

International Commission of Jurists

> Nizeria and the Rule of Law A Study

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Cover page photo Soldiers and police patrol the streets of Lagos.

Back page photo
Anti-riot police patrol the streets of Lagos.



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International Commission
of Jurists (ICJ)
Geneva, Switzerland

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A Study

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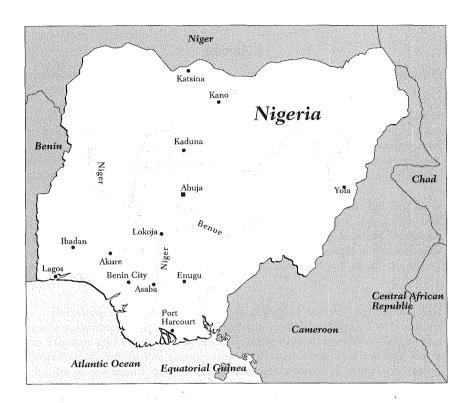
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Federal Republic	of Nigeria
Capital:	Abuja
Area:	923 768 Km²
Population:	102.1 million (Human Development Report 1995, UNDP)
Head of state:	General Sanni Abacha
Official Language:	English
National Languages:	Hausa, Yoruba, Ibo and other indigenous languages
Ethnicities:	51 distinct nations with 250 Ethnic/lingustic groups. The 3 largest nations are the Hausa- Fulani, the Ibo and the Yoruba. The Kanuri, Tiv, Efik/Ibibio/Annang, Ijaw, Edo, Urhobo and the Nupe are also larger groups.
Religions:	Islam (almost 50%), Christianity (about 40%) traditional beliefs (almost 10%)
Currency:	Naira

Preface

As an organisation whose primary interest is in the legal protection of human rights norms around the world, the International Commission of Jurists (ICJ) has been concerned about developments in Nigeria over the past few years, especially as it concerns the lack of respect for human rights and the Rule of Law.

The "Law of Lagos" adopted in 1961 states that "the Rule of Law is a dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realise his legitimate aspirations in all countries, whether dependent or independent".

Between 1993 and 1995, the ICJ issued several press releases, made statements at the United Nations and the African Commission on Human and Peoples' Rights and made direct representation to the Nigerian government expressing its concerns and calling for a change in the status quo. All these actions seemed to yield no results, while the situation degenerated further.

It is in the light of the continuing deterioration in the human rights conditions that the ICJ decided to conduct an in depth study into the Nigerian situation. This study which covers the period 1985 - June 1996 is meant to assist in providing an insight into the root causes of some of the recent events and be a source of information for all those working towards finding a permanent solution to the crisis.

The study is written from a legal perspective but describes the way in which laws are applied in practice. The style of writing chosen renders it accessible to the larger public in the hope that it will raise the level of understanding of the reader about the Nigerian situation.

In accordance with ICJ practice a copy of the first draft of the report was sent to the Military Government of Nigeria in April 1996 for its comments which would have been published in the report.

Recent steps towards improving the human rights situation taken by the Military government following the report of the United Nations Fact-Finding mission confirm the view that positive changes can be made if the political will to do so exists. Nigeria is one of the few countries in Africa that has a large residue of skilled human resources, particularly in the legal field, it was well known for its strong and highly independent legal and judicial system. This report shows that the present state of affairs within the legal system is a result of direct interference by the Executive. The Rule of Law depends not only on the provision of adequate safeguards against abuse of power by the executive, but also on the existence of effective government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society.

The ICJ hopes that the recommendations made in the report can contribute towards reinstating the Rule of Law in Nigeria.

Адата Dieng Secretary General

Acknowledgements

The ICJ wishes to express its deep gratitude to all those who have taken part in the preparation of this study. In particular we would like to thank Justice Kayode Eso, Messrs Roger Chongwe, Micheal Birnbaum, Asue Ighodalo, Clement Nwankwo and Kayode Fayemi for their immense contribution to the study.

Our thanks are also due to the human rights and pro-democracy nongovernmental organisations (NGOs) in Nigeria, individual lawyers and scholars in this field who supplied us with a lot of information on the situation in Nigeria, their assistance has been very valuable.

We are also greatly indebted to SIDA for their financial support, without which the study could not have been prepared.

Finally, sincere thanks go to Andrea Rauber, Valerie Etim, Reza Hariri and Nicolas Bovay for their role in producing this study.

While acknowledging its indebtedness to these and many others, the ICJ wishes to make clear that it alone is responsible for the final text.

Introduction

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression that human rights should be protected by the Rule of Law.

I. Overview of the Current Situation

The picture Nigeria offers today is one of a zone of continuous and intense seismic activity on the political and social fronts. In its move towards self-governance over the past four decades, all solutions the country has embarked upon have, far from oiling the cogs in the democratic machinery, turned out to be highly corrosive acids that eat away at the very structures and institutions which they were meant to sustain.

The country's attempts at democratic rule have been interrupted by a succession of military coups. Halting economic decline and restoring discipline and order have been the motivations advanced by the military leaders to justify each takeover. Yet at no time in Nigeria's history have the basic human rights of the individual met with such outright opposition and violation as they have under Nigeria's most recent military regimes.

Individuals, civil society, the media, the judiciary: every section of society has fallen prey to the tide of decrees and arbitrary measures that characterise the generals' exercise of absolute power in pursuit of "peace, order and good government of Nigeria." l

¹ Section 2 of Decree No. 107, Constitution (Suspension and Modification) Decree 1993, Official Gazette Extraordinary No 29., Vol. 30, 17th November 1993, Part A, A1499

In the past three years alone, the military governments has:

- removed by decree the jurisdiction of regular courts to challenge the government's authority or any of its actions. The power of the courts to protect the most basic rights of the individual, including that of issuing writs of habeas corpus has also been removed;
- cancelled the results of an election declared free and fair by national and international observers. They have arrrested the alleged winner, Chief Moshood Abiola, who, two and a half years later is still to be brought to trial;
- persecuted all dissenting voices in civil society, dissolving political parties and arresting their leaders. They have detained incommunicado, without charges the leaders of major trade unions, human rights groups and journalists;
- hanged nine environmental rights activists, amongst whom
 was the writer Kenule Saro-Wiwa, sentenced to death by a
 Special Military Tribunal in a trial international observers
 described as flouting established legal norms;
- sentenced to death in closed trials 41 people including General Olusegun Obasanjo, widely respected for having returned power to civilians in 1979, his former deputy, civil rights activists and journalists, allegedly for taking part in a coup plot which the government never proved; the sentences were commuted to various terms of imprisonment after an international outcry.

The Nigerian economy is in deep recession. Per capita income has fallen five-fold in ten years, the country no longer meets the interest payments on its external debts. Ensuring day-to-day survival has become the principal preoccupation of all but a minority of Nigerians.

II. Background

The Country and its History

With its population estimated at over 100 million,² Nigeria is the ninth largest country in the world and the largest country in Africa. Officially english-speaking, Nigeria occupies a prime spot on the Atlantic coast of West Africa, straddling the oil-rich delta of the River Niger where it empties into the Gulf of Guinea. Its immediate neighbours are officially french-speaking Benin, Chad, Cameroon, and Niger.

Whereas the socio-politics of Nigeria today is all tension and strife, its physical characteristics are all warmth and gentleness. Easily the most stable aspect of Nigeria is its climate: it is characterised by high temperatures around 30° throughout the year, with little variation between the north and south of the country, and slightly lower temperatures in the eastern highlands. Rainfall introduces the first element of variation, with nearly year-round rains along the coast, diminishing in intensity and duration to under five months in the northern part of the country.

Moderation similarly characterises Nigeria's physical features: from a central high point less than two thousand metres altitude, the Jos Plateau, the land slopes away gently towards the north of the country in a broad expanse of level sandy plains which at its extreme north west and north east respectively, become the lowland basins of Lake Chad and Rima; towards the south it falls away into lowlands of less than 300m some 250km inland from the coast, continuing in trough like valleys of the Niger and Benue rivers. These lowlands are dissected by innumerable streams and rivers flowing in broad valleys.

² The November 1994 census estimate; UNDP estimated Nigeria's population in 1992 at 102.1 million (Human Development Report 1995, UNDP) while UNFPA 1994 report estimated the population at 119,300,000.

Pre-Colonial and Colonial Times

Nigeria has a rich and diverse cultural heritage, the first traces of which go back some 2,500 years ago to the Nok civilisation which flourished from 500 BC to 200 AD. Before the demarcation of Africa at the 1884 Berlin Conference, the area which came to be known as Nigeria was made up of a number of independent kingdoms, peoples and city states. Some of these were as ancient as a thousand years old and others as recent as one hundred years old: the thousand-year old kingdom of Bornu, the powerful Fulani Empire of the north, the kingdoms of Ife and Benin of great artistic achievement, the Yoruba Empire of Oyo which had once been the most powerful of the states along the Gulf of Guinea, the city states of the Niger Delta, as well as the loosely organised Ibo peoples and peoples of the plateau.³

The colonising power by whom these nations were conquered during the second half of the 19th century was Britain. The British first ruled Nigeria as four distinct administrative units, the Protectorate of Northern Nigeria, the Protectorate of Southern Nigeria, the Colony and Protectorate of Lagos and the Egba United Government under the King of Abeokuta. The entity known as Nigeria was born at the start of the century in 1914, when the Northern and Southern Protectorates were amalgamated for reasons of fiscal and administrative convenience. The Southern Protectorate was divided into Western and Eastern Provinces in 1939.

Until 1946, it was the colonial power's policy to maintain a closed door policy in Northern Nigeria, barring all Christian missionaries and strictly restricting official contact with the south, where exposure to European influence had created vocal, westerneducated, politically conscious populations. The pattern in the more homogenous, muslim North, was that of centralized states, ruled by powerful monarchs. The more diversified South had increasingly embraced western influences and culture introduced by the missionaries since the 1840s, and early Portuguese and British traders since the 16th century, and was allowed a certain amount of direct government by the British. The closed door policy in the North deprived the future co-joint venturers in Nigeria of contact

³ Michael Crowder, A Short History of Nigeria, 1962

and association, and in particular delayed the exposure of Northern society to western political style and education opportunities.⁴

By the time the first set of elections for a national legislative power were held in 1951, the three parties to emerge were already structured predominantly along regional lines: the National Council of Nigerian Citizens (NCNC) dominating the East with support in the West, the Action Group (AG) holding strong in the West with some support in the East and amongst northern minorities, and the Northern People's Congress (NPC) dominated the North. Nigerian political thinking of the day was that a strong national identity would evolve from healthy regional identities and the recognition and respect for mutual differences.⁵ The opposite took place, however. Whatever support the more broadly-based parties held away from their home region would dwindle as ethnic consciousness became stronger and stronger, fuelled by conflicts made inevitable by mutual suspicion and mistrust. Among these was the first motion for "the attainment of independence for Nigeria by 1956" tabled before the National Assembly by southern politicians, this was defeated by the northern representatives who feared southern domination. 6 After this, it became the policy of Northern rulers to encourage young men of northern origin to join the army, in order to counter-balance the absence of Northern cadre and civil servants in the federation. Meanwhile, distrust between East and West had been born as a

⁴ Chief Obafemi Awolowo, Premier Western Region 1952-59, Leader of Opposition 1960-62, Vice Chairman, Federal Executive Council 1967-71, "The British were in power in Nigeria for about 61 years. For 47 out of the 61 years, they divided the North from the South so thoroughly and effectively that the two were divergently and almost irreconciliably orientated. It is incontestable that the British not only made Nigeria, but also handed it to us whole and united on their surrender of power. But the United Nigeria which they handed to us, had in it the forces - British-made forces they were - of its own disintegration."

⁵ Sir Ahmadu Bello, KBE, Sardauna of Sokoto, Premier of Northern Nigeria 1954-1966 "Let us not forget our differences. Let us understand our differences and in so doing build unity in our country."

⁶ Akinjide Oshuntokun, "... while the Southerners were clamouring for independence in 1956, apparently to be in line with the Gold Coast which had been promised independence in 1957, Kashim Ibrahim and his other colleagues from the North felt it would be suicidal for Nigeria. They feared that the Southerners who dominated the civil service and the economy would simply take over the country."

result of a previous incident in which the Easterners felt they had been cheated out of a legitimate victory in the legislative elections by the Westerners.

Ethnic consciousness and rivalry sharpened amongst the three major ethnic groups, the Yoruba in the West, the Ibo in the East and the Hausa in the North, with minority groups receiving little attention.

Inдеренденсе and Post Inдеренденсе

Thus, on October 1, 1960, it was an imperfect union of states, each one harbouring fear of domination by another, that was released from British rule to embark on the task of nation building. The factors that would impede Nigeria's progress to self-rule, even without the lure of vast wealth that oil would bring in the seventies, were already in place.

In 1962, crisis engulfed the Action Group (AG), the ruling party in the West. Chief Awolowo the party leader and Leader of Opposition in the House of Representatives fell out with his deputy, Chief Akintola who was then the Premier of the Western Region. The dispute was intractable. The NPC-dominated central government responded to the crisis by favouring the Akintola faction of the A.G leadership. Chief Awolowo was arrested and charged along with his supporters with conspiracy to overthrow the Federal Government under the leadership of the Prime Minister, Sir Abubakar Balewa.

The Awolowo faction of the A.G. and its alliance partners boycotted the national elections in 1964 and disputed the results of the 1965 Western regional elections claiming that they had been rigged in favour of the NPC-supported faction of the A.G. A complete breakdown of law and order in the region ensued, which the Prime Minister was unable to contain.

On January 15, 1966, Nigeria suffered its first coup attempt, when a group of majors, avowedly out of patriotism and a desire to cleanse the country of a political leadership perceived as self-seeking,

corrupt and tribalistic, sought to overthrow the government. The coup was bloody, and its victims were mainly northern political leaders, including the Prime Minister, Sir Balewa and the northern Premier, Sir Ahmadu Bello, northern officers in the army, Chief Akintola and yoruba officers in the army. The majors at that time were Ibos, who were preponderant in the army and the Federal Civil Service.

By July 29, 1966 a revenge coup had taken place executed by Northern officers in the army in which Ibo officers were killed on a large scale. These killings and the designation as Head of State of Lt. Col. Yakubu Gowon by some elements in the army, met with uncompromising opposition from the Governor of Eastern Region, Lt. Col. Ojukwu. The stage was set for the secession of the Eastern Region.

Gowon moved to stabilise the country. He put an end to the killing of Ibos stationed in the North, and reintroduced discipline within the armed forces. He released political prisoners and then set up an ad-hoc committee to deliberate on the constitutional future of Nigeria. Whilst discussions were going on, a new wave of killing of Ibos in the North occurred in September-October 1966, sparking a mass exodus of distressed Ibos from the North, and other parts of the country, back to the East. Ojukwu declared secession on May 30, 1967.

From the declaration of secession to January 12, 1970, Nigeria was engaged in a civil war, the Biafra war of grim memory. Millions of lives were lost. Human suffering took place on a scale to be ranked amongst the highest in recent history. The destruction of infrastructure, the economic devastation and the social dislocation in the Eastern part of the country were severe.

At the end of the war, Gowon initiated the policy of the three Rs - Reconstruction, Reconciliation and Rehabilitation, under the slogan"No Victor No Vanquished". Resources were channelled to the East for reconstrction purposes. Gowon promised to return the country to civil rule by 1976 when he believed effective rehabilitation of the Ibos would have been completed and democratic structures put in place.

Oil started to become the major source of revenue for the federal government in the early 70s, holding out the promise of wealth on a scale untold. By 1974, the government had become corrupt beyond the imagination of most Nigerians, and Gowon had reneged on his promise to return the country to civil rule claiming that the politicians "had not yet learnt their lesson".

On July 29, 1975 exactly nine years after Ironsi was killed, Gowon was toppled in a bloodless coup and power seized by General Murtala Mohammed, one of the minds behind the July 1966 coup.

His motivation was clear: to restore the country to civilian rule. General Murtala Mohammed immediately announced a transition programme within which an elected Constituent Assembly would deliberate on, accept and enact a Constitution, following which political parties would be unbanned and elections held at Federal and State levels, and the newly democratically elected leaders sworn in on October 1st, 1979. On his assassination on February 13, 1976, his deputy General Obasanjo took over from where he left and faithfully implemented the laid down transition programme, culminating in the election of Alhaji Shehu Shagari under the 1979 Constitution - the first and so far the only time in Nigeria's history that a military leadership would hand power over to a democratically elected civilian government.

Having been absent from government for thirteen years, a lot of politicians at all levels exhibited a lack of preparedness for the offices they held. Whereas basic human rights were respected under Shagari's civilian government, it quickly demonstrated that the accumulation of personal wealth, manipulation of the democratic process and economic non-accountability were not the sole preserve of military leaders. After the ruling party the National Party of Nigeria (NPN) declared that it had won the 1983 elections to the protests of a disenchanted and impoverished population, it was only a matter of time before the military struck again to "restore order" - this time with the encouragement of certain sections of the population.

General Buhari became the fifth military head of state in twentythree years of Nigeria's independence on December 30, 1983. Buhari and his deputy Idiagbon tried to instil some discipine in the country, but their draconian decrees and disregard for the rule of law and due process, especially in the treatment meted out to politicians and the press, eroded whatever goodwill they had among the Nigerian people. A conducive atmosphere was thus created for their overthrow two years later by their No. 3 and Chief of Army Staff, General Ibrahim Babangida, who promised to tackle the country's economic problems and to return the country to civilian rule by 1990.

Nigeria in the 90s.

Before acceding to his promise to hold elections, Babangida heavily manipulated the political process. He banned old politicians from participating in politics, disqualified all parties that were seeking registration and formed two parties, insisting that all those who intended to participate in politics join one or the other. The whole political class acquiesced and participated in this exercise. Babangida then unbanned old politicians and declared them eligible to contest elections, deepening immeasurably the individual and factional political rivalry that has characterised the Nigerian political process from its beginnings.

When presidential elections were finally held on June 12, 1993 after being postponed three times, and Chief Moshood Abiola appeared from the results declared in each state as the winner by an overwhelming majority, Babangida cancelled the elections. The resulting massive outcry and widespread unrest throughout the country, along with pressure from within the armed forces and the international community led Babangida to relinquish office and appoint an Interim Government, under Chief Shonekan.

On November 10, 1993, a Lagos High Court declared the Interim Government illegal. Within days General Abacha, who had been the de facto No. 2 under Babangida and de jure No. 2 in the Interim Government, seized power.

As the end of the second millenium approaches, the peoples of Nigeria can hardly be said to be further advanced politically than they were some one hundred and forty years ago, when they first lost their claim to self government upon being invaded by the British.

Though fourteen million Nigerians are widely believed to have given Chief Moshood Abiola the mandate to become the nation's president on June 12, 1993, their country is presently run as a unitary state by Commander in Chief of the Armed Forces, General Sani Abacha, who seized power on November 17, 1993, and exercises it at gun point. All democratic institutions having in any case been suspended by the previous military government under Babangida, the day to day administration of the country's affairs is carried out by military administrators with limited powers who rule each of the states and answer to General Abacha in Abuja, the country's capital.

In accordance with the tradition established by previous military regimes in Nigeria, the present government rules by decrees made exclusively by the Commander in Chief. These decrees range from ad hominem decrees directed at one person against whom legislative judgement is exercised,⁷ to decrees that oust the jurisdiction of the courts and suspend various parts of the Constitution.⁸ It is alleged that decisions are made by Gen. Abacha alone: the Provisional Ruling Council supposed to be the executive arm of the military has only consultative status with the Head of State.

Successive military governments have tried hard to cloak their actions in legitimacy, but the contradictions between their body of rules and both the country's Constitution and international human rights law but deepen with each new decree. The military leaders are also finding it impossible to be coherent within their own body of rules: for example Babangida decreed himself out of power by Decree 59 of 1993 and attempted to decree into power an interim head of state by Decrees 60 and 61, the legitimacy of which was successfully challenged before the courts by Abiola on the grounds that having decreed himself out of power, Babangida had lost the power to make subsequent decrees.

⁷ For example the Nigeria Labour Congress (Dissolution of National Executive Council) Decree No. 9 of 1994

⁸ For example The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994

General Abacha has promised transition to civilian rule for 1998, following the same transitional programme proposed by his predecessor, General Babangida, whose refusal to stand down after the programme had run its course precipitated the current crisis. The Abacha government called elections (largely boycotted) for a constitutional conference in May 1995 and lifted the ban on political parties the following month. Inspite of the "successful" local government elections held on 17 March 1996 on a no party basis, the prospects of a successful transition are grim. The disqualification of candidates by a retroactive decree after having been elected already shows which way the programme is likely to go.

Today, it is General Abacha who makes the law, interprets it and applies it. His claim of absolute power is rare, even by the standards of military regimes in Nigeria.

The Economy

Nigeria is a country endowed with resources: be these natural or human; abundance and diversity are the themes. The country's size, the richness of its endowment in agricultural and mineral resources, the quality and quantity of its human resources give it the potential for being one of the richer countries in the world. Nigeria has the largest reserves of petroleum and natural gas on the African Continent. Coal, iron ore, uranium and tin are the country's other mineral resources, Only oil is presently being exploited to any significant extent.

The agricultural resources of the country's nearly one million square kilometres have similarly also to yield their real potential. Nigeria's GNP in 1992 amounted to US\$ 29,667 million, derived from the following sectors of the economy (Central Bank of Nigeria figures):

The arrival of the oil industry in the late 1960s and its rapid build-up in the 1970s saw the collapse of traditional industry in Nigeria, with disastrous consequences for domestic food production. From being a large exporter of agricultural produce at independence, Nigeria has moved to being a sizeable importer. Agriculture started

Statistical Data	
Agriculture and livestock	35.3%
Crude petroleum	12.9%
Wholesale and retail trade	12.5%
Government services	9.0%
Finance and Insurance	8.7%
Manufacturing	8.6%

making a comeback in the national economy towards the end of the 1980s, with agricultural production rising in response to the Buhari and Babangida governments' agricultural development and food-self sufficiency strategies. Food imports fell from 115% of total imports in the mid-1980s to 8% in 1993. Policy initiatives which contributed to this were: the devaluation of the Naira, the abolition of the state controlled commodity boards and removal of restrictions on agricultural pricing; the imposition of a ban on cereal imports and support to the traditional smallholder farmers who account for around two-thirds of Nigeria's total agricultural production and around 90% of the food consumed.

Nigeria's agricultural production, principally in the central and western areas is thus geared towards its domestic market. Cash crops are produced of which only cocoa is exported to any real extent: Nigeria was the worlds fourth largest exporter of cocoa beans in 1990/91 accounting for about 7.1% of world trade. Other cash crops, grown mainly in the midwest and north of the country, are palm kernels, rubber, coffee, groundnuts and cotton.

Agriculture keeps the Nigerian people alive, but the petroleum industry is the engine driving the economy, accounting in 1992 for over 95% of Nigeria's total export earnings and 85% of all government revenues. Nigeria's oil fields are to be found in and around the delta of the Niger. They are exploited by Shell (which accounts for half of total production and is 80% owned by the government), AgipPhillips, Elf-Aquitaine, Gulf, Mobil, Texaco and

⁹ Economist Intelligence Unit, Nigeria Country profile, 1995, p 28

Pan Ocean (60% owned by the government). The USA buys around half of Nigeria's production, the remainder is bought up by Spain, Germany, France, Portugal and the UK.

Though Nigeria's industrial base and services sector are now relatively small for the size of the economy, it remains an industrialised country with respect to its neighbours which it supplies with manufactured and semi-finished products.

As world events dictate oil prices and production quotas, so do Nigeria's economic and to a certain extent political fortunes fluctuate. The return to civilian rule in 1979 for instance followed a period of real and steady economic growth. The aborted attempt to return to civilian rule in 1993 took place in the midst of a severe depression. It was followed by the protest strikes of the oil workers which caused production levels in 1994 to drop by a third. In mid 1986, the free-market price for oil fell to \$10-12 per barrel and total export earnings fell with it to about half of what they were in the previous year, ushering in Nigeria's first attempt to implement a Structural Adjustment Programme to redress the economic decline of the previous years. On the other hand, the 1990-1 Gulf War crisis engendered a mini-boom which brought additional and unexpected billions to the government's coffers.

An examination of the way in which the Gulf War bonus was used reveals a disturbing picture of the way in which the Babangida regime in particular handled public funds. According to one enquiry into the finances of the Central Bank of Nigeria which has not been made public: ¹⁰

"between September 1988 and 30 June 1994, US\$12.2 billion of the \$12.4 billion (in the dedicated and special accounts) was liquidated in less than six years... they were spent on what could neither be adjudged genuine high priority nor truly regenerative investment; neither the President nor the Central Bank Governor accounted to anyone for these massive extrabudgetary

¹⁰ Dr. Pius Okigbo, Statement by The Chairman on the Occasion of the Submission of the Report of The Panel on the Reform and Reorganisation of the Central Bank of Nigeria, July 1994.

expenditures ... that these disbursements were clandestinely undertaken when the country was openly reeling with a crushing external debt ..."

Nigeria's economy today is in a deep recession with an external debt of US\$ 32 billion. Inflation having been at over 50% for the past three years (70% in 1993), and per head income having fallen from \$1,000 in 1983 to \$ 330in 1992. II In 1993, the World Bank ranked Nigeria amongst the 20 poorest countries in the world: it underperforms both with respect to other countries which have a similar level of GNP and those with a similar size of population. In 1965 Indonesia's GDP per head was lower than Nigeria's, by 1990 it was 3 times greater and the gap has continued to widen. In

Statistics on social services are sparse but indicate a clear lack of progress in the provision of facilities in the 1980s and 1990s. The number of primary schools fell through the 1980s to 37,800 in 1993, while secondary school numbers declined to 6,200. Given an adult literacy rate of 54% in 1993, it is clear that the grand aim announced in 1992 of total adult literacy by the year 2000 will not be achieved. Since the start of the 1990s, enrolments have risen sharply at all levels, with the primary school pupil/teacher ratio deteriorating from 36 in 1990 to 41 in 1993. Provision of health services in Nigeria is generally poor, despite slight improvements. The population per doctor and population per nurse ratios stood at 5,882 and 1,639 respectively between 1988-91. The 1995 budget allocation to health and social services was only 4.4% of total capital allocations to federal ministries.

Economic infrastructure is similarly in bad shape. The standard of Nigeria's road network is very disappointing. Reduced federal revenues in the 1980s meant that there was virtually no significant addition to capacity and a lack of maintenance and rehabilitation has meant that many of the country's roads have deteriorated sharply.

¹¹ UNDP, Human Development report 1995. A more recent survey put GNP per capita at \$250 in 1994.

¹² The Economist Intelligence Unit, op cit.

¹³ The Economist Intelligence Unit, op cit.

¹⁴ UNDP Human development report, Table 8

The railway system has received little investment in recent years and services on the 3,500km network have been reduced to a mininum, deterring both passenger and freight business, despite the deteriorated state of the roads. Passengers carried by the Nigerian Railway Corporation slumped to only 580,000 in 1993 compared with nearly 6.5 million four years earlier. The country's airline, Nigeria Airways, and 15 airports are suffering from a lack of capital spending, lack of maintenance and the absence of a coherent policy, and similarly cannot play their essential role in a country of Nigeria's size. Only the ports have the capacity to meet demand, but this is only because demand has fallen due to the general downturn in the economy and the fall in imports. 15

Since the start of the 90s, there has been a virtual policy vacuum. The various economic reform programmes conducted by the military régimes since 1986 have ground to a halt, and negotiations with the World Bank, the IMF and the Paris Club are all on hold. Servicing of interest payments on most of the external debt has stopped. To quote a recent study: 16

"virtually all pretense of professional economic management has been abandoned, and the government has cynically allowed the economy to become completely predatory in nature."

The figures and facts above describe a country which, after a glorious day of several centuries has now to emerge from a night of underdevelopment on all fronts. A people hungry for the satisfaction of its basic economic and social needs, starved for the fulfiment of its legitimate aspirations.

¹⁵ Economist Intelligence Unit, op cit, p 18

¹⁶ International Forum for Democratic Studies, Nigeria's Political Crisis: Which Way Forward? Conference Report, December 7, 1994. Washington, D.C.

III. Nigeria in Regional and International Politics

Nigeria is still very much a giant in West African politics. Diplomatic relations with neighbouring countries, Benin and Niger, are generally good. Relations between the Nigerian and Cameroonian governments however are marked by border disputes, and have been further strained since the allegation of Nigeria that Cameroon invaded two islands, in 1994. Nigeria is the biggest member of the Economic Community of West African states (ECOWAS) which it was instrumental in setting up. The country maintains the largest army in the sub-region, from which it supplied 10,000 troops to the peace-keeping effort in Liberia and Sierra Leone in 1993.

Relationships with the wider international community are marked with ambiguity. It is generally characterised by a combination of economic complicity and diplomatic distance, the result of the attraction created by Nigeria's economic potential and the distaste generated by the military's determination to remain in power against the wishes of the population. Western foreign investment in Nigeria runs into several billions of dollars, primarily in the petroleum industry. The present political and economic climate has discouraged new investments, bringing about the failure of the privatisation programmes introduced under the Structural Adjustment Programme. However, existing levels of investment appear to be high enough to discourage strong diplomatic initiatives against Nigeria on the part of its major investors and trading partners.

This situation is well illustrated by the international response to the execution of Ken Saro-Wiwa and the Ogoni Eight in November 1995. The 15 countries of the European Union, South Africa and the USA recalled their ambassadors for consultations in protest. Nigeria which applies very strictly the principle of reciprocity, did the same. In January 1996, the French and British ambassadors had returned to Nigeria. Relations with the USA however remained distant: the Clinton administration indicated that it will not collaborate with the Abacha regime and has suspended bilateral aid. The Abacha regime has refused to enter into discussions with any of the mediators delegated by various sympathetic communities, emphasizing the

principle of non-interference in the affairs of the sovereign state of Nigeria.

As a member of the Organisation of African Unity (OAU) to which it contributes one tenth of the budget, the United Nations (UN) and the Commonwealth of Nations, Nigeria has been an active player in international politics on a number of occasions, the most significant being its role in bringing about the end of apartheid in South Africa. It was amongst the first countries to push for sanctions against the racist South African regime, vigourously and often brilliantly fighting the ANC's cause in these organisations. Nigeria was member of the Security Council between January and December 1995, and has permanent membership of the Council amongst its foreign policy goals.

Today, Nigeria has been suspended from the Commonwealth for two years, and has provided the occasion for the African Commission for Human and People's Rights (ACHPR)to meet in the second extraordinary session in its history to condemn Nigeria for its violations of human rights. The actions of the ACHPR and of South Africa seem to be making a clear statement in African politics, namely that brotherhood can be based on respect for principle, and not merely on shared interests or other considerations.

IV. One of the World's most Ethnically Diverse Societies

Rabid fear of political subjugation by one ethnic group or by an alliance of two of the major ethnic groups is how many Nigerians characterise the political climate in which they have been attempting self rule since their very first parliament, even before independence. Which are these ethnic groups that see themselves as locked in conflict over the control and share of the country's main source of revenue, presently oil?

The 1994 census put Nigeria's population at 89 million, though it is commonly held to be closer to 100m. These millions of people are

said to be divided into 51 distinct nations with 250 ethnic/linguistic groups, making Nigeria one of the world's most largest and most ethnically diverse societies. The 3 largest nations are the Hausa-Fulani, the Ibo and the Yoruba, who make up around 50% of the population. There are 7 other nations with populations of at least 2 million: the Kanuri, Tiv, Efik/Ibibio/Annang, Ijaw, Edo, Urhobo and Nupe. The Ogoni, the ethnic group of late Ken Saro-Wiwa are a minority group of about half a million people, one of the twenty-odd ethnic groups of the oil-rich delta.

The battle lines appear to be drawn between a populous, relatively homogeneous North, inhabited by a predominantly muslim Hausa nation, and a more differentiated South of christian influence, divided into the South East where the Ibo nation dominates, and the South West where the Yoruba hold the majority. For historical reasons, the Northerners grew to dominate the top ranks of the army, whilst the Southerners were more to be found in administration, the liberal profession and trade. Given the location of the oil fields in the coastal areas of the midwest and the south east and the prevailing climate of entrenched ethnic distrust, insecurity and intolerance, it is easy to see how the political misfortunes of the country could be linked to the harrowing steps in the apparent power struggle between the three nations vying for economic survival and political supremacy.

Is it really the case that ethnicity is the stumbling block on which any attempt at peaceful, consensual sharing of the country is doomed to fail? The general reaction to the annulment of the results of the presidential elections of 1993 purported to have been won by Moshood Abiola, a Southern muslim, by people in all regions and states of the country contradicts this hypothesis.

The pragmatic perception of the Nigerian people of their common interests is supported by sociological analysis of the dimension of ethnicity in politics. "Ethnicity, states a Nigerian political scientist, "operates at the level of an ideology... and rests on, is functional for and determined by the infrastructure of society, the mode of production." It is not therefore that people from different

¹⁷ Okwudiba Nnoli, Ethnic Politics in Nigeria, 1980

ethnic groups cannot share Nigeria, but that certain groups and individuals in society in wanting to exclude all others from the socioeconomic benefits arising from production, use the ethnic argument to entrench the social power base from which they successfully compete. This use of exclusion along any convenient line as a socioeconomic competitive strategy was clear in the Somalian conflict, where the border lines were drawn not between different ethnic groups - since all parties to the conflict belonged to the same ethnic group - but between clans.

Historically, much of Nigerian ethnic consciousness was born under British colonial rule, when the country was divided into three regions prior to the first national elections ever held. Before that time for instance, Ibos lived in the north and were a full part of its social and economic life. Since that first division of the country, various historical incidents and social and economic factors (notably the discovery of oil), have raised the stakes of socio-economic confrontation and simultaneously, the attractiveness of ethnic consciousness as a strategic instrument has increased.

"A feeling of belonging and rejection becomes the basis for distinguishing individuals in the city and at the national level. Under these circumstances, each member of X ethnic group fears that he is regarded as an X by any member of Y or Z ethnic group and would, therefore, be discriminated against by them in the struggle for the scarce socioeconomic resources. He believes that he can expect preferences from any member of X in a position to help him, and perceives it to be in his interest to promote the activities of all Xs in competition with Ys and Zs. If any X or Z does not favour his own kind, he gets no preference from his kind in return, and no one of the other groups would give him preference over their own people. As a result, anyone who finds himself outside the system of ethnic preferences is lost." 18

The hold ethnicity has in national consciousness has been further perpetuated by the spatially-based mode of political representation

¹⁸ Okwudiba Nnoli, op cit.

Nigeria inherited from its colonial past. This tended to encourage ethnically salient parliamentary candidates who stood to benefit from appealing to ethnic sentiments. As ethnic consciousness increases in scope and intensity, it assumes

"... a self-fulfilling and self-sustaining dynamic of its own. Ethnic hostility, loyalty and identification are passed on to successive generations, and the family, press, private and public conversation become infected by ethnicity." Therefore even when the original basis of ethnicity, socioeconomic competition among classes and individuals is eliminated, there remains the problem posed by the internalised dimension." 19

¹⁹ O. Nnoli, op cit.

Conclusions and Recommendations

The complexities that the Nigerian situation presents is common in countries with a great diversity of population. The question of national unity and territorial integrity cannot but be great. The onus therefore falls upon the people and particularly the government to make efforts towards strengthening the national identity through peaceful means. According to former president of Senegal, Leopold Sedar Senghor "La Nation, notre commun vouloir de vie commune", ²⁰ the people must have a will to live together before a Nation can be deemed to exist. Furthermore the interests of all sections in the society must be taken into consideration and an enabling sociopolitical environment created, so that all are free to participate therein.

In a situation such as Nigeria's, where, far from subsiding, socioeconomic competition has reached an all time viciousness, the level of fear of losing out that has been internalised is acute. Paradoxically, it is taken for granted, becoming all the more dangerous for being insiduous. Fear is dehumanising, it alienates people from each other and a man from what is best and highest in him. Fear of losing out has been the dominant, prevalent dimension of interaction in Nigeria since colonisation. Where human rights are concerned, the inability of the Nigerian peoples to find a plausible solution to diminishing the level of fear in their society has resulted in the grim catalogue of abuse and exploitation which now follows.

Successive governments have made efforts to gloss over the «National questions». These questions include issues such as: the power sharing structure, accountability in governance (separation of powers), the role of the military in Nigeria, revenue allocation and ensuring ethnic balance (in particular, treatment of minority groups). The tradition has been to call for a review of the Constitution through a Committee (mainly nominated by the Executive), the outcome of their deliberations have not been given the serious

²⁰ In english this phrase can be translated to read: «The Nation, our common will to live together».

attention it deserves. The most recent attempt which came after the annulment of the first widely adjudged free and fair elections, suffered the same fate. The report of the Constitutional Conference which met for almost a year has not been published, yet the government has gone ahead to implement a transition process which it claims arose out of the Conference's recommendations. Generally, it is believed that the problem is not with the type of Constitution the country has adopted, it is the mode of operation that needs to be checked and reformed.

Nigerian leaders, particularly the military, seem to have taken the erroneous position that a Nation can be built through force or cohesion. There is a need for dialogue, backed by genuine intention.

It is recommended that:

- (a) the report of the Constitutional Conference of 1994-95 be made public. The military government should accept the recommendations of the Conference and embark upon a transition programme in line with the aspirations of the people.
- (b) that the government of Nigeria accept the need for a genuine national dialogue which will take into consideration the wishes and aspirations of all Nigerians. This dialogue should be organised by an independent body comprising of representatives of the different sections in Nigeria and open to international observation and monitoring.
- (c) that development planning directed at protecting the economic, social and cultural rights of the people should be made a priority.

Compliance with International Standards

I The United Nations Human Rights Regime

Nigeria is a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has also signed and ratified amongst others the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the prevention and punishment of genocide, the Slavery Convention of 1926, 21 the Convention and the Protocol relating to the status of refugees. Nigeria is signatory to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

In principle, state parties to these various instruments are obliged to comply with their provisions. In recent years, various UN human rights mechanisms, governments, and non governmental organisations (NGOs), have alerted the UN Human Rights Commission on the deteriorating situation of human rights in Nigeria.

In 1993, the UN Working Group on Arbitrary Detention adopted a decision²² stating that the detention of three prominent human rights activists, Chief Gani Fawehinmi, Dr. Beko Ransome-Kuti and Femi Falana, was arbitrary. These three men had been arbitrarily arrested and detained repeatedly for days because of their

²¹ including the Supplementary Convention on the Elimination of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, as well as the Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

²² Decision No. 22/1993-Nigeria

activities in the field of human rights. Furthermore, the Working Group deplored the military government's rule by emergency decrees without a formal declaration of a state of emergency in the country.

On May 30, 1994, the UN Special Rapporteur on Torture, Inhuman or Degrading Treatment or Punishment, transmitted an urgent appeal to the Government of Nigeria on behalf of Ken Saro-Wiwa, the leader of the Movement for the Survival of Ogoni People (MOSOP), who was arrested on May 20, 1994, and detained incommunicado under severe conditions. The Rapporteur had raised concern on the denial of medical attention to Ken Saro-Wiwa who was suffering from a serious heart condition. ²³ During his detention, Saro-Wiwa was repeatedly beaten and held in hand and foot cuffs for 65 days. All these actions perpetrated by the government's agents amounted to torture under the UN Convention against Torture.

The report of the Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions to the 51st session of the Commission on Human Rights confirms that extrajudicial, summary and arbitrary executions were occuring in Nigeria.²⁴ Many of these acts of violence were being committed against the Ogoni people. Specifically, the Special Rapporteur had information about the alleged killing of 52 members of the Ogoni community by soldiers of the Internal Security Task Force, a contingent of anti-riot policemen and soldiers. He noted that there were consistent reports and allegations of violations of the basic right to life. The Special Rapporteur called on the government to take necessary steps to ensure that the security forces respect human rights and fully abide by the norms and regulations governing the use of force and to bring to justice those who violate these principles. These calls appeared to fall on deaf ears. Special tribunals continued to conduct unfair trials and pass death sentences on persons brought before them. The execution of Ken Saro-Wiwa and his colleagues was carried out in confirmation of the conviction handed down by such a tribunal.

At the 51st session of the UN Human Rights Commission in 1995, the Nigerian government managed to prevent the adoption of a

²³ UN Document E/CN.4/1995/34

²⁴ UN document E/CN.4/1995/61

resolution to urge it to comply with international instruments and to take measures to restore democratic rule without delay.²⁵ However, the General Assembly at its 50th session held in December 1995, adopted a resolution in which it "invited" the Human Rights Commission to give urgent attention to the deteriorating human rights situation in Nigeria. The resolution condemned the arbitrary execution of the Ogoni leaders and expressed concern about other violations of human rights and fundamental freedoms in Nigeria. It also called upon the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions as well as the Working Group on Arbitrary Detention to look into the situation in Nigeria and report their findings to the UN Human Rights Commission at its next session in March 1996.

The UN Human Rights Committee also expressed deep concern on the human rights situation in Nigeria following the trials and subsequent execution of Ken Saro Wiwa and the MOSOP leaders. The Committee requested the Nigerian government to submit its initial report for consideration at its 56th session in March-April 1996. The report requested related to the application of Art. 6, 7, 9 and 14 of the ICCPR in particular.

Given the importance of the report in the current situation and the constraints of the Nigerian delegation in being available for only one day, the Committee decided to divide the examination of the report into two parts, namely the first part on articles 6, 7, 9 and 14 and the second part on the remaining articles of the Covenant. The first part was considered at the 1494th and 1495th meeting of the Committee held on 1 April 1996 (CCPR/C/SR. 1494 and SR. 1495), while consideration of the second part of the report was adjourned to the 57th session of the Committee in July 1996 to be held in Geneva.

In regard to the first part of the report, the Committee noted fundamental inconsistencies between the obligations undertaken by Nigeria under the Covenant to respect and ensure rights guaranteed under the Covenant and the implementation of those rights in

²⁵ Civil Liberties Organisation, open letter to Mr. Jose Ayala Lasso, High Commissioner for Human Rights, 24 July 1995.

²⁶ CCPR/C/92/Add.1

Nigeria. In particular, the Committee observed that the incommunicado detention for an indefinite period and the suppression of habeas corpus (violation of article 9 of the Covenant), as well as the establishment by Presidential Decree of several types of special tribunals, which constitute violations of rights under article 14, 6.1 and 6.2, led to the arbitrary deprivation of life of Mr. Ken Saro Wiwa and the other accused.

The Committee recommended the abrogation of all Decrees establishing special tribunals or ousting normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts, which violate some of the basic rights under the ICCPR. It recommended further that urgent steps be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial as provided in article 14 (1, 2, 3) and to have their conviction and sentence reviewed by a higher tribunal in accordance with article 14 (5) of the ICCPR. Finally, the Committee requested the Government of Nigeria to inform the Committee at the resumed consideration of the report in July 1996 of the steps it has taken to implement the recommendations mentioned above.

Despite this and other various denounciations of the military governments actions, human rights activists and others, particularly journalists and members of the opposition clamouring for a return to democratic governance are continously being harassed, arrested and detained at will.

II The African Charter on Human and Peoples' Rights

Nigeria became a party to the African Charter on Human and Peoples' Rights (ACHPR) in 1983. The Charter obliges member states to recognize the rights, duties and freedoms enshrined in the ACHPR and to undertake to adopt legislative measures to give effect to them.

In response to complaints it has been receiving on the deteriorating human rights situation in Nigeria particularly since 1990, the African Commission on Human and Peoples Rights (the Commission) has taken several steps to intervene in the country in compliance with its mandate under the Charter.

In the wake of the crisis which followed the annulment of the 1993 presidential elections and the resultant clampdown on innocent citizens by the military government, the Commission expressed its concern and called for an observance of human rights principles by the government. The Commission passed specific resolutions during its 16th and 17th sessions.²⁷

At its 17th ordinary session held in Lome, Togo, in March 1995, the Commission examined a communication by the Civil Liberties Organisation (CLO), a Nigerian NGO. The CLO was preoccupied with the various decrees, especially decree Nr. 107 of 1993, which suspended the constitution and ousts the jurisdiction of the regular courts on matters for which the decree had been promulgated. The Commission declared that: «the act of the Nigerian government to nullify the domestic effect of the (African) Charter constitutes an affront to the African Charter on Human Rights and Peoples' rights". 28

During the course of the Ogoni trials, the Commission received communications from various NGOs concerned about the unfair conduct of the trials. A number of communications were made with the Nigerian Government in accordance with Rule 109^{29} of the Rules of procedure of the African Commission to prevent irreparable damage from being done to Ken Saro-Wiwa and his colleagues while the complaint before the Commission was being dealt with. The failure of the Nigerian government to keep to its assurance made to the Commission in early November 1995, led to an extra-ordinary session which was held from 18-19 December 1995. The Nigerian government had sent a high powered delegation to participate in the 18th session in October 1995, to respond to a number of complaints which were before the Commission. During the discussions, the government delegation had assured the Commission that the

²⁷ ACHPR/COM.FIN/XVI, 16th session, 25 October - 3 November 1994, Banjul, the Gambia; and ACHPR/COM.FIN./XVII/Rev. 3, 17th session, 13-22 March 1995, Lome, Togo.

²⁸ ACHPR/COMMU/AO442869

²⁹ Rule 111 in amended Rules of Procedure.

judgement given by the special tribunal against the Ogoni leaders would be stayed pending the outcome of the Commission's mission to Nigeria scheduled for February 1996.

In violation of its obligation under the Charter, the Nigerian government ordered the execution of the Ogoni leaders.

The resolution adopted at the end of the extra-ordinary session of the African Commission on Human and Peoples Rights (December 1995) planned to undertake a mission on February 1996 in order to intensify the dialogue between the Commission and the Nigerian Authorities, concerning the Ogoni detainees. At the time of publication of this report, the mission had not taken place.

III. Domestic Implementation of International Human Rights Standards

International treaties are incorporated into the Nigerian domestic legislation through the enactment of enabling laws. Following this action, the treaties become part of the domestic laws which can be applied by the courts. For example, the ACHPR became part of the laws of the country by virtue of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. The Charter has since been applied by the courts in human rights cases.

Chapter IV of the 1979 Constitution, which deals with human rights, guarantees a wide range of civil liberties, similar to those contained in the International bill of rights.³¹ It contains the most basic safeguards for the rights of the individual citizen vis-à-vis the State. However, it has become a practice under successive military governments to abolish some parts of the Constitution, particularly those dealing with the protection of human rights.

Under the present military regime, headed by General Abacha, parts of the 1979 Constitution have been amended by *Decree No. 107, 1993, the Constitution (Suspension and Modification)* Decree, which

³⁰ Cap. 10, Laws of Federation 1990

³¹ see Appendix B, Part IV of the 1979 Constitution

specifies that the constitution and other laws (including international treaties) are subordinate to executive decrees. The constitution of the peace, order and good government of Nigeria or any part thereof with respect to any power whatsoever. Undicial review of these decrees is ruled out, in particular as to questions touching Part IV (Human Rights) of the Constitution. This position has been challenged by the judiciary in some cases. In CRP vs The President of the Federal Republic of Nigeria, the trial judge cited several authorities to the effect that an international agreement as in a treaty or convention is autonomous as states parties submit themselves to be bound by them. He stated further that the state's obligation to ensure that its municipal law conforms with the treaty provisions makes the treaty prevailent over the municipal law.

Inspite of judicial pronouncements to the contrary, decrees backed by the executive's powers continue to operate in violation of the provisions of the Charter and other international human rights norms.

The following decrees which are currently in operation specifically contradict international human rights law:

 Constitution (Suspension and Modification) Decree No. 1 of 1984

³² Sect. 1 of Decree No. 107, Constitution (Suspension and Modification) Decree 1993, Official Gazette Extraordinatry No. 29., Vol. 30, 17th November 1993 - Part A, A1499

³³ Sect. 2, ibiд.

³⁴ cf. Sect. 5: "No question as to the validity of this decree or any other decree made during the period 31st December 1983 [after military coup in 1983, note by the editor] to 26 August 1993 or made after the commencement of this decree or of an edict shall be entertained by any court of law in Nigeria". Cf. also Decree No. 12, 1994, Federal Military Government (Supremacy and Enforcement of Powers).

³⁵ Onalaja J. Suit No. M/103/93

This decree suspends the major provisions of the 1979 Constitution, including the human rights provisions.³⁶ It ousts any possibility of seeking redress in a regular court and effectively derogates all the safeguards in particular concerning the right to liberty. This is contrary to art. 4, 14 and 15 ICCPR and art. 6, 7, and 26 of the African Charter.

• State Security (Detention of Persons) Decree³⁷

This decree provides for administrative detention. Section 1 of the decree provides "If the Chief of General Staff is satisfied that any person is or recently has been concerned in acts prejudicial to state security or has contributed to the economic adversity of the nation, or in the preparation or instigation of such acts; and that by reason thereof it is necessary to exercise control over him, he may by order in writing direct that person be detained in a civil prison or police station or such other place specified by him; and it shall be the duty of the person or persons in charge of such place or places, if an order is made in respect of any person delivered to him, to keep that person in custody until the order is revoked."

This provision is a clear violation of article 9 of the ICCPR and of Article 6 of the African Charter. Section 4 of the same decree effectively suspends the right to fair trial and ousts the jurisdiction of regular courts³⁸ in

³⁶ Section 1 (1) says: "The provisions of the Constitution of the Federal Republic of Nigeria of 1979 mentioned in the first schedule of this decree are hereby suspended."

Section 5:"No question as to the validity of this decree or any other act made after the commencement of this decree or of any decree or edict shall be entertained by any court of law in Nigeria."

³⁷ Cap. 414 Laws of the Federation 1990

⁵⁸ Section 4 (1) provides: "No suit or other legal proceedings shall lie against any person for anything done or intended to be done in pursuance of this Act." Section 4 (2) states: Chapter IV of the Constitution of the Federal Republic of Nigeria is hereby suspended for the purposes of this Act and any question whether any provision thereof has been or is being or would be contravened by anything done or proposed to be done in pursuance of this Act shall not be inquired into in any court of law, and accordingly Section 219 and 259 of that constitution shall not apply in relation to any such question."

contravention of art. 14 and 15 ICCPR and art. 7 of the African Charter.

Special Tribunal (Miscellaneous Offences) Decree³⁹

This decree sets up a tribunal presided over by a serving or retired judge of the High Court. It prescribes stiff penalties for offenders, and appeals can only be directed to a special appeals tribunal. Section 11 of the decree ousts the jurisdiction of regular courts and suspends Chapter IV of the Constitution⁴⁰ in violation of the guarantees provided in art. 14 ICCPR as well as art. 7 of the African Charter.

• The Civil Disturbances (Special Tribunal) Decree⁴¹

This decree provides for the investigation and trial of persons involved in civil disturbances in any part of the Federation. The first schedule of the decree contains a comprehensive list of crimes falling under the jurisdiction of such a tribunal (namely treason, unlawful assembly, murder, manslaugther, assault, rape, arson, etc.). Again, there is no possibility of taking any matters related to this

³⁹ cap. 410 Laws of the Federation 1990

⁴⁰ Section 11 (1) reads:" No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act matter or thing done or purported to be done under or pursuant to this decree and if any such proceedings are instituted before on or after the commencement of this decree the proceedings shall abate, be discharged and made void."

⁽²⁾ The question whether any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria has been, is being or would be contravened by anything done or proposed to be done in pursuance of this Decree, shall not be inquired into in any court of law and accordingly, no provision of that constitution shall apply in respect of any such question."

⁴¹ Cap. 53, Laws of the Federation 1990, cf. Appendix E.

⁴² Section 8 (1): "The validity of any decision, sentence, judgement, confirmation, direction, notice or order given or made, as the case may be, or any other thing whatsoever done under this decree shall not be inquired into in any court of law."

^{(2) &}quot;It is hereby declared that for the avoidance of doubt that Section 24 of the Interpretation Act shall apply in respect of offences referred to in this Decree."

decree to a regular court in violation of art.14 of the ICCPR and art.7 of the African Charter.

Federal Highways Act⁴³

Under this decree land can be compulsorily acquired by the government without any compensation. The decree provides that the Federal Government may take away land privately owned if it is deemed to be along a federal highway. This is a clear violation of art. 14 of the African Charter which guarantees the right to property.

 The Reporter (Proscription and Prohibition from Circulation) Decree 1993⁴⁴

This decree specifically prohibits the publication of the newspaper *The Reporter*. This is a flagrant violation of the freedom of press (art. 19(2) ICCPR and art. 9(2) African Charter). In addition, it is in disrespect to the rule of law, being devised as a law for an individual and concrete situation.

A number of other decrees also violate basic human rights in the same way, these are namely:

Counterfeit Currency (Special Provisions) Decree Cap. 74
 Laws of the Federation 1990

⁴³ Cap. 135 Laws of the Federation 1990

⁴⁴ There are also a number of other decrees aimed at other publications (cf. freedom of press, p.113).

⁴⁵ Section 1 of this decree reads: "Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended or any other enactment or law, the daily newspaper known as The Reporter published by the Reporter Newspapers Ltd. and printed by the Nation House Press Ltd. of Plot 3 Western Bye-Pass, Kaduna, is hereby proscribed from being published and prohibited from circulation in Nigeria or any part thereof".

⁽²⁾ The premises where the daily newspaper referred to in Section 1 of this Decree is published and printed shall be sealed up by the Inspector General of Police or any officer of the Nigerian police force authorised in that behalf during the duration of this decree".

- Exchange Control (Anti Sabotage) Decree No. 7 of 1984, cap. 114 Laws of the Federation 1990
- Constitution (Suspension and Modification) Decree No. 107 of 1993
- Petroleum Production and Distribution (Anti-Sabotage)
 Decree No. 35 1975 continued in Cap. 353 laws of the Federation 1990
- Special Tribunal (Miscellaneous Offences) Decree No. 20, 1984 contained in cap. 410 Laws of the Federation 1990
- Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984 contained in Cap. 137 Laws of the Federation 1990
- Forfeiture of Assets (Director of the Special Structures Company Limited) Act Cap. 153 Laws of the Federation 1990
- Forfeiture of Assets ETC (Validation) Act Cap. 154 Laws of the Federation 1990
- Recovery of Public Property (Special Military Tribunals)
 Decree No. 3 of 1984 contained in cap. 389 of the Laws of the Federation 1990
- Abandoned Properties Act Cap 1 of the Federation 1990
- New Nigeria Salt Company Limited (Take Over) Act

Conclusions and Recommendations

Nigeria is a party to the international standards as far as human rights are concerned; international treaties are indeed part of the domestic laws. However, most of the laws being made and actions taken by the government in recent times are not in compliance with these norms. Several decrees currently in operation violate international human rights law. The Nigerian government will need to change its perspective in order to gain credibility internationally concerning human rights.

It is therefore recommended that:

- a) all decrees which violate basic human rights principles be abolished
- b) the government makes effort to respect recommendations and resolutions of treaty bodies to which it is affiliated: in this vein the government of Nigeria is called upon to grant access to the UN Special Rapporteur on Summary and Arbitrary Executions to visit the country as recommended by the General Assembly at its 50th session.
- c) the African Commission on Human and Peoples' Rights should follow through its planned mission to Nigeria. A comprehensive report on the human rights situation should be produced and sent to the Organisation for African Unity.

Administration of Justice

The rights of the accused in criminal trials, however elaborately safeguarded on paper, may be ineffective in practice unless they are supported by institutions, the spirit and tradition of which limit the exercise of the discretions, whether in law or in practice, which belong in particular to the prosecuting authorities and to the police (Congress of Delhi, 1959. Committee III).

The fundamental principle of the Rule of Law requires legal authorization for any action by official authorities. The concept also pertains to the basic legal and social order protecting human rights. The Act of Athens⁴⁶ describes the Rule of Law as "springing from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association, and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all".⁴⁷ These are minimum conditions of a juridical system in which fundamental rights and human dignity are respected.

The Law of Lagos⁴⁸ states that the Rule of Law can only be fully realized under a system of government established by the will of the people. Rule of Law refers to a state in which people are governed according to laws that are just and fair and which apply to all people equally. It also pertains to situations where a citizen may seek judicial review of laws or acts by the official authorities. This principle,

⁴⁶ The Act of Athens was the result of the first international congress on the rule of law sponsored by the International Commission of Jurists, held in Athens, 1955.

⁴⁷ The Rule of Law and Human Rights, Principles and Definitions, as elaborated at the Congresses and Conferences held under the auspices of the International Commission of Jurists, 1955-1966, Geneva, 1966, p. 3.

⁴⁸ Resulting from the conference held in Lagos, Nigeria, in 1961 by the ICJ.

embodied in the Resolution of Rio⁴⁹ emphasises that one of the foundations of the Rule of Law is the protection of the individual from unlawful or excessive interference by the government.

The Rule of Law is a dynamic concept whose realization is primarily the responsibility of jurists. Judges and lawyers must be independent from any undue influences and active in the promotion and safeguard of the Rule of Law. The very structure of the judicial system requires a permanent commitment on the part of the judges to provide guarantees to those who come to them in search of justice. The Declaration of Bangkok⁵¹ recognized that the Rule of Law and representative government are often endangered by hunger, poverty and unemployment and that therefore all efforts should be committed to the elimination of these evils. The follow-up conference in Colombo in 1966 stressed the important role of lawyers in disseminating the principles of the Rule of Law among the average citizen. It also discussed how simple and effective means of redress against grievances with the administration can be devised. 52

The independence of the judiciary and the guarantee of impartiality are indispensible conditions of a free and democratic state.⁵³ All this can only be achieved under representative government.

Nigeria has for many years been and is presently being governed by executive decrees inspite of the "existence" of a Constitution. The question of the supremacy of the Constitution over these decrees remains a major bone of contention. Successive military governments in Nigeria have tried to shroud their illegitimacy in the Constitution by suspending it only in part upon seizing power. They "modify" the principle of seperation of powers by abolishing legislative institutions

⁴⁹ Concluded at the ICJ conference held in Rio de Janeiro (Petropolis) in December 1962.

⁵⁰ Jose Antonio Martin Pallin, "Judges Committed to Justice and Law", in: Justice - Not Impunity, a publication by the International Commission of Jurists, Geneva, 1992, p. 134.

⁵¹ adopted at the Conference of Bangkok, in February 1965.

⁵² Declaration of Colombo, 1966.

⁵³ The Rule of Law and Human Rights, op cit. p. 6.

while keeping the provisions relating to the judiciary intact. Decrees are subsequently enacted to oust the jurisdiction of the courts to deal with matters which are considered sensitive to their existence, thereby rendering the judiciary impotent in actual fact.⁵⁴

As far back as 1970, the Nigerian Supreme Court has been hattling with the re-establishment of judicial authority and independence under a military regime. 55 In a case involving a public officer whose assets had been confiscated, the courts attempted to challenge the power of the Western State Military Government to enact an edict on that matter. The Supreme Court in that case declared that in effect the Constitution remained the law of the country even after a coup d'etat and that all laws (be they decrees or edicts) were subject to the Constitution, except so far as by necessity the Constitution was amended by a decree. This, however did not mean, according to the Supreme Court, that the Constitution ceased to have effect as a superior norm. Thus, where necessary, part of the Constitution could be suspended or amended; but as the Court maintains later in the case, the separation of powers provided for in the Constitution⁵⁶ limits the power of the executive to act under such circumstances. The government reacted by promulgating the Federal Military Government (Supremacy and Enforcement of Powers) Decree⁵⁷ which not only nullified the decision but also provided that the events of the coup d'etat abrogated the pre-existing legal order and created a new one.

The debate has subsequently narrowed down to the question as to whether the military governments can lawfully exercise governmental powers inconsistently with the *grundnorm* laid down by them after a «revolution». In a more recent case, ⁵⁸ the Supreme Court reminded the government of its capability to abolish the

⁵⁴ e.g. Constitution (Suspension and Modification) Act, Cap. 64, Laws of the Federation, complemented by Decree No. 107 of 1993, cf. Appendix D for a list of acts ousting courts jurisdiction.)

⁵⁵ Lakanmi & Anor. v. Attorney-General (West) & Ors., 24 April 1970.

⁵⁶ The Nigerian Constitution is modelled after the American Constitution.

⁵⁷ No. 28 of 1970.

⁵⁸ Saidu Garba vs. The Federal Civil Service Commission and the Attorney General of the Federation, 1986 INWLR 55.

judiciary completely if that was its intention, especially if it would not obey court orders.⁵⁹ To put this rather cynical argument in simple terms: upon seizing power the military regime had all the ammunition it required to abolish the Judiciary, once it chooses not to do so, it has to respect the independent existence of the judiciary as an arm of government. Therefore, any act that is not in compliance with the military's own laws should be open to challenge in the courts. It is difficult to see how a government which enjoys nearly absolute powers, could be bound to rule by law, even if they are its own laws. Surprisingly, in that particular case, the then Babangida regime chose to obey the order issued by the Supreme Court. Babangida even decided to improve the conditions of service of the members of the judiciary.⁶⁰

The fact that with regard to judicial powers, the Constitution of 1979 was not suspended was made clear in the recent judgement of the Court of Appeal (Lagos Branch) in Guardian Newspapers Ltd. v. AG Fed. 61 The court stated, "It is perhaps to the credit of successive military administrations which in this country have consistently professed their commitment to the rule of law, liberty and justice that the structure of governance is deliberately fashioned to preserve the vesting of judicial powers in an independent judiciary and not in itself. That commitment will be empty and made nonsense of were the judiciary to interpret laws in such a way as to obliterate the separation of powers". In this sense it is of course alarming that presently the judiciary has become absorbed as part of the military government and that judges now obey, support and respect military decrees; particularly, that they accept ouster clauses contained in almost every decree issued by the military government.

The Abacha regime provided itself with supreme authority, 62 incorporating both executive and legislative powers. While the judiciary as an institution was spared and its structure retained, its

⁵⁹ The Judiciary acted at that time under the so-called "permitted existence".

⁶⁰ The Hon. Kayode Eso, former Justice of the Nigerian Supreme Court, "The Impact of Military Rule on the Judicial System and the Rule of Law in Nigeria," Nov. 1995, in: SAN. JNL, vol. 1, no. 3.

^{61 1995 5} NWLR Part 398, p. 703.

⁶² Decree No. 12, 1994, Federal Military Government (Supremacy and Enforcement of Powers).

freedom to operate has been drastically curtailed. The parliament had already been dissolved after the coup in 1983 by the Buhari regime, 63 which also effectively 'cut the judiciary's wings', 64 section 6 of the 1979 Constitution dealing with the mandate of the judiciary was, however, never formally amended. In contravention of the provision in Section 14 (2) (a) of the 1979 Constitution which states that, "Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority", the Abacha government reaffirmed the usurpation of the judicative branch in Decree No. 12, 1994. Section 2 (b)(i) of the decree states that:

"No civil proceedings shall lie or be instituted in any Court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before, or after the commencement of this Decree the proceedings shall abate, be discharged and made void."

This provision effectively ousts the competence and jurisdiction of the courts from enquiring into the validity of decrees made by the military government. Such provisions are contained in almost all decrees affecting human rights proclaimed by the military since 1994 and most courts cite it as an excuse for declining jurisdiction, especially in cases involving violations of human rights by the military authorities. 65

⁶³ Basil Ugochukwu, Dulue Mbachu, and Kolawole Olaniyan, Suppression as Law, The Arbitrary Use of Military Decrees in Nigeria, Constitutional Rights Project, Lagos, 1994, p. 3.

⁶⁴ Part VI of the 1979 Constitution vests the court with judicial powers. This part of the constitution empowers the courts to determine "all matters between persons or between government and authority and any person in Nigeria and to all actions and proceedings relation thereto, for the determination of any question as to the civil rights and obligation of that person". Section 5 of Decree No. 1 1984, enacted by the Buhari regime, declares: "No question as to the validity of this or any other Decree or Edict shall be entertained by any court of law in Nigeria".

⁶⁵ Nigeria, Limists of Justice, published by Constitutional Rights Project, Lagos, 1993, p. 42.

The forceful entry of the military into government is not only undemocratic but also unconstitutional. The drafters of the 1979 Constitution, in an attempt to prevent further military rule, asserted the supremacy of the constitution by proclaiming that "the Federal Republic shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution". 66 Thus, change of government must be through a democratic process.

The Rule of Law depends not only on the prevention of abuse of power of the executive but also on the existence of an *effective* government. Countries struggling with difficult economic and social conditions may under certain conditions have to vest the executive with sufficient power to manage the country in an efficient way. The grant of such power should be in the narrowest possible limit and the purpose and extent of such delegated legislative power should be clearly defined.⁶⁷ A state of emergency for instance may require a broad delegation of power. It must be ensured, however, that certain rights, that can never be abrogated,⁶⁸ are safeguarded. To this end, any law must be subject to ultimate review by an independent judicial body.

The successive Nigerian military regimes have always dismissed these principles. After General Abacha seized power, he made previous decrees by his predecessors applicable to his regime as well. ⁶⁹ The Federal Military Government, headed by the Commander-in-Chief, issues decrees, while at the state level military governors exercise legislative authority through edicts. The highest ruling organ, the Provisional Ruling Council, which replaced the Armed Forces Ruling Council established by the Babangida regime, concentrates executive and legislative powers in one body, i.e. one person, General Abacha. The Provisional Ruling Council has only

⁶⁶ Section 1 (1) adn 1 (2) of the 1979 Constitution.

⁶⁷ The Rule of Law and Human Rights, op cit. p. 11.

⁶⁸ cf. art. 4 of the International Covenant on Civil and Political Rights.

⁶⁹ Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12, 1994.

the right to *consult* the head-of-state.⁷⁰ Members of the Provisional Ruling Council are appointed by the head-of-state himself.

For the purpose of what follows it is important to know the central characteristics of the decrees which do not only violate international human rights law but also the domestic constitution of 1979. Their features can be summarised under the following keywords:

- Retroactivity
- Ouster Clauses
- Legislative Judgement
- Prohibition of judicial appeal

Rule by Decree

Retroactivity

Often, decrees are backdated, usually to legitimise illegalities or to make certain persons culpable for specific actions which did not constitute offences at the time they were carried out.⁷¹ In 1984, when the *Special Tribunal (Miscellaneous Offences) Decree* was promulgated by the Buhari regime, it provided the death penalty for a wide range of offences including arson, tampering with oil pipelines or electric and telephone cables, importing or exporting mineral oil, dealing with cocaine, etc. Three suspects, Bartholomew Owoh, Ogedengbe and Ojuolope, who were charged with having dealt in cocaine before the decree was enacted, found themselves arraigned before such a special military tribunal, convicted and sentenced to death and publicly executed. Three women, Gladys Iyamah, Sola Oguntayo, and Ronke, who almost suffered the same fate, were only "saved" from public execution by the military coup of 27 August 1985 by General Babangida.⁷²

⁷⁰ Sect. 6 (1) of Decree No. 107.

⁷¹ Suppression as Law, The Arbitrary Use of Military Decrees in Nigeria, op cit. p 4.

⁷² Nigeria, Limits of Justice, op cit. p. 43, 44.

The application of ex post facto laws (retroactive laws) is prohibited under art. 15 of the ICCPR.73 It is a basic right for the purpose of legal certainty. Under the Nigerian Constitution of 1979, the retroactive application of laws is also proscribed.⁷⁴ Used as an oppressive instrument typical for military governments, the drafters of the 1979 Constitution were well aware of the danger of retroactive decrees and tried their utmost to prevent them. 75 Retroactive decrees are not limited to the deprivation of individual liberty. The Satellite Town (Title Vesting and Validation) Decree No. 5 of 1991, for example, affects the property rights of land owners in an area in Lagos known as Satellite Town. It annuls all court orders and judgements passed before or after the commencement of the decree. The decree was signed on 16 January 1991 by General Babangida, and was given retroactive effect going back 16 years to be valid from 18 September 1975. These ex post facto laws are used not only in criminal cases where they are considered most harmful, they are also used in other circumstances such as to take away rights previously granted by contract or public appointment, or to invalidate decisions of public agencies which had been validly made. 76 As stated earlier, judicial review of decrees for violation of Part IV (Human Rights) of the 1979 Constitution has been revoked, so there is no existing legal remedy against such retroactive decrees in Nigeria.

Ouster Clauses

Closely linked with the principle of supremacy of the Constitution is that of judicial review which allows courts to have a

⁷³ Art. 15 (1) ICCPR states: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed [...]".

⁷⁴ Sect. 33 (8) of Part IV (Human Rights) of the 1979 provides: "No person shall be held guilty of a criminal offence on account of any act or omission that did not at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed".

⁷⁵ cf. Ben O. Nwabueze, "The Individual and the State Under the New Constitution", Public Lecture delivered at the Nigerian Institute of International Affairs, Lagos, 1979, p. 15.

⁷⁶ Nwabueze, p. 14.

certain control over governmental acts. Such an instrument of control has no place under a military administration. A typical trait of executive decrees is therefore that they often contain ouster clauses, which deprive civil courts from jurisdiction in matters regulated by the decree. Not even the validity of such a decree may be examined by a regular court.⁷⁷ Under art. 14 of the ICCPR everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, a right which is also guaranteed by the Nigerian Constitution. 78 The 1979 Constitution spells out the jurisdiction of the high courts of each state because the drafters wanted to preclude the proliferation of ouster clauses which had been the practice of earlier military regimes. 79 Section 236 (1) of the Constitution grants the High Court "unlimited jurisdiction to hear and determine any civil proceedings in which existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."

Unfortunately, the military regime has developed an incredible imagination to get around this provision and to bar possible loopholes for judges to examine a decree containing ouster clauses.⁸⁰

⁷⁷ Cf. for example Decree No. 107, sect. 5, 1993, and Constitution (Suspension and Modification) Decree No. 1, Sect. 5, 1984. Often the decree sets up a special (military) tribunal to deal with matters enacted by the decree.

⁷⁸ Sect. 33 (1) of the 1979 Constitution.

⁷⁹ Nwabueze, p 13

⁸⁰ The government has designed new formulas for its decrees, such as "civil proceedings in respect of any act, matter, or thing done or purported to be done under the Decrees are barred." or another formula barring any sort of temporal jurisdiction is: "If such proceedings have been or are instituted before or after the commencement of the Decree, they shall abate, be discharged and made void". To block "imaginative lawyers" decrees sometimes also exclude "specific remedies, quo warranto, certiorari, mandamus, prohibition, injunction or declaration". (cf. Nwabueze, p. 17 for further examples).

Legislative Judgement

Legislation is conceived as a system of general and uniform rules designed to regulate life and activities in the community as a whole. Singling out a person for individualised treatment by legislation is not only arbitrary and discriminatory but it leads to oppression. This is an instrument which can be used by the executive to influence the outcome of judicial proceedings. What has routinely been used under previous military governments, is again widely employed in present day Nigeria. Decrees pass judgements, legislative judgements, aimed at specific individuals or situations. They may bar the publication of a particular newspaper like the already mentioned *The Reporter (Proscription an d Prohibition from Circulation) Decree 1993* or create special tribunals for the adjudication of specific situations and persons as was the case for Ken Saro-Wiwa and others in November 1995.

Other decrees take the form of title acquisitions or forfeiture and are directed at the property of individual persons in spite of whatever claims such persons may have over the property.⁸¹ Such a usurpation of judicial power clearly transgresses the "boundaries" of the principles of separation of powers.

Probibition of judicial appeal

Decrees setting up military tribunals do not provide for appeal to the regular courts. Instead, special appeals tribunals are sometimes established whose role is often no more than perfunctionary. On occasion, appeal is only possible to the executive power (see Fair Trial, further below). Under art. 14 (4) of the ICCPR, "everyone has the right to his conviction and sentence being reviewed by a higher tribunal according to law. The right to review or appeal to a higher court shall provide a thorough and impartial review of the facts of the case within a reasonable period of time".

⁸¹ cf. Ugochukwu et al., op cit. p. 4.

⁸² cf. Ugochukwu et al., p. 5. Cf. also below (independence of the judiciary, p.64)

Arrest and Detention

A well trained law enforcement agency is a prerequisite for the maintainance of law and order in society. When a law enforcement agent abuses his office to serve his own ends he steps outside the limits established by international human rights law. As he has considerable power over a person in his custody he must be accountable in the exercise of that power.

Liberty and Security

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in such procedure as are established by law (art. 9 (1) ICCPR).

Nigerian law makes adequate provisions for the protection of the right to personal liberty. Section 32 of the 1979 Constitution states that no person shall be deprived of his liberty except in the execution of a lawful order of a court or on reasonable suspicion of having committed an offence. It also states that any person who is arrested or detained shall be informed in writing within 24 hours (and in a language that he understands) of the facts and grounds for his arrest and detention. The arrested or detained person is to be brought before a court within reasonable time.

These rights are presently flagrantly violated. By virtue of section 10 (1) of the Criminal Procedure Act⁸³ and section 24 of the Police Act, the police are empowered to arrest suspects without a warrant under certain circumstances. The two sections outline a number of reasons for arrests, such as suspicion of the commission of an indictable crime, obstruction to a police officer executing his duties or the possession of stolen goods, etc. Yet, arrest procedures or clear guidelines are lacking. The police have in many cases gone beyond

⁸³ Cap. 80 Laws of the Federation of the Republic of Nigeria 1990, vol. V.

their powers to arrest and have arrested innocent people who do not fall into any category stated by the law. They regularly arrest relatives or friends of suspects if the latter are not available. In other cases the arrests have been carried out by other branches of the armed forces without adequate instructions as to the legal method of conducting arrests

The military governments have promulgated several decrees that infringe the right to liberty. The most (in) famous of these decrees is the State Security (Detention of Persons) Act⁸⁴ which empowers the Inspector General of Police or the Chief of General Staff to detain persons for up to three months without trial, upon suspicion of their being involved in acts prejudicial to state security or for "contributing to the economic adversity of the nation or in the process of preparing or instigating such acts." No writ of habeas corpus or an order of prerogative or any other order of a court may be issued for the production of a person detained under this Decree. 85

General Abacha, when he took office in 1993, had amended this law to make it more stringent. He restored the initial three month detention period that had been reduced by his predecessor General Babangida to six weeks in 1986. The decree gives the law enforcement personnel a carte blanche to detain all opponents to the government at will. Politicians, human rights activists, labour leaders, journalists, students, and others who happened to "bother" the government have been detained under application of this decree. No regular court has jurisdiction for acts which are considered to be a violation of the decree. As long as a government lawyer can produce evidence that a person is being detained under the decree, regular courts are precluded from examining the legality of such acts. Many persons have spent over a year in prison awaiting trial, under extreme conditions. Among those still being detained administratively as at the time of this report are:

⁸⁴ Cap. 414, Laws of the Federation, 1984,

⁸⁵ State Security (Detention of Persons)(Amendment)(No.2) Decree No. 14, 1994

⁸⁶ Conditions for pre-trial detention are often harsher than those of persons who have already been convicted. This is a violation of art. 10 (2) (a) ICCPR which provides for a more privileged treatment of unconvicted persons and the presumption of innocence. Persons who are awaiting trial should be segregated from others who are serving a sentence.

- 1. Abdul Oroh Executive Director Civil Liberties Organisation(CLO);
- 2. Chima Ubani General Secretary, Democratic Alternative;
- 3. Dr. Tunji Abayomi Chairman, Human Rights Africa;
- 4. Kabir Ahmed Campaign for Democracy;
- 5. Fred Eno personal assistant to the detained Chief Moshood Abiola;
- 6. Chief Frank Kokori General Secretary, National Union of Petroleum and Natural Gas Workers, NUPENG;
- 7. Olawale Oshun Assistant Secretary, National Democratic Coalition, NADECO;
- 8. Ayo Opadokun Secretary, NADECO;
- 9. Sanusi Mato relation of a convicted coup suspect;
- 10. Hilary Ojukwu and Charles Titiloye both students;
- 11. Nosa Igiebor Editor-in-chief, TELL Magazine.

Others are Moshood Nurudeen, Musa Oko Iya Afon and Mohammed Sunkere Lafiaji. This list is unfortunately not exhaustive. It does not include many less prominent Nigerians whose arrests were not reported and those who do not have access to legal counsel. Many of them are picked up as "vagabonds" or "loiterers", there is large scale abuse of the applicable law.

Many Ogonis have been detained without charge at the Upor detention Camp in Ogoni, the State Intelligence and Investigation Bureau and the Prison in Port Hartcourt.⁸⁷

Rights of Defence

The Right to a Hearing Within Reasonable Time

A detained person shall be brought promptly before a judge and tried within reasonable time (art. 9 (3) ICCPR).

After arrest, a detainee should be brought before a judge within a few days.⁸⁸ The accused must be informed promptly of the charges against him. Moreover, detention without trial in general should be exceptional and as short as possible. Nigerian law provides for the granting of bail, however applications for bail are handled very arbitrarily. 89 Police investigation of cases takes an often unreasonably long time, when the trials commence suspects are in most cases not brought to court. 90 The right to seek judicial remedy to challenge the lawfulness of the detention as provided for in art. 9 (4) ICCPR is unknown by most detained persons and almost impossible for most as they hardly have access to legal aid. 91 In addition, the police have the power to prosecute most cases before the magistrate court. A number of criticisms flow from this practice. Not only are the police not trained for such work, it is incompatible with their investigative role and can potentially violate the presumption of innocence. For example, a man named Shola Olowokere who was arrested in 1985 for the unlawful possession of firearms, was refused bail and detained. Since 1985 until at least 1993 not fewer than six investigating police officers have been assigned to his case without progress being made. Every time a new policeman took office he asked the judge to adjourn the case because he had not had time to study the file. 92 During all this time

⁸⁸ Human Rights Committee, General Comment No. 8 (16).

⁸⁹ For a good and comprehensive report on the system of bail in Nigeria see: The Bail Process & Human Rights in Nigeria, Consitutional Rights Project, Lagos, 1992.

⁹⁰ Prisoners in the Shadows, a report on Woman and Children, Civil Liberties Organisation, Lagos, 1993, p. 47. This is an infringement of the right to be present during the determination of any charge (art. 14 (3) (d) ICCPR).

⁹¹ Prisoners in the Shadows, p. 33

⁹² Human Rights Practices in the Nigerian Police Force, Constitutional Rights Project, Lagos, 1993, p. 52.

Olowokere remained in detention. There are allegations of corruption stating that the police take bribes in order to prosecute less diligently so that an otherwise guilty person may be free. 93

In a ruling on 10 July, 1992, a Lagos State High Court judge, Solomon Hunponu-Wusu, granted bail to three women who had been awaiting trial at the Kirikiri Women's Prison for five years. Bunmi Wemimo had been detained for robbery, Rose Udofia and Adijatu Usmaila were both charged with murder. They had all been in detention since 1987 while their cases were pending before various magistrate courts. 94 These women were part of a group of women for which the Nigerian NGO Constitutional Rights Project (CRP) had sought redress in March 1992. The whole group of women together had been detained from two to seven years without trial. As not many persons awaiting trial are lucky enough to find a dynamic human rights group, their sole hope for release or an expedited trial is the occasional judicial review of the pile of cases waiting to be tried.

Chief Abiola has now been in detention without trial for more than two years. His health is deteriorating. Ken Saro-Wiwa and his co-accused were detained without charge for over eight months. Not only prominent cases are dealt with in such a manner. In a case against illegal detention filed by the CRP early in March 1993, a Lagos High Court Judge refused to assign an early return date because he complained that he had a full docket. He adjourned the case for another six months during which period the applicant was expected to remain in detention. 95 According to human rights lawyers the courts are extremely reluctant to handle cases 96 involving the violation of human rights.

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⁹⁴ Prisoners in the Shadows, a report on woman and children in five Nigerian prisons, Civil Liberties Organisation, Lagos, 1993, p. 43.

⁹⁵ Nigeria, Limits of Justice, Constitutional Rights Project, p. 40.

⁹⁶ Nigeria, Limits of Justice, Constitutinal Rights Project, p. 40.

The Right to Legal Assistance

A person who is accused of having committed a crime must have sufficient means and time for the preparation of his defence and to communicate with a counsel he chose himself (art. 14 (3) (b) ICCPR and art 7 (1) (c) ACHPR).

The right to defence is also guaranteed by section 33 (6)(b) of the Nigerian Constitution. The right to defence is a component of the right to a fair trial and it must be provided for before the trial starts, when the accused is arrested, detained, or indicted. It should also be guaranteed during the trial so that the defendant can make use of all possible legal remedies. What type would be adequate depends on the circumstances of the case. The the accused person does not have sufficient means to pay for his legal assistance, provisions for official legal assistance must be made. Sometimes this principle is not respected and accused persons have had to suffer from the lack of legal assistance for example, Grace Rimback, an ex-inmate of Kaduna prison, said that she had to go to prison only because she had no lawyer. She had been accused of stealing money from her office. At the time the money vanished, Grace had been away on an official assignment.

The accused must have access to documents and other evidence required for a good preparation of his case. Lawyers should be able to communicate with their clients in accordance with their professional standards, without pressure and interference from outside. The accused has a right to be present during the determiniation of charges against him and he must have an opportunity to examine witnesses against him (ICCPR art. 14 (3)(d) and (e)).

Nigerian authorities do not consider it necessary to adhere to this and to inform accused or even detained persons of their rights. Often, the police "forget" to pick up the defendant to take him or her for trial and prison authorities consider it outside of their duty to see to it that inmates are brought to court, when the police are unwilling to do so. Majority of persons who are not well educated do not know

⁹⁷ Human Rights Committee, General Comment 13 (21)

⁹⁸ Prisoners in the Shadows, Civil Liberties Organisation, Lagos, 1993, p. 32.

that they have a right to legal assistance. They remain in detention, waiting to be tried, ignorant of the possibility of obtaining bail or to use any other legal remedy to secure temporarily released until they can be taken to court.

Lawyers are usually subjected to different forms of harassment while pursuing their professional duties, for example, the defense counsels in the Ogoni trials were constantly harrassed while they were trying to perform their duties. ⁹⁹ Persons arrested for allegedly plotting to overthrow the Abacha regime did not get counsel of their own choice. Instead, the government appointed lawyers for the accused, knowing that these lawyers were loyal to the regime. ¹⁰⁰ In the case of Major Lekwot and others, tried for allegedly being involved in clashes between Katafs and Hausas in Northern Nigeria, the counsels resigned in protest against government's interference in the case. The defendants who did not want to accept government lawyers they considered biased, remained without legal counsel.

Trial and Punishment

Conduct of Trials

Art. 14 ICCPR and art. 7 ACHPR contain a whole range of rights necessary to guarantee the proper administration of justice. These rights are also grosso modo contained in section 33 of the Nigerian Constitution of 1979. Equality before the courts and fair trial must be ensured. The provisions of art. 14 apply for every kind of trial whether ordinary or special. 101 In order to protect the accused's right to a fair trial, the following guarantees must be granted: the right to be presumed innocent until proven guilty, the right to be tried publicly, the right to be present at trial and have the services of an interpreter if necessary, and the already mentioned rights to adequate defence and to a hearing within reasonable time.

⁹⁹ see further below, p. 91

¹⁰⁰ more details further below, p. 89

¹⁰¹ Human Rights Committee, General Comment No. 13 (21)

The conduct of trials before special military tribunals give rise to concern. Proceedings in these tribunals tend to severely violate the right to a fair trial. The government tried to justify the setting up of these tribunals as a remedy against the congestion in courts, to make the adjudication process quicker. It was also declared that such tribunals would be specialized in purely technical matters over which ordinary courts had no competence. ¹⁰² It is difficult to appreciate the argument in favour of military officers, trained in issues of war and conflict, being more competent to try criminal matters than legally-trained judges; especially since most tribunals are also empowered to exclusively deal with all ancilliary matters, including remand, bail, and other preliminary issues connected with an offence over which the tribunal has jurisdiction. *Decree No. 9 Tribunals (Miscellaneous Provisions) of 1991* established that in some cases only one judge (a serving or retired High Court judge) should hear and dispose of a case. ¹⁰³

In trials of public officers who are accused of corruption or abuse of office, the burden of proof is often reversed so that the defendant must prove beyond reasonable doubt that he is innocent. The law and human rights norms require that all trials should be public, except in special cases involving children or where it is considered necessary. In Nigeria, this principle is often violated without just cause; particularly in trials before special military tribunals. The special military tribunal that heard the case against the alleged coup plotters held in June 1995 excluded the public. Not even the press was allowed to observe the trials. In many cases journalists and observers are harrassed when they attempt to cover a trial that is held at a special tribunal. Some journalists who wanted to write about the trial of Chief Abiola were beaten and their cameras were damaged. During the trial of Ken Saro-Wiwa and others, the authorities tried to keep the time and venue secret, to prevent the friends and family from attending the trial. The publicity of a trial is an important instrument of the community to control the fairness of the proceedings. The public should only be excluded under very exceptional circumstances, for instance to protect the victim of a sexual offence.

¹⁰² Human Rights in Retreat, Civil Liberties Organisation, Lagos, 1993, p. 105. 103 Section 7 of Decree No. 9, 1991.

There is credible evidence to the effect that crown witnesses in the Ogoni trial were bribed and menaced. The tribunal did not deem it fit to investigate these allegations. The fact that Ken Saro-Wiwa did not give counter-evidence was considered as an acknowledgement of the truth of the prosecution's evidence. This constitutes a violation of the accused's right to remain silent. An accused person cannot be compelled to testify. If he choses not to do so, no negative inferences may be taken from that. This right like others is violated in many cases, as well.

Often, if they cannot obtain evidence through any other means the police use force to "help the accused to remember". Evidence obtained through torture or any other forms of compulsion is unacceptable in law.

There is evidence that trials at special tribunals are arbitrary. The Armed Robbery Tribunals, for example, are composed of three "judges", one judicial officer, one army officer and one police officer. These tribunals are set up ad hoc when the need arises to try cases of armed robbery. They were designed in 1982 when a wave of violent crime spread across the country. In some cases, however, the tribunals now deal with cases that are far removed from any question of armed robbery. Some persons who were found in the possession of stolen goods were accused of armed robbery without evidence of their actual participation in the robbery. ¹⁰⁴

Moreover, it is alleged that in some cases persons have been acquitted because they had enough money to offer bribes to the judicial officers. The action of some judges are known to fall below the standard of behaviour that is expected of a judicial officer in their treatment of accused persons and their general demeanour while on the bench. 105

¹⁰⁴ Observation of Father Kevin O'Hara, formerly working as a priest in Enugu State, Nigeria, June 1994.

¹⁰⁵ ibid.

Appeals and Penalties

"Everyone convicted of a crime should have the right to his conviction and sentence being reviewed by a higher tribunal established by law (art. 14 (5) ICCPR)."

The Nigerian judicial system provides for a process of appeals from lower to higher courts. This procedure is duly respected where regular courts exercise their constitutional jurisdiction. Extra judicial institutions such as special tribunals often rule out the possibility of appeal. If appeal is possible at all then it is most of the time to another special (appeals) tribunal or to the Executive. The nine Ogonis who were sentenced to death in November 1995, for example, could only appeal to the Provisional Ruling Council. As these special military tribunals have considerable power (they can sometimes pronounce death sentences, like the Armed Robbery Tribunal or the Civil Disturbances Tribunal) the fact that no regular court can review the sentences can be detrimental. It is an established fact that laymen tend to issue harsher sentences than experienced judges. So even in the absence of deliberate arbitrariness the defendants are in the danger of violation of their rights.

Extra-Judicial or Summary Executions

"Every human being has the inherent right to life. No one shall be arbitrarily deprived of his life (art. 6 ICCPR)."

The right to life is non-derogable and cannot be suspended under any circumstance (art. 4 ACHPR). The deprivation of life by the authorities of a state is a very grave matter. It must therefore be strictly controlled by law and the circumstances under which a person may be deprived of his life must be very narrow and precisely defined. The fact that an act may be lawful under national law does not prevent it from being arbitrary under international human rights law.

The UN Special Rapporteur on Extrajudicial or Summary Executions has defined executions as being summary and arbitrary when life is deprived as a result of a sentence imposed by a procedure in which the minimum principles of due process as spelled out in art. 6 and 14 ICCPR have been neglected. The deprivation of life by killings carried out on the order or with the knowledge of the government without a judicial or legal procedure that merits this name is arbitrary, as well. They can also be killings of civilians by military or security forces in violation of the rules of armed conflict or as a result of abuse or excessive use of force. 106

States have an obligation to ensure that their law enforcement officers conduct their activities within the permitted range of law and to train them accordingly. Law enforcement officials, policemen or special patrols appointed by the state, are there to protect and serve the community. As they exhibit considerable power they are particularly prone to abuse of this power. A number of international codes of conduct regulate this extensively. ¹⁰⁷ The basic principles include namely that a law enforcement officer must exercise restraint and act in proportion of the offence, he must minimise injury and protect human lives.

These principles are ignored in Nigeria today. In the last six years there has been a wide-spread pattern of extra-judicial killings by the police. Many reports talk of people "missing" from police custody. In one case, Elechi Larry Igwe, a 26-year-old businessman, was killed at the Surulere Police Station, on Western Avenue, Lagos, while in custody. He had left home on the night of December 19, 1989, in his car to meet his brother Orji Igwe at the airport. On his way he was arrested by the police under unclear circumstances. According to eye witnesses he was brought alive to the police station in hand cuffs with signs of heavy beating. Later his family discovered his dead body at the Lagos State Hospital tagged "unknown corpse, reference No. 5960". His brother Orji, a professional criminologist in Houston, Texas, observed that the bullet which had killed him was

¹⁰⁶ Human Rights Fact Sheet No. 11, Summary or Arbitrary Executions, UN Centre for Human Rights, Geneva.

¹⁰⁷ These are namely: the UN Code of Conduct for Law Enforcement Officials (LEO), the UN Basic Principles on the Use of Force and Firearmes by LEOs, the UN Standard Rules for the Administration of Juvenile Justice (the Beijing Rules), The UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under any Form of Detention.

fired at very close range. The police had claimed that Igwe died in a shoot-out with the police. Strangely, Igwe's car bore no signs of bullets. ¹⁰⁸ While armed robbery is indeed a major problem, many human rights groups complain that the police shoot people whether they are armed or not. Police killings are generally not investigated.

In the aftermath of the aborted elections in 1993, over a hundred unarmed civilians were killed during protests, shot by police forces. Again, at the height of the political unrest in July and August 1994, well over a hundred persons were killed by security forces. Official reports claim that most of them were violent criminals. On the second anniversary of the annulment of the presidential elections, 12 June 1995, the government mobilised a 24 hour security patrol in Lagos and other cities. These security personnel, mainly soldiers and and dressed in full battle gear, were positionned in strategic places to prevent any incidents. Some people who could not "properly" explain where they were going were arrested.

Accounts of the killing of a university student, Mr. Afilaka of the Ahmadu Bello University, in January 1995, by a police officer contradict the official version of the police which claims that the use of force was reasonable because it was to prevent the student's escape from arrest. A very recent case, is that of Alex Ibru, publisher of the Guardian Newspaper Group and a former Minister of Internal Affairs, who was shot at close range in his car when he left his office on 2 February 1996. Ibru luckily survived the incident but had to be flown abroad where he underwent a six -and-a -half hour operation. The police claimed that there had been an attempted armed robbery and arrested nine persons in connection with the crime. However, it appears odd that nothing was stolen from Ibru's car or his person. 109

Furthermore, a *Special Security Task Force* which was established to deal with armed robbers is known to abuse its powers. In many cases, extra-judicial killings by the Security Task Force have been

¹⁰⁸ Human Rights Practices in the Nigerian Police, Constitutional Rights Project, Lagos, 1993, p. 31.

¹⁰⁹ Letter of February 15, 1996 to General Abacha, by the Committee to Protect Journalists.

reported. They have been used to subdue popular uprisings and protests, in particular in Ogoni land. 110 A detachment of 400 army, air force and naval personnel and policemen has occupied Ogoni territory since April 1994. These troops are accused of systematically engaging in extra-judicial killings, summary executions, arson, looting, arrests, detention, torture, rape, and extortion. 111 As at June 1995, 1850 members of the Ogoni community had reportedly been killed by soldiers.

On 22 July 1995, 43 prisoners were executed by a firing squad before a large crowd in Lagos. They had been convicted of armed robbery by Robbery and Firearms Tribunals, especially set up for this purpose. 112 The decree setting up these special tribunals is draconian and very liable to abuse. 10 persons were granted a stay of their executions, yet it is uncertain whether their sentences have been carried out. According to uncorroborated reports, six of these persons had been executed earlier. The date of their execution is unknown. Three others have apparently appealed for clemency and are waiting for a decision by the Lagos State Military Administrator. The government is reported to have said that the executions were intended to subdue an upsurge of violent crime. In addition to this case, 11 other people are known to have been executed under such circumstances. On 26 July 1995, Manasa Thomas and four other prisoners were put to death in Adamawa State, Eastern Nigeria. The five men had also been convicted of armed robbery by the State Armed Robbery and Firearms Tribunal. They are believed to have been executed in public.

The most recent case of summary executions in November 1995, the case of Ken Saro-Wiwa and other members of the Ogoni community, caused a world-wide outcry. The prosecution appeared to have been politically motivated and the trials blatantly violated international standards for fair trial. 113

¹¹⁰ Human Rights Call, Civil Liberties Organisation, October 1995.

¹¹¹ Movement for the Survival of Ogoni People, letter of 31.8.1995.

¹¹² established by the Robbery and Firearms (Special Provisions) Act, Cap. 398, 1984, No. 5.

¹¹³ see below, p. 91 and seq.

Torture

No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment (art. 7 ICCPR).

In Detention

There are many reports about torture in detention. This is contradictory to international law. ¹¹⁴ Nigeria is a signatory to the UN Convention Against Torture. ¹¹⁵ Not only must the perpetrator of torture be brought to justice, there should also be effective control mechanisms to prevent any such thing from happening. The scope of protection goes beyond what is generally understood as torture as it limits solitary confinement and especially prohibits incommunicado detention. The latter is unfortunately happening regularly. A prominent prisoner held incommunicado for several days is Chief Moshood Abiola. He was taken away from his house by the military and for days his family did not know where he was taken to.

Torture is widely practised in police custody. Policemen concede that in the absence of an efficient means of investigating crime, torture becomes the easiest method of extracting information from suspects. ¹¹⁶ A torture chamber is known in police circles as "talk-true room". Torture methods by the police include beating with sticks, iron bars, wires and cables. Other techniques are the sticking of sharp objects into the private parts of the suspects, the use of cigarette lights to inflict burns, amongst others. ¹¹⁷ For example, a young woman, Miss Usoma Okorie, was arrested and taken to the Adeniji Adele police station in Lagos on 3 February 1993, for an

¹¹⁴ Art. 7 ICCPR states that "no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". It is also forbidden by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment to which Nigeria is a signatory. One could even venture to consider the prohibition of torture ius cogens.

¹¹⁵ Convention against torture and other cruel, inhuman or degrading treatment or punishment, 1987.

¹¹⁶ Human Rights Practices in the Nigerian Police, Constitutional Rights Project, Lagos, 1993, p. 38.

¹¹⁷ Human Rights Practices in the Nigerian Police, p. 38.

alleged theft of N 12'600 (approx US\$ 150). Two male police officers, John Okon, the investigation police officer (IPO), and one Sergeant Joseph, stripped her naked and suspended her by both wrists from the ceiling of a torture cell. The policemen flogged Miss Okorie's back, buttocks and thighs until she was bleeding. The neck of a beer bottle was inserted into her private parts and remained there during the whole proceedings. This was called the "VIP treatment". Miss Okorie lost consciousness and was admitted at the Police Hospital, Falomo, Ikoyi, Lagos, until 5 February 1993. Later she was released under the condition that she reported to the police station every day. It appears that Miss Okorie was arrested because her boss, who had made sexual advances to her and was rejected, reported her to the police for theft. Under the duress of torture Miss Okorie made a confession. Otherwise, there was no other evidence to establish a case of theft. 118

The case of one Andrew Okonye, a security officer with a petroleum marketing company in Apapa, Lagos, has also been reported. This man was arrested by the police in January 1993 on allegations of stealing drums of oil from his employer. When he refused to confess to a crime he had not committed, his interrogator, called Femi, beat him with rough edged glass on his hands and ribs. When Andrew's family located him a few days later they hired a lawyer to protest against the treatment. Femi, the police officer, showed the lawyer a window with broken glass. He claimed that Andrew had inflicted the wounds onto himself when he tried to escape through that window. Further inquires revealed that the window had been broken for a long time and was consistently used as an excuse when anyone tried to investigate torture cases. According to the report there is no way by which a person could reasonably expect to escape through that window. At the time of writing, the window is still broken. 119

One junior military officer claimed that he was dismissed from the military service because he had stumbled on information about the killing of Dele Giwa, editor-in-chief of *Newswatch*.

¹¹⁸ Annual Report on Human Rights in Nigeria, 1993, Civil Liberties Organisation, Lagos, 1994.

¹¹⁹ Human Rights Practices in the Nigerian Police, p.39

In Prisons

Conditions are not better in prisons. Late Ken Saro-Wiwa was beaten and detained in hand and leg cuffs for the first 65 days of his arrest. After a critical article he had written for the Guardian Newspaper, published on 31 July 1994, the degrading treatment was reinforced. 121 A group of people, Abdul Oroh, executive director of the "Civil Liberties Organisation", Nick Ashton-Jones, a British national, and Uche Uyo, secretary of the organisation "Democratic Alternative", went to see Ledum Mitee, Saro-Wiwa's deputy, who was then being detained at the Bori Camp in Port Harcourt. The three men were arrested while talking to Mitee and put in a prison cell. Later the commander in charge, Major Okutimo, ordered that one hundred strokes of the cane should be administered on each of them. The "cane" was an electric cable. Uche Uvo's face was broken, Nick Ashton-Jones suffered injuries on his back and buttocks. After the Major discovered that there was also a driver who had taken the three men to the camp he ordered the same treatment for that poor man, as well. Three days later the men were released. 122

An accused and witness in the alleged coup trials, ¹²³ R.S.B. Bello-Fadile, had been beaten and tortured for months to get him to implicate General Olusegun Obasanjo and his former deputy Shehu Musa Yar'adua for conspiracy to overthrow the government. He finally agreed to cooperate with his tormentors for the sake of his health. Later he was accused himself of being involved in the coup plot and is now serving a 25-year prison term, after first having been sentenced to death. ¹²⁴

Not only eminent prisoners are subjected to cruel treatment. The practice of torture and cruel, inhuman or degrading treatment is wide-spread in prisons all over the country. At the Kirikiri Women's

¹²¹ Letter by the Ogoni National Emergency Committee to the Military Administrator of Rivers State, 2 August 1994.

¹²² Affidavit by Oronto Douglas, 29 June 1994, sent to the Unrepresented Nations and Peoples Organisation,

¹²³ see below, p.111.

^{124 &}quot;Nigeria, The Sad Case of Olusegun Obasanjo", factsheet, Free Obasanjo Campaign Commitee, January 1996.

Prison, inmates are handled in an especially cruel way. The women receive a "special treatment" when they are found to be "stubborn": "The female is taken into a corner, stripped naked and given twenty-four strokes of the cane on her body. Sometimes the cane is doubled. It is soaked in Izal¹²⁵ before administering it on the bare body. Before the treatment, however, a doctor must certify the body fit". ¹²⁶ Bodily searches when the women first enter the prison are also done in a very degrading manner. Prisoners describe the way the prison officials search them as very humiliating, touching the most intimate parts of their body without the slightest respect. ¹²⁷

Law Enforcement Agents and the Menace of Impunity

The captain who yesterday tortured, stole and murdered will tomorrow become a general 128

By ratifying the International bill of human rights, Nigeria undertook the obligation to prevent violations of human rights from happening. Law enforcement officers who mistreat citizens or abuse their position must be brought to justice. A democratic government that gives in to impunity guarantees a future of corruption and

¹²⁵ Izal is an antiseptic liquid. Applied undiluted, it burns the skin and leaves an intense peppery sensation.

¹²⁶ Stella Okai, an inmate, quoted by Ehonwa, Prisoners in the Shadows, p. 53.

¹²⁷ Prisoners in the Shadows, p. 51.

¹²⁸ Luis Perez Aguirre, "The Consequences of Impunty in Society", in: Justice - Not Impunity, a publication of the International Commission of Jurists, Geneva, 1992, p. 118.

profound immorality. The nature of state responsibility for human rights violations is different from that of violators within the private domain. The rationale is that the official capacity with which a person is endowed gives him a higher degree of responsibility and liability. The failure of the official state system to punish a law offical who violates the human rights of a person in his custody or dealing with him in his official capacity in any other way is not only a violation of the human rights of the harassed person but also a breach of social understanding detrimental to democracy and the Rule of Law. ¹²⁹

Despite the widespread abuse of the human rights of individuals by the Nigerian police force and other law enforcement agents, there is little evidence of any official sanctions against them. The fifth schedule to the 1979 Constitution contains a Code of Conduct for Public Officers. It prohibits the taking of bribes, restricts loans, gifts, or benefits given to a public officer and condemns the abuse of the power which his position entails. It even established a Code of Conduct Bureau to receive complaints about non-compliance with the Code. A special Code of Conduct Tribunal, also provided for in the Constitution, may impose punishments upon the finding of a contravention of the Code. The police fall under the Code of Conduct as defined in Part II of the Code. 130 Yet, the Code does not seem to be applied. Moreover, it appears as if police authorities are anxious to cover any abuses and infringements by their officials. They either react with complete apathy or set up internal enquiries into the most serious allegations. These enquiries hardly ever find any violations of the law. Citizens whose rights have been infringed are thus not very encouraged to make an official complaint.

The courts have not been very responsive to complaints, either. Allegations by suspects that their confession has been extorted through torture are often treated with disbelief and cynicism. ¹³¹ With the suspension of the relevant provisions on human rights, including the right to liberty, in the 1979 Constitution, control of the

¹²⁹ Yogesh Kumar Tyagi, "Pardon, Oversight, Revenge, Equitable Punishment, Responsability", in: Justice - Not Impunity, a publication by the International Commission of Jurists, Geneva, 1992, p. 77.

¹³⁰ Part II of the fifth schedule, Public Offices for the Purposes of the Code of Conduct

¹³¹ Human Rights Practices in the Nigerian Police., p. 64.

activities of the police and other law enforcement agents is poor and they are left unrestrained in the treatment of suspects. 132

One of the reasons for the unaccounted corruption is the inadequate training the police officers receive. Modelled after the colonial para-military police, the British originally trained the Nigerian police more after the Northern Ireland police than the Scotland Yard, which would have been of a more civil nature. Today, there is no evidence that this model has changed very much. The young police cadets are from the very beginning confronted with corrupt senior police officers. During training, police instructors unfortunate enough to have been placed far outside of "civilisation" with no other possibilities of "making money" take bribes from the police students as a condition for passing them. 133 Policemen receive meager salaries and they live often in poorly maintained and overcrowded barracks. In a typical barrack, sometimes dating from the colonial era, there are four blocks of buildings, each housing twenty-four families on the average with ten or twelve members each. Most of the houses are in pitiful condition, showing signs of decay. At one such barrack, all the residents, i.e. the twenty-four large families, use the same toilet facilities. It is not so surprising that corruption thrives under such frustrating conditions; especially when their own family members engage in practices the police are supposed to prevent. The custom of keeping policemen in barracks was introduced by the colonial authorities essentially for easy mobilisation in times of emergency. Nowadays, this reason is not valid anymore. Keeping the police apart from the rest of society has alienated them from the citizens. In an effort to combat the shortcomings of the police force a study group on law and order suggested that the police should be better integrated into society and quit the barracks. Under the tenure of Inspector-General Etim Inyang, a directive was issued in 1985 that as a minimum entry requirement into the police forces every applicant should at least have passed the West African School Certificate (WASC) or the General Certificate of Education (GCE) ordinary level. However, his successor, Muhammadu Gambo, rescinded the directive a year later after discovering that the number of applicants had dropped significantly. 134

¹³² Human Rights Practices in the Nigerian Police., p. 65.

¹³³ Human Rights Practices in the Nigerian Police., p. 68.

¹³⁴ Human Rights Practices in the Nigerian Police, p. 71.

Prison Conditions

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (Art 10 ICCPR).

Detention conditions in Nigeria's prisons are appalling. The UN Standard Minimum Rules for the Treatment of Prisoners, although not binding in international law as such, can be considered as an interpretation of the binding art. 10 ICCPR. They provide a minimum yardstick for the treatment of prisoners. These rules give a description of the conditions in which prisoners should be kept in order to ensure respect for humanity in accordance with art. 10 ICCPR. Juvenile offenders should be separated from adults and brought to trial as soon as possible. 135 A prisoner should have adequate accommodation and should be provided with means to take care of his personal hygiene. If the prisoners are not allowed to wear their own cloths they should be given suitable clothing. They are to be fed with good, nutritional food and should receive medical treatment when they need it.

An alarming aspect is that detainees seem to be subjected to worse treatment than actual prisoners. In most cases they are denied medical care; for example the detention conditions of Chief Abiola and Ken Saro-Wiwa in recent times attracted international concern. Both men were held in very bad state of health. In both cases their doctors, who had made the poor and declining health of their patients public were themselves detained and later released. Less prominent prisoners have no chance to get to a hospital because there is no transportation and they cannot afford deposits to pay for their stay in hospital . In some cases, prisoners had to collect money to enable a fellow inmate go to a hospital and to pay for drugs that would restore his health.

Prisons are generally overcrowded. To mention just a few examples; the Birni Gwari prison in Kaduna state was built for 30 people, it was found to house 249 (an overcrowding of 730%). In the same state, the Borstal Prison, with a capacity for 120 persons, is

135 art. 10 (2)(b) ICCPR

filled with 365 inmates, the Kayaure prison in Jigawa state is overcrowded by 220 % (capacity: 50 persons, inmate population of 160). In Rivers state, the Ahoada prison, built for 108 persons, is overcrowded by 196 % with an inmate population of 320. 136 Inevitably, facilities are inadequate under such circumstances. About 40 % of the prision population are persons who are awaiting trial. 137

There is no marked difference in treatment and conditions for adult prisoners and juveniles, nor is there much difference between facilities for women and men. The situation of accommodation is in some cases so bad, the cells so over occupied, that prisoners have to take turns to sleep and some must even sleep standing. The situation is extremely unsanitary as uncovered buckets are used as toilets in the overcrowded prison cells (at least in men's detention facilities). Personal hygiene is very difficult due to the lack of water and the fact that inmates are not provided with the necessary toiletries. All kinds of diseases, particularly skin diseases are most common. 138 In some prisons, for instance at Ikovi prison in Lagos, tuberculosis threatens the lives of inmates. A study conducted by the National Institute of Medical Research revealed that about 28 % of the inmates tested positive with tuberculosis infection. 139 Recreational and educational facilities are virtually non-existent. 140 The little food inmates receive is often of bad quality. Food is reported to be beyond any "civilised standard". Prisoners who receive regular visits by their families bringing them food are privileged. Reports blame this state not only on inadequate funding but also on the corruption of the prison officers who reduce the funds available through misappropriation and sometimes even take some of the food stuffs for themselves. Most prisons are also grossly understaffed, in particular concerning health care personnel. $^{\rm 141}$

¹³⁶ Statistics from: Prison Watch, a CLO quarterly, Issue no. 2, Sept. 1995.

¹³⁷ Annual Report on HumanRights in Nigeria, 1993, Civil Liberties Organisation, p. 54.

¹³⁸ Prisoners in the Shadows, p. 95.

¹³⁹ Annual Report on Human Rights in Nigeria, 1993, Civil Liberties Organisation, p. 39.

¹⁴⁰ Report on Human Rights Situaton in Nigeria, by Legal Research and Resource Development Centre, Lagos, Nigeria, 1995.

¹⁴¹ Ibid.

Conclusions and Recommendations

The system of administration of justice has deteriorated particularly in recent years. Abuse of power by government law enforcement agents in direct violation of international human rights standards is the order of the day.

The treatment of detained persons are in most cases worse than those of prisoners, who are kept under appalling conditions. Right from the time of arrest, accused persons are subject to treatment which violate basic human rights. Of special concern are the lack of use of formalities such as warrants and the observance of various duties to provide information to the defendant; time limits and the possibility to question the validity of arrest and detention. On the other hand, as there is a lack of sanctions in most provisions and as there are various special laws conferring wide executive powers, many provisions and many rights given to suspects and defendants turn out to be largely cosmetic, presenting Nigeria to the world as a constitutional state under the rule of law, while in reality the government and its officials have not renounced much of their power.

The structural conditions for realizing improvements remain unfavourable. The reaction to the period of guided democracy has led to a fading away of the political will to return to the rule of law.

The best way of improving the protection of human rights in the process of administration of justice is to embark upon a campaign aimed at changing attitudes.

Again, within the present disposition this may be difficult to achieve without a genuine will for change on the part of government.

It is however recommended as a minimum that:

- a) all political prisoners, held solely for the non-violent expression of their opinion, must be instantly released.
- b) in sofar as credible evidence exists, persons who are awaiting trial, especially those detained in prison, should

- be brought to court within reasonable time. As much as possible, suspects should be released on bail pending trial.
- c) all allegations of torture in detention and prisons be investigated and perpetrators of such should be punished.
- d) continued training programmes on human rights be developed and organised for all law enforcement agencies and other categories of persons involved in the administration of justice. NGOs can assist in this regard.

Judicial System

In modern, democratic societies subject to the Rule of Law, it is the work of the judiciary to protect human rights and to punish those who violate those rights. 142

The Courts

According to the Nigerian Constitution, judicial power is vested in six courts; namely the Supreme Court of Nigeria, the Federal Court of Appeal, the Federal High Court, the High Court, Sharia Court of Appeal and Customary Court of Appeal of every State. The Constitution also provides for the establishment of other courts as the national or state legislative bodies may establish in their respective areas of competence. 143

The essential property of the judicial system is its independence and impartiality. The procedure of a court of law should be characterised by the following attributes: absence of bias, public proceedings, presentation of the case by the parties to the dispute, ascertainment of the facts in issue by means of evidence, the submission of arguments of facts and of law by the parties and a binding decision by the court. It does not matter that an organ is vested with judicial power and called "court," it is not a court in the constitutional sense if its decision is subject to confirmation by a President or any other executive organ. Law Such a "court" is not independent.

¹⁴² Dalmo De Abreu Dallari, Professor of Law, Brazil, "National Jurisdictions and Human Rights", in: Justice - not Impunity, a publication by the International Comission of Jurists, Geneva, 1992, p. 201.

¹⁴³ Ben O. Nwabueze, The Individual and the State Under the New Constitution, p. 8.

¹⁴⁴ Ben O. Nwabueze, The Individual and the State Under the New Constitution, p. 8.

In Nigeria, a dual "judicial system" has evolved, with ordinary courts and parallel military (special) tribunals, the latter partly established ad hoc operating side by side. 145 The arbitrary procedures of the special tribunals has already been alluded to above. What is of concern is that under the current regime a proliferation of such Tribunals has taken place at the cost of jurisdiction of ordinary courts. Judges who have the required qualifications 146 have less and less opportunities to apply their knowledge as most of the special tribunals provide for military personnel as judges or other officers who are in general untrained. The manipulation of the judiciary has been a major problem for a long time which persists until this day. For example, one Tanimu Idris Waziri, a senior magistrate in Taraba State, was suspended by the military administrator for sentencing a professional praise singer and itinerary beggar to a two month prison term. As far as the administrator was concerned, the magistrate had failed to give the beggar the option of a fine. Yet, the said beggar, one Dantadi Babudamawa, had defaulted his rent for six months for which his landlord had already sued him. Apparently, Babudamawa had boasted that he had friends in the right places so that nothing could happen to him. Lawyers in the whole of Taraba State protested against the magistrates' suspension, which they considered arbitrary, by boycotting the courts for several days.

Working conditions of the judicial staff are below international standards. If court rooms do exist, they often lack ventilation and airconditioning which makes work hard considering that the average temperature is 30 degrees celsius. Judges write their opinions in long hand for lack of equipment and support staff is badly trained and poorly motivated. The lack of the necessary infrastructure for the effective running of the judicial system has led to considerable delays in the disposal of cases. According to the chairman of the Oyo State section of the Nigerian Bar Association, Kayode Balogun, no fewer than 1618 cases were pending in various cours across the state by February 1995. It is no wonder that it may take 7 to 10 years to determine a case. Acces to courts remains theoretical if cases are never dealt with or with considerable delay. The implication of this is that frequently Nigerian citizens take justice in their own hands. 147

¹⁴⁵ A list of decrees establishing military tribunals is provided in Appendix C. 146 Sect. 234 (3) of the 1979 Constitution.

¹⁴⁷ other examples can be found in "Attacks on Justice", 1995.

Independence of the Judiciary

An independent judiciary is an indispensable requirement for the attainment of the Rule of Law. The judges (judiciary) who execute the laws should be separate and independent from those who pass the laws¹⁴⁸ (normally the legislative branch of government). This is the basic principle of separation of powers. Judges should be able to pass judgements against the government (the executive) if it acts outside the limits of law.

The United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Milan in 1985, adopted Basic Principles on the Independence of the Judiciary (later endorsed by the General Assembly). ¹⁴⁹ These principles provide general guidelines upon which genuine independence is founded and which can serve as a guide to measure judicial independence. ¹⁵⁰ According to the principles:

- 1. It is the duty of the government to respect and observe the independence of the judiciary.
- 2. It is the duty of the judiciary to decide matters impartially.
- 3. Judges must not be subjected to or accept:
 - restrictions;
 - improper influences;
 - inducements;
 - pressures;
 - threats or interferences of any kind with the judicial process.

¹⁴⁸ Kathryn English and Adam Stapleton, The Human Rights Handbook, Human Rights Centre, University of Essex, Colcheester, 1995, p.63.

¹⁴⁹ resolutions 40/32 and 40/146 1985

¹⁵⁰ Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (cited from Kathryn English and Adam Stapleton, The Human Rights Handbook, Essex, 1995, p. 198.)

- 4. Judges have the exclusive authority to decide all issues that come before them.
- 5. Judges should be properly trained and selected without any discrimination.
- 6. The appointment of judges should be guaranteed up to a fixed retirement age, or the end of their term of office.
- 7. Judges may only be removed for incapacity, or behaviour that makes them unfit to discharge their duty.

The conduct of the Nigerian judiciary in present times falls below these standards. By virtue of Decree No.1 Constitution (Suspension and Modification) Decree of 1984, appointments into the judiciary are made by the military authorities on the advice of the Advisory Judicial Committee (AJC). The AJC is composed of the Chief Justice of Nigeria, the Attorney-General, President of the Court of Appeal, Chief Judges of the States and the Federal Capital, Abuja, as well as the Grand Khadi of the Sharia Court of Appeal and the President of the Customary Court of Appeal. 151 In recent times, the government has shown a propensity to select judges from the civil service, so that the judicial bench is in large part made up of officers who are reluctant to offend presidential authority. In Lagos State, for instance, four of the six judges appointed in 1990 to the State High Court were officials of the State Ministry of Justice while the remaining two were senior officials of the judiciary. It is therefore understandable why these judges who owe their position to governmental grace find it difficult to deliver judgements that will not please the government.

In addition, as the judiciary's budget is entirely dependent on funds provided by the executive, the keeping up of court buildings, judges' residences and furnishings, the purchasing of cars and other objects is in the absolute discretion of the executive, at the federal and states levels. Furthermore, although recurring items may be

¹⁵¹ Decree No. 1, 1984, Constitution (Suspention and Modification Decree), Sect. 15.

¹⁵² Justice Kayode Eso, CON., paper on the independence of the judiciary, p. 4.

provided for in the budget, judges sometimes have to beg for the release of these funds. In many cases, some of the Chief Executives do not provide the required funds.

The dependence of judges on governmental benevolence may also help to explain why judicial orders are often not being obeyed by the government. Fringe benefits, such as a driver or the supply of water can be withdrawn from a judge merely because his judgement was unfavourable to the government or its functionary. Governors have been known to order a judge to bring his record book because his judgement went against the interest of government. In one instance, a judge was asked to reverse or alter his judgement within 14 days because it did not favour the government. In another case, a newly appointed judge who was still in training was specifically flown by a presidential jet to try a politically sensitive case involving an opposition leader and delivered a ruling at midnight. This list could be prolonged infinitely. ¹⁵³

At the height of the litigation on the annulment of the June 12, 1993 presidential elections, the Federal Government gave each justice of the Supreme Court a Mercedes Benz car. "Weekend Concord", a newspaper owned by Concord Newspapers Ltd., of which Chief Abiola is the major shareholder, connected this gift to the cases involving Abiola which were then about to be tried before the Supreme Court. Nine of the judges, including the then Chief Justice of the Federation, Justice Mohammed Bello, sued Concord Newspapers Ltd. seeking total damages of over half a million Naira (approx US\$ 6,000) for libel. 154 The case has not been fully dispensed with.

The Role of Lawyers

The corollary of the individual's right to legal counsel is the duty of a lawyer to accept a case, even if it is for an unpopular cause or a

¹⁵³ cf. Afe Babalola, "Legal and Judicial System and Corruption", in: Corruption, Democracy and Human Rights in West Africa, Summary Report of a Seminar organised by Africa Leadership Forum in Cotonou, September 1994, Lagos, 1994., p. 109.

¹⁵⁴ Civil Liberties Organization, Background information on the Abiola Trial.

minority view. For the maintenance of the Rule of Law it is essential that the legal profession is free to manage its own affairs. Once a lawyer is assigned legal representation of a case he should not relinquish it or be made to do so to the detriment of his client. For a working judiciary it is just as important that the lawyers can fulfil their task without any interference from the government. Lawyers organised in bar associations should be able to control admission to the legal profession and the discipline of the members themselves. 155

In Nigeria, the independence of lawyers is diminishing. The Nigerian Bar Association, the umbrella body under which lawyers are organised has been receiving its own share of interference by the military government. Traditionally the 20,000 member association was known for its strong opposition to draconian laws and effective role as a watchdog particularly during military regimes. With the Legal Practitioners (Amendment) Decree 1994 (No. 21), the government. bestowed itself with high influence over the Bar. It created a new Body of Benchers, taking away power of the Bar Council, that had been elected by the members of the Bar. Through this act, the government effectively banned the Nigerian Bar Association, limiting the lawyers' rights to organise to the state bar associations. Decree No. 21 formally provides that the Body of Benchers has the power to accept gifts on behalf of the Associations.

On 7 July 1994, members of the Nigerian Bar Association protested against continued military rule characterised by the disrespect for the Rule of Law. A young man, Morufu Pereirra, standing nearby, was felled by gunshots and teargas that was used against the protesting lawyers. On 12 July 1994, lawyers went on strike in Lagos, thereby forcing courts to close down temporarily. The lawyers protested against the Abacha regime's disregard for court orders. Independent lawyers who battle for the (human) rights of their clients have repeatedly been harassed and even been arrested. A prominent lawyer from Lagos, Chief Gani Fawehinmi, has been a target of the military government. Fawehinmi was part of

¹⁵⁵ Commitment to the Rule of Law and Human Rights, Principles and Definitions, a publication by the International Commission of Jurists, Geneva, 1966, p. 33.

the defence team in the Ogoni Trials. ¹⁵⁶ He is regularly being arrested and detained without charge, since the first time in 1969. In the last few years, Chief Fawehinmi was arrested various times, detained without charge and for political reasons. The prominent lawyer was arrested again in early January 1996 for unknown reasons.

Femi Falana, another lawyer who has also been repeatedly harassed by government agents. ¹⁵⁷ Mr. Falana is the President of the National Association of Democratic Lawyers (NADL). On June 7, 1993, he was arrested along with Chief Fawehinmi, and charged with sedition and conspiracy to incite violence. After two months in detention, they were released on humanitarian grounds and all charges were dropped. One year later, on 13 April 1994, Mr. Falana was arrested again for allegedly being in possession of seditious material and anti-government posters. His office was searched and some posters were removed. He was later released, but following his legal representation of Turner Ogboru, the brother of a fleeing coup suspect, Falana has been subjected to close surveillance by the government. On 12 January 1995, Falana was arrested again on his return from a trip abroad.

Ledum Mitee, lawyer and deputy president of the MOSOP, was arrested in 1994, together with their president Ken Saro-Wiwa and several other members of the Ogoni community. Although Ledum Mitee was acquitted by the military tribunal in 1995, it is widely believed that this was just a move to make the Ogoni trials appear fair. Defendants who faced the same charges and against whom the prosecution had the same evidence were sentenced to death.

In July 1995, one of General Olusegun Obasanjo's lawyers in the trials of the alleged coup plotters, Tunji Abayomi, was arrested by security agents after holding a press conference in which he criticised

156 see below, p. 91 157 cf. also below, p. 91, Ogoni Trials the conduct of the trials and affirmed his clients innocence. He has not been seen or heard of since the arrest. 158

There are a number of other cases of lawyers who have been hindered by the government from performing their duties. These men and women engage actively in the advancement of the Rule of Law and in the pursuit of establishing democracy.

¹⁵⁸ The Sad Case of Olusegun Obasanjo", Free Obasanjo Campaign, January 1996, p. 6.

Conclusions and Recommendations

When a case is considered to be of importance to the authorities, there are too many possibilities to avoid constitutional provisions protecting the independence of the judiciary. The government can widen its powers using special decrees or simply ignore court orders. Judges are prone to bow down to the wishes of the executive with a bit of pressure either in the form of harassment or coercion through the acceptance of gifts from military and government officials. The lack of independence and impartiality of the judiciary is a structural obstacle which must be removed.

The Nigerian judiciary is presently going through a period of trial, struggling with maintaining its balance as an independent arm of government. On the one hand, the judiciary is under pressure from the people who want it to continue to exist as the last hope of the common man in the face of gross violations of their human rights, while on the other, the executive has resorted to the use of coercive measures and decrees to ensure the loyalty of the judiciary. The result of this is that the credibility of the Nigerian judiciary is now at stake.

Public confidence in the courts is for these reasons receding. Courts are considered as just another arm of the government, enforcing the draconian executive decrees. The independence of the judiciary can only be assured if the tenure of the office is guaranteed and secured against any fear of removal. The independence of the judge is reduced to a vanishing point where contrary to law, he can be retired or dismissed on the radio or television. Attention must also be placed on the terms and conditions of service. Courts should be in control of their own budget. Judges should be of fine scholarship and only judges known for their integrity should be appointed to the bench. Corruption must be fought more thoroughly and "bad eggs" should be removed. An important task is to attack the chronical congestion of courts of all hierarchies and the delays occasioned by the police and the Office of the Prosecutor.

Due Process

The fundamental rights in the Constitution are provisions designed to protect the citizen from the strong arm of the executive. 159

Due process of law means a course of legal proceedings in accordance with the rules and principles which have been established for the enforcement and protection of the rights of the individual. It implies an exercise of the powers of government within the limits of the law. Due process of law encompasses all the guarantees necessary to ensure that proceedings are fair, just and equitable. Such guarantees are the right to be heard by an independent and impartial tribunal, established by law, the right to be present before the court which pronounces judgement on the life, liberty or property of an individual, and the presumption of innocence. ¹⁶⁰

In the past few years, there have been a number of prominent cases in which the principle of due process has not been observed. Four of these cases are analysed in this report as examples to illustrate the serious violation of this principle in the last few years.

Lekwot Case

The "Lekwot Case" constitutes a milestone in the path of degrading justice. It is a clear illustration of the pattern of governmental interference in the judicial process. In 1992, following bloody religious riots in Zango-Kataf, Kaduna State, a number of persons among whom was Major-General Zamani Lekwot, a former Governor of Rivers State, were arrested and brought before a Special Tribunal.

¹⁵⁹ High Court of Maiduguri, in Shugaba Darma v. Fed. Min. of Internal Affairs.160 These guarantees are contained in art. 14, 6, 7, 9, and 15 ICCPR, in art. 7 ACHPR, and in section 33 of the Nigerian Constitution.

The Tribunal was considered heavily biased against the accused. Despite the fact that Christians and Moslems were belligerent in the clash, out of the seven judges, none was Kataf and only two were Christian, one of which withdrew later. The accused persons and their lawyers complained of undisguised hostility from the tribunal members. They declared that the trials were manifestly unfair. One of the lawyers cross-examined a doctor who had performed autopsies on some of the victims of the disturbances. The lawyer noticed discrepances in the testimony and insisted on probing deeper. Justice Okadigbo, who presided over the tribunal, ordered the lawyer to stop asking questions. When he did not comply, the Justice ordered him into the dock and threatened to send him to jail. The right to adequate defence was thus grossly violated.

In October 1992, the High Court in Kaduna accepted the claim that the accused persons fundamental human rights were being denied. However, in November 1992 the Court of Appeal ruled that the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987, which established special tribunals to try cases of civil unrest, had removed the High Court's jurisdiction in such cases. The case was pending before the Supreme Court when General Babangida, who was president at the time, passed a decree on 1 December 1992 (the Revised Edition (Laws of the Federation) (Supplementary Provision) Decree No. 55), with retroactive effect from July 1991. The government appeared to fear that the Supreme Court might rule that fundamental rights under the Constitution could not be removed. The decree banned the possibility to appeal to a higher (regular) court. The defence counsels resigned in protest. The accused persons refused to accept government appointed counsels, so that they had to hold their own defence. They were charged for trying to seize land in Zango town from the Hausa community by illegal means, unlawful assembly and rioting while armed with deadly weapons. For this, the men faced the death sentence. Later the charges were amended. Lekwot was charged for culpable homicide. Despite the outcry and criticisms, on 2 February 1993, the Tribunal sentenced Lekwot and five of the six other persons to death by hanging for their alleged role in the May 1992 communal clashes. The five others who were sentenced to death without the possibility of appeal were: Major Atomic Kude (rtd), Yohanna Karau Kibori, Marcus Mamman, Yahaya Duniya, Julius Sarki Zamman Dabo. One of the accused. Mr. Juri B. Ayok, chairman of the Zango-Kataf Local Government Council, was acquitted. However, soon after his release he was

arrested again and detained in Kaduna prison. Subsequently, more persons were convicted and sentenced to different prison terms.

The CRP filed a communication with the African Commission for violation of art. 7 of the African Charter. At the same time they filed a suit at the Lagos High Court to seek an injunction restraining the federal military government from executing Lekwot and the five others before the African Commission had reached a decision.

Due to the religious undertones of the case, pressure mounted in the country. It was interpreted as a case of Muslims against Christians. As a result of the pressure, the National Defence and Security Council under the Babangida regime granted a general amnesty and commuted the death sentences of Lekwot and all the others to five-year-prison sentences. ¹⁶¹

As recent events show, such cases are far from being history:

The Ogoni Trials

Right to be Presumed Innocent

Everyone has the right to be presumed innocent until proved guilty according to law (Art. 14 (2) of the ICCPR).

The Nigerian Constitution of 1979 provides the same guarantee in section 33 (5) of Part IV. The presumption of innocence, particularly in criminal cases, is such that it is imperative for the prosecution to prove beyond reasonable doubt, the guilt of the accused person. ¹⁶²

¹⁶¹ Annual Report on Human Rights in Nigeria, Civil Liberties Organisation, 1993, p. 350-371.

¹⁶² see in section 33 (5) of the Nigerian Constitution

The most widely publicised Ogoni trial, involving MOSOP leader, Ken Saro-Wiwa and eight others, provides a recent case study on the violation of this principle in Nigeria. Most observers of the trial had the impression that the Civil Disturbances Special Tribunal, especially set up to try the accused persons had already decided on its verdicts and only used the trial proceedings to seek for arguments to justify them. ¹⁶³

The Ogoni, and other ethnic minorities, live in the oil-rich Niger delta in the Southeast of Nigeria. Environmental pollution as a result of flared gases that burn in the proximity of their small communities 24 hours a day all year round, makes life very hard in the Niger delta. Ken Saro-Wiwa and MOSOP fought against the destruction of the Ogoni environment, the poisoning of their water and land. They denounced the atrocious situation before the UN Working Group on Indigenous People in 1992, the Sub-Commission on Prevention of Discrimination and Protection of the Rights of Minorities and the Human Rights Conference in Vienna in 1993.

On 21 May 1994, during an election campaign meeting for the National Constitutional Conference organized by the Gokana Council of Chiefs in Giokoo, Gokana, four Ogoni elders (Chief Edward Kobani, Chief Samuel Orage, Chief Albert Badey and Chief Theodolphus Orage¹⁶⁴), alleged to be sympathetic to government, were reportedly attacked by a mob and hacked to death. The precise chain of events leading to the murders is very controversial. The following day, on May 22, 1994, Ken Saro-Wiwa and Ledum Mitee, his deputy, were arrested and detained without charge. Apparently, the Governor of the State had been on television immediately after the killings saying that he knew that Ken Saro-Wiwa was the perpetrator of the killings. How could the Governor be so certain before the trial started? His public remark is in any case a clear violation of the presumption of innocence.

Charges were filed only after eight months. 15 people in total were charged with murder. Later a tribunal 165 was appointed by the

¹⁶³ Michael Birnbaum, A Travesty of Justice, an analysis of the judgement in the case of Ken Saro-Wiwa and others.

¹⁶⁴ two of which were Ken Saro-Wiwa's in-laws and the other two close friends.

¹⁶⁵ established by Decree No. 2 of 1987. According to Section 1 of the Decree, it is the President who determines whether there have been civil disturbances.

Federal Military Government to try the offenders arising out of that riot. The government as part of its defence alleged that this was a clear "case of murder". If it was such a "clear case of murder" it appears very strange that it took the prosecution so long to come up with charges.

The Right to a Fair Trial

The Tribunal was composed of two judges, Justice Ibrahim Nadhi Auta, judge of the Federal High Court in Lagos, and Justice Etowa Enyong Arikpo, judge in the Cross River State High Court, as well as an army officer, Lieutenant-Colonel Hammid Ibrahim Ali. As provided for in the Civil Disturbances Decree, the tribunal was especially set up for the trial of the events which had occurred in Giokoo; 166 with the judges hand-picked by the executive. This constitutes a violation of the right to a trial heard by independent and impartial judges. 167

The defence lawyers challenged the jurisdiction of the tribunal because the basic procedure for its set-up provided for in the decree had not been followed. The decree provides that before anyone can be tried for an offence the Head of State must have instituted a Special Investigation Committee which must have carried out an initial investigation and made recommendation that the matter be taken for trial. This was not done. As there was no strict procedure set out regulating the work of a Special Tribunal, it had the power to invent its own rules of procedure. The defendants had no possibility of appeal against the judgement or any preliminary rulings before any ordinary civil high court.

When the trial opened in February 1995, three groups of people were charged with the murder of the four Ogoni chiefs. The first

¹⁶⁶ Civil Disturbances (Special Tribunal) Decree of 1987, as amended by the Special Tribunal (Offences Relating to Civil Distrubances) Edict 1994, retroactivly effective as of December 10, 1993

¹⁶⁷ as guaranteed under national and international law (sect. 33 (1) Nigerian Constitution, art. 14 (1) Intl. Covenant on Civil and Political Rights, art. 7 African Charter on Human and Peoples' Rights).

¹⁶⁸ report of the Gani Fawehinmi Chambers.

group included Ken Saro-Wiwa, Ledun Mitee, his deputy, Dr. Bariment Nobari Kiobal, John Kpuinen, vice chairman of the MOSOP youth wing (known as National Youth Council of Ogoni People, NYCOP) and Baribor Bera. The second group included Felix Nwate, Saturday Dobee, Norda Eggwo, Kagbara Alfa and Monday Dowing, while the third group comprised of Paul Levara, Joseph Kpante, Michael Visor, Daniel Gbokoo and Albert Kogbara

The first group of suspects were charged with the murder of the four Ogoni chiefs. The specific charge was that Ken Saro-Wiwa, Ledum Mitee, and Dr. Barinem Nubari Kiobel instigated and counselled the other two accused, John Kuinen and Baribor Bera in company of others, to commit the murders, contrary to section 316 of the Criminal Code, and contrary to item 13 schedule 1 Civil Disturbances (Special Tribunal) Act Cap. 53, Laws of the Federation of Nigeria, 1990.

The trial was flawed in several respects. ¹⁶⁹ In many instances, the tribunal relied on contradictory evidence given by the prosecution without evaluating its accuracy. ¹⁷⁰ For example, prosecution witness Dr. Garrick Leton, former president of MOSOP, contended that when Ken Saro-Wiwa became the leader of MOSOP, violence was introduced into the movement. Yet, on cross-examination he admitted that Ken Saro-Wiwa never preached or practised violence. ¹⁷¹ The witness also admitted that the decision to boycott the June 12 elections by the Ogoni community had been taken democratically and was not ordered by Saro-Wiwa, as he had earlier stated.

The tribunal depended not only on a one-sided picture, unfavourable to the accused, it also ignored allegations that a large number of the prosecution witnesses had been bribed and/or

¹⁶⁹ a trial observer calls the judgement of the Tribunal as "downright dishonest" (cf. Michael Birnbaum, A Travesty of Law and Justice, Analysis of the Judgements in the Case of Ken Saro-Wiwa and others, unpublished p. 2.)

¹⁷⁰ cf. a report on the trial of Ken Saro-Wiwa and others before the Ogoni Civil Distrubances Tribunal held at Port Hartcourt, by Gani Fawehinmi Chambers, 26 February 1995. Unpublished.

¹⁷¹ report of the Gani Fawehinmi Chambers.

threatened or were inimical to the accused. 172 The defence submitted affidavits from two prosecution witnesses, Charles Danwee and Naavone Nkpah, who declared that security agents and other prosecution witnesses had bribed them and others to sign false statements (Danwee and Nkpah claimed that they had been paid N30,000 (approx US\$ 550) each and were offered employment in the oil fields). Their confessions were video and audio taped and also reported in newspapers. Justice Auta refused to examine Danwee's statement, unless he could be cross-examined. However, the said witness was in hiding. The exclusion of hearsay evidence could be acceptable, but there was an apparent element of prejudice which made it possible that other hearsay evidence, not in favour of the accused, was accepted, while such evidence that would undermine the prosecution was not allowed. It was the duty of the tribunal to provide protection for all witnesses, so that they could appear in court and would not have to hide. Moreover, the fact that some of the accused persons gave no counter-evidence was interpreted as an acknowledgement of the truth of the prosecution evidence. The court thus reversed the burden of proof. Likewise, whenever a certain piece of evidence could be interpreted in two ways, the judges chose to adopt the one least favourable to the accused.

It appears as if the tribunal, for lack of any concrete evidence, reinterpreted the Criminal Code and invented a new law of murder based on negligence or murder by (intentionally or negligently) causing a civil disturbance. Under Nigerian law, for the guilt of a person accused of murder to be established, there must be proof that the accused person played a part in the events that caused the death. ¹⁷³ A person who counsels or procures the commission of an

¹⁷² This would constitute perjury, with the punishment of fourteen years of imprisonment (section 117 and 118 of the Nigerian Criminal Code Act).

¹⁷³ Sect. 7 Criminal Code (Parties to Offences): Principle offenders are:

⁽a) every person who actually does the act or makes the omission which constitutes the offence.

⁽b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offense.

⁽c) every person who aids another person in committing the offense.

⁽d) any person who counsels or procures any other person to commit the offence.

offence faces the same consequences as the principal offender. 174 Bystanders, who are merely present at the scene and do not further the crime in any way may not be punished. An instigation to commit a crime has to be concrete and precise, with the clear intention to incite another person to commit an offence. It is not enough to tell somebody to "deal with" 175 an enemy or that "heads will roll" 176, as the second prosecution witness (PW.2) claimed that Saro-Wiwa had said to her. The Tribunal claimed that they saw indices of Saro-Wiwa's guilt also from his reply to the question: "Have you heard that your boys destroyed my house?" posed by a lady whose house had been attacked by the mob. Saro-Wiwa answered, according to the facts stated in the judgement: "Well, Priscilla, there is a revolution in Ogoni land; if you are not part of the revolution, you will go with the revolution". The judges infer from this answer that Saro-Wiwa "accepted those who destroyed PW.2's house, i.e. NYCPO, as his boys and that he is privy to their destructive activities which symbolise the emergence of the revolution in Ogoni land". 177

The debate of the Tribunal on Saro-Wiwa's guilt is rather abstruse. The Tribunal relied entirely on testimonies about imprecise and vague statements Saro-Wiwa allegedly had made. The Tribunal does not discuss intention (a constitutive element of murder) or the counselling and procuring of a person to murder. Its reasoning for why Ken Saro-Wiwa was guilty according to the charges is the following:

"On the totality of the foregoing, we have not the slightest doubt that MOSOP and NYCOP laid the foundation of the disaster that occurred on 21/5/94.

¹⁷⁴ sect. 7 cap. 2 of the Nigerian Criminal Code

¹⁷⁵ cf. p. 36 of the judgement. PW.5 said he had heard Saro-Wiwa say at a meeting NYCOP in August 1993 that NYCOP boys "should go and deal with" some named persons (these include, according to the judgement, Dr. G.E. Leton, Dr. Charles Kpakor, Chief Lekue Lah Loolo, Ms. Priscilla Vikue, Chief W.Z.P. Nzidee, Chef Igbara, Chief Eguru and others).

¹⁷⁶ see p. 35 of the judgement of 31 October 1995. Ken Saro-Wiwa's defence counsel interpreted this expression, referring to its meaning in the Oxford Avanced Learner's Dictionnary, as meaning that "people will be punished". To the Tribunal, referring to the same dictionnary, it meant punishment, corporal and capital.

¹⁷⁷ Judgement, p. 35.

It has not been challenged that:

- (a) There were riots at Giokoo on 21/5/94;
- (b) that as a result of those riots 4 eminent personalities of Gokana, i.e. late Chief Albert Badey, late Chief Edward Kobani, late Chief Samuel Orage, and late Chief Theophilus Orage were brutally murdered;
- (c) that the Federal Constitution Assembly Election Laws prohibited election campaigns on 21/5/94;
- (d) that Mr. Kenule Beeson Saro-Wiwa, 1st accused, was not a candidate for the Constitution Assembly Election:
- (e) That not being a candidate for the election, he (1st accused) and other members of MOSOP and NYCOP wrongfully organised election campaign rallies in Gokana and thereby wrongfully congregated a large crowd of their fanatical MOSOP and NYCOP youths who rioted and caused the deaths of the four eminent Gokana leaders at Giokoo;
- (f) The decision to organise and hold these rallies and create a riotous situation was made by members of the organisations called MOSOP and NYCOP."178

So there were riots, there were deaths, the meeting that was organised was illegal, all this proves beyond reasonable doubt, according to the tribunal, that the accused persons were guilty.

¹⁷⁸ The Tribunal inferred from his silence that he accepted all the allegations, see p. 39 and 40 of the judgement

In reality, there was no clear evidence that any of the defendants ever incited anyone, save for the second version of the evidence of prosecution witness Gbaa, who testified that Saro-Wiwa had addressed NYCOP at a meeting and allegedly told them to "kill the vultures" (i.e. Ogonis who allied with the government). Even if there were credible evidence of one of the accused having incited anyone present at the meeting of the 20th or the 21st May, it must be proved that this (incited) person took part in the killing. In the view of one of those who observed the trial there was no evidence of murder against any of the defendants, except conceivably Bera who had taken part in the riot and was alleged to be the leader of the mob. ¹⁷⁹ In such a large riot it would still be difficult to prove that he actually instigated or committed the murderers of any of the four Chiefs (the murder of each Chief would have to be proved separately).

The Special Military Tribunal completely misinterpreted the law. They declared that one must not confuse the offence of murder under the Civil Disturbances Decree with a similar offence under the Criminal Code. ¹⁸⁰ Having cited sections 1, 2, and 3 of the Civil Disturbances Decree, the Tribunal went on:

"On the totality of the foregoing provisions, therefore, it becomes obvious that although a person may be charged under a named offence listed in schedule 1 to the Decree, such as murder and punishable under the criminal or penal code, the acts constituting the offence arise from the actions or conduct of the person in civil disturbances 181 as provided for in Sect. 1 (2) (a) - (c) in the Decree reproduced above. The questions that now arise are:

- (a) Have there been any civil disturbances in Giokoo or Gorkana?
- (b) Were there any person or group of persons who by conduct or negligence or otherwise howsoever

¹⁷⁹ Birnbaum, p. 10.

¹⁸⁰ Judgement p. 30 - 31. However, the Civil Disturbances (Special Tribunal) Act refers to the Criminal Code when defining the jurisdiction of the Tribunal (section 3).

¹⁸¹ emphasis added by the author.

in any way caused or contributed to the breaking out of the disturbances?

- (c) Is there any person or group of persons holding political, social or other belief who contributed to or participated in any way in the civil disturbances?
- (d) Did any movement or association (howsoever called) led by any person or group of persons contribute to or participate in any way in the civil disturbances?
- (e) Is there any person or persons who encouraged, contributed to or participated in the civil disturbances?
- (f) Is there any person or persons who were callously and violently killed by any person or persons who participated in the civil disturbances?" 182

By invoking these sections of the Decree, the Tribunal expanded the scope of the offence considerably. These sections had not been meant to define the offence but merely to delimit the range of action of the Investigation Committee that should have been appointed. According to the logic of the Tribunal, once it was proved that a death had occurred in the course of a civil disturbance anyone who in any way contributed to or encouraged the disturbance could be convicted of murder. ¹⁸³ This means that the basic principles of causation and joint liability have been jettisoned. It convicted and sentenced the accused persons to death, for the fact that they, in the Tribunal's eyes, encouraged the disturbance. Even under Nigerian law, murder is defined as the killing of another person by intent. ¹⁸⁴ From the reasoning of the judges one could, if at all, infer negligence at the most.

¹⁸² emphasis added

¹⁸³ cf. Birnbaum, p. 12

¹⁸⁴ Sect. 316 of the Criminal Code gives a definition of murder: "if the offender intends to cause the death of the person killed, or that of some other person", etc., dolus eventualis would also count as intent (316 (3)).

Right to Appeal

Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. (art. 14 (5) ICCPR)

This is of particular importance in a case where the death sentence is applied. Even if states are not obliged under the ICCPR to abolish the death penalty, its use is to be restricted to the most serious crimes. It should constitute an exceptional measure. ¹⁸⁵ In addition, art. 6 of the ICCPR provides for certain safeguards which must be complied with before the death sentence may be carried out. The penalty can only be administered pursuant to a final judgement rendered by a competent court, which includes a right to appeal and the particular right to seek pardon or commutation of the sentence.

The UN Safeguards guaranteeing protection of the rights of those facing death penalty, provide that the death penalty can only be imposed when the guilt of the person is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. ¹⁸⁶ Ken Saro-Wiwa and the other convicted men appealed to the Provisional Ruling Council (PRC), the nation's highest decision-making authority, dominated by the army. ¹⁸⁷

The PRC met on November 8, 1995 and confirmed Justice Auta's ruling. The swift confirmation of the death sentence by the PRC gives rise to the belief that the meeting which was held two days after the Tribunal's ruling was called primarily for the

¹⁸⁵ Human Rights Committee, General Comment 6 (16).

¹⁸⁶ Even if these principles are not binding law they give a coherent and logical interpretation of art. 6 ICCPR, they can also be considered as constituting customary law.

¹⁸⁷ Other tasks of the PRC are: (a) the determination, from time to time, of national policy on major issues affecting the Federal Republic of Nigeria; (b) constitutional matters, including amendments of the Constitution of the Federal Republic of Nigeria of 1979; (c) all national security matters, including the authority to declare war or proclaim a state of emergency or martial law; (d) the ratification of the appointment of such senior public officers as the Council may, from time to time, specify; and (e) general supervision of work of the National Council of State and the Federal Executive Council (sect. 10, Decree 107, Constitution (Modification and Suspension) Decree):

ratification of the sentence in order to foreclose any chance for clemency and to prevent the deluge of protests and pleas that were to be expected. The timing of the conviction, confirmation of the death sentences and the actual execution coincided with the summit of the Commonwealth Heads of States which was held in Auckland, New Zealand. Despite the urgent pleas of the Commonwealth Heads-of-State, the executions were carried out. The Commonwealth suspended Nigeria's membership for this defiance.

The CRP, an NGO based in Lagos, filed a case before the Federal High Court in Lagos, on November 4, 1995, to seek judicial restraint against the government from carrying out the sentences pending the determination of a complaint it has filed before the African Commission where it challenged the abuse of due process by the Justice Auta Tribunal that convicted the Ogoni leaders. Justice Babatunde Belgore, before whom the case was brought, denied an urgent hearing. By the time he was ready to hear the case, the Ogoni leaders had been executed.

On 1 November 1995, the Secretariat of the African Commission sent an urgent message to the Nigerian government through the Ministry of Foreign Affairs. The objective of the message was to urge the government not to execute the death sentences of the Ogoni people on behalf of which the Commission had received communications. The Commission may, in accordance with rule 111 of its revised Rules of Procedure on provisional measures (former rule 109) request a state party not to undertake any steps that would cause irreparable damage to accused persons. The Nigerian government did not deem to answer this request until 20 November 1995, when it had accomplished its undertaking. 189

According to a report, a representative of the Nigerian Ministry of Justice explained the absence of a formal procedure for appeal by

¹⁸⁸ Letter of the African Commission on Human and Peoples' Rights, 1 November 1995, Doc. II/ES/ACHPR/3 Add.1.

¹⁸⁹ It is interesting to note that the government underlined the fairness of the trials, backed up by the fact that the tribunal discharged the Vice-President of MOSOP, and five others. It also claimed that "Tribunals are part of the Nigerian judicial system properly constituted to deal with specific issues and for speedier dispensation of justice» (letter of 20 November 1995, Doc. II/ES/ACHPR/3 Add.1.)

claiming that it was "unnecessary" in this case because the lower court was comprised of more than one judge. He apparently also explained that since Justice Auta, the presiding judge, was an experienced judge, an appeal was obviated, especially since it would have been before Auta's "colleagues" on the Federal Court of Appeal. 190

On Friday, November 10, 1995, Baribe Kiobel, John Kpuinen, Baribon Bera, Saturday Dobee, Felix Nwate, Nondu Egwo, Paul Levura, and Daniel Gbokoo were, along with Ken Saro-Wiwa, hanged at Port Hartcourt prisons.

Right to Legal Assistance

Everyone has the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing (art. 14 (3) (b)).

The African Charter provides for the same in (art. 7 (c)), as well as the Nigerian Constitution of 1979 (sect. 33 (6) (b) and (c)). These guarantees are a minimum requirement. Defence lawyers should be able to advise and represent their clients privately without any restrictions, influences, pressures or undue influence from anyone. Lawyers are entitled to early access to all appropriate files and documents in a particular case and all communications with clients must be respected as confidential. This is the basic principle of equality of arms between the prosecution and the accused.

In the Ogoni trials, on the day the application for bail was to be heard, two of the defence lawyers, Chief Gani Fawehinmi and Mr. Femi Falana, ¹⁹¹ were assaulted on the way to the Rivers House State of Assembly Complex, the trial venue, by policemen holding guns who attempted to prevent them from entering the hall. The lawyers were asked to seek accreditation that would allow them to enter into the venue, from another place several kilometres away. Chief

¹⁹⁰ Human Rights Watch/ Africa, Nigeria, The Ogoni Crisis, July 1995, vol. 7, No. 5., p. 26.

¹⁹¹ See also the chapter on the legal profession, above, p. 84.

Fawehinmi refused to do this and claimed that he needed no accreditation to defend his clients. In the scuffle that ensued his jacket was torn by a security official. ¹⁹² The two lawyers were rescued by a senior army officer. Not even the presence of international observers could prevent the Tribunal from disregarding any basic respect for the lawyers. On the contrary, the Tribunal objected to the presence of the observer sent by the International Commission of Jurists (ICJ). The judges declared that the proceedings were not organised by the United Nations thus the ICJ had no right to be present.

Furthermore, the lawyers claimed that, despite Justice Auta's orders, they did not have access to their clients and that the prosecution denied them access to vital evidence, one of which was the videotape in which the then chairman of the Internal Security Task Force in Ogoni, Major Paul Okuntimo, apparently boasted that he would "waste" so many lives. 193 The lawyers were only allowed to have access to their clients with the consent and in general in the presence of Okuntimo. 194 The defence was not able to prepare cross-examination properly because it did not have the statements of the prosecution witnesses which were made before the police. Even if the prosecution declared that the defence did not have the right to receive the material in advance, the Tribunal finally ruled that this should be the case for future cases. Due to the constant frustration and intimidation, the defence counsels had to withdraw from the case.

In conclusion, it can be safely stated that the trials were unfair. Almost every right of the accused provided for in national and international law was violated. A special tribunal was set up to try a case that ordinarily should have been brought before a properly constituted law court (in the case of murder, the High Court), defence attorneys were assaulted, intimidated, and frustrated out of the case, the suspects were not given access to their lawyers, doctors,

^{192 &}quot;The State murders Ogoni activists", in: Constitutional Rights Journal, October - December 1995, p. 5.

^{193 &}quot;The State Murders Ogoni Activists", In: Constitutional Rights Journal, Oct. - Dec. 1995, p. 5

¹⁹⁴ Birnbaum, Nigeria: Fundamental Rights denied", London, Article 19, June 1995, p. 57.

family members and their conviction was predictable. It is claimed that the trials were orchestrated by the military government to punish and silence environmentalists and human rights activists, and as a lesson to other campaigners for equality, human rights and democracy in Nigeria. ¹⁹⁵

The trial of 19 other Ogoni detainees, charged with the same murders for which Ken Saro-Wiwa and the eight other Ogoni prisoners were hanged is due to commence before a Civil Disturbances Tribunal in early 1996. Although a High Court in Lagos has ordered a temporary stay while it considers a constitutional challenge brought by the accused, it is to be feared that the government will ignore the court order as has happened before and proceed with the trials. At the time of the compilation of this report there was no further information about the trials.

The Abiola Trial

Following the presidential elections held in 1993, Chief Moshood Abiola, the alleged winner of the elections, and other political leaders, namely Dr. Adebola Bailey, Dr. Olu Falomo, Alhaja Kudirat Abiola (his wife) and Mr. Femi Abass, had been arraigned on 6 July 1994, on a three count charge of treasonable crimes under the Penal Code, for which maximum punishment on conviction was imprisonment for life or any lesser term, and a fine. Three weeks later, on 28 July 1994, this charge was amended to a five count charge under the Criminal Code, including the specific charge of treason, for which the penalty is death. ¹⁹⁶

^{195 &}quot;The Ogoni Killings: contempts for Civilised Conduct", editorial in: Constitutional Rights Journal, October - December 1995.

¹⁹⁶ The Charge of July 6, 1994, reads as follows: Count 1: That you Chief (Alhaji) Moshood Kahimawo Olawale Abiola of 5/7 Moshood Abiola Crescent, Ikeja, Lagos, on or about 11th day of June, 1994 at Eleganza Sports Complex [...] did form an intention to remove or overthrow otherwise than by constitutional means the Head of State and manifested such intention by overt acts to wit:

i. Solicited, incited, addressed and endeavoured to persuade and to procure persons to take part unconstituionally in the removal or overthrowing of the Head of State and Commander-in -Chief of the Federal Republic of Nigeria.

Right to a Fair Trial

Although the alleged offence was committed in Lagos, Chief Abiola was arranged before a Federal High Court in Abuja. Prior to his arrest, no division of the Federal High Court had been established in Abuja, but the Chief Justice of the Federation hastily exercised his powers to establish the court, whose only business appeared to be the trial of Chief Abiola.

The Federal High Court generally serves as revenue court and has no appellate jurisdiction. ¹⁹⁷ A later expansion of its jurisdiction was annulled. Abiola's defence counsel challenged the jurisdiction of the Federal High Court on this and other grounds because the acts constituting the alleged offences had taken place in Lagos (principle of territoriality). However, the trial judge, Justice Mustapha adjourned the ruling saying that he needed time to write his ruling and to consult some people in Sokoto and Kano as well as other parts of the country. ¹⁹⁸

As in other cases mentioned in this report, Chief Abiola was denied his right to a hearing before an independent and impartial court. The right to a public trial was shamefully violated when on 20 July 1994 journalists and photographers who wanted to cover the proceedings were beaten up and denied access to the court house. Their cameras and tape recorders were damaged and in some cases even seized. The pressmen affected by this act included Dare Fasube of Vanguard Newspaper, Baba Ali of The Democrat, Philip Ojisua of The Guardian, Razaq Hamza of The Concord, and Timothy Ikuomenisen of The Sketch. 80 other people were arrested by the police during a fracas that ensued. 199

The strange course of events concerning the application for bail suggests that the whole process had been directed by the executive from the very beginning. Repeatedly, pressure from all over the country, was put on the military government to release Abiola

¹⁹⁷ cf. Nigeria, Limits of Justice, op.cit., p. 11.

¹⁹⁸ Civil Liberties Organisation, Background on Court Proceedings involving Chief M.K.O. Abiola, 9 February 1996, unpublished.

¹⁹⁹ Human Rights Update, Civil Liberties Organisation, 6 September 1994.

unconditionally. Several attempts were made to get him to bring a fresh application for bail (the first was apparently only oral) before the Federal High Court at Abuja. 200

From the unguarded remarks of the judge, as well as the way in which the establishment of the Federal High Court at Abuja was carried out, it could be inferred that the government had some ulterior motive in trying to persuade Abiola to return to the same judge to apply for bail. So Abiola was determined that he would not do so. However, in early August 1994, Abiola's defence counsel, Chief Ajayi S.A.N., was approached by a government emissary who told him that the Federal High Court was ready to hear an application for bail from Abiola. The government even provided an aeroplane to take him to Abuja. 201 The defence counsel made clear that he had no instructions from Abiola to apply for bail, and that his client had put his faith in the expected success of his appeal to the Court of Appeal. The leading counsel was not willing to comply with the military government's plans, so the government procured another lawyer, one Ajibola Olanipekun, who was nominally representing Chief Abiola.²⁰² Olanipekun brought an application for bail which was supported by a false affidavit sworn to by a certain "Adenike Abiola" who was alleged to be Abiola's daughter. No such person exists.

²⁰⁰ Civil Liberties Organisation, Background on Court Proceedings involving Chief M.K.O. Abiola, 9 February 1996, unpublished.

²⁰¹ ibid., p. 2

²⁰² In celebrated trials such as that of Chief Abiola, it is common for many lawyers to seek to associate with the trial by having their names called as part of the team supporting the leading counsel, who in this case, was Chief G.O.K. Ajayi S. A. N. Generally, such appearances are mere courtesies, with the Counsel involved merely robing and sitting in court without contributing in any way to the trial other than as mere spectators, but they reap such advantages as they consider important from having their names included on the record as having appeared in the case. However, the actual conduct of the defense remains under the control of the leading counsel, and an inner team of those who are actually working on the case and carrying out his instructions in this regard. Mr. Olanipekun was one of these "spectator lawyers". In the present case, neither he nor the government could claim that he had a right to act on the instruction of Chief Abiola. The government knew, from his refusal to apply for bail, that the leading Counsel, Chief Ajayi, under whose direction all such associated lawyers were bound to act, was not prepared to comply with their plans.

The government sent an official aeroplane to Benin where Justice Mustapha, the trial judge, was based. The judge followed the call and travelled to Abuja. He commenced the hearing just before 4.00p.m. on a Friday afternoon. 203 By chance, another lawyer, Mr. Uyi Ogedegbe, one of the active members in Chief Abiola's defence team, happened to be in the courts premises and heard about the proposed application. He went to the court to protest against it, by stating that the application was being heard against his client's instructions, in his absence, and also in the absence of the leading counsel. As he was not in his official robe, the judge refused to hear him. Mr. Olampekun, the "spectator lawyer", on the other hand, was prepared, and so was the counsel for the military government, even though he had only been served the application that morning. He supported the application fully. 204 Despite attempts by Mr. Ogedegbe, the "real lawyer" to halt the proceedings, the judge proceeded to grant Abiola bail, with conditions. These conditions included a prohibition of interviews or public speeches, the prohibition of travel outside of Nigeria and a written affirmation that he would not "breach the peace and unity of the country". Such conditions were unprecedented and had never been raised in previous applications, nor urged in the oral arguments before the trial judge by either Mr. Olanipekun or the State Counsel.²⁰⁵ When Chief Abiola was informed about the ruling he declared that he preferred to wait for the outcome of the unconditional bail application which was pending before the Court of Appeal.

²⁰³ Government working hours are generally from 7.30 am to 3.30 pm although courts may continue to sit beyond 3.30 if necessary. On Fridays, however, it is extremely rare for a court to sit after midday, partly because people need to attend the Friday worship.

²⁰⁴ Civil Liberties Organization, p. 2.

²⁰⁵ Civil Liberties Organization, p. 3.

The bail incident shows clearly that the court was not as independent as it should be. It was in fact extremely pliant in the hands of the military government. Various pronouncements made by General Abacha on the "guilt" of Chief Abiola reinforce this view. ²⁰⁶

Chief Abiola's application for unconditional bail was finally heard by the Court of Appeal on 4 November 1994. The Court of Appeal granted him an unconditional bail. The military government appealed against this decision to the Supreme Court and applied for a stay of execution. The Court of Appeal granted the stay of execution and Abiola had to remain in detention.

The "never-ending-story" made Abiola to appeal before the Supreme Court. However, the Supreme Court was not "ready", as there were two vacancies in the statutory number of judges provided for in the constitution. The government has been blaming Abiola's defence lawyers for the delay in the case. Yet, it is the duty of the government to fill the vacant seats in the Supreme Court. The failure to do so infers a determination on the executive's side to slow down the whole proceedings. In addition, the issue of Abiola's bail is to be held before a panel of judges of the Supreme Court, the majority of which had sued the newspaper company controlled by Abiola for libel. ²⁰⁷ It can hardly be believed that such a panel would be impartial in the case on the liberty of an antagonist. So Chief Abiola objected, and the Supreme Court upheld the obligation for reasons which it promised to give later on. ²⁰⁸

To date Chief Abiola's appeal on jurisdiction is still pending.

²⁰⁶ Similar pronouncements of guilts were made by General Abacha in the case of General Olusegun Obasanjo who was being accused of complicity in the alleged coup plot. In due course, General Obasanjo was found guilty by the secret tribunal before which he was tried, and sentenced to life imprisonment, later reduced to 15 years. Ken Saro-Wiwa was equally pronounced guilty by the Military Administrator of Rivers State and other government functionaries before he was "tried" and found guilty. It is rare for a person thus found guilty by high functionaries of the state to be acquitted, whatever the nature of the tribunal before which such a person might be arraigned.

²⁰⁷ mentioned above. p. 67.

²⁰⁸ Civil Liberties Organization, p. 5.

The Coup Trials

On 10 March 1995, Major General Abdulsalam Abubakar, the chief of defence staff, announced that they had discovered a plot to overthrow the Abacha government. Most people were sceptical as to the truth of these allegations: The 29 men arrested at first, mostly military personnel and retired officers, were not in control of troops. Major Among these was a former deputy head of state, General Shehu Yar'adua (rdt). Yar'Adua apparently managed to get the Constitutional Conference to pass a motion which called on government led by Gen. Abacha to leave office by January 1996.

Four days after Yar'adua's arrest, his former boss, General Olusegun Obasanjo, who had been president of Nigeria from 1976 -1979 and the only military leader who voluntarily relinquished power to civilians, was also arrested in connection with the alleged coup. He had just returned from the UN Social Summit in Copenhagen, Denmark, which he attended as a special UN ambassador for Human Development. Obasanjo was an outspoken man who after his retirement continued to publicly comment on the military's politics, criticising the government's spending habits and its refusal to make a clear commitment to democracy. At first he was detained incommunicado for several days. After the intervention of several world leaders, the General was released and placed under house arrest. It was not until June 1995, when he was interrogated by an investigative panel that Obasanjo was officially told why he was being detained.²¹⁰ Later Obasanjo was taken away from his house and put into prison. Neither his family nor his lawyers were granted access to see him. On 18 June 1995, a doctor was allowed to see him. He reported that Obasanjo had lost considerable weight and should be treated for acute high blood pressure, malaria, diabetes, and fatigue. The report was ignored by officials.²¹¹

By June 1995, when the trials started, the list of suspects had expanded considerably: human rights activists, journalists, and other

²⁰⁹ Onukaba A. Ojo, *Nigeria, the Sad Case of Olusegun Obasanjo*, Free Obasanjo Campaign Committee, January 1996.

²¹⁰ Nigeria, The Sad Case of Olusegun Obasanjo, op.cit.

²¹¹ Onukaba A. Ojo, Nigeria, The Sad Case of Olusegun Obasanjo, Free Obasanjo Committee, January 1996.

critics of the government were arrested, as well. The pattern of arrests appear very arbitrary. In one case, a suspect, Major Akinloye Akinyemi, had already been in detention before any rumours about a coup started. Dr. Beko Ransome-Kuti, Chairman of the Campaign for Democracy, was charged because he sent information relating to the coup by fax to the outside world. The nature of the arrests and subsequent charges give the impression that the government wanted to seize the opportunity to rid itself in one big round-up of all its critics.

Right to a Fair Trial

A special tribunal (the *Treason and other Offences Special Military Tribunal*), was set up to try the alleged conspirators. The Tribunal was empowered to try "any person whether or not a member of the armed forces, who, in connection with any act of rebellion against the Federal Government has committed the offence of treason, murder or any offence under Nigerian Law". ²¹² Thus a person who is not subjected to military law but who took part in an act that constitutes an offence under this law, falls also within the Tribunal's jurisdiction. The Tribunal was composed entirely of military personnel, presided over by General Brigadier Patrick Aziza, a member of the Provisional Ruling Council.

According to the UN Human Rights Committee, civilians should only be tried by military courts under very exceptional circumstances, 213 and no matter the nature of such a court it must still afford all the guarantees set out in art. 14 of the ICCPR.

The publicity of hearings is an important safeguard of the rights of the individual and the interests of society at large. Apart from very exceptional circumstances a hearing must be open to the public in general, including members of the press.²¹⁴

The special tribunal sat in secret and journalists were not allowed to cover the proceedings. The defendants were not allowed to have

²¹² Art. 1 of the Decree

²¹³ Human Rights Committee, General Comment Nr. 13 (4)

²¹⁴ Human Rights Committee, General Comment No. 13 (6).

their own lawyers, instead military lawyers were appointed to defend them. These lawyers were answerable only to the tribunal and most of the documents needed for the defence were not available. The charges were facetious. For example, Obasanjo was charged with conspiracy to overthrow the government and for concealment of information about the alleged coup. This was based on an alleged conversation with a co-accused R.S.B. Bello-Fadile who was supposed to have consulted Obasanjo about the coup. Obasanjo could prove that he had been abroad during the time of the alleged meeting. Bello-Fadile himself, a lawyer, was charged for once having advocated a review of some military laws. Some others were charged with conspiring against the government on the basis of having been seen conversing with other officers by government's spies. 217

At the end of the trials, 41 persons were convicted in total and sentenced to various punishments ranging from the death penalty to long prison terms. 14 of the accused, including Yar'adua and Bello-Fadile, were convicted for treason and sentenced to death. Obasanjo and three others were given life sentences. Fourteen others, including pro-democracy activist Beko Ransome-Kuti, and the journalists Chris Anyawu, George Mbah and Kunle Ajibade, were sentenced to 25 years of imprisonment each. After an international outcry, the death sentences were finally commuted to long-term prison sentences and some of the sentences reduced by a few years. General Obasanjo was recently transferred from Jos to Yola Prison where he is to serve a fifteen-year sentence.

As in the Ogoni trials, appeal against the Tribunal's judgement could only be made to the Provisional Ruling Council. No such appeals have been made

²¹⁵ Onukaba A. Ojo, Nigeria, The Sad Case of Olusegun Obasanjo, Free Obasanjo Committee, January 1996.

²¹⁶ It turned out later that the witness, Bello-Fadile, had been tortured to make false allegations against Obasanjo, cf. above, p. 70 (torture).

²¹⁷ Onukaba A. Ojo, Nigeria, op. cit.

Conclusions and Recommendations

The analysis of the cases above reflect a general trend in the functioning of special military tribunals which are set up to usurp the powers of ordinary courts. These tribunals do not provide a saveguard for the right to fair trial as provided for international law. The due process of law is not beeing respected either.

It is recommended that:

- 1) All special military tribunals should be abolished.
- 2) The transcripts of all cases which have been tried by these tribunals be made public.
- The decisions of the tribunals be subject to appeal by the regular courts.
- 4) That a thorough investigation into the events leading to the Ogoni trials be made. The outcome of these investigations should be made public. In spite of the fact that Ken Saro-Wiwa and his colleagues have already been executed, the government should make reparation for the damage done if the executions reveals injustice.
- 5) Pending the outcome of investigations in (4) above, all other trials of Ogoni persons should be halted.
- 6) Chief Abiola be released on bail and his appeal on jurisdiction be heared without further delay.

Freedom of the Press

Everyone shall have the right to hold opinions without interference.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kind, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (Art. 19 ICCPR).

The vibrant, combative Nigerian press was born under colonial times, at the initiative of nationalists mainly from the southern part from Nigeria. Today, the majority of privately owned papers still belong to Southerners, which gives the conflict between them and the Northern-led central government ethnic undertones. Military governments have always perceived these publications as part of a grand conspiracy to undermine "national" interests and branded their crusading journalism sectional politics. In the context of Africa, the plurality of the press in Nigeria is impressive. In 1993, there were 35 major daily papers, eighteen of which were controlled by federal and state governments, with the remainder being privately owned. In addition there were 34 major weekly newspapers, sixteen government controlled and eighteen privately owned. Private ownership of weekly news magazines was much higher, with 17 out of 19 being run by private owners. The relationship of private to state ownership is reversed when it comes to broadcast media with the federal and state governments owning 50 television and 30 radio stations.

As decree after decree attempts to curtail freedom of expression and journalists fearing for their lives and those of their families increasingly resort to operating within the confines the government has defined through a series of arbitrary measures, the press in Nigeria today is engaged in a battle for its survival against a fiercely repressive military government.

The Legal Status of the Press

Nigeria's 1979 Constitution gives the press the role of "upholding the fundamental objectives of the Constitution and the responsibility and accountability of government to the people". 218 It is however silent on the rights of the press to gather and publish news and information without constraints, and does not provide constitutional protection for the press. Recommendations to include specific provisions for the press within those for freedom of expression have met with the opposition of successive governments. In March 1987, the Political Bureau set up by the military government of General Babangida recommended that:

"Freedom of the press should be clearly enshrined in the Constitution. This freedom should adequately guarantee to the press the right to receive and disseminate information and protect the source of such information. Any existing legislation which tends to unduly strangulate the freedom of the press should be reviewed". ²¹⁹

The government rejected this on the grounds that the provisions of the 1979 Constitution were adequate. This failure to legally guarantee press freedom remains a source of anxiety for the profession.

Freedom of the press is guaranteed in the international instruments to which Nigeria is signatory such as the ACHPR (Article 9) and the ICCPR (Article 19).²²⁰

Whereas the press has been entitled to relative freedom under the

²¹⁸ Section 21, 1979 Constitution

²¹⁹ Report of The Political Bureau (March 187) page 214 para 12.031 (a) and (b)) published by MAMSER

²²⁰ Art. 9, ACHPR provides that every individual has the "right to receive information" and to "express and disseminate his opinions within the law"; Art 19. of the ICCPR provides for the "right to hold opinions without interference" and the "freedom to seek, receive and impart information and ideas through any media and regardless of frontiers."

short spells of civilian government that Nigeria has known, it has been the practice of successive military governments in Nigeria to use decrees to control the free flow of information. Since 1992, these decrees have become increasingly repressive in nature, with the result that journalists in Nigeria today exercise their profession at the cost of their physical integrity and indeed their lives.

Amongst the harshest decrees that restrict the exercise of freedom by the press are the:

- Treason and Treasonable Offences Decree No. 29 of 1993, under which any person who "utters any word, displays anything or publishes any material" that the government judges capable of "breaking up Nigeria" becomes "guilty of treason and liable on conviction to be sentenced to death".
- Offensive Publications (Proscription) Decree No. 35 of 1993 which gives the Head of State unfettered discretion to order the proscription, seizure and confiscation of any publication. It bars the law courts and tribunals from inquiring into whether any of the fundamental rights in Chapter 4 of the Constitution or any other enactment, including the African Charter on Human and Peoples' Rights, enacted as part of the laws of the country, 221 "has been, is being or would be contravened by anything done, being done or proposed to be done in pursuance of the Decree."
- Retroactive decrees proscribing and prohibiting from circulation specific publications.²²²

Other restrictive legislation includes the Official Secrets Act²²³ which restricts the access of the press to official information, the sedition laws contained in the Criminal Code Act, Chapter 71 and laws inherited from colonial times.

²²¹ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter 10, Laws of the Federation of Nigeria, 1990.

²²² Decrees No. 6, 7 and 8 of 1994 referred to earlier.

²²³ The Official Secrets Act, CAP 335 Laws of the Federation of Nigeria, 1990

The Nigerian Press Council was created by decree in 1992 to regulate the conduct of the profession. Although the government has filed complaints with the Press Council accusing some publications of publishing subversive articles, it has ignored the Council's recommendations, preferring instead to take extra-legal actions such as harassement, arbitrary arrests and closure of media houses. The Council has been reduced to dealing with complaints emanating from individuals against the press, and even news publications ignore its summons and recommendations.

1992 also saw the introduction of private broadcast media in Nigeria, under the National Broadcasting Commission (NBC) Decree No. 38. Section 6 of this decree subjects the NBC to the directives of the Minister of Information.

Present Situation Regarding Press Freedom

On seizing power on November 17, 1993, the head of state General Abacha announced that his administration would respect the Rule of Law and the rights of the press to gather and disseminate information without hinderance. On his second day in power, he lifted the proscription order imposed by his military predecessor on five media houses. By January 1994 however, the honeymoon was over: 50,000 copies of *TELL*, a privately-owned weekly magazine were seized by policemen. The raid was as a result of the magazines cover story which was critical of the ten decrees passed by General Abacha on December 20, 1993 curtailing some fundamental human rights and freedoms.

The relationship soured for good on publication by Newswatch Magazine on April 10, 1994 of an interview with Brigadier General David Mark who admitted to being a co-plotter in the Abacha coup and claimed that the General's stay was not intended to be as brief as was originally claimed. Mark claimed that the regime planned to be in government at least until 1999, and alleged that the constitutional conference was a mere sop to assuage the frayed nerves of the disenchanted public and political groups. Three members of the editorial staff of the publication were immediately jailed for a week and charged with sedition, alongside with its London-based deputy editor-in-chief and bureau chief.

The regime was however forced to react to the specific allegations contained in the Mark interview and hurriedly announced a transition programme with the lifting of the ban on politics announced for January 17, 1995. It released the 3 journalists on April 14th and announced on national television that their release marked "the start of a new era in relations between the government and the press based on understanding, mutual respect and the positive pursuit of aims in the national interest." However on this occasion and thereafter, press freedom was as predicated by General Abacha on the exercise of "discretion and self control".

As the political leaders had shown a classic refusal to take a firm stand against the military - many had joined the Abacha government - it was the press (and Non-governmental organisations) that took up the task of defending civil society. It did this so well that even the most optimistic began to doubt the government version of reality given its contradictions. This helped civil society, the rump of the political class and labour to regroup, forming on May 17, 1994 another alliance, the National Democratic Coalition (NADECO) to challenge the military government, push for the restoration of democracy and respect for the June 12 1993 election mandate.

With the intensification of the pro-democracy agitation in May and June 1994, the government seemed to come to the conclusion that the press would remain a stumbling block in its battle to win the Nigerian people over, and opened a fiercer onslaught on the independent publications believed to be connected to the prodemocracy campaign. Shorn of pretenses to respecting the Rule of Law, the government as of then resorted to widescale seizure of publications, the closure and occupation of media houses, the harassment and intimidation of journalists and the heavy handed use of a variety of measures with censorship effects, including restrictive administrative provisions.

Administrative Provisions

By Decree No. 43 of 1993, the government imposed strict new registration and operational procedures on the press. It created a Newspaper Registration Board within the Federal Ministry of Information and Culture and introduced the requirement for the people in charge of the newspaper to produce evidence of their "good character, competence and integrity" prior to registration, as well as a pre-registration deposit of N250,000 (approx. US\$ 3,000) and a non-refundable annual registration fee of N100,000 (approx.US\$ 1,200) per newspaper registered. It creates several offences punishable by high fines and/or imprisonment such as failure to establish an office in the Federal Capital Territory, Abuja; circulating or selling a newspaper not bearing the name and place of residence of the editor; and failure to deliver a copy of every newspaper published to the Minister for Information and Culture.

Probibition, Seizure and Media Houses Closure

Twelve different media houses publishing a total of 23 titles, and one radio station were forcibly closed by the government and occupied by government agents in 1994, three of them were closed twice within a year. Ten media houses were subjected to a complete ban from publication and circulation for between four and six months and some 750,000 copies of different opposition publications were confiscated at different times by agents of the government.

Armed security men closed the premises of Concord Press Nigeria Limited and Punch Nigeria Limited on June 11, 1994, and the those of Guardian Newspaper Limited on August 15, 1994. In 1994, the Federal Military Government published 3 decrees, ²²⁴ by which it proscribed newspapers and magazines published by the designated media organisations from being published and prohibited them from circulation for a period of six months which was later extended.

²²⁴ The Concord Newspaper and African Concord Weekly Magazine (Proscription and Prohibition from circulation) Decree No. 6 of 1994 backdated to June 10, 1994

The Punch Newspaper (Proscription and Prohibition from circulation) Decree No. 7 of 1994 backdated to June 10, 1994

The Guardian Newspaper (Proscription and Prohibition from circulation) Decree No. 8 of 1994 backdated to August 14, 1994

These Decrees affected the following publications: The African Guardian, The Guardian, Guardian Express, Financial Guardian, Lagos Life; National Concord, Business Concrd, Udoka, Isokan, Amana; African Concord, Africa Economic Digest, African Science Monitor; The Punch, Sunday Punch, Toplife) and other publications by whatsoever name the media houses might be publishing or intending to publish. The retroactive nature of the decrees was meant to give legal cover to the forcible closure of the premises of the media houses.

The economic cost of these arbitrary disruptions of activities is extremely high. Between them the media houses employed well over 1000 journalists and support staff who had to be laid off. Similarly other companies which occupied the same premises could not operate during this period, and also had to lay off staff. The media houses sought redress in the courts. *TELL* magazine estimated lost sales and advertising on the confiscation of its January 1994 issue at N11.5 million (approx. US\$ 135,000), *Punch* sued the government for N25million (approx. USD 300,000) and the *Guardian* for N450 million (approx. USD 550,000).

On August 18, 1994, the Chief judge of the Federal High Court, Justice Babatunde Belgore ordered the Federal Military Government to pay Concord and African Concord N1.5 million as damages and to reopen the media houses, saying "the government has not only a duty, but an obligation to allow variety of views in the country. Those who think that might is right should have a rethink. Servants of government should be careful not to engage in actions that would bring down the government". As in fifteen other cases between 1993-94, the government has ignored the courts' ruling.

When news publications have not been subjected to an outright ban, armed security personnel have invaded printing presses to confiscate "offending" editions of news magazines. Where copies were already distributed to vendors, they have been seized directly from the vendors by armed security personnel riding police vans or unmarked cars, firing guns into the air, and confiscating offending publications and arresting vendors. In 1994, Ahmed Katsina, State Police Commissioner confirming the arrest of vendors of African Concord and TEMPO magazines for publishing "seditious materials," said although he received no specific directive from the Force Headquarters in Lagos "police have the right to take such (actions) if they consider it (the newspaper report) to be false."

One of the conditions for unbanning newspapers is that they apologise and undertake not to provoke the military government again.

Censorship

Restriction of press freedom is imposed in different forms both by the government and by certain private owners of media. Though military régimes sometimes bring the best out of journalists as some professionals risk their lives to see that the public is accurately informed, for the majority, a combination of fear and economic hardship dictates that self-censorship is the rule.

Censorship is not directly imposed, however Decree No. 43 of 1993 does require all newspapers to submit a copy of every issue of it's publication to the Minister for Information and Culture. In government-owned papers it tends to take the form of appointing loyal people to critical posts, and sacking journalists who do not tow the official line or publish articles which embarrass the state or federal governments. Some are consciencious enough to risk doing so. In September 1995, the editor of the main government publication, Daily Times had its Managing Director, Mr. Tunji Oseni removed without notice, apparently for refusing to take prepared editorials written by the Information Ministry; Yakubu Abdulazeez, editor of the Federal Government-owned New Nigerian resigned after accusing government officials of "overt intervention in the newspaper editorial policy." The editorial board of Nigerian Standard, a State-government owned paper, resigned en masse in 1993, after refusing to apologise for an alleged "anti-government" story.²²⁵

Where privately owned newspapers are concerned, in addition to extra-legal actions which will be described in the next section on Intimidation and physical violence, the government uses wideranging measures to apply pressure. It has imposed new and higher import duties on newsprint and paper products, forcing the price of newspapers to go up and out of the reach of the ordinary people.

²²⁵ Constitutional Rights Project, The Press and Dictatorship in Nigeria, p 17

Cover prices for most weekly magazines rose from N30 (approx US\$ 0.35) in 1994 to N70 (approx US\$ 0.90) by 1995. Another measure aimed at hitting the private press, dependent on its circulation and on sale of advertising for its revenue, has been to instruct government departments to stop purchasing privately owned papers and to refrain from placing advertisments in them. Since the State and Federal governments are amongst the largest advertisers in Nigeria, this implies for the private papers concerned a significant loss of revenue.

A more ingenious measure aimed at discrediting the private media and depriving them of revenue has been the appearance and circulation of imitation copies of critical publications like *TheNews*, *Tempo*, *Tell*, *Dateline* and *TSM*. A cover story in *TSM* which appeared in the original issue as 'June 12: Abacha must go - Nigerians in a TSM National Opinion Poll' became 'Public Opinion Poll: Only Abacha Can Save Nigeria, Special Edition on June 12'. The slant of the stories in the counterfeit copies is typically pro-government.

The Government is not the only obstruction to the free flow of information in the private press, as many private newspapers are set up by big business men with political and economic interests to nurture. Particularly when their financial situation is significantly related to the volume of contracts they receive from the government, they ensure that what is published in their papers does not jeopardise their interests. For most Nigerian journalists, the unwritten rule is therefore to identify the interests of their owners - public or private - and protect them through what they do or do not publish.

Intimidation and Physical Violence

In March 1995 following the announcement by the Chief of Defence Staff that a plot to overthrow the government had been discovered, the press reported the matter, and a number of journalists wrote articles which raised questions about the foundation of the government's allegation.

Amongst these journalists were Mr. Kunle Ajibade, editor of *The News* Magazine, Ms. Chris Anyanwu, publisher and editor of *TSM*, Mr. George Mbah assistant editor of *Classique* and Mr Ben Charles

Obi, editor of African Concord magazine. The four were arrested on May 4-5 1995 and charged with being "accessories to treason" or for "concealing knowledge of treason." Along with the military personnel previously arrested and known civil rights activists subsequently arrested, they were tried by a secret military tribunal which sentenced them to life imprisonment. The tribunal was composed entirely of military officers; the accused were not allowed access to lawyers; and they were denied the right to appeal. Following the international outcry this judgement raised, the government relented and converted the sentences: the four journalists are now serving prison sentences of 15 years under very difficult conditions. 226

The unfair trial of these four journalists is the most visible part of a repressive campaign that the military forces have undertaken against journalists. Between February 1993 and September 1994, reports show that 76 journalists and 8 newspaper vendors were arbitrarily arrested by the police and other arms of state security service. Most were released without trial or explanation after a few days, but 26 were charged (not prosecuted) and 9 detained. Mr Bola Bolawole, editor of *Punch* newspaper was detained in his office for 72 hours. ²²⁷

Foreign journalists have not been spared: on August 26, 1994, two journalists of the American Cable Network News, CNN, were deported from Nigeria. The reporters, according to a statement of the United States Department of State, 228 "were accosted by the police and state security agents at the lobby of their hotel and forced, without their belongings, into a car." Washington said the behaviour of the Nigerian government was "inconsistent with that of a government professing to be in a transition to return the country to democracy. The reporters had broken no law and were informed of no charges against them. "the statement added.

There is an increasing trend in arrests being accompanied by physical violence and various abuses. When the police went to the

²²⁶ Op. cit. p. 107.

²²⁷ Constitutional Rights Project, The Press and Dictatorship in Nigeria, p 29. Cf. Appendix F.

²²⁸ U.S. Department of State, Notice to the Press, US Embassy Protests Expulsion of CNN Journalists, August 27, 1994.

house of Dapo Olorunyomi the editor-in-chief of the group that publishes *TheNews*, *TEMPO*, *AM and PM News* in 1993, he was not at home. The soldiers instead arrested his wife along with her two month old baby, they were subsequently released. The same fate was to befall the wife and eight month-old daughter of another journalist, Tayo Lukula, correspondent for *TheNews*.

Over the same period, about 17 journalists, including one woman, and many newspaper vendors were assaulted by security police. Several homes and offices of editors were searched, ransacked and vandalised, and on December 18, 1995, the headquarters of the *Guardian* group went on fire in suspicious circumstances. Since the beginning of 1996, two more newspaper headquarters, *TheNews* and *TEMPO*, fell prey to the same fate.

The Abacha government appears to have declared an all out war against the press in which there is less respect for the basic rights of journalists. There has been no news of Nosa Igiebor, editor of the weekly *Tell* magazine since he was accosted on December 18, 1995 by 12 armed policemen outside his house and taken away.

Though the scale of the repression is unknown in Nigeria's history, there are precedents for it under previous régimes, the most notable being the murder by parcel bomb of journalist Dele Giwa under the régime of General Babangida. In 1993, TELL magazine published an interview with Edmund Onyeama who claimed to be a former junior officer of the Military Intelligence and to have taken part in the bombing of the journalist in 1986, alleged to have been carried out at the request of the then head of state, General Babangida. Onyeama, who says he owes his life to an intervention by the Catholic Church, claims to be in possession of a master tape in which the Director of Military Intelligence reassures General Babangida that the operation was successful and that its execution could not be traced back to the government. 229

Conclusions and recommendations

The throttling of the press has been particularly severe under the present regime. With decrees churned out regularly and retroactively, threatening life jail upon conviction for "false accusations" and "accessory to treason for handling seditious material", the media in Nigeria, once reputed to be amongst the most independent press on the continent, is facing the most repressive tactics ever in almost 150 years of media operation in the country.

The independent press has reacted by going underground, moving presses under the cover of darkness, holding clandestine editorial meetings in innocuous places, which has come to be known as "guerilla journalism." It is continuing to do its job of informing under extremely difficult conditions, but the price of reporting the truth has been high in human and material terms. The cost of going underground is so high, that it appears that the regime's deliberate strategy of running independent publications out of business may yet succeed. It will not be for lack of trying on the part of journalists, whose resiliency and perseverance is inexplicable to regime members and the ordinary public. As Babafemi Ojudu, editor of the independent daily, AM News recently said in an interview with the Sunday Times of London, "we are trying to show it is impossible to ban us." 230

The dilemma facing the press in Nigeria may be summarised in one phrase: "publish and perish".

A free press encourages freedom of expression and flow of information, both very important requirements for the development of any society. To this end, it is recommended that

a. the government abolish all draconian laws which hinder freedom of expression and the press from carrying out their activities.

²³⁰ Christine Lamb, "Editors defy Nigerian reign of fear," The Sunday Times (London) December 24, 1995.

b. the government release with immediate effect all journalists arrested in pursuit of their professional responsabilities and bring to trial before a regular court those who are accused of various offences.

Economic, Social and Cultural Rights

Recognizing that, in accordance with the Universal Declaration of Human Rights, the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights (Preamble ICESCR)

Each State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) undertakes to take steps [...] to the maximum of its available resources, with a view to progressively achieve the full realisation of the rights provided for in the Economic and Social Covenant .²³¹ The Covenant provides for a wide array of economic and social rights, such as the right to adequate food, adequate housing, to the enjoyment of the highest attainable standard of physical and mental health, the right to education, the rights of workers, etc. While the full realisation of the relevant rights may be achieved progressively, steps toward that goal must be taken within a reasonably short time after the ratification of the Covenant.

The States undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind.

Right to Adequate Standard of Living

The States Parties recognize the right of everyone to an adequate standard of living for himself and his family (Art. 11 ICESCR).

Despite considerable revenue from its oil riches, Nigeria's economic and social situation is in shambles. With the adoption and implementation of the Structural Adjustment Policy (SAP) in the early 80's coupled with economic mismanagement and lack of

231 Article 1 (emphasis added.)

accountability on the part of the executive, economic and social rights eroded considerably. The continuous devaluation of the Nigerian currency (even though the official exchange rate is pegged at N22 to US\$1, there is also the government approved autonomous market rate of between N82 and N85 to US\$1) had a devastating effect on the import-depending economy. In a situation where the real income of most people puts them below poverty level the withdrawal of government subsidies on certain goods, e.g. petroleum products and social services, seems particularly unwise. Many Nigerians have no adequate housing. The sight of people living under bridges and taking over bus sheds is common place. The National Housing Policy which was supposed to facilitate mortgages has collapsed. Deregulation policies of the housing market (made under SAP) added to the vendor-dominated market structure and have worsened the housing situation. ²³²

The situation is pathetic for many children who have to leave home because their parents can no longer support them. Picked up on the streets for loitering, they are taken by the police to so-called welfare centres, actually nothing else but prisons. The children stay in crowded cells, sleep on the floor and are only released if either their family is found or an orphanage has room for them. ²³³

Enjoyment of the Highest Attainable Standard of Physical and Mental Health

The States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Art. 12 ICESCR).

In contravention of provisions of international human rights norms, social services, education, health, and environmental programmes have deteriorated substantially in the last eight years. Illiteracy, malnutrition, short life expectancy and inadequate health

²³² Report on Human Rights Situation in Nigeria, presented by the Legal Research and Resource Development Centre, Lagos, Nigeria (unpublished).

²³³ Nigeria - Stolen by Generals, report of a mission by the non-governmental Commonwealth Human Rights Initiative, New Delhi, 1995.

care have become the norm for most Nigerians. The government having reduced spending on health care (partially resulting from the reduced spending policy under SAP) many people cannot afford to pay for health services anymore. Frequently, patients have to provide their own supplies of needles, syringes and drugs, upon going to the hospital. Women suffer most from this situation because their traditional role as mothers has cultivated the belief that their needs must not be met before the needs of the other members in the household have been addressed.²³⁴

Right to Education

The States Parties to the Covenant recognize the right of everyone to education. Education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms (Art. 13 ICESCR).

Many schools are closed or open only on a restricted schedule. Primary education suffered greatly from the repeated strikes of teachers who protested against the non-payment of their salaries. They also complained about the confusion regarding which entity was responsible to pay for education. Decree No. 3 1991 had passed the responsibility for the funding of primary education to local governments, while the administration was vested in the States. This led to a wave of strikes by the primary school teachers in 1992-1993. Later the primary school teachers were joined in their strikes by the secondary school teachers, thus effectively crippling the whole school system. On 7 April 1993, students of secondary schools went out on the streets to protest against the continued closure of their schools. Some of them were arrested and detained during the protests. Protests also emanated from the universities. Students complained that the university administrators were not applying the funds available to them judiciously. A teachers' strike at the University of Ibadan on 4 January 1993 exposed the fact that despite the release of N 133.7million (approx. USD 120,000) to the university, laboratories, classrooms, and the library remained dilapidated. The teachers proposed an implementation task force to supervise the

²³⁴ Report on Human Rights Situation in Nigeria, op. cit. LRRDC.

disbursement of the funds but the idea was rejected by the university's administration. ²³⁵ Lagos State University was closed for long months after the Academic Staff University Union (ASUU) had called a strike. ³⁴ students were expelled after a peaceful protest on 18 April 1992, which had been part of a national protest directive issued by the National Association of Nigerian Students (NANS).

At the time this report was being compiled, the polytechnics and universities were being closed and opened as a result of strikes called by the Academic and Non-Academic staff of these institutions. Government's response to these actions which have generally been in the form of bluffing the unions has not helped to improve the situation. In effect, most of these institutions are almost one year behind their academic schedule, leading to a fall in the standard education. The display of military might by the government has also been introduced into the educational system. The government has now resorted to appointing military men as sole administrators for some universities. By so doing, the daily running of these institutions is now vested in one individual contrary to accepted international norms and practice.

Rights of Workers and Trade Unions

The State Parties undertake to ensure the right of everyone to form trade unions (Art. 8 ICESCR).

This right, which is also recognized in art. 22 ICCPR and in art. 10 (1) of the African Charter must be ensured, it is not subject to the principle of progressive achievement. Nigeria is party to several regional and international instruments which guarantee workers' rights. Section 35 of the 1979 constitution assures freedom of

²³⁵ Annual Report on Human Rights in Nigeria, 1993, Civil Liberties Organisation, Lagos, 1994, p. 123.

²³⁶ Philip Alston, The International Covenant on Economic, Social and Cultural Rights, Commentary to art. 8 ICESCR, Manual on Human Rights Reporting, Centre for Human Rights, United Nations, New York, 1991.

association as well. In 1994, military decrees²³⁷ dissolved the executive bodies of the trade unions Nigerian Labour Congress (NLC), umbrella organisation of Nigerian workers, and of two other important labour unions, the National Union of Petroleum, Energy and Gas Workers (NUPENG) and the Petroleum, Energy and Gas Senior Staff Association of Nigeria (PENGASSAN) because they went on strike. Government-appointed administrators are now directing the affairs of these organisations. Union leaders Chief Frank Kokori, General-Secretary of NUPENG, and Waribi Kojo Agamene, President of PENGASSAN were arrested for organising the strike. They are held in solitary confinement and are still waiting to be tried.

The government had promised that the sole administrators were to organise elections for new members of the executive within six months yet nothing has happened so far, even though it is more than a year since the dissolution. The effect of the measures is that the unions are paralysed. Individual members can no longer exercise their rights. In Ondo state, the military government announced in 1995 that striking government workers should either go back to work or lose their jobs. The government did not deem to lend its ears to the grievances of the workers.

In the private sector, most employers, especially in the banking and financial sectors, forbid any kind of labour union activities. Anybody who defies this rule is either dismissed or discriminated against. The government has done nothing to remedy this situation.

The Organisation of African Trade Union Unity (OATUU) condemned the gross violations of Nigerian workers rights. At its 6th ordinary congress in May 1995, it was reported that a formal complaint had been filed with the International Labour Organisation (ILO). Also the Commonwealth Trade Union Council, of which the NLC is a member, criticised the military government's contempt for the rights of workers. Despite these international criticisms, the Nigerian government is currently forcing 41 industrial unions affiliated with NLC to merge and to bring the number of unions

²³⁷ Decree No. 9 of August 1994 dissolved the NLC national leadership, decree No. 10 of August 1994 dissolved the leadership at all levels of NUPENG and PENGASSAN.

down to 29. Measures taken in this respect include: appointment of a committee charged with the drafting of a "model constitution" for unions, and appointment of a merger committee that is to organise the merger of unions, as well as officers for the merging unions. The merging unions are to be dissolved before the so-called merger conferences take place. Unions that do not merge are also being dissolved and forced to attend "affirmation conferences". All state councils of the NLC that have been spared by these measures are to be dissolved.

The overall aim of these measures is for the government to have firm control over the unions and to impose restrictive guidelines which undermine the right of each union to operate freely. The measures are in violation of art. 22 (2) ICCPR which stipulates that restrictions on the freedom of association must be prescribed by law and are limited by necessity. Paragraph 3 of the same article emphasises that states parties to the ILO may not use paragraph 2 to take legislative measures which would prejudice the guarantees provided for in the ILO Convention of 1948. Also art 3 (1) and (2) of ILO Convention 87 states clearly that "(1) workers' and employers' organisations shall have the right to draw up their representatives in full freedom, to organise their administration and activities and to formulate their programmes" and (2) that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

Conclusions and Recommendations

Economic, social and cultural rights are being steadily eroded as a result of economic mismanagement and accountability, on the part of the Nigerian government.

As these rights are fundamental for the survival of all persons, and in order to ensure that all citizens of Nigeria enjoy these rights, we recommend that:

- (a) The Nigerian government take positive steps towards respecting its obligations under regional and international instruments which guarantee economic, social and cultural rights. In this regard, the military government should abrogate all decrees which undermine the enjoyment of these rights; particularly the rights of workers to organise and freedom of association.
- (b) The military government should embark upon an economic policy which will take into consideration the needs, interests and aspirations of all Nigerians.

The Response of Civil Society

Forty organisations representing a broad-spectrum of civil society met on January 13, 1996, in Jos at an All Nigeria Summit on Human Rights and Pro-Democracy, to consider the socio-political life of Nigerian people under the unelected military government. The communique issued after their debate proclaimed that:

- i. There is an inseparable link between military dictatorship on the one hand, and underdevelopment, on the other.
- ii. The announced transition programme of the current military regime and its so called transitional agencies lack democratic content and input from the people and thus cannot create a democratic order.
- iii. Civilian rule is not necessarily the same thing as democracy. Consequently, any struggle for democracy that does not recognise the need for the people to take part in all sstructures of decision-making and decision implementation will be fruitless.
- iv. Although the Nigerian Pro-Democracy Movement values the solidarity and concern of the international community concerning the undemocratic goings-on in the country, the concrete resolution of the crisis will be internally generated.

The last 10 years have seen an awakening in consciousness and a determination of the Nigerian people to take their destiny in their own hands through, the ballot box, strict application of democratic procedures, denounciation and rejection of political manipulation and mobilisation of individual and collective energies.

Trade unions, pressure groups, civil associations and organisations, women's groups, ecological movements, student unions, and associations defending human rights have been growing in number and in the effectiveness of their actions.

The proliferation of pro-democracy and human rights organisations in the late 1980s was in response to the increase in human rights abuses and the violation of the Rule of Law by the Buhari/Idiagbon and particularly, the Babangida governments. Their actions became more pronounced around 1987, when a handful of persons started to disbelieve General Babangida's commitment to returning the country to civilian rule. Professional bodies such as the Nigerian Bar Association, the Nigerian Medical Association and some of the Labour Unions frequently challenged human rights violations and excesses of the military governments through the judicial process, at press conferences, through press releases, and by organised strike actions. Arbitrary arrests of government critics and pro-democracy activists were the order of the day, then, as it is now.

In 1993, the Nigerian people expressed themselves at the ballot box three years after the date originally announced by General Babangida. After the annulment of the June 12 elections the activities of pro-democracy NGOs contributed tremendously to creating the atmosphere that ensured the military ruler's exit from Government on the 26th of August 1993. During this period and again in mid-1994 they organised civil society to protest against executive injustice, by staying at home from work. The non-violent act of civil disobedience was very successful in Lagos, other parts of the West, the Mid-west and parts of the Eastern states and in the Middle belt.

By these activities the individual Nigerian arose to their potential for collective action and challenged local dictators. This was of course not without risk. In the course of the mass rallies organised in 1993 to protest the annulment of the elections and the 1994 rallies in support of the mandate given by the electorate, over two hundred innocent citizens were killed by soldiers and policemen, under the command of General Abacha who was Minister for Defence at the time.

Having successfully campaigned to remove one general from office, civil society, supported by the press and other democratically inclined sections of society have not stood by whilst yet another succeeded him and extended all the practices a harried people had wanted to do away with when they elected a new government.

In 1995, the different groups continued to:

- engage in fact-finding and document cases;
- file cases in national courts and defend or arrange for the defence of persons whose fundamental rights have been abused;
- carry out community organising and political consciousness raising, training and fielding paralegals, conducting educational programs and publishing and distributing easy-to-understand educational material and leaflets;
- advocate on behalf of minorities;
- organise mass rallies and strikes;
- conduct symposia and press conferences;
- file petitions with international treaty bodies;
- interact with international NGOs, regional and foreign governments, opinion leaders and mediators, to focus the attention of the international community on the subversion of the Rule of Law in Nigeria.

Many of their activist members have met with harsh repression and others given up their lives in the continuous exercise of monitoring and publicizing human rights abuses. To date many are being held in detention without any charges against them.

A number of pro-democracy and human rights activists have left the country to continue and support the struggle from a distance. Professor Wole Soyinka, Nobel Laureate and frontliner in the campaign for the restoration of democracy, had to flee the country and is in self exile. A number of NADECO and MOSOP members are also in exile.

It is important to note that the emergence and multiplication of today's groups has coincided with the decimation and internal strife

within the Nigerian Bar Association and the Nigerian Medical Association which has limited their ability to oppose the government. It is believed in many quarters that the problems and or demise of these groups in particular the Bar and Medical Associations is not unconnected with governmental intrigue and subversion within their ranks. The Abacha government has dissolved the trade unions by decree.

Another factor limiting the scope for action of Nigerian nongovernmental organisations is that several fracture lines run through Nigerian society and spilnter it around a multitude of poles of attraction, religion, ethnic group, belonging to a disadvantaged zone or not, or one social class or another.

A Summary of Recent Events March-July 1996

The human rights situation in Nigeria has not improved much since March 1996 although the military government claims it is pursuing a programme to return Nigeria to civilian rule in 1998.

The most frightening aspect of the situation in Nigeria is the recent wave of attacks and killings in strange circumstances of wellknown critics of the Government. Early victims included Chief Alfred Rewane, a leading member of NADECO who was killed in late 1995, Chief Alex Ibru, former Minister of Internal Affairs, who miraculously escaped death after being shot several times in broad daylight. Also in May 1996, the prison where Chief Gani Fawehinmi, a human rights lawyer, was being held was stormed by gunmen; fortunately Chief Fawehinmi was in hospital during the attack. The most outrageous occured on the 4th of June, 1996, when the wife of Chief M.K.O Abiola, detained politician and presumed winner of the annuled 12 June, 1993 presidential elections, Alhaja Kudirat Abiola, was assasinated in broad daylight in the streets of Lagos, a few metres from a police checkpoint. The reaction of the government to these incidents have been to set up an enquiry, the results of these are still being awaited.

Perhaps due to the continuous pressure emanating from the international community (United Nations, regional organisations, NGOs) there has lately been some cosmetic changes on the part of the Nigerian military government. The government has indeed made attempts to redeem its human rights record especially concerning arbitrary detention, through the adoption of new laws and the political transition programme.

Liberation of detainees

In June 1996 the military government released seven human rights activists and journalists involving Dr. Tunji Abayomi, lawyer to jailed former head of State, Gen. Olusegun Obasanjo, detained since July, 1995 and Mr. Nosa Igiebor, editor-in-chief of Tell Magazine (detained since December 1995). Mr. Abdul Oroh, Executive Director of CLO (detained since July 1995), Mr. Ayo Opadokun, Gen. Secretary of NADECO and Mr. Matthew Popoola, a civil rights activist, were also released.

The government denied the fact that the release of detainees was a way of influencing the Commonwealth Ministerial Action Group (CMAG), which met in London in June, 1996, but stated that the Government was doing this in deference to the United Nations fact-finding mission which visited Nigeria in March 1996.

At the time of this publication over 300 activists, journalists, politicians and labour leaders still remain in detention and the number of those who have gone into exile is still rising.

Modifications in laws

As of the 4th June, 1996, the Federal Military Government had enacted 10 decrees. Only two of these decrees which are amendments to previous decrees are relevant to human rights.

The first is the State Security (Detention of Persons) Decree 2 of 1984 (as amended). With the recent amendment, the right of habeas corpus hitherto suspended has been restored. That means that the court can now order that a detainee be produced in court. The new amendment also repealed Decree 13 of 1994 ousting the courts' jurisdiction in relation to anything done under the decree. The second decree amended is the Civil Disturbances (Special Tribunal) Decree 2 of 1987 under which Ken Saro-Wiwa and others were tried and convicted. The new amendment now precludes members of the armed forces from sitting on the tribunal constituted under the decree. It also provides for the right of appeal for persons convicted under the decree. It however doesn't state clearly to whom the appeal will be made.

The National Human Rights Commission Decree 22 of 1995 was given effect in June, 1996 with the inaugurations of the Governing council of the National Human Rights Commission. The decree

provides for a 16-man Council comprising a retired Justice of the Supreme Court, an executive secretary, one representative from the Ministries of Justice, Foreign Affairs and Internal Affairs. Others are three representatives of registered human rights organisations in Nigeria; two legal practitioner with at least 10 years post-call experience; three representatives of the media and three other persons to represent "a variety of interests".

Of particular interest are the three appointees to represent "registered human rights organisations in Nigeria". One Mr. Kunle Fadipe was appointed to represent the Civil Liberties Organisation (CLO). The CLO however has disclaimed this individual as not being one of its own. One Dr. Ibrahim N. Sada was appointed to represent "Network for Justice" while Professor Oji Umozurike was appointed to represent the "African Commission on Human and Peoples' Rights". The latter Commission does not qualify as a human rights organisation in Nigeria which is the requirement of Decree 22 of 1995.

Political Transition Programme

Following the transition timetable drawn by the Federal Military Government, the first quarter of 1996 witnessed the election and inauguration of Local Government Council on non-party basis. During this period, political participation was guaranteed only within the strict limits established by the military government. All those who were perceived as being members of the strongest opposition coalition (NADECO) or having any anti-government inclinations were disqualified (as stated above). In Lagos alone no fewer than 70 aspirants were disqualified. The story was the same in other parts of the country. In fact, some aspirants knew of their disqualifications either on the eve of the election or on the election day itself. To give legal backing to this exercise, the Federal Military Government promulgated Decree 6 of 1996 which ousted the jurisdiction of the court concerning anything done by the government in relation to the election.

The second quarter of 1996 has witnessed the creation of

State/Local Governments and registration of political parties. Either deliberately or otherwise the creation of new states/local governments was not effected because the panel set up by government to receive memoranda and work out modalities for the said creation did not submit its report on schedule. This means that the political timetable is already behind schedule, thus giving room for fears and speculations as to a possible extension of the transition programme. However, the National Electoral Commission of Nigeria (NECON) came out with guidelines for registration of political parties in June. In spite of the exhorbitant fees for the registration forms about 23 associations collected the forms.

Despite the situation of extreme repression in Nigeria, people are not willing to give in to the dictatorship. The international community still has an important role to play by supporting civil society in Nigeria in its desperate bid to terminate military dictatorship and the current gross violations of human rights and return the country to civilian democratic governance in which the respect for human rights and the rule of law will prevail.

Appendices

Appendix A

Chronology of Events 1993-1995

1993

Transitional Council sworn in under the January 2 chairmanship of Chief Ernest Shonekan June 12 Presidential Elections finally took place. Agreed free and fair by National, international and military observers. June 23 Election results annulled by President Babangida. Results have been made public in all states, but final release halted. July Public unrest including demonstration in the streets of Lagos. 200 shot dead August 26th General Babangida resigns August 27th Chief Shonekan sworn in as head of Interim National Government (ING). November 10th High court declares ING illegal. November 17th General Abacha takes over as Head of State. Promises constitutional conference in maiden speech.

1994

January 14th Commission to establish Constitutional Conference announced.

February 12th General (rtd) Shehu Yar'adua arrested for criticising Abacha's regime

May 17th	Formation of National Democratic Coalition (NADECO).
April	Unrest in Ogoniland including murder of four Ogoni elders.
May 21st	Ken Saro-Wiwa detained along with Ledum Mitee (Vice President MOSOP).
May 23rd	Elections for the constitutional conference.
May	Announcement of reconvening of the National Legislature by the Leader of the House of representatives.
June 11th	Chief Abiola declares himself President. Government declares him wanted.
June	Demonstrations and general unrest demanding restoration of annulled election.
June 16th	Punch and Concord newspaper groups proscribed.
June 23rd	Chief Abiola arrested on charges of treason
June 27th	Strike announced by oil workers union. Gradually spreads to become nation-wide involving other groups
June 28th	Constitutional conference starts meeting
August	Government dissolves the executive of oil workers unions.
Sept. 5th	General Abacha passes decrees which increase arbitrary powers of the government
Sept. 12th	Attorney General Olu Onagoruwa dismissed by General Abacha for criticizing nature of decrees

Dec. 5th

Constitutional conference sets January 1996 deadline for the Abacha government to quit office.

1995

10th February

FIFA suspends Nigeria's hosting of the Junior

World Cup competition.

28th February

USA decides to continue the decertification of

Nigeria

March 3rd

Arrests of several military officers, civil rights activists and journalists for alleged coup plot.

June

Trial of alleged coup plotters by secret military

tribunal begins.

July

Trials concluded and death sentences

recommended for many

July 6th

Ken Saro Wiwa's defence withdraws

October 1st

General Abacha makes long awaited Independence day speech. Three year transition programme announced. Abiola stays in jail. Chief Gani Fawehinmi detained for announcing the formation of a new political

party

October 7th

Chief Rewane (pro-democracy patriarch)

assassinated.

Oct. 31st

Ken Saro-Wiwa and eight other Ogonis

sentenced to death.

Nov. 2nd

Emeka Anyaoku, Secretary General of the Commonwealth appeals for clemency for the

Ogoni leaders.

Nov. 4th

Abacha ignores chief

Nov. 10th

The Ogonis executed. Security clamp down in

Ogoniland.

Nov. 21st

Regime announces 19 further Ogonis to appear before the special tribunal on the same charges as the executed men.

Dec. 8th

Commonwealth suspends Nigeria.

UN General Assembly adopts resolution.

Dec. 18-19

African Commission on Human and Peoples'

Rights holds extra-ordinary session on Nigeria

in Kampala.

Appendix B

Chapter IV of Nigeria's 1979 Constitution

Fundamental Rights

Right to Life.

- 30. (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
 - (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary
 - (a) for the defence of any person from unlawful violence or for the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
 - (c) for the purpose of suppressing a riot, insurrection or mutiny.
- 31. (1) Every individual is entitled to respect for the dignity of his person, and accordingly
 - (a) no person shall be subjected to torture or to inhuman or degrading treatment;
 - (b) no person shall be held in slavery or servitude; and
 - (c) no person shall be required to perform forced or compulsory labour.

- (2) For the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include
 - (a) any labour required in consequence of the sentence or order of a court;
 - (b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such or, in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;
 - (c) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
 - (d) any labour or service that forms part of -
 - (i) normal communal or other civic obligations for the well-being of the community,
 - (ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or
 - (iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.
- 32. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law__
 - (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

- (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;
- (c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- (d) in the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare;
- (e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or
- (f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

- (2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.
- (3) Any person who is arrested or detained shall be informed in writing within 24 hours (and in a language

that he understands) of the facts and grounds for his arrest or detention.

- (4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of
 - (a) 2 months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
 - (b) 3 months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further Proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.
- (5) In subsection (4) of this section the expression "a reasonable time" means
 - (a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of 40 kilometres, a period of one day; and
 - (b) in any other case, a period of 2 days or such longer period as in the circumstances may be considered by the court to be reasonable.
- (6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.
- (7) Nothing in this section shall be construed
 - (a) in relation to subsection (4) of this section, as

applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

- (b) as invalidating any law by reason only that it authorises the detention for a period not exceeding 3 months of a member of the armed forces of the Federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria Police Force, in respect of an offence punishable by such detention of which he has been found guilty.
- 33. (1) In the determined including as any government to a fair hearing other tribung
- In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.
 - (2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law—
 - (a) provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person;
 - (b) contains no provision making the determination of the administering authority final and conclusive.
 - (3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

- (4) Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn be entitled to a fair hearing within a reasonable time by a court or tribunal.
- (5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

- (6) Every person who is charged with a criminal offence shall be entitled—
 - (a) to be informed promptly in the language that he understands and m detail of the nature of the offence;
 - (b) to be given adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or by legal practitioners of his own choice;
 - (d) to examine in person or by his legal practitioners the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to the witnesses called by the prosecution; and
 - (e) to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence.
- (7) When any person is tried for any criminal offence, the court shall keep a record of the proceedings and the accused person or any person authorised by him in that

- behalf shall be entitled to obtain copies of the judgement in the case within 7 days of the conclusion of the case.
- (8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence; and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.
- (9) No person who shows that he has been tried by any court of competent jurisdiction for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save up on the order of a superior court.
- (10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.
- (11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.
- (12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.
- (13) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsections (1) and (4) of this section (including the announcement of decisions of the court or tribunal) shall be held in public:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than parties thereto or

their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of 18 years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal a Minister of the Government of the Federation or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

34. Right to private and family life.

35. (1)

The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

Right to freedom of thought, conscience and religion Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

- (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance relates to a religion other than his own, or a religion not approved by his parent or guardian.
- (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of

education maintained wholly by that community or denomination.

- (4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society, and for the purposes of this subsection, "a secret society" means a society or association, not being a solely cultural or religious body, that uses secret signs, oaths, rites or symbols_
 - (a) whose meetings or other activities are held in secret; and
 - (b) whose members are under oath, obligation or other threat to promote the interest of its members or to aid one another under all circumstances without due regard to merit, fair play or justice, to the detriment of the legitimate expectation of those who are not members.
- 36. (1)
 Right to freedom
 of expression and
 the press.

Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

- (3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—
 - (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or

regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or

(b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force.

37.
Right to peaceful assembly and association.

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that -

- (a) the provisions of this section shall not derogate from the powers conferred by this Constitution on the Federal Electoral Commission with respect to political parties to which that Commission does not accord recognition; and
- (b) a person elected to a legislative house as a candidate who was not sponsored by any political party shall not be entitled to join or declare himself to be a member of a political party until the general election next following his election as such candidate
- 38. (1)
 Right to freedom of movement

Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

- (2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society—
 - (a) imposing restrictions on the residence or movement of any person who has committed or is

reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

- (b) providing for the removal of any person from Nigeria to any other country—
 - (i) to be tried outside Nigeria for any criminal offence, or
 - (ii) to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

39. (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person—from discrimination.

- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not made subject; or
- (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

- (3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.
- 40. (1)

 Compulsory
 acquisition of
 property.

No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things

- (a) requires the prompt payment of compensation therefor; and
- (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.
- (2) Nothing in subsection (1) of this section shall be construed as affecting any general law—
 - (a) for the imposition or enforcement of any tax, rate or duty;
 - (b) for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence;
 - (c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;
 - (d) relating to the vesting and administration of the property of persons adjudged or otherwise

declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporate bodies in the course of being wound-up;

- (e) relating to the execution of judgements or orders of courts;
- (f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
- (g) relating to enemy property;
- (h) relating to trusts and trustees;
- (i) relating to limitation of actions;
- relating to property vested in bodies corporate directly established by any law in force in Nigeria;
- (k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;
- (l) providing for the carrying out of work on land for the purpose of soil-conservation; or
- (m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.
- (3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon

any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

41. (1)
Restriction on and derogation from fundamental right.

Nothing in sections 34, 35, 36, 37 and 38 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society ___

- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom of other persons.
- (2) An Act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 30 or 32 of this Constitution; but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:

Provided that nothing in this section shall authorise any derogation from the provisions of section 30 of this Constitution, except in respect of death resulting from acts of war or authorise any derogation from the provisions of section 33 (8) of this Constitution.

- (3) In this section, a "period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 265 of this Constitution.
- 42. (1) Special furisdiction of High Court, and legal aid.

Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

- (2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any rights to which the person who makes the application may be entitled under this Chapter.
- (3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.
- (4) The National Assembly -
 - (a) may confer upon a High Court such powers in addition to those coferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and
 - (b) shall make provisions -
 - (i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and
 - (ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

Appendix C

List of Decrees Creating Military Tribunals

Military tribunals have been established under the following laws:

- a. The Civil Disturbances (Special Tribunal) Act, Chapter 33, Laws of the Federation, which sets up a tribunal to try various offences created under the Act and relating mostly to civil, breach of the peace, threat to public safety, riots and other disturbances.
- b. The and Fake Drugs (Miscellaneous Provisions) Act, Chapter 73, Laws of the Federation, which provides for trial of offenders under a special tribunal.
- c. The Currency (Special Provisions) Act, Chapter 74 Laws of the which established a tribunal headed by a serving or retired high court judge.
- d. The Exchange Control (Anti-Sabotage) Act, Chapter 114, which established a tribunal presided over by a serving or retired high court judge.
- e. The Foreign Currency Domiciliary Accounts, Act, Chapter 51, which provides for the trial of offenders under the tribunal established by the Exchange Control (Anti-Sabotage) Act.
- f. The National Drug Law Enforcement Agency Act Chapter 253, which created a tribunal that would try offenders without being subject to any judicial review of its proceedings.
- g. The Petroleum Production and Distribution (Anti-Sabotage)Act, Chapter 353, which created a tribunal of entirely military membership and whose proceedings are not subject to review or appeal.

- h. The Recovery of Public Property (Special Military Tribunal)Act, which established a tribunal whose decisions can only be appealed to a special appeal tribunal.
- i. The Robbery and Firearms (Special Provisions) Act which a tribunal to try armed robbery and firearms offences.
- j. The Special Tribunal (Miscellaneous Offences) Act, Chapter 410, which a tribunal presided over by a serving or retired judge of the High Court. It prescribes stiff penalties for offenders and appeals can only be directed to a special appeal tribunal.
- k. The Transition to Civil Rule (Political Programme) Act, Chapter 443, which established a tribunal headed by a serving or retired High Court judge and whose decisions can only be challenged before a special appeal tribunal.
- 1. The Treason and Other Offences (Special Military Tribunal) Act, Chapter 444, which set up a tribunal headed by a military officer and with other members from the military and the police.
- m. The Treason and Treasonable Offences Decree No .29 of 1993, which set up a military tribunal to try the offences it created.

(Source: Constitutional Rights Project)

Appendix D

List of Decrees Ousting Jurisdiction of Courts

The following Acts in the Laws of the Federation, 1990 and subsequent Decrees contain clauses ousting the jurisdiction of the courts:

- 1. Abandoned Properties Act, Cap 1, Laws of the Federation.
- 2. Acquisition of Assets (British Petroleum Company Limited)
 Act Cap 3, Laws of the Federation.
- 3. Armed Forces (Disciplinary Proceedings) Act Cap 22, Laws of the Federation.
- 4. Banking (Freezing of Accounts) Act Cap 29, Laws of the Federation.
- 5. Civil Disturbances (Special Tribunal) Act, Cap 53, Laws of the Federation.
- 6. The Civil Service Commission and other Statutory Bodies (Removal of Certain Persons from Office) Act, Cap 54, Laws of the Federation.
- 7. Constitution(Suspension and Modification) Act, Cap 64, Laws of the Federation, which was not abrogated before the promulgation of Decree No. 107 of 1993. The two are on similar terms.
- 8. Counterfeit Currency (Special Provisions) Act, Cap 74, Laws of the Federation.
- 9. Currency Conversion (Freezing Orders) Act, Cap 82, Laws of the Federation.

- 10. Exchange Control (Anti-Sabotage) Act, Cap 114, Laws of the Federation.
- 11. Federal Military Government (Supremacy and Enforcement Powers) Act, Cap 137, Laws of the Federation.
- 12. Forfeiture of Assets (Validation) Act, Cap 154, Laws of the Federation.
- 13. Forfeiture of Assets (Miscellaneous Provisions) Act, which removes the jurisdiction of the courts to "question or inquire into any act, matter or thing" done under the Act or under:
 - a. the Public Officers (Forfeiture of Assets) Order of 1978 as amended; and
 - b. the Forfeiture of Assets (Miscellaneous Provisions) Act 1986 as amended. It also voids proceedings and decisions on any proceedings made before the commencement of the Act.
- 14. Forfeiture of Assets, etc. (Validation) Act Cap 158, Laws of the Federation, precludes civil suits and voids them where they had commenced on matters covered by the Act.
- l5. Judgement of Tribunals (Enforcement, etc.) Act, Cap 194, Laws of the Federation, ousts the jurisdiction of the courts to question or inquire into the validity of any instrument, notice or order given or made under the Act.
- 16. Land Use Act, Cap 202, Laws of the Federation, deprives the courts of jurisdiction to entertain the following:
 - a. questions concerning the vesting of all land in a state on the governor in accordance with the provisions of the Act;
 - b. questions concerning the right of a state governor to grant a statutory right of occupancy in accordance with the provisions of the Act;

- c. questions relating to the amount or adequacy of any compensation paid or to be paid under the Act.
- 17. The Military Court (Special Powers) Act Cap 225 prohibits law courts from entertaining any appeal from the decisions of any military court.
- 18. The National Drug Law Enforcement Agency Act, Cap 253, Laws of the Federation, precludes judicial review of any decision made by the tribunal set up under it.
- 19. Petroleum Production and Distribution (Anti-Sabotage) Act, Cap 353, Laws of the Federation.
- 20. The Price Control Act, Cap 365, Laws of the Federation.
- 21. The Recovery of Public Property (Special Military Tribunals) Act, Cap 389.
- 22. The Regulated and other Professions (Private Practice Prohibition) Act, Cap 390 this precludes the courts from entertaining any questions on whether the human rights provisions in the Constitution have been violated.
- 23. The Review Tribunals (Implementation of Decisions) Act, Cap 393.
- 24. The Robbery and Firearms (Special Provisions) Act.
- 25. The Special Tribunal (Miscellaneous Offences) Act, Cap 410.
- 26. The State Security (Detention of Persons) Act, Cap 414 as amended by Decree No. 11 of 1994.
- 27. The Trade Disputes (Essential Services) Act, Cap 433.
- 28. The Trade Union Act, Cap 437.
- 29. The National Population Commission Act, Cap 270.

- 30. The National Salt Company Limited (Takeover) Act, Cap 275, which says that any person carrying out the duty of rectifying a register or records of a company as provided under the Act shall not be sued in any court by an aggrieved person.
- 31. The New Nigeria Salt Company (Takeover) Act I Cap 289, makes similar provisions.
- 32. The Satellite Town Land (Title Vesting and Validation) Decree No. 5 of 1991. This decree also discharged pending proceedings and annulled any judgement of any court or tribunal announced on or before the commencement of the Decree.
- 33. Public Officers (Forfeiture of Assets) Decree No. 8 of 1991.
- 34. The Tribunals (Miscellaneous Provisions) Decree No 9. of 1991.
- 35. The Assets (Title Vesting and Validation Mr J. H. Bassey) Decree No. 11 of 1992.
- 36. The Association of Individuals (Dissolution and Proscription, etc.) Decree No. 21 of 1992.
- 37. The Trade Disputes (Amendment) Decree, which deprives the courts of jurisdiction on any matter which is the subject of a trade dispute and discharged all pending suits at the onset of the Decree.
- 38. Revised Edition (Laws of the Federation of Nigeria Supplementary Provisions) Decree, which subordinated the 1979 Constitution to military decrees.
- 39. The Lands (Title Vesting) Decree No. 52 of 1992. The Constitution (Suspension and Modification) Decree No. 107 of 1993, which precludes any inquiry into the validity of decrees made since 1983.
- 40. The Political Parties (Dissolution) Decree No. 114 of 1993.

41. The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994.

(Source: Constitutional Rights Project)

Appendix E

Civil Disturbances (Special Tribunal) Act

Chapter 53 1987 No. 2.

An Act to provide for the investigation and trial of persons involved in civil disturbances, in any part of the Federal Republic of Nigeria.

Commencement

[18th March, 1987]

Part I - Constitution of Civil Disturbance Investigation Committee

1. (1) Whenever the President, Commander-in-Chief of the Armed Forces is of the opinion that—

Constitution
of Civil Disturbance
Investigation
Committee.

- (a) there has occurred civil disturbances, commotions or unrest in any part of the Federal Republic of Nigeria; or
- (b) there has been a breach of the peace that would have the effect of destabilising the peace and tranquility of the nation; or
- (c) the public order and public safety of Nigeria is being threatened by any disturbance; or
- (d) there has occurred or may likely occur a riot or civil disturbances of a riotous nature resulting or likely to result, as the case may be, in loss of life and property or injury to person;

he may constitute a special investigation committee (hereafter in this Act referred to as the "Investigation Committee").

- (2) The Investigation Committee constituted under subsection (1) of this section, shall conduct investigation into the civil disturbances and determine—
 - (a) whether any person or group of persons by conduct or negligence or otherwise howsoever in any way caused or contributed to the breaking out of the disturbances and make, in the light of its findings in that behalf, recommendations as to measures to be taken against any such person or group of persons;
 - (b) whether any person or group of persons propagating or holding religious, political, social or other beliefs, or any movement or association (howsoever called) led by any person or group of persons contributed to or participated in any way in the civil disturbances;
 - (c) whether any person or persons, being citizens of Nigeria or not, encouraged, contributed to or participated in the civil disturbances.
- (3) Further to subsection (2) of this section, the Investigation Committee may make recommendation for the trial of any person or persons involved in the civil disturbances.
- (4) The Investigation Committee constituted under subsection (1) of this section—
 - (a) shall consist of such persons as the President, Commander-in-Chief of the Armed Forces may appoint; and
 - (b) may, subject to any general or specific directions that may be given in that behalf by the President, Commander-in-Chief of the Armed Forces, regulate its own proceedings as it may deem fit.

Part II - Constitution and Powers of Tribunal

- 2. (1) Special tribunal.
- The President Commander-in-Chief of the Armed Forces is hereby empowered to constitute civil disturbances special tribunal (hereafter in this Act referred to as the "tribunal") to try all cases of civil disturbances as stated in section 1 of this Act.
- (2) A tribunal constituted under subsection (1) of this section shall consist of—
 - (a) a Chairman who shall be a serving or retired judicial officer of any of the superior court of record in Nigeria; and
 - (b) four other members one of whom shall be a serving member of the Armed Forces:

Provided that no person who has taken part in the search for, pursuit or apprehension of any person to be tried under this Act or who has taken part in the investigation of any person to be tried shall sit as a member of the tribunal constituted for the trial of that person in respect of any offence referred to in this Act.

- (3) 1987 No. 13.
- The Chairman and any three other members shall constitute a quorum for the trial of any offender under this Act.
- 3. (1)
 Jurisdiction and powers of tribunal, etc.
- A tribunal shall have jurisdiction to try any person charged with any of the offences specified in the First Schedule to this Act and shall have power to award any penalties specified for the offences in either the Criminal Code or the Penal Code.
- (2) For the purpose of subsection (I) of this section, where in respect of any act which is an offence under this Act a tribunal is satisfied that any person. not being a person charged with an offence under this Act—
 - (a) acted in concert or conspired with any person; or

- (b) knowingly took part to any extent whatsoever in the commission of the act constituting an offence referred to in the First Schedule to this Act. the tribunal shall have power to treat the person in like manner as a person charged with an offence under this Act and shall proceed against him accordingly notwithstanding anything to the contrary in any other enactment.
- (3) The President, Commander-in-Chief of the Armed Forces. may add to, alter or modify the list of offences referred to in subsection (1) of this section.
- 1987 No. 13.
 L.L. of N.N.
 1963 Cap. 30
 Cap. 80.

 Notwithstanding the provisions of the Criminal Procedure Act relating to venue of the trial or anything contained in the Second Schedule to this Act, any offence specified in the First Schedule to this Act shall be triable in the Federal Capital Territory Abuja or any other place as the Chairman or the Attorney-General of the Federation may, from time to time, determine.
- 4. (1) The rules of procedure to be adopted in prosecutions for the offences in the First Schedule to this Act before a tribunal and the forms to be used in such prosecutions shall be as set out in the Second Schedule to this Act.
 - (2) Prosecutions for offences referred to in this Act shall be instituted in the name of the Federal Republic of Nigeria by the Attorney-General of the Federation or such officer in the Federal Ministry of Justice as he may authorise so to do and, in addition thereto, he may—
 - (a) after consultation with the Attorney-General of any State in the Federation, authorise any officer of the Ministry of Justice concerned to undertake any such prosecutions directly or assist therein; or
 - (b) if a tribunal so requests, or if contingencies so dictate. authorise any other legal practitioner in Nigeria to undertake any such prosecution or assist therein:

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Provided that the question whether any authority has been given in pursuance of this subsection shall not be inquired into by any person.

- (3) Any person accused of any offence referred to in this Act shall be entitled to defend himself in person or by a person of his own choice who is a legal practitioner resident in Nigeria, but where an accused person charged with an offence punishable with life imprisonment or death is not defended by a legal practitioner as aforesaid, the tribunal shall assign to such person a legal practitioner for his defence.
- 5.

 ywer to issue
 'arch warrants.

Notwithstanding the provisions of any other enactment conferring power to search, if the Chairman of the tribunal is satisfied that there is a reasonable ground to suspect that there may be found in any building or other place whatsoever, any dangerous weapon including arms, ammunition or weapon of any description or any books, records, statements or information in any other form whatsoever, which, in his opinion, are or may be material to the charge or any trial under this Act, he may issue a warrant under his hand authorising any police officer or any member of the armed forces or security agencies to enter, if necessary by force, the said building or other place and every part thereof, and to search for, seize and remove any such thing as aforesaid, found therein.

- 6. (1) Where a person is charged with an offence but the evidence establishes an attempt to commit the offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged, and punished as provided under the relevant enactment.
 - (2) When a person is charged with an attempt to commit an offence but the evidence establishes the commission of the full offence the offender shall not be entitled to acquittal but he may be convicted of the attempt and punished as provided under the relevant enactment.

Part III - Confirmation

- 7. (1)
 Confirmation of penalties of tribunal, etc.
- Where a tribunal finds the accused guilty of any offence referred to in this Act, the record of the proceedings of the tribunal shall be transmitted to the confirming authority for confirmation of the sentence imposed by the tribunal.
- (2) Any sentence imposed by the tribunal shall not take effect until the conviction or sentence is confirmed by the confirming authority and pending such confirmation the convicted offender shall be kept in such place of safe custody as the tribunal may determine.
- (3) The confirming authority may confirm or vary the sentence of the tribunal.
- (4) For the purposes of this Act, the confirming authority shall be the Armed Forces Ruling Council.

Part IV - Supplementary Provisions

8.
Exclusion of proceedings

(1)

- The validity of any decision, sentence, judgement, confirmation, direction, notice or order given or made, as the case may be, or any other thing whatsoever done under this Act shall not be inquired into in any court of law.
- (2) It is hereby declared for the avoidance of doubt that section 24 of the Interpretation Act shall apply in respect of offences referred to in this Act.
- 9. In this Act, unless the context otherwise requires—

Interpretation

"civil disturbance" includes riot, unrest, civil disorder, civil commotion, rampage, breach of the peace having the effect of destabilising the peace and tranquillity of the nation or affecting public order and safely; "superior court of record in Nigeria" has the meaning assigned

thereto in the Constitution of the Federal Republic of Nigeria; "tribunal" means any special tribunal constituted as provided in this Act.

10. This Act may be cited as the Civil Disturbances (Special Tribunal) Act.

First Schedule

A - Criminal Code

- l. Treason.
- 2. Concealment of treason.
- 3. Unlawful assembly. Riot.
- 4. Rioters demolishing buildings.
- 5. Rioters injuring buildings.
- 6. Going armed so as to cause fear.
- 7. Forcible entry.
- 8. Violence.
- 9. Unlawful processions.
- 10. Insult to a religion.
- 11. Offering violence to officiating Ministers of religion.
- 12. Disturbing religious worship.
- l3. Murder.
- 14. Attempt to murder.
- 15. Manslaughter.
- 16. Grievous harm.
- 17. Acts intended to cause grievous harm or preventing arrest

- 18. Assault occasioning harm.
- 19. Serious assault.
- 20. Rape.
- 21. Indecent assault on females.
- 22. Attempt to commit rape.
- 23. Unlawful possession.
- 24. Arson.
- 25. Attempt to commit arson.
- 26. Setting fire to crops and growing plants.
- 27. Attempting to set fire on crops.
- 28. Destroying or damaging an inhabited house or vessel with explosive.
- 29. Attempt to destroy property by explosive.
- 30. Treasonable felonies.
- 31. Wilful damage to property.
- 32. Sedition and the importation of seditious or undesirable publications.
- Managing an unlawful society membership of unlawful society.
- 34. Unlawful assemblies, breach of the peace.

$\overline{Appendix F}$

Медіа Persons Arresteд

The first table contains those media people for whom the only information available is their date of arrest, or other harrassment.

Name/Date of Arrest	Медіа Ноизе	Form of Harassmen	
1993			
Oqua Itu	Nigerian Chronicle (G)	suspended for 1 week	
Ladi Olorunoyomi 24.6	wife of D. Olarunyomi TheNews	arrested and released	
Malam Aliyu Hayatu 1.3	The Reporter	arrested	
Malam Razaq El-Alawa 21.4	Herald (G)	arrested and released	
David Spencer 16.5	TheNews	detained without charges	
Bayo Onanuga 9.6	TheNews	arrested and released	
		(twice)	
Ike Okonta 9.6	TheNews	arrested and released	
Ayodele Akinkuotu 2.5	TELL	arrested (twice)	
Dayo Omotosho 2.5	TELL	arrested	
Jude Igbanoi 2.5	TELL	arrested	
Chuks Onwudinjo 20.8	TELL	arrested and released	
Idowu Awoyinfa 20.8	TELL	arrested and released	
Durosinmi Meseko 20.8	TELL	arrested and released	
Genro Adebanjo 20.8	TELL	arrested and released	
Saturdey Osagie 20.8	TELL	arrested and released	
Yomi Balogun 20.8	TELL	arrested and released	
Emeka Nwadioke 1.3	Guardian	beaten by immigration	
		officers	
Bisi Fetuga (Mrs) 22.3	Nigerian Tribune	assaulted by police	
Innocent Okoye 1.4	Daily Satellite	arrested	
Adebimpe Afunku 1.4	Daily Satellite	arrested and released	
Imo Eze 1.4	Daily Satellite	declared wanted	
Chief Chris Okolie 6.4	Newbreed	arrested	
Mr. Okeke 6.4	Newbreed	arrested	
Omotara Idowu 6.4	Newbreed	arrested	
Isiaka Ahaja	Concord	arrested	
Adego Johnsons	Concord	arrested	
Odus Oyebanji	Concord	arrested	

Harry Aworumibe 4.1	The Guardian	beaten into a coma	
Gbenga Olagunju 2.1	TELL	threatened	
994			
ridewan Onuma 10.11	BBC & Nigerian Tribun	arrested in neu of nusband	
Segun Fagbemi 1.11 Adetoun Odunfa 15.11	wife of Sola Odunfa	arrested in lieu of husband	
	City News	arrested	
Chief Victor Vanni 1.11	City News	demoted arrested	
Segun Adetola 7.10 Malam Saad Beli 1.11	Vintage people Radio Kano	arrested	
	Vintage people	arrested	
Niran Malaolu 7.10	Vintage people	arrested	
Charles Igboamah 7.10 Muyiwa Adetiba 7.10	NTA (G)	sacked	
Emeka Obiowa 7.10	NTA (G)	getamed sacked	
Adewate Adeoye 1.10	i ne Guardian	assaulted, arrested and detained	
Ezekiel 23.8 Adewale Adeoye 1.10	vendor The Guardian	arrested and charged	
Philip Alalade 23.8	vendor	arrested and charged	
Kayode Oni 23.8	Sunday Hope	arrested and charged	
Malam M. Khalid 17.8	NUJ	arrested	
Hassan Dansoto 17.8	TELL	arrested	
Maxwell Nimfas 15.8	State Television (G)	sacked	
Dele Momodu 27.7	FAME Weekly	arrested	
Emmanuel Udoka 27.7	Abuja Newsday	arrested	
Stanley Oppah 27.7	Abuja Newsday	arrested	
Ade Alawode 16.7	Quality	arrested	
Bala Dan Abu 16.7	Quality	arrested	
Moses Ango	vendor	drilled and beaten	
Kola Olubowale 10.7	Concord	drilled and beaten	
Jimmy Ovuehor 10.7	Nigerian Observer (G)	redeployed	
Felix Adenaike 10.7	Sketch	home searched	
Labaran Maku	Champion	sacked	
Henry Odukomaiya 9.7	Champion	suspended	
Ebenezer Udoeyop 24.6	The Pioneer	sent on compulsory leave	
Okon Akpan 24.6	The Pioneer	sent on compulsory leave	
Yinka Tella 24.6	TheNews	arrested	
Nendo Gawa 24.6	Nigerian Tide	sent on compulsory leave	
Odu Oyebanji 16.6	National Concord	severely beaten by police	
Adeye Joel 15.6	Good Time	arrested	
Isaac Adeduro 15.6	Good Time	arrested	
Sunday Francis 15.6	Good Time	arrested	
Tunde Adesanya 7.6	Lagos Horizon	sent on compulsory leave	
Rosemary Kadiri (Ms)	Concord	arrested	

Patrick Bodu 4.1	The Guardian	beaten into a coma	
Yakubu Mohammed 8.4	Newswatch	arrested	
Dan Agbese 17.4	Newswatch	arrested	
Ray Ekpu 18.4	Newswatch	arrested	
Alex Kabba .4	TheNews and TEMPO	arrested and beaten	
Oqua Itu	Nigerian Chronicle	sacked	
Alhaji Malami 4.6	vendor	arrested	
Bayo Onanuga 27.9	TheNews	arrested, charged, released	

The second table contains those for whom addition information, i.e. date of release from arrest is also available.

Name	Медіа Ноизе	Date of Arrest	Date of Relea.
1993			
Seye Kehinde 11.3	The News	March 11	March 19
Dapo Oluronyomi 12.3	The News	March 12	March 19
Akin Adesakan	The News	March 12	March 19
Bayo Onanuga	The News	March 12	March 19
Chinedu Ezeanah	The News	March 12	March 19
Nsikak Essien	National Concord	April 29	May 1
Akin Ogunride	National Concord	April 29	May I
Ben Okezie	National Concord	April 29	May 1
Titi Okorie	National Concord	April 29	May 1
Nosa Igiebor	TELL	August 15	August 26
Kolawole Ilori	TELL	August 15	August 26
Ayodele Akinkuoto	TELL	August 15	August 26
Onome Osifo-Whiskey	TELL	August 15	August 26
1994			
Ray Ekpu	Newswatch	May 27	May 31
Mee Mofe-Damijo	Weekend Classique	June 20	June 23
Hyacinth Oroh	Guardian	August 16	a few days
Minet Ojodavon	Guardian	August 16	a few days
Bola Oduntan	Guardian	August 16	a few days
Emmanuel Eferi	Guardian	August 16	a few days
Dapo Fwange	Nigerian Standard	August 17	fatal car crash
Ola Awoniyi	Nigerian Tribune	August 17	with a police
Temitope Banro	Sketch	August 17	vehicle
Dapo Olorunyomi	The News	August 23	August 24

Appendix G

Press Releases issued by the ICJ

- a. ICJ Urges End of Military Rule in Nigeria. (18 October 1994)
- b. Nigeria's Military Government Continues to violate Human Rights.
 (9 June 1995)
- Jurists Express Concern Over Extension of Military Rule in Nigeria.
 (3 October 1995)
- d. Jurists Condemn Nigeria Military Government's Act of Gruesome Murder of Ogoni Leaders. (11 November 1995)
- e. Nigeria: ICJ Praises African Human Rights Body's Work. (22 December 1995)



INTERNATIONAL COMMISSION OF JURISTS

Commission Internationale de Juristes

Comisión Internacional de juristas

Press Release Communiqué de presse • Comunicado de Prensa

18 October 1994

For Immediate Release

ICJ Urges End of Military Rule in Nigeria

The International Commission of Jurists (ICJ) is alarmed by the serious erosion of the Rule of Law in Nigeria and calls for the immediate repeal of decrees which constitute an offence to human rights and which derogate from the principle of the independence of the judiciary.

The ICJ condemns the promulgation of the State Security (Detention of Persons) Decree, 1994, which confers upon the military junta the power to detain opponents for renewable periods of three months without judicial review.

The ICJ condemns the decree which gives the military authorities unlimited powers to act outside of the established judicial framework, scrutiny and challenge, and the one which bans three newspapers: "The Guardian," "National Concord," and "The Punch."

The arrest and detention of pro-democracy activists, the clamp-down on the media, the promulgation of decrees which violate fundamental human rights, and the constant repression of pro-democracy demonstrations in Nigeria, are viewed by the ICJ with serious concern.

The composition, content of work and methodology adopted by the on-going Constitutional Conference has shown that this is a waste of resources and an attempt to divert the attention of the country and the international community away from the serious political issues which need to be sorted out.

The ICJ urges the military junta to release all pro-democracy activists, labour leaders and intellectuals currently detained and to immediately disengage from political activities and allow the return of Nigeria to genuine democracy.

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INTERNATIONAL COMMISSION OF JURISTS

Commission Internationale de Juristes

Comisión Internacional de juristas

Press Release Communiqué de presse • Comunicado de Prensa

Geneva, 9 June 1995

For Immediate Release

Nigeria's Military Government Continues to Violate Human Rights

Today, the International Commission of Jurists (ICJ) received news of the arrest of Mr. Olisa Agbakoba, the President of the Civil Liberties Organization. This arrest is the latest in a series of disturbing developments occurring in Nigeria. On 2 June 1995, Dr. Beko Ranmsome-Kuti, Chairman of the Campaign for Democracy, a coalition of groups calling for the restoration of democracy in Nigeria, was arrested. On 7 June, the trial of 23 civilians and military officers alleged to have been involved in a coup attempt began in Lagos. The trial is being held in camera, before a military court.

These latest actions by the Military are believed to be part of a continuous strategy of the military government to silence opposition.

Following the aborted presidential elections of 12 June 1993, the Military Government of General Sani Abacha has embarked upon the indiscriminate arrest and detention without trial of politicians, pro-democracy and human rights activists, and prominent community and labour leaders. As of today, the government also has in its custody, among others; Chief Moshood Abiola, who is widely believed to have won the aborted 1993 elections. Chief Abiola, arrested one year ago and later charged for treason, remains in prison under appalling conditions. Chief Frank Ovie Kokori, leading trade unionist, Mr Alao Aka-Bashorun, former President of the Nigerian Bar Association and one of the lawyers representing Chief Abiola; Mr. Ken Saro-Wiwa, leader of the Movement for the Survival of the Ogoni People; former Head of State, General Olusegun Obasanjo and his former aide Major General Shehu Musa Yar'adua are being held under house arrest with their fate unknown.

The ICJ is alarmed by the systematic erosion of the Rule of Law in Nigeria and the refusal of the military government to respect the will of millions of Nigerians to live in a democratic society.

The ICJ is concerned about the indiscriminate arrest of innocent citizens, the continued detention without trial of pro-democracy activists, opposition leaders, and the trial before unconstitutional courts of persons charged with offences and urges the military to release with immediate effect all those detained.

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INTERNATIONAL COMMISSION OF JURISTS

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Press Release Communiqué de presse • Comunicado de Prensa

Geneva, 3 October 1995

For Immediate Release

Jurists Express Concern Over Extension of Military Rule in Nigeria

The International Commission of Jurists (ICJ) said today that it is alarmed by General Sani Abacha's prolongation of military rule in Nigeria for three more years.

While extending military rule, General Abacha announced a superficial programme of reforms. The reforms include lifting a ban on political activities and establishing civilian local and State legislatures and a national assembly. The General remained silent, however, on the fate of the 1994 draft Constitution that paves the way to restore democracy in Nigeria. General Abacha took power in November 1993.

The ICJ is particularly concerned that General Abacha refused to release political prisoners, and in particular Chief Moshood Abiola, the widely acclaimed winner of the 1993 elections, who was arrested in 1994.

General Abacha also made no mention of the fate of imprisoned former Head of State, Mr. Olesegun Obasanjo, the only Nigerian military ruler who voluntarily relinquished power to civilians. Mr. Obasanjo and others were accused of conspiring to overthrow the military regime. The alleged plotters were tried between May and July 1995 in secret by a military tribunal that apparently handed down several death sentences and long imprisonment terms.

The ICJ is concerned that the secrecy that prevailed throughout the proceedings did not allow the accused a fair trial. The ICJ is alarmed that there is no proper appeal of these judgments that are subject to final review only by the Provisional Ruling Council of the military government. Three months after the convictions and sentencing of these persons, the military government says that its final decision will only be handed down at an "appropriate time."

The ICJ calls on the military government to immediately release all those detained and review its decision to delay a rapid return to constitutional, democratic and civilian normality.

The ICJ calls upon the international community to step up its pressure on the military government of Nigeria to ensure that Africa's most populated State be governed once more by the Rule of Law.

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INTERNATIONAL COMMISSION OF JURISTS

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Press Release Communiqué de presse • Comunicado de Prensa

Geneva,11 November 1995

For Immediate Release

Jurists Condemn Nigeria Military Government's Act of Gruesome Murder of Ogoni Leaders

Today, the International Commission of Jurists (ICJ) condemns in the strongest terms the execution by hanging of environmental activist and writer Ken Saro-Wiwa and eight others condemned to death by a military tribunal after what has been adjudged a most unfair trial and violation of the Rule of Law.

The ICJ continuously called upon the military government to ensure that the accused persons were given a fair trial throughout the 17 months of the trial. Following the death sentences handed down by the military tribunal on October 30 and 31 1995, the ICJ joined the international appeal for clemency and urged for a trial before an impartial judiciary before a decision was made.

The ICJ is appalled by this action of the government of General Abacha by which it has shown to the whole world its lack of respect for fundamental human rights, the Rule of Law and the wishes of its people.

"This criminal act of State murder committed against innocent citizens of Nigeria is unacceptable. The world community, especially the Organisation of African Unity cannot fold its arms and watch another dictatorship expressing its authority through sacrificing the lives of its citizens. This is a show of shame and it must be condemned as such," says Tokunbo Ige, ICJ Legal Officer for Africa.

The ICJ supports the stand taken by the Commonwealth to suspend Nigeria from its membership in the spirit of the Harare Declaration of 1991.

The ICJ calls on all States to sever diplomatic relations with the military clique and urge the United Nations Security Council to take all appropriate measures to ensure that respect for human rights, democracy and the Rule of Law is restored in Nigeria.

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INTERNATIONAL COMMISSION OF JURISTS

Commission Internationale de Juristes

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Press Release Communiqué de presse • Comunicado de Prensa

Geneva, 22 December 1995

For Immediate Release

Nigeria: ICJ Praises African Human Rights Boдy's Work

Today, the International Commission of Jurists (ICJ) welcomed the actions taken by the African Commission on Human and Peoples' Rights (ACHPR) on Nigeria. After holding a two-day Extra-Ordinary Session, the ACHPR expressed its "serious concern" on the human rights situation in Nigeria and decided upon several practical measures.

Professor Isaac Nguema, Chairman of the ACHPR, said that they were holding the Session because the Nigerian Government executed writer and human rights activist Ken Saro-Wiwa and eight other leaders of the Ogoni people in defiance of a call by the ACHPR to stay execution. He stated that the session was a follow-up to that tragedy and should serve to consolidate human rights in Africa.

The ICJ appreciates the following decisions of the Extra-Ordinary Session:

- to request the Chairman of the OAU and its Secretary-General to express to the Nigerian authorities that no irrecuperable prejudice be caused to the 19 Ogoni detainees whose trial is pending;
- to send a high-level delegation to Nigeria from 16-21 February 1996. The
 delegation will be composed of the ACHPR Chairman, Vice-Chairman,
 and the Special Rapporteur on Summary and Arbitrary Executions in
 Africa;

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- to send the report of the Extra-Ordinary Session to the Chairman of the OAU, the Secretary-General of the UN, and the UN High Commissioner for Human Rights; and
- to make a statement on the human rights situation in Nigeria during the next session of the UN Commission on Human Rights.

The ICJ said that the ACHPR decision to present its findings to the UN Commission establishes a precedent which should be followed by other regional organizations. This event is an encouragement for those who believe in the strengthening of a global partnership between the UN and the regional intergovernmental organizations.

The ICJ regrets that the Nigerian Government tried to halt the session on procedural grounds. The attempt failed.

The ICJ welcomes the historic initiative taken by the ACHPR to hold an extra-ordinary session on Nigeria. The ICJ notes with satisfaction that it is the first time that such a session is convened with regard to a particular country situation and considers this event a milestone in the history of human rights protection in Africa.

The ICJ welcomes the openness with which the session was conducted. We were encouraged by the presence of the representative of the OAU Secretary-General and by the fact that NGOs were actively invited to contribute as partners in the process. The Session called on the Nigerian government to ensure the protection of those Nigerian NGOs who were present during the debates.

The ICJ believes that the close and cordial relationship established between the ACHPR and NGOs on that occasion should be emulated by other regional bodies.

The ICJ is encouraged by the statements made by the Ugandan Government, that hosted the session, in which it condemned the deteriorating human rights situation in Nigeria.

The ICJ takes this opportunity to reiterate its call on the Nigerian Government to respect its obligations under international human rights instruments and the African Charter on Human and Peoples' Rights. We, once more, call for the release of all political detainees and the immediate restoration of the Rule of Law in the country.

The ICJ took an active part in the Extra-Ordinary Session in line with its long-standing commitment to further the cause of democracy and human rights in Nigeria.

The extra-ordinary session took place in Kampala, Uganda, between 18-19 December 1995.

Appendix H

Resolutions adopted by the African Commission in Human and Peoples' Rights

Адорtед 3/11/94 **R**ev.1

Resolution on Nigeria

The African Commission on Human and Peoples' Rights meeting at its 16th Ordinary Session held from 2nd October to 3 November 1994 in Banjul, The Gambia:

RECALLING that Nigeria has ratified the African Charter on Human and Peoples' Rights.

BELIEVING that the restoration of democracy in Nigeria will be a positive step in African development;

REGRETS the annulment of the 12 June 1993 presidential election which was adjudged free and fair by national and international observers;

CONDEMNS the gross violations of Human Rights as evidenced in:

- 1. the exclusion of the African Charter on Human and Peoples' Rights from the operation of decrees adopted by the military regime;
- 2. the detention of pro-democracy activists and members of: the press,
- 3. the exclusion of the jurisdiction of courts over decrees;
- 4. discarding of court judgements,

- 5. the promulgation of laws without proper procedure or penal laws with retroactive effect;
- 6. the closure of newspaper houses.

CALLS UPON the Nigerian military government to respect the right of free participation in government and the right to self-determination and hand over the government to duly elected representatives of the people without unnecessary delay

RE-AFFIRMS the decision to send a delegation of Commission members to meet with the Nigerian Head of State, to express concern of the Commission about the gross violations of human rights and express the need for the Nigerian military government to urgently transfer power to a civilian government.

Resolution on Nigeria

The African Commission on Human and Peoples' Rights meeting at its 17th Ordinary Session held from 13 to 22 March 1995, in Lomé Togo:

Guided by the African Charter on Human and Peoples Rights and other international human rights instruments of which Nigeria is a signatory;:

Reaffirming that all member States including Nigeria have the duty to fulfil the obligations they have undertaken under the various international human rights instruments, particularly the African Charter on Human and Peoples' Rights;

Recalling the resolution passed by the African Commission at its 16th Session in Banjul in November 1994 which condemned the gross violations of Human Rights in Nigeria by the military government;

Deeply concerned about the political, social, economic and general situation in Nigeria and the consequences that may result therefrom;

Condemns the continued gross and massive violations of human rights in Nigeria and particularly:

- i) the arbitrary arrests and detention of human rights and pro-democracy activists critics and opponents of military rule,
- ii) severe restriction on the rights to freedom of expression, including the banning of several newspapers and newsmagazines,
- iii) circumscribing the independence of the judiciary and setting up military tribunals lacking in independence and

due process to try persons suspected of being opposed to the military regimes "

- iv) the abolition of habeas corpus with respect to political detainees,
- v) restrictions on the right to leave the country;
- vi) restrictions on the right to freedom of association.
- vii) promulgation of decrees and laws ousting the application of the African Charter on Human and Peoples' Rights and preventing the Courts from intervening in cases of human rights violations.

Calls Upon the military government in Nigeria to ensure respect for human rights and the rule of law, and in particular to release all political prisoners, reopen all closed media and respect freedom of the press, lift arbitrarily imposed travel restrictions, allow unfettered exercise of jurisdiction by the courts and remove all military tribunals from the judicial system,

Urges: the military government in Nigeria to respect the rights of minorities and all religions and ensure full respect for the right of association.

Again Calls Upon the military government in Nigeria to take immediate steps to return Nigeria to democratic rule.

Appendix I

UN Resolutions and Decisions

- a. Human Rights Questions: Human Rights Situations and Reports of special Rapporteurs and Representatives (8 December 1995)
- b. Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant (3 April 1996)
- c. Human Rigths Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives. (28 May 1996)



General Assembly

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Fiftieth session THIRD COMMITTEE Agenda item 112 (c)

Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives

Albania, Andorra. Argentina. Australia. Austria. Bahamas, Belgium. Bulgaria. Canada. Chile, Czech republic. Denmark, Estonia. Finland. France. Germany. Greece. Guatemala. Haiti. Hungary. Iceland. Ireland. Italy. Japan. Lesotho. Liechtenstein, Lithuania. Luxembourg. Malta, Marshall Islands. Monaco. Netherlands. Norway. Panama. Poland. Portugal, republic of Moldova, Samoa. Slovenia. Solomon Islands. South Africa. Spain. Sweden. United Kingdom of Great Britain and Northern Ireland. United States of America and Uruguay: draft resolution

Situation of human rights in Nigeria

The General Assembly,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, 1/ the International Covenants on Human Rights, 2/ the Vienna Declaration and Programme of Action 3/ and other human rights instruments,

Reaffirming that all Member States have the duty to fulfil the obligations they have freely undertaken under the various international instruments in this field,

Mindful that Nigeria is a party to the International Covenant on Civil and Political Rights, 2/

¹ Resolution 217 A (III).

² Resolution 2200 A (XXI), annex.

³ A/CONF.157/24 (Part I), chap. III.

Expressing concern that the absence of representative government in Nigeria has led to violations of human rights and fundamental freedoms, and recalling in this regard the popular support for democratic government as evidenced in the 1993 elections,

Noting with interest that the Government of Nigeria, on 1 October 1995, affirmed the principle of multi-party democracy, announcing its intent to accept the principle of power-sharing, lift the ban on political activity and the press, devolve power to local levels of government and subordinate the military to civilian authority, but disappointed that only limited action in this regard has followed,

Noting with alarm the recent arbitrary executions of nine persons, namely Ken Saro-Wiwa, Barinem Kiobel, Saturday Dobee, Paul Levura, Nordu Eawo, Felix Nwate, Daniel Gbokoo, John Kpuimen and Baribor Bera,

Noting the decision of the Commonwealth Heads of Government to suspend Nigeria from membership in the Commonwealth,

Noting also the decisions of the European Union, as well as those of other States or groups of States with regard to Nigeria,

Deeply concerned about the human rights situation in Nigeria and the suffering caused thereby to the people of Nigeria,

- Condemns the arbitrary execution, after a flawed judicial process, of Ken Saro-Wiwa and his eight co-defendants, and emphasizes that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial with all the guarantees necessary for defence;
- 2. Expresses its deep concern about other violations of human rights and fundamental freedoms in Nigeria, and calls upon the Government of Nigeria urgently to ensure their observance, in particular by restoring habeas corpus, releasing all political prisoners, guaranteeing freedom of the press and ensuring full respect for the rights of all individuals, including trade unionists and persons belonging to minorities;
- Calls upon the Government of Nigeria to abide by its freely undertaken obligations under the International Covenant on Civil and Political Rights and other international instruments on human rights;
- 4. Urges the Government of Nigeria to take immediate and concrete steps to restore democratic government;
- 5. Welcomes the decisions by the Commonwealth and other States individually or collectively to take various actions designed to underline to the Government of Nigeria the importance of return to democratic rule and observance of human rights and fundamental freedoms, and invites

Member States in a position to do so to consider appropriate steps, consistent with international law, for that specific purpose;

- 6. Invites the Commission on Human Rights at its fifty-second session to give urgent attention to the situation of human rights in Nigeria, and recommends, in this regard, that its relevant mechanisms, in particular the Special Rapporteur on summary or arbitrary executions, report to the Commission prior to its next session;
- 7. Requests the Secretary-General, in the discharge of his good offices mandate and in cooperation with the Commonwealth, to undertake discussions with the Government of Nigeria and to report on progress in the implementation of the present resolution and on the possibilities for the international community to offer practical assistance to Nigeria in achieving restoration of democratic government.

United Nation

CCPR



International Convenant on Civil and

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Human Rights Committee Fifty-sixth session

> Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant

> > Preliminary Concluding Observations of the Human Rights Committee

Nigeria

A. Introduction

- 1. Deeply concerned by recent executions after trials that were not in conformity with provisions of the Covenant, the Human Rights Committee on the 29 November 1995, acting through its Chairman, requested the Government of Nigeria to submit its initial report without further delay for consideration by the Committee at its fifty-sixth session in March/April 1996 and, in any event, to submit by the 31 January 1996 a report, in summary form if necessary, relating to the application of Articles 6, 7, 9 and 14 of the Covenant on Civil and Political Rights in the current situation.
- 2. The Committee appreciates the decision of the Government of Nigeria to submit its initial report (CCPR/C/92/Add. 1) in time for consideration at its fifty-sixth session as scheduled.
- 3. Given the importance of the report in the current situation and the constraints of the Nigerian delegation in being available for only one day, the Committee decided to divide the examination of the report into two parts, namely, the first part on articles 6, 7, 9 and 14 and the second part on the remaining articles of the Covenant.

- 4. The first part was considered at the 1494th and 1495th meetings of the Committee held on 1 April 1996 (CCPR/C/SR 1494 and SR.1495). Further consideration of the report was adjourned to the 57th session of the Committee in July 1996 in Geneva.
- 5. In the light of the examination of the first part of the report and the observations made by members of the Committee, the Committee adopted 1/the following preliminary observations and urgent recommendations.

B. Principal Concerns in respect of Articles 6, 7, 9 and 14

- 6. The Committee noted fundamental inconsistencies between the obligations undertaken by Nigeria under the Covenant to respect and ensure rights guaranteed under the Covenant and the implementation of those rights in Nigeria.
- 7. In particular, the incommunicado detention for an indefinite period and the suppression of habeas corpus constitute violations of article 9 of the Covenant.
- 8. The establishment by Presidential Decree of several types of special tribunals, including their composition and rules of procedure which exclude the free choice of a lawyer, and the absence of any provisions for appeals, constitute violations of rights provided under article 14 of the Covenant as well as violations of article 6, paragraph 1, and article 6, paragraph 2, of the Covenant when a sentence of death is pronounced.
- 9. The failure to respect these guarantees has led to the arbitrary deprivation of life of Mr. Ken Saro Wiwa and the other co-accused.
- 10. There would not appear to have been any serious investigations into allegations of torture, ill-treatment or conditions of detention which raise serious issues under article 7 of the Covenant.

C. Urgent Recommendations

11. The Committee, in particular, recommends that all the Decrees establishing special tribunals or ousting normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts (such as State Security (Detention of Persons) Decree No. 2 of 1984, The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12 of 1994, the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987, Treason and Other Offences (Special Military Tribunal) Decree No. 1 of

l At the 1499th meeting (Fifty-sixth session), held on 3 March 1996.

- 1986), which violate some of the basic rights under the Covenant, be abrogated and that any trials before such Special Tribunals be immediately suspended.
- 12. The Committee recommends that urgent steps be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial as explicitly provided in Article 14(1), (2) and (3) and to have the conviction and sentence reviewed by a higher tribunal in accordance with article 14(5), of the Covenant.
- 13. The Committee requests the Government of Nigeria to Inform the Committee at the resumed consideration of the report in July 1996 of the steps it has taken to implement the above recommendations.



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Human Rights Questions: Human Rights situations and Reports of Special Rapporteurs and Representatives

Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly

I have the honour to refer to General Assembly resolution 50/199 of 22 December 1995, as well as to my letters to you dated 26 February 1996 and 19 March in which I informed you of my decision to send a fact-finding mission to Nigeria.

The mission submitted its report to me on 23 April 1996. I sent a copy of the report to the Head of State of Nigeria, His Excellency General Sani Abacha, by hand of my Special Envoy, Mr. Lakhdar Brahimi. The Special Envoy visited Nigeria from 10 to 14 May 1996. Following the visit of my Special Envoy, the Special Adviser (Legal Matters) to the Head of State of Nigeria, sent me a letter on 21 May 1996 on behalf of General Abacha.

I hereby enclose the report of the fact-finding mission (annex I), as well as the interim response received from the Government of Nigeria (annex II). I should like to take this opportunity to assure you that I will continue to discharge my good offices mandate in the implementation of the above-mentioned resolution and will report on any further progress achieved.

I should be grateful if you could bring this information to the attention of the members of the General Assembly.

(Signed) Boutros BOUTROS-GHALI

Annex I

Report of the fact-finding mission of the Secretary-General to Nigeria

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I. INTRODUCTION

- 1. It may be recalled that on 10 December 1995, the Head of State of Nigeria wrote to the Secretary-General supporting the suggestion that a fact-finding mission be sent to Nigeria to gain first-hand information on the country.
- 2. On 22 December 1995, the General Assembly adopted resolution 50/199 on the situation of human rights in Nigeria. In paragraph 7 of that resolution, the General Assembly requested the Secretary-General "to undertake discussions with the Government of Nigeria and to report on progress in the implementation of the present resolution and on the possibilities for the international community to offer practical assistance to Nigeria in achieving the restoration of democratic rule". Meanwhile, the Government of Nigeria maintained contact with, and requested by letter dated 19 December 1995 the assistance of, the Secretary-General concerning the sending of a fact-finding mission to address itself to the trial and execution of Mr. Ken Saro-Wiwa and others and to the plans of the Government of Nigeria to implement its declared commitment to restore the country to civilian democratic rule.
- 3. The Secretary-General, after consultation with the Government of Nigeria, set out the terms of reference of the fact-finding mission. The Secretary-General constituted the fact-finding mission, hereafter referred to as the mission, composed of Justice Atsu-Koffi Amega, former Minister for Foreign Affairs of Togo and former President of the Supreme Court of Togo and a member of the African Commission for Human and People's Rights; Justice V. S. Malimath, member of the National Human Rights Commission of India; and John P. Pace, Chief of the Legislation and Prevention of Discrimination Branch, Office of the High Commissioner for Human Rights/Centre for Human Rights.
- 4. On 26 February 1996, the Secretary-General informed the President of the General Assembly and the Secretary-General of the Commonwealth of the establishment of the mission and its composition.

II. TERMS OF REFERENCE

- 5. The terms of reference of the mission read as follows:
 - "1. At the request of the Government of Nigeria, the Secretary-General has decided to send a fact-finding mission to Nigeria composed of three persons internationally recognized for their judgement and independence of mind to look into two issues of concern to the international community.
 - "2. The first matter to which the mission will address itself is the recent trial and execution of Mr. Ken Saro-Wiwa and others. In this connection, the mission will examine the judicial procedures of the trial in the context both of the various international human rights instruments to which Nigeria is a party and of relevant Nigerian law. Consultations will be held, inter alia, with representatives of the Ogoni communities, the Administrator of Rivers State, the ministers of Internal Affairs and Foreign Affairs, the Attorney-General of the Federation, the Chief Justice of Nigeria, members of the Ogoni Tribunal, the Chairman and members of the National Human Rights Commission, as well as lawyers both for the Prosecutor and for the defence.
 - "3. The second matter to which the mission will address itself is the plans of the Government of Nigeria to implement its declared commitment to restore the country to civilian democratic rule. In this connection, the mission will hold consultations with members of the various organs established to implement the Government's transition programme, including the National Electoral Commission, the National Reconciliation Committee and the Transition Implementation Committee. It will study the various relevant instruments and laws and hold consultations with representatives of other institutions, political parties, non-governmental organizations, the press and

trade unions. It may also conduct interviews with some of the personalities currently in detention.

- "4. The mission will present a report to the Secretary-General. This report will include recommendations for action which, in the mission's view, could usefully be taken, inter alia, by the Government of Nigeria.
- "5. The Government of Nigeria has undertaken to cooperate fully with the mission and to ensure its access to all persons, places and information which the mission feels necessary for the discharge of its mandate."

III. ORGANIZATION OF WORK

- 6. While organizing its work, the mission had before it the terms of reference, correspondence between the Secretary-General and the Head of State of Nigeria and background information provided by the Secretariat relating to the matters making up its terms of reference as well as other pertinent information on Nigeria.
- 7. The members of the mission were convened at United Nations Headquarters on 26 March 1996. They agreed to designate Justice Amega leader of the mission. The mission was briefed by the Under-Secretary-General, the Assistant Secretary-General of the Department of Political Affairs, and the Acting Director of the Africa II Division. The mission also met with the Special Adviser to the Secretary-General, the Legal Counsel, the Permanent Representative of Nigeria to the United Nations and the Permanent Observer for the Organization of African Unity to the United Nations.
- 8. On 27 March 1996, the Permanent Representative of Nigeria presented to the mission a draft programme for its visit to Nigeria.
- 9. The mission arrived in Lagos on 29 March 1996. Its proposed draft programme was further discussed with Nigerian

Government officials in Abuja upon the mission's arrival there on 30 March 1996. These discussions dealt with the duration of the mission, its itinerary as well as the need to have free access to information and individuals.

- 10. The mission visited Abuja on 29, 30 and 31 March and 1, 2 and 11 April; Lagos on 3, 4, 12 and 13 April; Borno State on 5 April; Enugu and Osun States on 6 April; Kano on 7 April; and Rivers State on 8, 9 and 10 April.
- 11. The mission issued four press statements while in Nigeria, with a view to providing the public and the media with information about its task and inviting individuals and organizations interested in providing information or in being interviewed by the mission to contact it.
- 12. During its visit, the mission was informed by some persons and organizations that had attempted to make contact with it or had been interviewed by it that they had been arrested and/or detained. The mission raised the issue with the Federal Government and, in the case of the incident which had taken place in Rivers State, with the military administrator of that state.
- 13. The mission was able to interview several organizations and individuals, including some detainees, without the presence of Government officials.
- 14. The mission resumed its work in New York on 15 April 1996 and finalized its report on 22 April 1996.

IV. SUMMARY OF INFORMATION AND VIEWS ON THE TRIALS OF MR. KEN SARO-WIWA AND OTHERS

15. The mission gathered information from the families of the victims (the four murdered chiefs), the families of Mr. Saro-Wiwa and others and Mr. Ledum Mitee -who had been acquitted in the trial - with a delegation from the Movement for

the Survival of the Ogoni People (MOSOP). It interviewed two of the members of the special tribunal, three members of the prosecution team, and some members of both the defence counsel retained by the accused and those appointed by the tribunal. On 11 April 1996 in Abuja, the mission interviewed leading counsel for the defence, Chief Gani Fawaehinmi, and the second counsel, Mr. Femi Falana, currently held in detention. On 9 April 1996, in the course of its visit to the Ogoni areas, the mission visited Jiokoo, the site where the murders took place and Bam, the home of Mr. Ken Saro-Wiwa. The trials were also discussed by the mission in the course of its meetings with the Minister for Foreign Affairs, the Minister of Justice/Attorney-General and his top aides, the Chief Justice, representatives of the Bar Association, political leaders, non-governmental organizations and political associations, in Abuja, Lagos, Port Harcourt and the other states visited by the mission.

- 16. The following paragraphs give a summary of the information received from the sources described in the preceding paragraphs.
- The Ogonis (estimated at 500,000) constitute one of a number of minority ethnic groups living in the Niger delta region. They live in an area approximately 200 square kilometres wide in the Rivers State of Nigeria. The members of the Ogoni community complain that their area has been neglected, proper roads have not been maintained, adequate medical facilities have not been provided, the problem of large-scale unemployment has not been attended to and they are suffering from pollution of the environment, in particular of the land and rivers on which they depend for their livelihood. This situation is all the more aggravated by the fact that oil is produced in Rivers State, including the areas inhabited by the Ogonis. Shell Oil Company used to have an active presence in the Rivers State, including head offices, oil extraction and other oil infrastructures. The Ogoni communities have felt for a long time that while oil was being extracted and produced from this state, inhabitants were not benefiting from the wealth of their land. Demands for improvement in the economic and social conditions were made by traditional chiefs as well as political leaders and environmentalists. These concerns were echoed by

the traditional rulers of the area in the course of the visit of the mission to Port Harcourt. These grievances had motivated the leaders of the Ogoni communities to establish MOSOP in 1990, and the formulation of the Ogoni charter of demands in what is described as the "Ogoni Bill of Rights".

- 18. One of the objectives of MOSOP was to implement the provisions of the Ogoni Bill of Rights. Negotiations were held between the Federal and state governments on the one hand, and MOSOP on the other. However, in 1993 MOSOP became divided between the youths (who declared their support for Ken Saro-Wiwa), on the one hand, and the traditional rulers, on the other. The events of 21 May 1994, when four prominent Ogoni leaders were killed, constituted the basis for the prosecution of Ken Saro-Wiwa and the other persons accused with him.
- 19. The main arguments used against the trials and executions were advanced by several organizations, including MOSOP, the Nigerian Bar Association, the Civil Liberties Organization, Amnesty International (Nigeria section), the lawyers for the defence who resigned protesting against the rulings of the tribunal during its consideration of the case, and others. The following legal issues were raised:
 - (a) The validity of the Civil Disturbances (special tribunal) Act of 1987 was attacked on the ground that its denies fair trial, a right which is a guaranteed fundamental human right, both under the Nigerian Constitution and the International Covenant on Civil and Political Rights;
 - (b) The constitution of the special tribunal is not valid for the reason that it was not preceded by the constitution of an investigation committee, a thorough investigation by the said committee and submission of its report as required by section 1 of the above-mentioned Act;
 - (c) The tribunal tried the defendants in two groups, in two concurrent trials, examining the same witnesses twice, thus causing grave prejudice to the defence;

- (d) The refusal of the request of the defence by the tribunal to present a videotape showing the Military Administrator of Rivers State accusing Ken Saro-Wiwa of the murders at a press conference in May 1994, before the case was submitted to the tribunal; this ruling of the tribunal is evidence of bias against the defendants;
- (e) The refusal of the tribunal to admit a videotape as evidence to bring out the contradiction in the testimony of a prosecution witness given before the tribunal is another circumstance indicating bias;
- (f) The lack of right of appeal against the decision of the tribunal represents serious deficiency in the dispensation of justice;
- (g) The haste with which the sentences were confirmed by the Provisional Ruling Council (PRC) implies that the Government had made up its mind and was not interested in a fair consideration of the case;
- (h) The PRC confirmed the conviction and sentence even before the records of the trial were received. At any rate, it was impossible for the tribunal to provide within eight days (the period between the date of the judgement and the date of confirmation) original or certified copies of the records and the judgement to all the 25 members of the PRC;
- (i) The failure of the defence lawyers (who were appointed by the tribunal after the withdrawal of the original defence lawyers in protest) to present the case of the defendants before the PRC in order to commute the sentences showed that the lawyers provided failed to protect the rights of the accused, thus violating their basic rights;
- (j) The presence of a military officer on the tribunal affected its independence and impartiality;
- (k) The tribunal proceeded with the trial even when their case was pending before the High Court wherein the accused

had requested a stay of further proceedings on the ground that the members of the tribunal were biased.

- 20. The lawyers for the prosecution, the judges of the Ogoni Tribunal, the defence lawyers appointed by the Tribunal and Government officials argued that the procedures followed were consistent with Nigerian law and international humanitarian law. Their views may be summarized as follows:
 - (a) The Civil Disturbances Act of 1987 is consistent with the Nigerian Constitution. It has been applied in a number of cases since colonial times. Civil disturbances cannot be satisfactorily dealt with by regular courts because legal process is very long and time-consuming and this might exacerbate the situation unless immediate action is taken. The average case takes 5 to 10 years from the lower court to the Supreme Court. Cases of civil disturbance, therefore, may have to be dealt with by a special tribunal to ensure speedy trial. Similar tribunals have been constituted to try cases of armed robberies, drug trafficking and arms trafficking;
 - (b) The tribunal comprised two judges and a military officer specialized in criminology;
 - (c) The tribunal followed the Nigerian laws and held its sessions in the open, and the Government did not interfere in its proceedings;
 - (d) The tribunal examined all witnesses for the prosecution and defence. On some occasions it rejected motions by the prosecution and on others, by the defence;
 - (e) The original defence lawyers resigned because they felt that they would lose the case and not because of bias of the tribunal;
 - (f) The fact that the Vice-President of MOSOP, Mr. Ledum Mitee, was acquitted in this case shows that the trial was not motivated by any extraneous factors;

- (g) The sentences were duly confirmed by the PRC and there is no evidence to show that the case was mishandled by the Government;
- (h) The Government felt that it had a primary responsibility to maintain law and order in the country. It maintained that it had to take firm and effective steps to combat disorder and chaos. It believed that the speedy trial of Ken Saro-Wiwa and the others was necessary to prevent disintegration of the country.

V. SUMMARY OF INFORMATION AND VIEWS ON THE TRANSITION PROGRAMME

A. Transition programme for restoring civil and democratic rule

- 21. In conformity with its terms of reference, the mission, throughout its visit to different parts of Nigeria, discussed the plans for transition to civil and democratic rule. These discussions showed a sharp division of views on this issue affecting the entire country, and more particularly since the annulment of the June 1993 presidential elections.
- 22. The military first took power in Nigeria in 1966; this was followed by the Biafra war. The end of the civil war, however, led to the consolidation of power by the armed forces. It was also stated that the armed forces had intervened, on occasions, at the request of the political leadership when the latter failed to resolve their differences and the country was faced with civil disorder and chaos. The mission was informed that the current military Government had been encouraged to take power by the political parties, supported by professional organizations, trade unions, women's groups and individuals.
- 23. Subsequent to the assumption of power by the current military Government in 1993, a Constitutional Conference was convened in 1994, two thirds of the delegates to which had been elected and one third designated by the Government. Upon conclusion of the work of the conference, a draft Constitution was proposed together with measures to be taken to assist the country to change over to civil democratic rule. On

- 1 October 1995, the Head of State announced a transition programme to culminate with the election of a president and the restoration of civil and democratic rule with effect from 1 October 1998. The transition was to take three years and was to be assisted by the establishment of a number of commissions designed to bring it about. These commissions are the following: Transition Implementation Commission; State Creation, Local Government and Boundary Commission; National Electoral Commission; National Reconciliation Commission; and the Federal Character Commission.
- 24. As stated above, Nigerian society is polarized. The opposition represented by a number of political associations, human rights activists and individuals, including former Cabinet ministers, governors and members of Parliament, were vehement in their opposition to the programme. They considered it a ploy by the military leadership to maintain power. They referred to similar arguments advanced by the previous regime and expressed apprehensions that the same tactics would be used when the time for departure of the military from power arrives in 1998. They pointed out that on the pretext of transition to civil and democratic rule, General Babangida continued in power for eight years, and likewise that the current military regime planned to continue its rule for as long a period of five years. Furthermore, they considered the programme too long, cumbersome, and a waste of time and resources. Moreover, the 1995 draft Constitution and the related arrangements were liable to be - and had been -altered by the military Government and there was therefore no guarantee that the transition programme would be implemented.
- 25. On the other hand, some of the opposition groups called for the handing over of power to an interim national Government which would immediately hold a national conference of all political forces to discuss the crises facing Nigeria. The proposed national conference should address itself to issues like the federation, the distribution of resources and institutions dealing with the democratization process and draft a new constitution.
- 26. Among those who had expressed grave doubts about the transition programme, some stated that the general framework

of the transition programme could be used to bring about democratic rule if certain measures were taken. These measures might include, as a minimum, the following:

- (a) Immediate release of all political prisoners and detainees;
- (b) Abrogation of Decree No. 2 of 1984, which confers arbitrary power of detention without charge;
- (c) Immediate restoration of the power of the courts to issue writs of habeas corpus;
- (d) Abrogation of all decrees which exclude the jurisdiction of regular courts;
- (e) The commitment to respect and obey all court orders;
- (f) The commitment to end the practice of seizing passports, thus denying Nigerian citizens their right to freedom of movement;
- (g) The commitment to end the harassment by the police and security forces of opponents of the regime;
- (h) Amendment of Decree No. 1 of 1996, concerning the transition programme, in particular section 6, to remove sanctions for criticism of the programme and the tribunal envisaged under that decree to try offences under it;
- (i) Repeal of Government decrees that interfere with the provisions of the Constitution;
- (j) The commitment to ensure that the National Electoral Commission is composed of members of all the political parties contesting the elections;
- (k) Supervision of the Nigerian elections by United Nations and other international observers to ensure fairness;
- (l) The commitment of the international community, particularly the United Nations, to be vigilant and follow closely the developments in Nigeria to maintain the

pressure on the military Government not to reverse the democratic process at the last moment, as has been the case in the past.

- 27. During its meetings with Government officials, the mission was informed of the irrevocable commitment to implement the transition programme. The sincerity of the commitment of the military Government is evidenced by the important steps it has taken, which include:
 - (a) Several decrees have since been promulgated to give legal backing to the entire programme;
 - (b) Various commissions and other bodies have been established under these decrees, such as the National Electoral Commission of Nigeria (NECON), which will conduct all elections, register political parties, delimit constituencies, etc.;
 - (c) NECON has just conducted elections to all the 589 municipal authorities, otherwise known as local Government Councils. The Government asserts that the elections were conducted peacefully, the turnout by voters was massive and the election was fair:
 - (d) The elections can be challenged in the newly established election tribunals.
- 28. The mission raised the issue of ouster clauses in decrees issued by the Government that precluded courts from inquiring into the validity of orders made under such decrees. Government officials pointed out that Nigerian courts had always asserted their judicial independence and had in a number of cases questioned the validity of such orders despite the ouster clauses, in the exercise of their inherent judicial powers conferred on them by the 1979 Constitution as amended. They cited the challenge to the decree concerning the closure of the premises of the newspaper The Guardian.
- 29. The Government cited the emergency situation in the country as a justification for Decree No. 2 of 1984, which provides for detention without trial.

30. It was submitted, on behalf of the Government, that the civil and democratic rule in the country had failed on several occasions, paving the way for military rule whenever a president from one region was elected, resulting in great disappointment and agitation by the people from the other regions. It was stated that the new Constitution had resolved this problem by ensuring due participation of all sections/parts of the State in running the Government and equitably sharing power. Reference was made in this connection to the following statement delivered by the Head of State on 1 October 1995:

"The national political offices which will be filled by candidates on a rotational basis are: President, Vice-President, Prime Minister, Deputy Prime Minister, Senate President and Speaker of the House of Representatives. This power-sharing arrangement which shall be entrenched in the Constitution shall be at Federal level and applicable for an experimental period of 30 (thirty) years."

- Government officials requested that the mission take cognizance of the fact that peace and stability prevailed in Nigeria. They compared conditions in the country with those of other countries in Africa and beyond and emphasized that Nigeria was a free country. They also cited the contributions of Nigerian forces to United Nations operations in different parts of the world and to the Economic Community of West African States (ECOWAS) Monitoring Group (ECOMOG) in Liberia. Furthermore, it was pointed out that the whole of the west African region depended on and was linked to the Nigerian economy and harming Nigeria economically would affect the whole region. The mission wishes to indicate that many non-governmental organizations, particularly women's groups, expressed the view that economic sanctions against Nigeria would be devastating to the country, particularly to women and children.
- 32. The Foreign Minister accused certain opposition groups of being financed and managed from abroad to harm Nigeria. He assured the mission that the programme for transition to civil democratic rule was irreversible, that three years were needed

to bring about a multi-party democracy representing all the States in the Federation and that the military leadership had no intention of staying in power beyond October 1998.

B. Political prisoners and detainees

- 33. In the fulfilment of its mandate, the mission raised the issue of political prisoners and detainees, notably at its meetings with the Minister for Foreign Affairs, the Minister of Justice and other authorities.
- 34. Release of political prisoners and detainees is of great importance to the democratization process. It was stressed by several persons and organizations appearing before the mission that no programme for transformation to democratic rule could be taken seriously while people were or could be detained in the country for their political beliefs.
- 35. Accordingly, on 1 April 1996, the mission addressed a letter to the Minister for Foreign Affairs requesting that arrangements be made for the mission to interview 12 specifically named political prisoners. On 4 April 1996, the mission addressed a second letter to the Minister for Foreign Affairs furnishing an additional list of three political prisoners and requested for arrangements to be made to interview them as well.
- On 6 April 1996, the Minister for Foreign Affairs replied to the Chairman of the mission stating that five of the persons listed by the mission were not detained (Chief Michael Ajasin, Anthony Enahoro, E. Rear Admiral Ndubuisi Kanu (Rtd.), Chief C. C. Onoh and Col. Yohanna Madaki) and that of the remaining 10, 4 were categorized as having been already convicted and serving a sentence (General Olusegun Obasanjo, Major-General Shehu Musa Yar'Adua (Rtd.), Mr. Beko Ransome-Kuti and Mrs. C. Anyanwu), 1 was in police custody under judicial order awaiting trial (Chief M. K. O. Abiola) and 5 were detained for acts prejudicial to State security and public order but not yet arraigned before a court of law (Mr. Femi Falana, Chief Gani Fawehinmi, Mr. Nosa Igiebor, Mr. Frank Kokori and Mr. Milton Dabibi).

- The Nigerian Government expressed the view that the mission's proposal had been to meet and interview persons that had been convicted and were serving a sentence was not in consonance with the terms of reference of the mission. However, arrangements would be made for the mission to meet Chief M. K. O. Abiola and some of the detainees listed by the Government as being detained for acts prejudicial to State security and public order. The Foreign Minister informed the mission that the modalities as well as the time and place for the meetings would be worked out to suit the schedule and convenience of the mission. On the same day, 6 April 1996, the mission replied to the Minister for Foreign Affairs acknowledging his letter and reiterating the view of the mission that its terms of reference necessitated that it interview all the persons mentioned in the letter of the Foreign Minister and described as being in detention, irrespective of whether they had been convicted and were serving a sentence or whether they were held in custody "awaiting arraignment before a court".
- 38. On 11 April 1996, in Abuja, the mission interviewed Chief M. K. O. Abiola, Chief Gani Fawehinmi, Mr. Femi Falana and Mr. Nosa Igiebor.
- 39. All four detainees with whom the mission met complained that they were not being provided with proper medical care, that newspapers and reading materials were not provided, that the members of their families and their lawyers were not allowed to meet and that they were being held in solitary confinement. The mission has taken account of the information obtained in the course of these interviews in the appropriate sections of the present report.

VI. ANALYSIS AND OBSERVATIONS

A. Trials of Mr. Ken Saro-Wiwa and others

40. The mission is required under its terms of reference to address itself to the procedures followed in the trial of Mr. Ken Saro-

Wiwa and others, in the context both of the relevant international human rights instruments, to which Nigeria is a party, and of relevant Nigerian law.

- 41. The constitution of special tribunals has been established in Nigerian law since colonial times. Special tribunals have been constituted for specific offences such as armed robbery, drug trafficking and illegal bankruptcy. Indeed, special tribunals were set up in the past, as early as in 1981 and 1986. In both those instances, the tribunals were established in conformity with the procedures envisaged in the Act; investigation committees were established prior to the decision to constitute a tribunal. Whereas special tribunals do form an integral part of the regular judicial system of Nigeria, the special tribunal that tried Ken Saro-Wiwa was established without a report by a duly constituted investigation committee.
- 42. The establishment of the special tribunals is governed by section 2, part II, of Act No. 2 of 1987. Under part I, section 1, the Act envisages the constitution of a civil disturbance investigation committee whenever the President, Commander-in-Chief of the Armed Forces, forms the opinion that any one of the following four conditions exists:
 - (a) There have occurred civil disturbances, commotions or unrest in any part of the Federal Republic of Nigeria;
 - (b) There has been a breach of the peace that would have the effect of destabilizing the peace and tranquillity of the nation;
 - (c) The public order and public safety of Nigeria is being threatened by any disturbance;
 - (d) There has occurred or may likely occur a riot or civil disturbances of a riotous nature resulting or likely to result, as the case may be, in loss of life and property and injury to persons.
- 43. The Act requires the investigation committee to conduct an investigation into the civil disturbances and to make

recommendations for the trial of any person or persons involved in the civil disturbances. The committee thus constituted shall consist of such persons as the President may appoint and may, subject to any general or specific directions that may be given in that behalf by the President, regulate its own proceedings as it may deem fit.

- 44. It is necessary to point out that the copy of the order made by the President under section 1 constituting the investigating committee and the copy of the report of the investigation committee were not produced either before the tribunal or before the present mission even though ample opportunity was available to the Nigerian Government to do so. It was not contended before the tribunal that the investigation committee had been constituted and that it had submitted its report. There is also nothing to indicate that the President had formed an opinion about the existence of any one of the conditions specified in clauses (a) to (d) of subsection 1 of section 1 of the Act. The names of the members constituting the investigating committee and a copy of the report of the investigation committee were not made available to the mission. The mission is therefore of the opinion that the President had not constituted a civil disturbance investigation committee and there is no report as contemplated by section 1 of the Act.
- 45. Part II, section 3, provides that the special tribunal shall try the offences specified in the first schedule of the Act; and the jurisdiction of the regular criminal courts is ousted. The provisions of the Act which oust the jurisdiction of the regular courts have to be strictly construed. The conditions for the constitution of a special tribunal must be found to exist before its constitution. The procedure prescribed by the Act for ascertaining these conditions must be strictly followed. In the context, the expression "may constitute a special investigation committee" used in section 1 of the Act has, in the opinion of the mission, to be construed as being mandatory in character and the word "may", in the context, means "shall". The special tribunal to try Mr. Ken Saro-Wiwa and others, constituted in violation of section 1 of the Act, had no jurisdiction to try Mr. Ken Saro-Wiwa and others.

- 46. Section 8, which ousts the jurisdiction of the court of law to inquire into the validity of any decision, sentence, judgement, confirmation, direction, notice or order given or made under the Act, cannot be successfully invoked in this case, firstly because the contention regarding constitution and jurisdiction of the tribunal was not raised before a court of law but before the special tribunal itself and, secondly, for the reason that the contention does not bear on the validity of any decision or order, the order constituting the tribunal being void ab initio and therefore non est.
- 47. Furthermore, the procedures actually followed in the course of the trials were not fair, as may be illustrated by the following:
 - (a) Denial of access to counsel for a long period prior to the opening of the trials. The mission notes that Mr. Saro-Wiwa and others were detained on the night of the incident, on 21 May 1994, without charge, and brought to trial on 6 February 1995. During this period they were held in inhuman conditions and denied access to counsel;
 - (b) Whereas after the opening of the proceedings, the tribunal accorded two weeks for the defence counsel to prepare the brief, access to counsel was limited by the condition of detention of the accused in a military base;
 - (c) The military was involved in all phases of the trial, as a result of which serious allegations were made affecting the credibility of witnesses, freedom of access to the tribunal and intimidation of the accused, their relatives and other members of the public;
 - (d) The defence counsel were harassed by the military personnel by requiring them to request permission of them to enter the courts and submitting them in the process to hardship, indignities and waste of time;
 - (e) Instead of furnishing the copies of the statements of witnesses as recorded by the investigation agency, only the summary of the statements of witnesses were furnished to the accused;

- (f) A videotape which was relied upon by the defence as an important piece of evidence was not permitted to be produced before the tribunal;
- (g) Mr. Ken Saro-Wiwa had a prepared statement which he tendered to the commission to be taken into consideration as his statement. The tribunal refused to receive the statement;
- (h) Affidavits on behalf of the defence by some of the witnesses examined by the prosecution stating that they had been bribed by the authorities to make their statements were not received in evidence;
- (i) The tribunal refused to stay further proceedings even though a request was made to that effect on the ground that an appeal had been preferred requesting the Appellate Court to stay the further proceedings before the tribunal on the ground that its members were biased against the accused.
- 48. Part III, section 7, provides for "confirmation" of the sentence as follows:
 - "7. (1) Where a tribunal finds the accused guilty of any offence referred to in this Act, the record of the proceedings of the tribunal shall be transmitted to the confirming authority for confirmation of the sentence imposed by the tribunal.
 - "(2) Any sentence imposed by the tribunal shall not take effect until the conviction or sentence is confirmed by the confirming authority and pending such confirmation the convicted offender shall be kept in such place of safe custody as the tribunal may determine.
 - "(3) The confirming authority may confirm or vary the sentence of the tribunal.
 - "(4) For the purposes of this Act, the confirming authority shall be the Armed Forces Ruling Council."

- 49. This procedure does not provide for judicial review by way of appeal or revision. The limited review contemplated is in the process of confirmation of the conviction and sentence contemplated by subsection 2 of section 7.
- 50. The mission was not informed of the procedures, if any, followed by the PRC under this provision. It notes that the death sentences handed down in both trials on 30 and 31 October were confirmed on 8 November 1995, and the executions carried out within 48 hours, namely on 10 November 1995. It was submitted to the mission that, within that time-frame, the records of the proceedings were not yet completed and that therefore the provisions of section 7 (1) could not have been complied with. It was said that the convicted persons were thus deprived of the right to have their death sentence reviewed. The mission was informed that in at least one earlier case a death sentence handed down by a civil disturbances special tribunal had been commuted by the confirming authority to a sentence of five years' imprisonment.
- 51. Subsection 2 of section 7 provides that any sentence imposed by the tribunal shall not be carried out until the conviction or sentence is confirmed by the Armed Forces Ruling Council. Subsection 3 says that the confirming authority may either confirm or vary the sentence of the tribunal. If both subsections 2 and 3 are read together, it would follow that the confirming authority is statutorily required to apply its mind to the records of the case in order to decide as to whether the conviction on merits is justified or not and if the conviction is justified as to whether the sentence imposed is excessive.
- 52. Examination of the records of the case, which means consideration of the entire evidence and the judgements, has to be made by the PRC in order to satisfy the provisions of section 7. It was submitted before the mission that the records in this case as well as in the connected cases covering several thousand pages were not ready and were therefore not sent to the confirming authority before it took the decision to confirm the conviction and sentence. The period between the date of pronouncement of the judgement and the date of confirmation is hardly eight days. Even with the best of efforts and diligence,

it was not humanly possible to achieve the feat of preparing the records and transmitting the same from Port Harcourt to Abuja. As the two trials were conducted concurrently, the records of both the cases had to be prepared and dispatched and the PRC was required to peruse those records before it took a decision to confirm the conviction and sentence on 8 November 1995. Having regard to the circumstances, it is obvious that the confirmation was recorded without the application of mind by the members of the Council to the records of the case as required by section 7 of the Act. The requirements of section 7 being mandatory, confirmation by the confirming authority is not legal and valid.

53. The President, it was submitted before the mission, has the power of according clemency and such power was in fact exercised on several occasions. In this connection, the International Covenant on Civil and Political Rights provides, in article 6, paragraph 4, as follows:

"Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

In order to enable the person convicted to petition the President for clemency, he should be provided with a copy of the judgement and given a reasonable period to study, prepare and submit the petition for clemency. In the present case, the period between the date of the judgement and the date of confirmation was eight days and the period between the date of confirmation and the date of execution was two days. By any reasonable standards this can hardly be regarded as a reasonably sufficient period for the convicted persons to submit a petition for clemency.

54. The mission notes that the right of appeal is recognized in Nigerian law in all cases tried under criminal law; this is especially the case when the offence is one of murder. Moreover, right of appeal is recognized in the International Covenant on Civil and Political Rights (article 14 (5)). In this

context, the mission was informed that at the time of the executions, an appeal filed on 25 July 1995 to the Court of Appeal from a decision of the High Court, rejecting the application for stay of proceedings on the ground of procedural and personal bias in the tribunal, was still pending.

55. In the view of the mission, the composition of the special tribunal is not in conformity with the standard of impartiality and independence set out in applicable human rights law as found in the African Charter on Human and People's Rights (article 7 (1) (d) and article 26) and the International Covenant on Civil and Political Rights (article 14 (1)). The presence of a military officer on the tribunal is, in the view of the mission, contrary to these provisions.

B. Implementation of the transition programme

- The second matter to which the mission has addressed itself is the plan of the Government of Nigeria to implement its declared commitment to restore the country to civil democratic rule. These plans and this commitment are to be found in the statement made by General Sani Abacha on 1 October 1995. The mission notes that, since then, a number of steps have been taken to implement this commitment. Local government elections (on a non-party basis) were held in March of this year. In January 1996, three decrees were promulgated, namely, Decree No. 1, entitled "Transition to Civil Rule (Political programme)"; Decree No. 2, "Transition to Civil Rule (Lifting of Ban on Politics)"; and Decree No. 3, "National Electoral Commission of Nigeria". These three decrees set out the details of the calendar of transition, which is the process of electing local governments, State governments and a President by 1 October 1998, the date set for the return to civil rule.
- 57. The information received by the mission on this issue may be grouped in three parts: (a) the views according to which these plans and the activities carried out thereunder constitute the best response by the Government to the recognized need to return to civil democratic rule; (b) the opposite view that the plans are doomed to failure and may only be considered, at best,

- a pretext to perpetuate military rule in Nigeria; and (c) the view according to which, regardless of the intentions, the plans could be successfully implemented if the current climate were to be improved to provide greater assurance and confidence among all sectors of Nigerian society.
- 58. The mission found that the division in Nigerian society is quite sharp. Positive efforts on behalf of the Government, political associations and individuals are important to heal the wounds in society and move forward towards civil democratic rule. Therefore, confidence-building measures are needed in order to ensure the success of the programme.
- 59. The release of political prisoners and detainees is one of the major steps in confidence-building.
- 60. The abrogation of Decree No. 2 of 1984, concerning arrest without trial of political opponents of the regime, and section 6 of Decree No. 1 of 1996, concerning the promulgation of the transition programme which prescribes fines and imprisonment for those who criticize the programme, as well as other decrees restricting political activities and freedoms are essential steps to achieve national reconciliation.
- 61. The mission found the press in Nigeria to be vigorous and alert. Whereas a large measure of freedom is enjoyed, there is disturbing evidence of harassment of some journalists and closing of newspapers.
- 62. Opposition groups are not willing to cooperate with the Government in the implementation of the programme until the restrictions on the enjoyment of fundamental freedoms by all are removed.
- 63. While at the moment the opponents of the regime refuse to cooperate with it or to participate in the election process, the mission feels that these rigid postures would soften if confidence-building measures were taken by the Government.
- 64. Both the Government and the opposition welcome the role of the United Nations and of international observers to monitor the elections.

- 65. There was general opposition to any sanctions against Nigeria. It was pointed out that sanctions would hurt only ordinary people and had a negative impact not only on Nigerian society but also on the whole West African region.
- 66. It would appear to the mission that there is consensus in Nigeria on the following: (a) the military Government must come to an end and civil democratic rule should be restored; (b) the electoral process should involve international observation/monitoring; and (c) persons detained without charge and other persons currently in prison for political reasons or offences should be released before the elections.
- 67. The mission received numerous expressions of concern stemming from various aspects of the current situation. It was pointed out that at present the judiciary is not in a position to carry out the constitutional responsibilities entrusted to it in protecting fundamental human rights as its jurisdiction is curtailed by the issuance of decrees that have made serious inroads into the authority of the courts in regard to both fundamental issues of substance, such as basic human rights provisions, and procedures such as the resort to special tribunals.
- 68. Furthermore, the mission noted expressions of concern about interference in the right to freedom of association of certain sectors such as the labour organizations, the Medical Association and the Bar Association, and the National Association of Businessmen. This attitude of the Government has created a situation in which the plans for transition were viewed with considerable scepticism and suspicion, strengthening the view among those who felt that a military Government could not conceivably usher in a truly civil democratic rule.
- 69. Another criticism recorded by the mission was that the bodies supervising the transition did not have adequate representation from all sections of society. The case of the National Election Commission was cited as being particularly significant as it was essential for that body to enjoy nationwide recognition and respect for its authority.

- 70. Numerous persons and organizations interviewed by the mission expressed the view that the transition calendar was unnecessarily prolonged and that this constituted a threat to the success of the process, casting doubt on the bona fides of the transition programme. Others expressed the view that the longer duration of the transition was justified because, in addition to the process of election, other steps had to be taken for devolution of power and resources before full civil democratic rule could be restored.
- A Constitution Conference was convened on 27 June 1994. The Conference prepared a draft Constitution, which was presented to the President on 7 June 1995. The draft Constitution, as proposed by the Conference, was further modified by the Provisional Ruling Council before it was approved. On 1 October 1995, the President announced plans for the transition and gave details of the timetable leading up to 1 October 1998, which was set as the date for swearing in the newly elected president and the final disengagement of military rule. In the same address, the President announced the establishment of a number of committees, consistent with the recommendations of the Constitutional Conference, for the purpose of facilitating the transition programme. Apprehension was however expressed by several others who felt that in the absence of adequate guarantees there was no possibility of successful completion of the transition programme. Moreover, the role of the military in controlling the transition process was a source of scepticism concerning the sincerity of the transition process. Some others echoed the view that the transition to democracy should be conducted by a sovereign national conference.
- 72. The mission observes that the differences of views reflected in the report of the Constitutional Conference as regards the duration of the transition and the role of the military in that transition, still persists today. This has created a situation which, in the view of the mission, constitutes a serious threat to the successful realization of the transition. However, in the view of the mission, any attempt to interrupt or reverse the momentum that is being generated could prove counterproductive and further delay the realization of the goal to bring about civil democratic rule. In the opinion of the mission, there is a need to take appropriate confidence-building measures.

- 73. We have given as fair an account as possible of what we were able to gather during our visit to Nigeria. Our meetings and discussions with General Sani Abacha and others have given us the impression that the Head of the State is sincere in his commitment to restore civil democratic rule by 1 October 1998 in accordance with his declared commitment. The Nigerian people as a whole are against continuance of the military rule.
- 74. The current military Administration appreciated the efforts of the Secretary-General in sending the mission; this appreciation was also expressed by those who oppose the military Administration. It was hoped that these efforts of the Secretary-General would help to restore to Nigeria its rightful place in the comity of nations.
- 75. The Head of the State has displayed statesmanship by his willingness to be transparent by inviting a neutral United Nations fact-finding mission to Nigeria. This indicates the willingness of the military Administration to consider proposals that may be made by the mission.
- 76. The mission is of the opinion that sanctions against Nigeria at this stage may prove unhelpful and retard the progress towards positive improvement. The mission would like to make some helpful and constructive recommendations to build up confidence and to improve the situation, which, we hope, the Nigerian Government can be persuaded by the Secretary-General to accept and implement in the spirit in which the Nigerian Government and the Secretary-General agreed to send this mission.

VII. RECOMMENDATIONS

77. As required by its terms of reference, the mission makes the following recommendations for action which, in the view of the mission, could usefully be taken, inter alia, by the Government of Nigeria:

In regard to the trial of Mr. Ken Saro-Wiwa and others

- (a) The Government of Nigeria should repeal the Civil Disturbances (Special Tribunal) Act of 18 March 1987 so that offences of this type are tried by the ordinary criminal courts;
- (b) In the alternative, the mission recommends that the following amendments be effected to the said Act:
 - (i) Section 2 (2b) of the Act providing for appointment of the serving member of the armed forces as a member of the special tribunal should be deleted;
 - (ii) A specific provision should be incorporated to the effect that the members of the special tribunal shall be appointed on the recommendation of the Chief Justice of the Supreme Court of Nigeria;
 - (iii) Section 7 of the Act should be amended to provide for confirmation of the order of conviction and sentence by the Nigerian Court of Appeal in place of confirmation by the Provisional Ruling Council;
 - (iv) Section 8 of the Act which excludes the jurisdiction of the courts of law to review the decision of the special tribunal should be deleted and the power of the superior courts to issue writ of habeas corpus should be restored;
 - (v) A specific provision should be made to provide for an appeal against the decision of the special tribunal to the Supreme Court of Nigeria;
- (c) In the case of the trials of Ken Saro-Wiwa and others, the Government of Nigeria should consider establishing a panel of eminent jurists, nominated by the Chief Justice of Nigeria, to establish the modalities to determine who and to what extent financial relief could be accorded to the dependents of the families of the deceased;

(d) All the trials pending and contemplated under the Civil Disturbance (Special Tribunal) Act should be suspended and further action taken only after the above-mentioned amendments are carried out.

In regard to the situation of the Ogoni people

The mission recommends the constitution of a committee comprised of representatives of the Ogoni community and other minority groups in the region to be chaired by a retired judge of the High Court for the purpose of introducing improvements in the socio-economic conditions of these communities, enhancing employment opportunities, health, education and welfare services and to act as ombudsman in any complaint/allegations of harassment at the hands of the authorities. This committee may make recommendations for the Government to carry out.

In regard to the transition programme

The mission recommends that the Government:

- (a) Strengthen the existing committees and commissions established to usher in democratic civil rule by incorporating persons holding different shades of opinion, those representing professional associations, political groups and ethnic minorities;
- (b) Invite an international team, composed of observers from the United Nations and/or the Organization of African Unity (OAU), to be stationed in Nigeria to monitor the implementation of all the remaining stages of the transition programme, including the elections;
- (c) Designate a review committee under the chairmanship of a judge of the superior court to examine the decrees promulgated by the military Government to date to identify and recommend the repeal of such of those decrees or provisions thereof that encroach on the human rights provisions of the Constitution or otherwise hinder the supremacy of the rule of law;

- (d) Ensure that the executive branches of Government and, in particular, the various State and armed forces security agencies respect and promptly carry out the decisions, orders and judgements of the courts;
- (e) Release all persons detained under Decree No. 2 of 1984 and similar decrees and grant amnesty to persons who have been convicted for political offences;
- (f) Lift the existing restrictions in law, in fact and in practice and refrain from imposing other restrictions on political and professional associations, and labour unions, in accordance with the national and international norms on freedom of association:
- (g) Remove restrictions on the right of freedom of expression of the press, release journalists and refrain from harassing the media;
- (h) Give wide publicity to and make available copies of the 1995 draft Constitution.
- 78. The mission recommends that the Secretary-General continue the dialogue with the Head of the Federal Republic of Nigeria in creating conditions for the restoration of civil democratic rule.

Read and adopted at United Nations Headquarters today, the twenty-third day of April, nineteen hundred ninety-six.

(Signed) John P. PACE (Signed) V. A. MALIMATH (Signed) Atsu-Koffi AMEGA

Annex II

Interim response of the Government of Nigeria to the report of the fact-finding mission

Letter дateд 21 May 1996 from the Special Adviser (Legal Matters) to the Head of State of Nigeria аддгеззед to the Secretary-General

I have been directed by the Head of State, General Sani Abacha, to communicate to you the underlisted as his interim response to the various recommendations contained in the said report which was submitted to him by Ambassador Brahimi, your Special Envoy.

- 1. The Civil Disturbances Act under which Mr. Ken Saro-Wiwa and eight others were tried and convicted will be amended: (a) to exclude members of the armed forces from serving on the tribunal; and (b) its verdict and sentence shall be subject to judicial review at the appellate level before confirmation by the confirming authority.
- 2. The Oil and Mineral Producing Areas Development Commission (OMPADEC) will be directed to look into whether there are peculiar ecological and environmental problems in the Ogoni area with a view to ameliorating them. The Federal Government will, with vigour, join the concerted efforts currently being undertaken by the Administrator, Rivers State, to reconcile all the parties in the Ogoni area.
- 3. The Head of State has directed the immediate review of the cases of all persons currently being detained without trial under Decree No. 2 of 1984 as amended. Very shortly, such persons will be released based on an assessment of the individual merit of each case.
- 4. Decree No. 2 of 1984, as amended, which presently permits the detention of persons suspected of engaging in acts prejudicial to

State security without trial and for an indefinite period will be amended to allow for the periodic review of each case by a body comprising the Chief of General Staff, the Inspector General of Police and the Attorney General of the Federation at an interval of three months.

5. Decree No. 14 of 1994 which ousts the jurisdiction of courts to issue the writ of *habeas corpus* to persons detained under Decree No. 2 of 1984, as amended, will be repealed.

I am also to assure Your Excellency that other aspects of the report are currently under serious consideration and the Government will in due course convey its decisions on them.

Finally, I am to further assure Your Excellency that the Head of State, General Sani Abacha, deeply appreciates the understanding and support which you have consistently shown to him personally and to the people of Nigeria in these trying times. He also warmly welcomes the ongoing dialogue between him and Your Excellency under your good offices which is aimed at assisting his Administration in its current efforts to return the country to a democratically elected civilian administration in 1998 in accordance with the transition to civil rule programme launched on 1 October 1995.

(Signed) Auwalo Hamisu YADUDU Special Adviser (Legal Matters) to the Head of State

Members of the International Commission of Jurists

President

Michael D. Kirby, AC, CMG,

Judge, High Court of Australia; President, Court of Appeal of the Solomon Islands

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Advocate; UN Special Rapporteur on the Independence of Judges, Jurors and Lawyers; former Chairman of Standing Committee on Human Rights, International Bar Association; Malaysia Substitute - Chief Justice of Mauritius; Member,

UN Human Rights Committee

Director, Korean Legal Aid Centre for Family Relations

Deputy High Court Judge, Hong Kong Professor of Social Law, France Advocate of High Court, Tanzania Investigator-General, Zambia

Professor of Public Administration at the Austrian Federal Academy; Expert for the UN Working Group on Forced Disappearances, Austria. Former Supreme Court Judge, Pakistan

UN Coordinator, Regional Political & Security Cooperation;

Adjunct Professor, Columbia University School of International Affairs (New York); Guyana

First Deputy Ombudsman; Spain

Senator, Argentina; Chairman, Human Rights Committee

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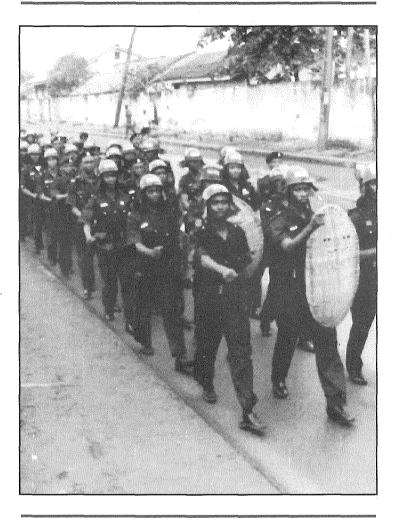
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