

## Open Letter to CMAG Regarding Nigeria

In this Open Letter to the Commonwealth Ministerial Action Group (CMAG), the Commonwealth Human Rights Initiative (CHRI) recalls the charge of CMAG in the 1997 Edinburgh CHOGM Communique, at paragraph 11 to continue to monitor the process of transition to democratic, civilian government by the present Nigerian regime in the period up to 1 October, 1998. With this charge in mind, CHRI seeks a statement from CMAG expressing its disapproval of the recent actions of the Abacha military regime as described below and urges CMAG to recommend to the Commonwealth Heads of Government that the sanctions adopted by them in October 1997 be immediately implemented by all Commonwealth countries.

CHRI seeks these actions since there is a continuing and flagrant disregard for human rights by the Nigerian government which runs contrary to any moves towards the restoration of democratic rule.

CHRI recalls CMAG's concerns with Nigeria's non-compliance with three elements of the Harare Principles, specifically, democracy, democratic processes and institutions; the rule of law and independence of the judiciary, and fundamental human rights. CHRI further draws the CMAG's attention to CHRI's last submission of February of this year (attached) which outlines Nigeria's continued lack of commitment to civilian and democratic rule and the corresponding stifling of dissent.

In CHRI's view, the Nigerian regime has failed to take credible steps towards a transition to democracy. In particular, CHRI notes the following :

- the extensive list of human rights violations reported by the UN Special Rapporteur on Nigeria including unfair trials by Special Tribunals, hostage-taking of people living in exile, intimidation and arrest of journalists, life-threatening conditions in jails, and denial of medication and food for prisoners;
- the farcical creation of 5 political parties, all government funded, which have all nominated General Abacha as the sole Presidential Candidate;
- the continued detention of political dissidents, including Chief Mohshood Abiola, the presumed winner of the last presidential elections in 1993, the former Head of State, General Olusegun Obasanjo and Mr Beko Ransome-Kuti of CHRI's Advisory Committee, despite pleas made by Pope John Paul II in March of this year to release 60 prisoners;
- the reported release of more than 120 detainees, most of whom appear to have been common law prisoners, while welcome, does not suggest any change in policy with respect to the tolerance of political opposition or human rights – political dissidents continue to be arrested and detained in terrible and inhumane conditions;
- the conviction of 30 persons for an attempted coup under the 1996 Treason and Other Offences Decree by a secret Special Military Tribunal operating under the same rules of procedure as that Tribunal which ordered the execution of Ken Sarowiwa and which has been found to be in violation of Article 7 of the African Charter on Human and People's Rights by the African Commission. Of those 30, 6 have been sentenced to death, including Lieutenant-General D Oladipo Diya, former Vice-Chairperson of the Provisional Ruling Council;
- local government elections originally scheduled for late 1996 were delayed until 15 March, 1997 and suffered from a flawed registration process, pre-election screening of candidates and unresolved disputes about the delineation of constituencies;
- state assembly elections were delayed for 3 months and suffered from an extremely low voter turn-out, with government canceling results in some electorates. The consequential anger and frustration of the electorate is a threat to the peace and security of the country,

whilst the low turn-out is a clear sign that the citizens are skeptical of a transition to democracy on the basis of present governmental processes.

CHRI urges the CMAG to fulfill its mandate and recommend action against those member countries which take undemocratic action and violate human rights as set out in the Harare Declaration. The Commonwealth Heads of Government must be made to focus on Nigeria's violation of fundamental Commonwealth values and urged to immediately assess the situation and, on the basis of Nigeria's proven record of international delicts, implement sanctions against Nigeria so as to indicate to Nigeria Commonwealth disapproval. CHRI further urges CMAG to recommend to the Commonwealth Heads of Government to decide that if General Abacha is to be re-installed on 1 October 1998 without fair elections, then Nigeria is to be expelled from the Commonwealth.

There should be no doubt in the collective mind of the Commonwealth that the present course of 'transition' by the Nigerian Government will not lead to civilian and democratic governance. Instead, political dissidents languish in jail, the Nigerian legal system remains disabled, the Rule of Law cannot prevail, the right to life is disregarded due to continued indiscriminate and excessive use of force and the imposition of the death penalty, and the rights to liberty and security of Nigerians are violated on a massive scale, as are the right to a fair trial, freedoms of expression and the press and freedoms of assembly and association. Such flagrant disregard for human rights and good governance leaves CMAG and the Commonwealth Heads of Government with the little moral choice but to act now to defend the citizens of Nigeria and pave the way to a sincere and democratic transition to good governance.

Dr Kamal Hosain  
Chairperson, The Advisory Commission, CHRI

1<sup>st</sup> June, 1998

**SUPPLEMENTARY SUBMISSION ON NIGERIA  
BY  
THE COMMONWEALTH HUMAN RIGHTS INITIATIVE  
TO  
COMMONWEALTH MINISTERIAL ACTION GROUP**

**Recalling** that at the Edinburgh CHOGM 1997 Heads of Government accepted the recommendations of the CMAG<sup>1</sup> on the Harare Declaration with respect to its findings on Nigeria and charged them with continuing to monitor the process of transition to democratic civilian government by the present Nigerian government in the period up to October 1<sup>st</sup> 1998<sup>2</sup> and

**further** recalling that the CMAG report as adopted by the Heads of State was concerned with Nigeria's non-compliance with three elements of the Harare principles specifically, democracy, democratic processes and institutions; the rule of law and independence of the judiciary; and fundamental human rights; and

**recalling** that CMAG noted that the "continued existence of a military government in Nigeria constitutes the most blatant violation of the Harare principles" and provides "the context for a range of further violations".

**CHRI submits that :**

- (1) Given the vast amount of political detainees that continue to languish, suffer maltreatment or die in prison there is no clear indication, five months into a 12 month allotted period, that the military regime is taking steps to ensure conditions favourable for a political transition or reconciliation.**

There is cold comfort in the CMAG report statement that "there have been no further political executions since November 1995". Political prisoners in Nigeria are constantly in danger of suffering ill-treatment, torture and other forms of duress as there are no provisions to ensure their rights as they can be held indefinitely and incommunicado.<sup>3</sup> Prisoners are not given the right to be seen by an independent doctor or any other independent source.

Since October 1997 the military regime has done nothing to ameliorate prison conditions. Over crowding, medical neglect and maltreatment of political prisoners continues to be life threatening. Since October 1997 General Shehu Musa Yar'Adua, 54, who was perceived as a serious political threat died in prison in early December 1997. Staff Sergeant Patrick Usikekpo who was imprisoned for allegedly allowing unauthorized access to Colonel Gwadabe, another political detainee, is reported to have died along with five others in mid-December 1997. Dr. Beko Ransome-Kuti, member of CHRI's Advisory Board, has been hospitalized after his health deteriorated seriously in prison and is reportedly in serious condition.

The Nigerian National Human Rights Commission, established in June 1996 has recommended that a review of prison conditions take place. Recommendations of the Commission are not binding on the government and there is little to indicate compliance.

Since October 1997 Nigeria has continued to arrest, detain and harass persons critical of the government. Thereby stifling all dissent which is a necessary condition for democratic debate and a requirement for the transition to civilian rule.

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<sup>1</sup> Communiqué para 11

<sup>2</sup> Executive summary of the CMAG Report to Heads of Government hereinafter 'the CMAG Report' para 11 (i)

<sup>3</sup> 1984 State Security Decree

Trials of political opponents do not today conform to international standards of due process. 26 people including the country's second highest ranking officer General Staff Lieutenant Oladipo Diya are reported arrested for an "attempted coup," details of which have not yet been made public. Their trials by special military tribunals have begun on 14 Feb 1998 amid widespread concerns that the system of trial will remain as flawed as that which led to the illegal execution of Ken Saro-Wiwo.

As of January 1998 the Nigerian government still has no published plan for the release of political prisoners. This despite the assurance by General Abacha that certain political prisoners would be released<sup>4</sup>. Previously the Nigerian government had also announced that it will review cases of all people held under Decree No. 2 of 1984 and if possible release any persons after an assessment of the individual merit of each case. Though a very few persons have been released since then, at least 22 further persons were arrested in January 1998 including Batom Mitee and Chima Ubani, Secretary-General of the Democratic Alternative, both former prisoners of conscience, who were re-arrested. At least three other pro-democracy advocates have been detained upon their return to Nigeria after traveling abroad. The National Human Rights Commission, has according to its Newsletter been effective in gaining the release of some prisoners.

**(2) In the run up to the transition to democratic rule the military regime has not yet taken any steps to date to restore fundamental human rights to its citizen but continues to rule by decree.**

Currently there are no guarantees of fundamental human rights for the Nigerian people. While the 1979 Constitution has been restored the sections related to fundamental human rights remain suspended<sup>5</sup>.

Although the Nigerian government restored habeas corpus in October 1996 it still retains the legal authority to detain citizens and to ignore court challenges.<sup>6</sup> Court orders are routinely disobeyed, especially those that require production of prisoners or their release. For example, Soji Omotunde, a detainee, continues to be imprisoned despite a December 1997 court order that calls for his release.

Since October 1997, there have been no changes in the method of trial for prisoners. The above mentioned decree ousts the jurisdictions of the courts and special tribunals cannot be said to be impartial, transparent or afford the protections required by international standards or the rule of law. Most accused are not allowed sufficient time to prepare their defence nor are they given adequate access to counsel, or who are often government appointed.

A panel established to review cases of persons detained beyond 90 days often consists of members who passed the original detention order. In any event their recommendations are not binding on the government. Special tribunals may no longer have active members of the military on them and verdicts and sentences are subject to judicial review at the appellate level before confirmation. However, many prisoners are subjected to punishment before the appellate court has heard the case and many question the impartiality of the confirmation authority. Thus due process and fair judgement remain elusive rights for Nigerian citizens.

**(3) Strict restrictions on the freedom of speech and expression and refusal to tolerate peaceful demonstrations by minorities, indicates the military regimes continued unwillingness to accommodate diversity, or tolerate democratic dissent, or political criticism, or permit freedom of association.**

At least thirty journalists have been reported arrested since October 1997 for their continued attempts to inform the Nigerian citizens of the governments lack of credible steps towards civilian rule or other abuses. Although journalists have recently been told that they may observe the trial of Gen.

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<sup>4</sup> November 17, 1997 speech to the nation

<sup>5</sup> Decree No. 107 of 1993

<sup>6</sup> Decree No. 2 and No. 12 of 1994

Staff Lt. Diya they could not report on any details. In early January 1998 over 30 Ogonis were reported arrested and detained for participating in peaceful celebrations to mark Ogoni National Day.

***In conclusion:***

**(4) Nigeria has only 12 months from the last CHOGM (October 1997) in order to “make the transition to civilian government” and still meet its own deadline for the transfer to civilian rule by democratic processes in October 1998. In the period between October 1997 and to date, Nigeria has not taken any significant steps which indicate that it is seriously furthering the agenda towards this democratic transition.**

The CMAG reports that the “timetable of the current transition programme remains broadly on course” although it remains concerned about “aspects of the programme which undermine its’ credibility.” However, under S.6 of Decree No. 1 of 1996 a person is subject to jail or a fine for opposing the transition and the methods outlined by the regime from military to civilian rule. The presence of such a decree itself presumes that any future process is likely to be manipulated and that there will be deep criticism of the outcome which will need to be suppressed.

Previous State and local level elections have taken place in circumstances of considerable delay. Their credibility has been seriously flawed by pre-election screening of candidates, low voter turnouts and flawed voter registration processes. Most notably, only 5 of the 17 political parties who applied for registration were registered despite all 17 meeting the very strict and onerous registration requirements. The surety of democratic functioning provided by elections is seriously undermined by the ability of the regime to cancel results and for the Head of State to remove duly elected council representatives.

Therefore under para 15 of the CMAG report which empowers CMAG to invoke in the period before the deadline any or all of the measures recommended which would serve to encourage greater integrity of the process of transition and respect for human rights.

**(5) CHRI recommends that:**

- A) All measures as outlined in Paragraph 11(ii) of CMAG report be progressively more strictly implemented by all governments of Commonwealth as an indication of the seriousness with which violations by Nigeria are taken; and
- B) That the CMAG fulfil its mandate to monitor the Nigerian transition through seeking and insisting upon, direct access to the country in order to assess the state of human rights, the application of the rule of law, and the transition to civilian government.

Any resistance to direct access to Nigeria by members of CMAG seeking to fulfil their mandate to monitor its transition to civilian democratic rule should be indicative of Nigeria’s lack of commitment to transferring power to the people and become the basis of immediate further actions and sanctions.

In this regard CHRI draws attention of the consistent refusal of Nigeria to permit direct access to the Special Rapporteurs of the UN – most recently, the Special Rapporteur on Human Rights in Nigeria who to date has not been able to visit the country and meet with political detainees there or examine the functioning of the system of justice for the realization of human rights; and

- C) CMAG devise a series of specific bench marks for each of the coming seven months to determine whether the transition to democracy is being realistically pursued and whether the Nigerian government will be in a position to transition to democratic civilian rule by October 1998; and

- D) That if it should appear to CMAG that these bench marks are not being met that it immediately recommend to the Commonwealth Heads of Government that more serious steps as outlined in Paragraph 11(iv) be initiated even prior to October 1, 1998.

27<sup>th</sup> February 1998