

# NIGERIA – STOLEN BY GENERALS

ABUJA AFTER THE HARARE COMMONWEALTH  
DECLARATION



**Report of a mission by the non-governmental Commonwealth Human Rights Initiative**

## **THE COMMONWEALTH HUMAN RIGHTS INITIATIVE**

The Commonwealth Human Rights Initiative was founded, as a charity, in 1987 in a non-governmental effort to make human rights more significant for the Commonwealth and, so far as possible, to improve the condition of citizens in the 50 member countries. It is supported by the Commonwealth Journalists' Association, the Commonwealth Lawyers' Association, the Commonwealth Legal Education Association, the Commonwealth Medical Association and the Commonwealth Trade Union Council.

An international Advisory Group chaired by Flora MacDonald issued a comprehensive report, *Put our World to Rights* in 1991. This was influential in persuading Heads of Government meeting at Harare to adopt a strong commitment to human rights. In 1992 the initiative appointed a new Advisory Commission, chaired by Dr Kamal Hossain. This Advisory Commission issued a further Report, *Act Right Now*, in 1993 urging action to fulfil the promise of Harare.

The office of the Initiative moved from London to New Delhi on August 1, 1993 and was inaugurated the following day in the presence of the Vice-President of India and Dr. Kamal Hossain. Among its activities, the Initiative has run a workshop for non-governmental bodies (NGOs) in Kenya, in September 1993, on the protection of the rights of refugees and a workshop in New Delhi in December 1994 on Police, Prisons and Human Rights.

*Cover picture: Children photographed by the CHRI Team at a Lagos detention centre (see page 15)*

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## **CHRI FACT-FINDING MISSION TO NIGERIA 7-21 JULY 1995**

### **Foreword**

This report of a human rights fact-finding mission to Nigeria in July 1995 is being sent to Commonwealth governments, and non-governmental organisations, and will, I hope, be widely read by concerned citizens in our 51 countries. On behalf of the Commonwealth Human Rights Initiative I should like to thank the Hon Flora MacDonald of Canada, Dr Enoch Dumbutshena of Zimbabwe and Dr Neville Linton of Trinidad & Tobago for the painstaking and comprehensive inquiry they have undertaken.

The issue of human rights in Nigeria, under a military regime, which has ruled that country for most of the time since it became independent, has become increasingly serious. In spite of Nigeria's valiant contribution to the ending of apartheid in South Africa, and the creative role which many Nigerians have played in Commonwealth affairs, we in the non-governmental Commonwealth Human Rights Initiative have felt that Nigerian citizens themselves are seriously deprived of the rights and freedoms they should expect. In the light of the Harare Declaration of 1991, to which the Nigerian government committed itself, Nigerian citizens are entitled to enjoy their basic human rights if their government is to go on being welcome at Commonwealth meetings.

Since 1989 our Initiative has been advised on Nigerian matters by a member of our Advisory Commission, Dr Beko Ransome-Kuti. Dr Ransome-Kuti is a former secretary-general of the Nigerian Medical Association and currently chairs the Committee for the Defence of Human Rights and is President of an umbrella body, the Campaign for Democracy. Dr Ransome-Kuti himself has been the subject of cat and mouse arrests by the authorities for several years. Disgracefully, and just after the CHRI mission left Nigeria, he was sentenced to life imprisonment by a military tribunal which was acting with none of the legal restraints expected of a Commonwealth court. The trumped-up charge was that he was an accessory to the so-called coup plot for which ex-President Obasanjo and others had already been sentenced in a parody of justice.

It is sometimes suggested that human rights fact-finding missions serve little purpose. We have been encouraged, however, not only by the knowledge that many outside Nigeria wanted an up to date Commonwealth perspective on what is happening there. We were also told by many informed observers in Nigeria, both foreign and local, that the presence of the CHRI mission in the week when the alleged coup plotters were sentenced and before final confirmation by the PRC, bought valuable time for second thoughts and international pressure to develop. It was not easy to arrange this mission, and due to the regime's slowness in issuing visas, members of our group had to arrive separately over a period of a week. Nonetheless the CHRI believes that this mission and report heralds a potentially important development in its work. Where appropriate, and where there is a Commonwealth interest that is not being served by government or other bodies, the Initiative will be prepared to mount further such missions elsewhere.

The CHRI has consistently taken a strong stand against the denial of rights in Nigeria. In 1993 it argued that only a duly elected president should be invited to the Commonwealth Summit in

Limassol. This year we have advocated sanctions against Nigeria, and a suspension of the government's participation in the Commonwealth. However, as a non-governmental body, supported by five Commonwealth non-governmental organisations, we would not wish to punish Nigerian citizens for the crimes committed by their unelected government. We greatly hope that Commonwealth pressure, following this report, will prove as effective in returning Nigeria to democracy and guaranteed rights as was the case in South Africa.

In thanking the three members of our team who gave so freely of their time at short notice to conduct this important mission, I would also like to thank the two Nigerian bodies which issued an invitation to the CHRI, the Nigerian Medical Association (which is affiliated to the Commonwealth Medical Association) and the Constitutional Rights Project. We are also pleased to express our gratitude to those organisations which helped to make the exercise financially possible: they include the Foreign & Commonwealth Office of the British Government in London; the Canadian International Development Agency in Canada; the Canadian High Commission - in Lagos, in particular the work of the Acting High Commissioner,- G L Ohlsen, and the Body Shop Foundation. I would like to express my appreciation also to Dr Linton for his work in drafting a report to the CHRI Trustee Committee in London and to the CHRI office in New Delhi.

The CHRI has a mandate to strengthen human rights in the Commonwealth. It will shortly publish its biennial survey covering other matters, in time for the Auckland Commonwealth Summit in November. Due to the urgency of the Nigerian question, however, we felt we should make this report public as soon as possible.

**Kamal Hossain**  
**Chair**  
**Advisory Commission to the**  
**Commonwealth Human Rights Initiative**

## **Terms of Reference**

The terms of reference for the human rights, fact-finding mission to Nigeria are as follows:-

Against the background of the cancellation of the results of the presidential election in June 1993, continued persecution of the Campaign for Democracy and other human rights organisations and a prolonged state of emergency, and given the commitment to democracy recently reaffirmed by member states in the Harare Commonwealth Declaration of 1991 with its call to Commonwealth NGOs 'to play their full part' in promoting its objectives and in view of the forthcoming Heads of Government Meeting, the Commonwealth Human Rights Initiative decided to send a fact finding mission to Nigeria to:

- (a) investigate the situation of those asserting and protecting human rights;
- (b) review conditions in Nigeria in the light of that country's long established membership of the Commonwealth and its support of the Harare Declaration;
- (c) assess the prospects for democracy, protection of human rights and the rule of law; and
- (d) make recommendations to the CHRI as to steps which could be taken in a Commonwealth context to assist the advancement of human rights in Nigeria.

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## **Abbreviations**

Commonwealth Human Rights Initiative - CHRI  
Civil Liberties Organisation- CLO .  
Movement for the Survival of the Ogoni People - MOSOP  
Nigeria Labour Congress - NLC  
Provisional Ruling Council - PRC  
Constitutional Conference - CC  
National Democratic Coalition - NADECO  
National Union of Petroleum and Gas Workers – NUPENG  
Shell Petroleum Development Company - SPDC  
Campaign for Democracy - CD  
Campaign for the Defence of Human Rights - CDHR  
National Association of Democratic Lawyers –NADL  
Petroleum Senior Staff Association of Nigeria .-PENGASU

## CHRI MISSION TO NIGERIA – JULY, 1995

### RECOMMENDATIONS

*We met with representatives of a variety of human rights and pro-democracy, church, professional and women's groups and were impressed by their courage and commitment. A consolidated programme of the meetings held by the mission is set out in Appendix 1. The future of Nigeria remains hopeful with such citizens ready, under clearly dangerous conditions, to carry on the struggle for democratic principles.*

*We were struck by the fact that across the board they all supported and called for a regime of punitive sanctions "against Nigeria and indicated that they were prepared to bear the economic and social costs of such a regime. Remarks made to us include: "Nigeria is cruising headlong down the precipice.....It is now a place of accelerating drift.....Act now to prevent another Rwanda.....Nigeria has perhaps two years to escape disaster." As we go to press it is reported that there have been further arrests of pro-democracy activists including some whom the mission met.*

#### **WE RECOMMEND:**

1. Commonwealth governments in their individual capacities should urge the Nigerian regime immediately to:-
  - (a) improve the conditions of detention of political prisoners, including immediate access to families, lawyers and suitable medical treatment, to a level consistent with Commonwealth and UN standards;
  - (b) release Chief Abiola, Generals Obasanjo and Yar'Adua. Other political detainees should be released or tried and charged before independent courts other than special tribunals.
2. Commonwealth governments in their individual capacities should recommend to the international community in general the immediate application of suitable sanctions against Nigeria, and in particular forthwith:-
  - (a) Commonwealth governments should suspend co-operation aid to the Nigerian Government, save in the areas of social services and humanitarian aid;
  - (b) Commonwealth governments should undertake to stop military co-operation with Nigeria, including a suspension of trade in arms; they should also suspend training of both the military and the police;
  - (c) Commonwealth governments should deny visas to members of the Nigerian government, high government officials and members of the military, and to the immediate families of these categories;

- (d) Commonwealth governments should urge that visas should not be granted to Nigerian governmental officials, not normally related to sport, accompanying participants at major sporting events such as the Olympics, the Commonwealth Games and the World Cup.
3. Commonwealth governments should urge the government of Nigeria to restore the judiciary by terminating the trial of criminal offences by military tribunals; agree to the judiciary having an adequate budget and that it be controlled and administered by them; and ensure the non-interference in judicial affairs by state administrators.
4. Commonwealth governments and NGOs should give priority to supporting in practical ways the work of Nigerian human rights and pro-democracy activists, both in Nigeria and abroad, in their efforts to build a democratic order and to strengthen the elements of civil society.
5. The Commonwealth, through its Secretariat, should arrange for an urgent expert assessment of the possibilities of applying an effective temporary embargo on Nigeria's oil exports and, if feasible, make a recommendation to the international community for such an embargo.
6. The Commonwealth through its Secretariat should arrange for an expert study of the feasibility of an effective freezing of the personal accounts and other personal assets held abroad by prominent leaders of the Nigerian military regime.
7. The Commonwealth Heads of Government Meeting (CHOGM) in Auckland in November 1995 should specifically condemn the human rights abuses of the Abacha regime and call for an immediate return to democratic order by early 1996. The meeting should also seriously consider the suspension of Nigeria from Commonwealth official meetings.
8. The Commonwealth Heads at Auckland should call on the Abacha regime to release immediately and unconditionally all human rights and pro-democracy activists detained for political reasons and to rescind the restrictive decrees issued in 1994; failing such action Commonwealth governments, by the end of 1995, should apply a range of trade and financial sanctions.
9. The Commonwealth Heads at Auckland should urge the UN High Commissioner for Human Rights to investigate and report on the human rights situation in Nigeria.
10. The Commonwealth Heads at Auckland should assert that, in the spirit of the Commonwealth association, they are ready to offer every assistance to Nigeria in helping it to meet its obligations under the Harare Declaration, and indicate their willingness to send a delegation to hold discussions to this end with the Abacha regime.
11. The Commonwealth Heads at Auckland should agree in principle on a comprehensive technical assistance programme to facilitate Nigeria's transition to democracy from the pre-election to the post-election phases and with particular emphasis on strengthening civil society.
12. The Commonwealth Heads at Auckland should agree that:-
  - (a) No military government shall be entitled to send a delegation to future CHOGMs. They may

only send observers.

- (b) While a state with a military government need not automatically lose its membership, such a government should only be allowed to continue to participate in Commonwealth meetings on a restricted basis. .
- (c) No military government should be allowed to participate at the level of ministerial meetings.
- (d) Military governments should be allowed to participate in non-ministerial meetings on specific functional issues at the level of officials.

**Flora MacDonald**

**Enoch Dumbutshena**

**Neville Linton**

## **NIGERIA - THE POLITICAL BACKGROUND**

*"We believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives" - clause 4 - the Harare Commonwealth Declaration.*

### **The Aborted Elections**

Since its emergence from colonial rule in 1961 Nigeria has been subjected to military governments for a crippling 24 out of the 34 years of its independence - a period characterised by repeated coups, arrests, civil unrest and economic breakdown. In June 1993, after nine years of military rule and faced with mounting internal dissension, a failing economy and international pressure, General Babangida reluctantly agreed to hold presidential elections. Given this opportunity the Nigerian people demonstrated their will to gain democracy by the commitment, energy and enthusiasm with which they approached and participated in the electoral process. On June 12, in an election which was described as reasonably fair, peaceful and comprehensive by domestic and international observers, the Presidential candidate of the Social Democratic Party, Bashorun (Chief) Moshood KO. Abiola seemingly won with a clear majority in a confused situation where the Electoral Commission aborted the announcement of the full election results. Two weeks later on June 26, Gen. Babangida, ostensibly ceding to sectoral claims about electoral irregularities, annulled the elections despite the apparent overwhelming countrywide and cross-cultural nature of Abiola's victory.

The ensuing months were marked by major civil protests in support of Chief Abiola and by a further downturn in the economy. Considerable external pressure was exerted on the Babangida regime to recognise the democratic process. On August 26, 1993 Gen. Babangida resigned while simultaneously appointing a supporter, the industrialist Chief Ernest Shonekan, as interim Head of State with a mandate to hold fresh presidential elections. This puppet administration was highly unpopular and was immediately faced with widespread unrest, a situation which worsened when, on November 10, the Federal High Court declared the interim government to be illegal. As well the report of a military enquiry team, set up by Babangida after April 1993 to study the elections issue, apparently stated that the Abiola election was legal. With the situation explosive and with the government obviously fragile, the military strongman behind the regime, General Sani Abacha, the Armed Forces Chief of Staff, took power on November 17. He immediately annulled the 1989 Constitution, which was due to come into force with the elected President, suspended some provisions of the 1979 constitution and proceeded to dismantle the democratic framework at both local and federal levels.

### **Abacha Entrenches His Regime**

On assuming office Gen. Abacha stated that his regime was provisional and that his purpose was to provide well-thought-out and permanent solutions to Nigeria's problems. However the fact that he banned all political activity, appointed a predominantly military Provisional Ruling Council (PRC), disbanded the federal and state legislatures and replaced civilian governors with military administrators immediately raised doubts as to his intentions. Assisting the PRC was a 32 (later changed to 36) member Federal Executive Council which included prominent politicians who were willing to co-operate with the new regime. In January 1994 Abacha attempted to offset the widespread mistrust that a politically alert and aroused populace held of his regime, by announcing

his intention to establish a consultative Constitutional Conference (CC). Although members of the CC would be elected their decisions would be subject to adjustment and approval by the PRC. These conditions were immediately opposed by most democratic leaders, who had been calling for an independent comprehensive and wide-based Sovereign National Conference since the days of Babangida. Elections to the 370 strong Constitutional Conference (including 97 nominated) were held in May 1994, and the turnout clearly demonstrated the lack of public support for the process. Only 300,000 votes were apparently cast - a ludicrous figure for a country of some 100 million people, and far short of the 14 million who had voted in the Presidential elections of June 1993. The results highlighted the public scepticism that had developed during the long, drawn out, 8 year transition period of Gen. Babangida, and also because the CC was seen as a way of marginalising the question of the annulment of the Presidential election.

### **The Regime Confronts the Democrats**

Dissent built up in early 1994 and at the same time the economic situation worsened. The regime was also faced in May with a serious confrontation with the people of Ogoniland in Rivers State; their brutal handling of this issue aroused international condemnation and a focus on the trial of Ken Saro- Wiwa and other leaders for the murders of four Ogoni elders. On May 10 a new national action group was formed to co-ordinate pressure on the Abacha government - the National Democratic Coalition (NADECO). On May 17 it released the Lagos Declaration which included four demands:

1. The military must leave politics;
2. Abiola must be installed as President by the end of the month of May;
3. Abiola should then appoint a government of national unity; and
4. The new government should convene the long advocated Sovereign National Conference.

In addition to this initiative, in late May members of the disbanded legislatures issued statements calling on Abacha to hand over power to Abiola; also members of the Senate indicated their intention to reconvene. In response Abacha arrested several members of both the federal and state legislatures, a few governors and some NADECO leaders. On June 11, 1994 Chief Abiola declared himself President; he was arrested on June 23, jailed and charged with treason. Dissent mounted. A particularly effective means of opposition was the strike called on June 4 by the National Union of Petroleum and Gas Workers (NUPENG) who, apart from industrial demands, called for recognition of the results of the June 1993 election. The strike was joined by several of the unions in July and August (including the National Academic Union, thus causing some universities to close) and eventually by the Nigerian Labour Congress (NLC), itself the umbrella organization of some 40 unions. By late August, faced with a severe drop in oil export earnings, Abacha dissolved the leadership of the oil unions, arrested some union leaders and ordered the workers back to their jobs.

After nine weeks the strike was called off in the face of the increasingly repressive measures by the regime. All forms of dissent were banned, with severe restrictions being, placed, in particular, on the media and the closure of major newspapers. Many journalists were arrested. The pro-democracy supporters responded by challenging in the courts, some of the acts perpetrated by the regime and many of these were declared to be illegal. In response Abacha in early September announced 8 new decrees, many of them with ouster clauses which widened the arbitrary powers of the government and which were backdated so as to be able to cover the events of the past few months. The decrees further undermined the constitutional protection of fundamental human rights and the most extreme were Decrees 12 and 14 which removed both the jurisdiction of the courts and the use of Habeas Corpus. In protest, Dr Ole Onagoruwa, the Justice Minister and Attorney General, publicly distanced himself from the decrees and threatened to resign if they were not rescinded. Instead he was fired by

Abacha on September 8, 1994.

Since the issuance of these decrees there have been hundreds of arrests and detentions. Reports have included charges that hundreds of dissidents have been executed by government security forces. In particular pro-democracy and human rights groups have been targeted, and attacks and restrictions on the media have continued. For their part protesters continued to use the courts. The regime, aware of the influence of the professional associations, has also harried the operations of the Academic, Bar, Journalists and Medical Associations. The crackdown has not significantly weakened the spirit of dissent. Many who fled the country during the last two years are very active in mobilising critical opinion in America and Europe.

### **Developments in 1995**

In early 1995, leading up to the anniversary of the June 12, 1993 elections, the Abacha regime felt that domestic reaction to the severe crackdown and the growing international disapproval could occasion a new eruption. In an attempt to deter such dissent, another round of arrests was launched in March. 29 officers and civilians were arrested on March 3 and 4, and subsequently charged with plotting a coup against the government. On March 9 Major-General (Ret'd) Shehu Yar'Adua, who was vice-president to Gen. Obasanjo and the member of the CC who had taken the lead in calling for the regime to hand over to a civilian government by January 1996, was arrested; Bayo Onagina, Editor-in-Chief of the News newspaper group was detained on March 10 and General (Ret'd) Olusegun Obasanjo, a former Head of State and internationally prominent statesman, was arrested in late March on his return from a visit abroad.

Following protests from foreign governments and the personal intercession of former US President Jimmy Carter, Obasanjo was transferred from military detention to house arrest on his farm outside Lagos. However a few weeks later he was returned to military prison and, along with Gen. Yar'Adua was tried in late June. Reports indicate that they were charged as being accessories in connection with the treason trial of 23 of the 29 alleged coup plotters arrested in early March.

### **The Draconian Sentences**

All these trials were held in secret. When sentences were handed down in mid-July it turned out that as many as 50 persons had been tried, of whom 40 were convicted. According to unofficial sources the judgments ranged from death sentences for some to life imprisonment and lesser jail terms for others. Amongst those sentenced to death were said to be Gen. Yar'Adua, Colonel Lawan Gwabede, the alleged leader of the coup plot and 12 other officers; while Gen. Obasanjo and journalist Mrs. Chris Anyanwu, Editor in-Chief, The Sunday Magazine, were amongst 11 other detainees given life sentences. The sentences have been submitted to the PRC which has the power to ratify, reduce or cancel them. Domestically and internationally there is great scepticism regarding the claims that a coup plot had taken place.

The announcement of the sentences immediately touched off a further flood of protests from internal sources - human rights NGOs, pro-democracy groups and politicians - as well as from external governments including the USA, UK, Canada and various African and European capitals. The UN Secretary-General, Boutros Boutros Ghali and South Africa's President Mandela sent personal emissaries to appeal for clemency; the Pope also added his plea. Ghana's President Gerry Rawlings, during a visit to discuss regional matters, also raised the issue. Domestically the significance of the protest was highlighted when two former Heads of State, Generals Buhari and Gowon, and former Head of Government, Chief Shonekan, also met with Abacha; as did a group of prominent Northern

leaders led by the Sultan of Sokoto. If the sentences are confirmed General Yar'Adua would be the first Northerner of such high rank to be executed for treason.

In mid-July prominent Nigerian human rights groups held a joint meeting and issued a statement condemning the convictions; within a week a number of them were arrested, including Dr Beko Ransome-Kuti of the Campaign for Democracy (CD), Dr Tunji Abagoni, personal attorney to General Obasanjo and Head of Human Rights Africa and Mr Abdul Oroh, Executive Director of the Civil Liberties Organisation (CLO). A few days after the arrest news came out of Nigeria that Dr Ransome-Kuti had been speedily tried on a charge of sedition and had been given a life sentence. His 'crime' was the possession of the text of the defence speech made to the secret tribunal of one of the alleged coup plotters.

The initial response of the Abacha regime to complaints about the 1995 trials and convictions is to criticise international interference in Nigeria's affairs. Thus in an indirect message to the UK government on July 17 the Petroleum Minister told Shell and BP executives that the government would no longer tolerate attacks by outside governments and would consider taking punitive action against Nigerian-based companies which originated from such erring countries. The message was delivered more directly a few days later when the British High Commissioner was summoned to the Federal capital for a meeting with the Foreign Minister. It should be noted that Gen. Abacha's attitude to foreign opinion had already been signalled by his refusal to meet with the representatives of some major Western countries - in July neither the British nor the US envoy had been given access for some time.

(A chronology of key events between June 1993 and July 1995 is set out in Appendix 2).

In early August the diplomatic pressure in Nigeria increased. Both US President Clinton and Britain's Prime Minister Major made telephone calls to Gen. Abacha specifically to stress the unacceptability of proceeding with the execution of those sentenced in July. In the same period, two Commonwealth African Presidents, Robert Mugabe of Zimbabwe, and Yoweri Museveni of Uganda, traveled to Nigeria to hold discussions on the issue and to plead for clemency.

### **Current Developments**

In the midst of all this the government underlined that it was business as usual; it announced that 40 persons, who had been tried and convicted before a military tribunal for armed robbery had been executed over the weekend of July 21. Earlier on June 27, on the occasion of receiving the Report (and Draft Constitution) of the Constitutional Conference, Gen. Abacha announced a conditional lifting of the ban on political activities; however the holding of public political meetings, campaigning and organising political parties would not be allowed. He also indicated that a comprehensive political time-table would be announced on October 1 and that the submission of the CC's Report marked the end of the first phase of his transition programme.

Predictably this was met with great scepticism by the pro-democracy groups who averred that until that time they were unaware that Abacha had a transition programme. On the other hand some of the politicians who are co-operating with the regime are hopeful that Abacha will leave within two years since, over his career, he is not seen as having any liking for holding political office as distinct from exercising power and influence. But the pro-democracy activists feel that it is time that Nigeria's future did not depend on the whims of military power.

## **HUMAN RIGHTS ABUSES**

*"We pledge the Commonwealth and our countries to work with renewed vigour, concentrating particularly on:.....the protection and promotion of fundamental human rights".....*  
-clause 9, Harare Commonwealth Declaration

### **Political and Other Extra-Judicial Killings**

Over decades of military rule in Nigeria the security services and the police have carried out extra-judicial killings with impunity and little respect for human life (1). In the aftermath of the aborted elections of 1993 reliable estimates suggest that well over 100 died in the July protests - defenceless civilians shot by troops under specific orders from the then Chief of General Staff and Defence Minister Abacha. Again, at the height of the political unrest in July and August in the following year, credible reports from Amnesty International and Human Rights Watch-Africa, as well as from domestic NGOs, state that, country-wide, over 100 persons were killed by security forces; the admitted government figures are much lower and the official reports claim that most of those killed were violent criminals.

While armed robbery is a major problem, human rights groups complain that the police shoot at suspected persons with impunity, whether or not they are armed. The charge is also made that in areas of the countryside armed vigilante groups operate freely with the permission of the police. Under the current regime such activities and police killings are usually not investigated. Another concern of human rights groups is the charge that a large number of people die of torture and abuse while in police custody and that there are few avenues for redress despite the protections listed in the constitution.

### **Ogoniland**

The case of the conflict in Ogoniland, in the oil-producing areas of the Niger Delta, where local ethnic groups were engaged in recent years in a struggle both with the government and the oil companies, has attracted international attention. The conflict centred around the issue of fair shares in resource distribution between the Federal and state governments and the question of environmental protection. In many parts of the Delta, despite oil extraction, economic conditions were abysmal with 85% unemployment, no pipe-borne water, little electricity, poor school facilities and charges of serious pollution of fisheries.

The Movement for the Survival of the Ogoni People (MOSOP) led by Ken Saro-Wiwa effectively mobilised local dissent and internationalised the issue. In 1993 Shell Petroleum Development Company (SPDC) suspended production because of continuing attacks on and subversion of its operations by local groups. In April and May 1995 in an effort to contain an outbreak of inter-ethnic violence and in the wake of the murders of the Ogoni elders, the Rivers State Internal Security Staff Force raided at least 30 towns and villages in Ogoniland systematically sacking and burning buildings, shooting at random, beating, looting and raping. Several hundred Ogonis were arrested and at least 50 were reported executed in what has been described as an act of terrorism. (2).

The evidence of these traumatic events is still apparent today in the many desolate and devastated areas of Ogoniland and many of the community still live in fear. In April 1995 the story of

Ogoniland was given an international airing over British television in a documentary on Channel Four. Some of the officers involved in the attacks gave a frank and vivid description of the brutality involved. On a visit to Ogoniland we met some of the maimed victims and their physical condition can only be described as shocking and pitiful, as they had not received adequate medical treatment, which for such ailments is only available at exorbitant rates.

The unrest in the Delta is to be found not only in Ogoniland but throughout Rivers State. In May of this year the Civil Liberties Organisation (CLO) reported that over 1000 people had been arrested in the past six months. The conditions of trial of many of these, but in particular of Ken Saro-Wiwa and 14 others before a special tribunal for the Ogoni murders, have been criticised as breaching fundamental rights <sup>(3)</sup>.

The harshness of the repression in Ogoniland and elsewhere in the Delta suggests that government forces were not only seeking to calm a local conflict but were intent on pacifying the area so as to prevent further political unrest. Nothing would be allowed to hinder oil production or interfere with the work of the oil companies. In discussion with the Administrator and his Attorney General they denied that there had been any abuses either by the security forces or in the administration of the courts. It is also clear from our meeting with Shell senior management that the company feels no responsibility for the tragic events in Ogoniland; rather it sees itself as caught in the middle of a domestic political battle in which it has become the scapegoat. It was acknowledged however that in recent years the company has been taking steps to improve its environmental management and its role as a civic partner at the local level <sup>(4)</sup>.

### **Arbitrary Arrest and Detention**

Arbitrary arrest and detention have been regular tools of Nigerian military regimes. Although Gen. Abacha came to power in the midst of a period of attempted democratic transition his use of these constraints has been more intense rather than less so. Faced in early 1994 with widespread opposition to his unilateral plans for a constitutional conference, the formation of NADECO and the additional challenge in May of Moshood Abiola's declared intention to form a government of national unity, the government arrested several politicians and democratic activists without charge and held them for weeks in some cases. Eventually 13 were charged with treason, including Chief Abiola.

Over the next six months there was a wave of arrests of democratic activists including the highly respected elder statesman Chief Anthony Enahoro (twice), CD Chairman Dr Ransome-Kuti (three times) and human rights activist Chief Gani Fawehinmi. Efforts to control the oil workers' strike which followed quickly on these events resulted in the arrest of many union officials in August 1994; a number of journalists were similarly detained.

During this period the problems in Ogoniland came to a head and several MOSOP leaders, including Ken Saro- Wiwa and Ledum Mitee, were arrested without charge. These two were later charged with the murder of four leading chiefs of the Ogoni community who had been known opponents of Saro-Wiwa.

## **Rule by Decree**

One of the most restrictive pieces of legislation in Nigeria is the State Security Decree of 1984 (Decree 2), a legacy of Gen. Babangida. Under its provisions persons deemed to be political or economic security threats can be detained for up to six weeks without charge; moreover if the decree is applied by the Chief of General Staff it is renewable, the- detainee's civil liberties are suspended and there is no recourse to judicial review.

In August 1994 the Abacha government promulgated a new series of decrees specifically designed to control the trade unions, the press, students and pro-democracy activists and to hobble the judiciary as well. Decree 2 was amended to allow renewable detention for three months and on order of both the Chief of General Staff and the Inspector General of Police.

A particularly striking aspect of these arrests and detentions is that detainees are often denied access to doctors or medical facilities. In a few notable cases limited access has been given. Information about arrests is not normally divulged and consequently families do not know where the detainees are being held or by what authority, and even if that information does become available, permission to see the detainee is not usually granted.

The conditions of detention of Chief Abiola and Ken Saro- Wiwa have drawn international criticism; the reluctance of the government to provide adequate medical treatment has led to a decline of health and in both cases the doctors of these prisoners were themselves temporarily detained - no doubt because of their public complaints about the treatment of their patients. Earlier this year Ken Saro- Wiwa's trial was delayed because of his poor health. In May, following a visit to Chief Abiola, Archbishop Desmond Tutu of South Africa was strongly critical of the conditions in which Abiola is detained; the Archbishop was acting as an envoy of President Mandela (5).

The largest number of arbitrary arrests, however, is of ordinary people, primarily for non-political activity. Hundreds of young men, traders and market women are picked up on grounds of being implicated in criminal activity, as part of a programme of collecting 'vagabonds' and 'loiterers', or in the campaign of clearing the streets of persons who are responsible for unsightly litter. Human rights groups state that the scale of abuse of the person in these latter cases is extreme. Incredibly the arrests are not made by the Police but by the Lagos State Environmental Sanitation Task Force. The Campaign for the Defence of Human Rights (CDHR) estimates that "no less than 2000 persons were illegally arrested and detained" in 1994. Most detainees are not charged with a crime and are released after varying periods, sometimes after being subject to beatings and abuse. There are credible reports of torture. The general picture is of people being humiliated, intimidated and victimized; concern for human rights is not usually a strong point with military regimes.

1995 saw another spate of arbitrary arrests in the run-up to the anniversary of the annulled June 12 election. Some 50 politicians, pro-democracy activists and journalists were arrested including leading figures from NADECO, CLO, CD, National Association of Democratic Lawyers and the Democratic Alternative. Most were released after June 13. In addition to Chief Abiola a number of prominent persons remain in detention, some since 1994. They have not been charged or tried. The list includes:

Chief Frank Kokori, Secretary General - NUPENG...1994  
Chief Waribi Kojo Agamen, President - NUPENG...1994  
Chief Fred Eno, Personal Assistant to Chief Abiola...1994  
Olu Akerele, Afiica Concord Magazine.. .1994  
Ben Charles Obi, Weekend Classique Magazine... 1995  
George Mbah, Tell Magazine... 1995  
Kunle Ajibade, The News Magazine.. .1995  
Ade Alawode, Eko Magazine... 1995  
Shehu Sani, Vice-Chairman, CD... 1994

### **Harassment in and out of Nigeria**

Apart from arrests, ordinary Nigerian citizens are subject to arbitrary harassment through house searches, telephone tapping, the abrupt cancellation of meetings, lectures and conferences and bomb attacks on houses and offices. Many persons have had their passports seized. Several NADECO supporters, including Nobel Laureate Wole Soyinka and former External affairs Minister Bolaji Akinyemi, were so harassed that they went into exile. Security services are known to monitor the activities of dissidents living abroad and some Nigerians travelling to business or professional meetings in other countries. On their return to Nigeria those considered activists have had their passports seized.

Harassment of this type occurred recently following the Commonwealth NGO Forum meeting in New Zealand. While in attendance, a human rights activist from Nigeria identified the presence in the room of Nigerian security personnel whom she felt would be reporting on her comments about the human rights situation in Nigeria. On her return to Nigeria her passport was in fact seized and she was warned that further action might be taken against her, which since has been.

### **Press Freedom**

Nigeria has been well-known for having a vigorous and varied media marked by its sturdy independence. While attacks on the press were constant in the Babangida years, the Abacha regime has proved itself even more systematic and comprehensive in its attempts to weaken the media. The 1994 crackdown was characterised by repeated attacks on media houses and journalists. Because of its outspoken criticism of the government during the mid-year confrontation with the pro-democracy forces, the media was subjected to special attention. The regime's response to criticism was to arrest and detain journalists, disrupt press conferences, impound thousands of copies of newspapers and magazines and disable equipment in publishing houses.

The most draconian action was the proscription of three major publishing groups - Concord and Punch in June and The Guardian in August. These closures made a significant impact on employment as an estimated 10,000 employees were affected. While newspapers have been closed down in the past, this was the first time that such closures have lasted a year. The ban on The Guardian was lifted in July 1995 after a meeting between Abacha, the publisher and some senior staff, at which, government sources publicly inferred, an abject apology had been tendered by the newspaper together with a promise to show greater sensitivity to the socio-political problems of the nation in future. Sources close to the newspaper contest the accuracy of the government's account of the meeting. The ban remains on the other publishing groups.

## **The Commitment of the Media**

Despite the harassment and brutality to which the media has been subjected, the remaining publications continue their critical and vocal assessment of government actions. Underground newspapers and radio have become very much a feature of the current Nigerian scene. It attests to the durability, professionalism and commitment of the media community that they continue to publish and inform in such an unsympathetic political and economic environment.

The Babangida regime imposed punitive duties on newsprint and other publishing materials, restricted or stopped government advertising in targeted papers and journals and harassed businessmen or others who advertised or supported what were seen as anti- government publications. All these measures are not only still in force but have been intensified. The government also attempts to counter media criticism through its ownership or indirect control of certain newspapers and of television. From time to time foreign journalists critical of the Abacha regime have been expelled.

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1. See 51st Session of the UNHCR: Report of the Special Rapporteur on Extra judicial, Summary or Arbitrary Execution; Amnesty International: Nigeria - Military Government Clampdown on Opposition, November 1994, London; Committee for the Defence of Human Rights: 1994 Annual Report - Human Rights Situation in Nigeria, Lagos; US Department of State: Country Report on Human Rights Practices for 1994 - Nigeria. February 1995, Washington
  2. Human Rights Watch - Africa: Nigeria - the Ogoni Crisis -July 1995. New York and London
  3. Civil Liberties Organisation: 1000 Detained in Rivers State - May 25, 1995, Lagos; Michael Birnbaum QC: Nigeria, Fundamental Rights Denied - Report of the Trial of Ken Saro-Wiwa and Others -June 1995, London
  4. Shell Petroleum Development Company: Nigeria Brief-The Ogoni Issue 1994.Lagos Arbitrary Arrest and Detention
  5. In July 1995 Mrs. Abiola had not seen her husband since October 1994 and had been recently told by the regime that she would be allowed to see him if she persuaded prominent dissidents abroad, Wole Soyinka and Bolaji Akinyemi, to return home. Mrs. Obasanjo had not seen her husband since he was removed from house arrest on June. Even when Obasanjo was on house arrest he was kept isolated from information - no radio or newspapers were allowed.

## **FRUSTRATION OF ECONOMIC AND SOCIAL RIGHTS**

*"We pledge to work with renewed vigour in extending the benefit of development within a framework of respect for human rights" - clause 9, Harare Commonwealth Declaration*

### **Severe Economic Decline**

In the last two decades Nigeria has moved from the ambitious company of middle-income countries to the depressing ranks of the 20 poorest. The years of Gen. Babangida's siege economy have been followed by an even further slide into economic breakdown under General Abacha. In 1994, inflation reached 50%, GNP growth was 1.3%, the manufacturing sector contracted by 4.1%. In mid-1995 inflation was running higher than in 1994, external debt was over US\$ 30 billion and, with industrial capacity utilisation below 30%, the manufacturing sector's poor showing was having a predictable impact on unemployment.

The small business sector has contracted considerably due to a variety of increased costs. Damage to property and equipment is constant, given massive unemployment and the current security situation where brigandage and looting are frequent. Much of the urban infrastructure is deteriorating. According to World Bank figures the per capita GNP of Nigeria currently is around US\$300 per annum.

### **The Suffering of the People**

The burden of the country's decline falls most heavily on the ordinary Nigerian. The government continues to receive substantial revenue from the petroleum industry but the distribution of those funds by regimes characterised by corruption, bureaucratic wastage and fraud does not leave much in the Treasury for the needs of the people.

In recent years in several public sectors authorities have been unable to pay workers' salaries regularly, some civil servants report for work only part of the week because of high transport costs, the payment of some army pensions has been stopped. Intermittent payment of their wages has led some sections of the police to the illegal tactic of setting up roadblocks where bribes and fines are extracted from ordinary Nigerians to supplement the income of the police forces. In one of the world's largest oil - producing nations there are regular fuel shortages creating massive inconvenience and leaving commuters stranded in the streets.

Social services, education, health and environmental programmes have deteriorated substantially. Illiteracy, malnutrition, short life expectancy and inadequate health care have become the norm of life for many Nigerians. Frequently hospital patients not only have to buy their drugs but also have to supply needles, syringes and suture threads - this in addition to paying for bed space<sup>(6)</sup>. Many schools are either closed or operate part-time and in any case there is a pronounced shortage of teaching materials. It is related with droll humour that when parents complained to Babangida that their children would not be able to graduate on time due to school stoppages, he supposedly replied that there was no point in the students graduating since there were no jobs for them. The story may well be apocryphal but that it is repeated and believed is significant in itself.

Nothing *more* dramatically illustrates the collapse of Nigeria's social infrastructure than the increasing use of child detention centres, more euphemistically termed welfare centres. The decline in employment and the meagre income, particularly among the poorer sectors of the population, is forcing families to sell young children (some only four or five years of age) into service, or simply turn them out to fend for themselves. But trying to maintain themselves on the streets is not easy for these children. They are quickly swept up by the police for loitering and taken to a welfare centre – in reality, to prison. Once inside, the boys are herded into one cell, the girls into another; and there they remain for 24 hours a day, their only release being when they are lined up in front of the cells for a meal (usually provided by an expatriate NGO). In their crowded quarters the children sleep on thin foam mattresses on the hard cement floor; facilities consist of a bucket in the corner in which to urinate.

What becomes of these children? Arrangements are made to have them shown on television so that they can be identified by their families and collected from the centre. But how many of these poor families have the luxury of television? Some of the children are returned to their homes, others remain in detention for weeks at a time, but eventually end up in orphanages or other juvenile institutions.

The price being paid by ordinary Nigerians is all too evident. It is characterised by the burgeoning crime rate, it is etched in the drawn faces of suffering women, crying out in the hungry eyes of miserable, malnourished children. The price is exacted from the ill who cannot get medical treatment or pay for it if it were available. It takes its toll amongst teenagers who have not been able to complete their education and face a bleak future.

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6. In Ogoniland victims claimed that an average operation costs N2,500

## **DISTORTION OF THE RULE OF LAW**

*"We pledge to concentrate particularly on the rule of law and the independence of the judiciary, just and honest government" - clause 9, Harare Commonwealth Declaration.*

### **Undermining of the Judiciary**

The military, governments in Nigeria are consistently undermining the judiciary through the appointment of military and special tribunals.

The judiciary derives its power from the Nigerian Constitution. Under Legislative Powers the Constitution provides:

- 4(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law; and accordingly the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

Section 4(8) is among other sections of the Constitution suspended by Decree 107 of 1993 (1).

The Nigerian judiciary is composed of magistrates and judges who under normal circumstances deal with civil and criminal matters. Each of the 30 states has a judiciary consisting of magistrates and judges. The Head of the judiciary in each state is the Chief Judge. Above all there is a Federal High Court, a Federal Court of Appeals and Supreme Court of Nigeria presided over by the Chief Justice of Nigeria. The present Chief Justice is the Honourable Mr. Justice Mohammed Bello. We were privileged to have two sessions of discussions with him.

### **Tribunals undermine the Judiciary**

The concern of both lawyers and judges is the military government's desire to undermine, knowingly or unwittingly, the independence of the judiciary by the appointment of military or special tribunals. These tribunals are presided over by a military officer or by a judge- and they include among their members military personnel. They cast doubt, in the minds of civil society, on the ordinary courts of the land. They compromise the independence of the judiciary because one of the members of a tribunal is always a serving member of the Armed Forces - the rulers of the land. The fact that one or two of the members are judges is overwhelmed by the presence on the tribunal of the serving member of the Armed Forces who moves in the corridors of power.

### **Ouster Clauses**

Decree No. 13 of 1984 - the Federal Military Government (Supremacy and Enforcement of Powers) Decree - excludes all civil procedures in respect of "any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict".

Organic law of Nigeria is found in the following:

- (a) Decree No.1 of 1985 which provides for the suspension of some of the provisions of the Constitution as modified by the others.
- (b) Decree No.2 of 1984 as amended and further amended by Decree No.3 of 1990 which provides for power to detain persons for acts prejudicial to state security, review of detention and establishment of a Review Panel.
- (c) Unsuspended sections of the 1979 Constitution.
- (d) Decree No., 13 of 1984 which declared the military intervention as a revolution and abrogated the pre-existing legal order. It further excludes all civil procedures in respect of any 'act, matter or thing done'.

### **The Rule of Law**

The cry right through the country is one of lawlessness. People say there is a breakdown of law and order. The breakdown of law and order is succinctly expressed in many publications. We repeat here an extract from one of the publications:

"On Friday, the 26th August, 1994 at 3.30 am four armed men in military outfit invaded the law Chambers of Chief Gani Fawehinmi, shot at the Chambers' guards and critically wounded two of them, leaving them in a pool of blood, thinking them dead, with the following message: *"we will kill you, we will kill your boss because he is an opponent of this Government"*.

On the same day and around the same time state-organised terrorists invaded the house of Dan Suleiman in Lagos, poured petrol around it, smashed his car, poured petrol into it and set it on fire. Only God saved Dan Suleiman and his family from being roasted alive. Dan Suleiman is a pro-democracy leader. He is a retired air commodore. He was a former Minister, Member of Supreme Military Council (SMC), and a former Governor of Plateau State. He is from the middle belt area of the country.

The prisons are full of pro-democracy activists, political leaders and trade union leaders. Elder statesman Chief Anthony Enahoro, Chief Cornelius Adebayo (the former Governor of Kwara State), Prince Adeniji-Adele, (the former Chairman of Lagos Island Local Government), Chief Frank Kokori (the General Secretary of Nigerian Union of Petroleum and Natural Gas Workers, (NUPENG), Mr. Fred Eno (The Personal Aide to Chief Abiola) and hundreds of other pro-democracy activists are now detained in various prisons without trial.

We could not avoid observing the rapidity with which human rights and pro-democracy activists were detained, freed and detained again.

Now and again we were reminded of Nigeria's respect for the Rule of Law before the advent of Military rule. At that time military courts had jurisdiction over soldiers in cases of crimes related to the military. Appeals from those tribunals were to civilian courts. Now civilians are being tried by

military tribunals without the right of appeal against the decisions of the military tribunals. It is more than a disregard of the rule of law to deny citizens the right to appeal to a competent appellate court.

### **Human Rights Suspended**

On October 23, 1953, the Government of the UK extended the European Convention on Human Rights to overseas territories for whose international relations they retained responsibility, including Nigeria. Nigeria was the first British colony with a Bill of Rights before independence. Following a Constitutional Conference in London, the Justiciable Bill of Rights was the first of many Commonwealth Bills of Rights to be modelled on the European Convention of Human Rights - incorporated in the pre-independence Nigerian Constitution. The Nigeria (Constitution) Amendment No 3, Order in Council 1959 (S.I 1959 No. 1772), Art. 69 and Schedule also refers.

Subsequently, there was a Code of fundamental rights reproduced in Chapter 111 of the independence Constitution of the Federation of Nigeria, set out in Second Schedule to the Nigerian Constitution Order in Council 1960 (S.I 1960 No. 165); Chapter IV, SS 30-40 of the 1979 Constitution, being fully operational in 1992.

The Bill of Rights formed an important part of the 1979 Constitution. Rights included the right to personal liberty, the right to a fair trial, the right to freedom of expression and of the press and the right to the dignity of the human person. Now those rights are no more. They have been superseded by decrees and practices that suppress individual rights and freedoms.

Decree No.1 of 1983 suspended substantial parts of the 1979 constitution including the right to personal liberty. Decree No.2 (1984) the State Security (Detention of Persons) Decree, now Chapter 414 - State Security (Detention of Persons) Act section 1 (1) provides:

‘If the Chief of General Staff is satisfied that any person is or recently has been concerned in acts prejudicial to State security to State security or has contributed to the economic adversity of the nation, or in the preparation or installation of such acts and that by reason thereof it is necessary to exercise control over him, he may by order in writing direct that a 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 is delivered to him, to keep that person in custody until the order is revoked’

Section 4 provides as follows:

- 4(1) No suit or other legal proceedings shall lie against any person for anything done in pursuance of this Act.
- (2) 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 sections 219 and 259 of the Constitution shall not apply in relation to any such question.

The military government not only suspended some parts of the Constitution of the federal Republic of Nigeria, it made certain that it would not be sued for any of its wrong-doing. Section 8 of the Special Tribunal (Miscellaneous Offences) Decree 1984 provides:

8(1) 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 1979 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.

The military government thus abolished the citizens' right to sue the government for wrongs perpetrated by government or its agents against citizens.

### **Removal of Criminal Jurisdiction from the Courts**

While the Courts of Law were left with civil jurisdiction, a great deal of criminal work is now done by tribunal. For example the Civil Disturbances (Special Tribunal) Decree No.2 of 1987 created a Tribunal to try cases of civil disturbances. The Special Tribunal consists of:

- (a) a Chairman who is either a serving judge or a retired judge
- (b) four other members one of who shall be a serving member of the Armed Forces.

The Tribunal has jurisdiction to try any persons charged with any of the offences in Schedule 1 of the Decree; an exceptionally broad range of offences (See Appendix 2).

### **The Nigerian Constitution now substantially suspended**

In the Nigerian Constitution it is provided:

Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and judicial tribunals established by law; and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

Both lawyers and judges are concerned because military decrees abound with ouster clauses as shown above. Decree No.1 of 1983 suspended substantial sections of the 1979 Constitution, including the right to personal liberty. It gave power to military government “to make laws for the peace, order and good government” of Nigeria.

Those of the legal profession who are not employed by the system are worried because the right to go to the State High Court has, as pointed above, been busted by many decrees; *habeas corpus* has been abolished and there is no right of appeal to a superior court. The ordinary courts are not available to

those who would like to challenge the decisions of a tribunal. The decisions of tribunals are confirmed or rejected (which we understand is very rare) by the Provisional Ruling Council.

Many years of experience in the courts of law of many countries have shown that mistakes of facts and law do occur. The only safeguard and protection convicted people have is in the appeal process. In Nigeria today it is difficult to correct miscarriages of justice because the final word comes from the military as the final arbiters in the adjudication process. Michael Birnbaum, QC, says in his Report in June 1995 'Nigeria: Fundamental Rights Denied':

"18.10 The lack of a right of appeal exemplifies the arbitrariness of the decision to convene a Civil Disturbances Special Tribunal (CDST). On the one hand, rights of appeal are guaranteed by unsuspended sections of the Constitution. On the other hand, Section 8 of Decree 2 of 1987 provides that the decisions of the tribunal shall not be questioned in any court of law. This prohibition is reinforced by Decree 55 of 1992. Yet when the Attorney General of Rivers State announced the Rivers State Tribunal he said that there would be a right of appeal from its verdicts".

Decree 55 of 1992 is mentioned frequently by judges and legal practitioners because in that Decree the military government declared that decrees took precedence over the Constitution and that no legal action would be possible for any alleged breach of fundamental rights guaranteed in Part 4 of the Constitution in respect of anything done or proposed in terms of Decree 55.

### **Breakdown of Law and Order**

The mission was informed that law and order has broken down. Crime has increased. Robberies are a daily occurrence. There is an increase in armed robberies and in killings by hired assassins. In recent years the police have earned themselves a very poor reputation. But some are in an unenviable situation since in many cases several months can pass in which they receive no salary, in the meantime they resort to taking bribes in order to survive. A corrupt force cannot maintain law and order.

There was a strong feeling that both the police and the judiciary needed specific training in the application of human rights standards to their work. During the oil strike one of the leaders was wanted by the police. They were ordered to arrest him. He met the police twice. He told us that he asked the police whether they preferred arresting him or being paid money. The police opted to receive money. The State Security (Detention of Persons) Act says in section 4(1):

'No suit or other legal proceedings shall lie against any person for anything done or intended to be done in pursuance of this Act'.

### **Chief M.R.D. Abiola - Trials and Tribulations**

Chief Abiola applied for the withdrawal from his case of Justice Mohammed Bellow, Chief Justice of Nigeria. Chief Abiola was one of two candidates contesting presidential election on 12 June, 1993 in accordance with the provisions of the Presidential Election (Basic Constitutional and Transitional Provisions) Decree 1993, No. 13.

Before the results were all announced, the High Court in Abuja made an order, at the instance of Abimola Davis, restraining the Chief Electoral Officer of the Federation from continuing with the

announcement of election results. On 21 June, 1993, Saleh C.J. declared the election illegal on the ground that it was done in violation of a court order. That Court Order was made by Ikpeme J, in an application made by Abimola Davis, and judgement had been delivered on 9 June 1993. The Order restrained the National Electoral Commission from holding the election on 12 June, 1993.

The Commission appealed against the order made by Saleh R.C.J. to the Federal Court-of Appeals. The Federal Military Government then published the Presidential Election (Invalidation of Court Order etc.) Decree 1993 No. 40.

The Decree provides:

“1(1)Any interim, interlocutory or final order, ruling, judgement, decision, direction or other pronouncement made or issued or to be made or issued by any court of law in Nigeria, on or before the commencement of this Decree, whether or not in exercise of its original jurisdiction, which order, ruling, judgement, decision, direction or pronouncement relates to the conduct, the holding or the release of the result of the Presidential election held on 12th June 1993 shall be null and void and of no effect whatsoever.

(2) If any proceeding or appeal has been instituted on or before, or is instituted after the commencement of this Decree in any court, in relation to the conduct, the holding or the release of the result of the Presidential election held on 12th June, 1993, the proceedings or appeal shall, by virtue of this Decree, be made null and void and of no effect whatsoever.

2(1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria, 1979, as amended, the African Charter of Human and People's Rights (Ratification and Enforcement) Act or any other enactment, no proceeding shall lie or be instituted in any court for or on account of any act, matter or thing done or purported to be done in respect of the Decree.

(2) Accordingly, if any proceeding has been instituted on or before or is instituted after the commencement of this Decree, such proceeding shall abate, be discharged and made void.

On 22 June, 1993, the Presidential Election, Basic Constitution and Transitional Provisions) (Repeal) Decree 1993 No. 39 was published. It annulled the election. It says:

"1 (1) The Presidential Election (Basic Constitution and Transitional Provisions) Decree 1993 is hereby repealed.

(2) Notwithstanding the provisions of section 6 of the Interpretation Act or any other enactment to the contrary, any act, matter or thing done or purported to have been done under or pursuant to the Decree repealed by subsection (1) of this section shall, by virtue of the decree be made null and void and of no effect whatsoever.

2(1) Notwithstanding anything contained. in the Constitution of the Federal Republic of Nigeria 1979, as amended, the African Charter of Human and Peoples' Rights (Ratification and Enforcement) Act or any other enactment, no proceeding shall lie or be instituted in any court for or on account of any act, matter or thing done or purported to be done in respect of this Decree.

- (2) Accordingly, if any proceeding has been instituted on or before or is instituted after the commencement of this Decree, such proceedings shall abate, be discharged and made void.

As can be seen from the above decrees, not even the constitution of Nigeria is supreme. The word of the Military Government is above and superior to the Supreme Law of Nigeria.

Abiola is reputed to have won the 12 June, 1993 Presidential elections. He did not become President. We were told that he won in every region of Nigeria. The election was cancelled by Babangida, the non-elected military president of Nigeria. It is common cause that Chief Abiola, after some months of hesitation, declared himself President of Nigeria on 12 June, 1993, and was arrested and charged with treason.

The alleged crime, treason, was committed in Lagos. His trial was held in Abuja. The decision to hold the trial in Abuja was challenged by his lawyers. The Abuja High Court said it had jurisdiction and Abiola appealed. The appeal is still pending. Abiola applied for bail, pending his appeal. On 14 July, 1994, the Federal High Court in Abuja refused him bail but the Federal Court of Appeals granted him bail on 4 November, 1994. The State appealed to the Federal Supreme Court and they confirmed an order from the Court of Appeals staying bail pending the determination of the appeal.

By 24 March, the State was in default of filing their brief. Chief Abiola's counsel applied to strike out the appeal. He did not succeed. The State applied for condonation. But before the two motions were heard, Abiola's counsel applied for an order discharging the Order of Stay of Execution made by the Court of Appeal. Extension of time applied for by the State was granted. At the request of Chief Abiola's counsel the application for the discharge of the order for Stay of Execution was adjourned to 16 May, 1995. On that day in the case between the Federal Republic of Nigeria and Chief (Alhaji) Moshood Kashimawo Olawate Abiola, SC, 214/1994, Chief Abiola applied for the excusal of the following judges:

Justice Mohammed Bellow, Chief Justice of Nigeria  
Justice Mohammadu Lawal Uwais  
Justice Salihu Modibbo Alfa Belgore  
Justice Abukar Bashir Wali  
Justice Idris Lego Kutigi  
Justice Emmanuel Objoma Ogwuegbu  
Justice Othman Mohammed  
Justice Sylvester Umaru Onu

The court adjourned *sine die* in order to reconstitute itself. The ground upon which the application for the excusal of the court was that the judges had individually sued Concord Press Nigeria Limited and others. The Publisher and a number of newspapers owned by Chief Abiola and his company had allegedly published libels against the said judges. The judges excused themselves. Recommendations were made to the Military Government to appoint two judges in order to form a new quorum of judges. Up to now no judges have been appointed.

Chief Abiola sits endlessly in prison. He is charged with high treason. His appeal to the Federal Court of Appeals on the question of jurisdiction is still pending in that Court. No one seems to care about his liberty.

In Nigeria today the delay in dealing with matters in which the liberty of the subject is involved

does not seem to show concern for the liberty of the subject. Justice delayed is justice denied. A high legal source expressed the view that Abiola's lawyers do not want their client tried as they were hoping that there may shortly be a change in government which will result in the release of their client; we were not able to test this claim.

### **The trials of Ken Saro-Wiwa, Mitee and Kiobel of Ogonliand**

The mission was unable to see Ken Saro- Wiwa and his colleagues who are under military custody. We read many reports on the trouble in Ogoniland. We were struck by the misery of the people whose houses were destroyed by soldiers and those who received gunshot wounds and are now left without any medical treatment. In June of this year Ken Saro-Wiwa and his co-accused have been abandoned by their chosen counsel because the defence did not succeed in trying to introduce evidence on a cassette that both the prosecution and the defence had in their possession. The prosecution alleged that evidence on the cassette had been destroyed. The defence could not introduce the evidence in their possession because the court would not allow it. It appears from this incident that the chances of the accused receiving a fair trial are very remote. It was for this reason that defence counsel withdrew from the case. By their presence they did not want to give a semblance of a fair trial when there was none.

### **Arbitrary Justice and the Judicial System**

Nigeria used to have a very good judicial system. We were informed that it is a widespread view, both in the legal profession and the public at large, that the present justice system has broken down, and that the judiciary is not independent. It was noted that 25 years of military rule meant that the majority of judges have been appointed by military regimes and that such selections were often very politically motivated. We heard complaints, from both judges and lawyers, that the courts were under funded and that budget shortages were such that sometimes clients needed to bring their own paper supply to court if they wished to have a copy of the judgement. However despite the fact that the various decrees seek to put the courts in chains, it is notable that there are some judges who still take the opportunity to challenge the validity of arbitrary acts of justice and who continue to assert their right to question state acts.

### **The Viewpoint of the Government**

Our mission did not have the opportunity to meet with Gen. Sani Abacha since the government felt that sufficient advance notice of the request for an appointment had not been given. The delegation was, however, able to meet with Dr. A H Yadudu, Legal Adviser to the Head of State; Hon. Baba Kingibe, Minister of Internal Affairs; Hon. Thomas Ikimi, Minister of Foreign Affairs and Hon. Tochukwu Onwugbufor, Solicitor General.

Assurances were given by these representatives of the military regime that a renewed process towards achieving democracy would be spelled out in detail by the Head of State on October 1, in response to the report submitted by the CC in June. The Minister of Foreign Affairs in particular gave the impression that the process would indeed be a lengthy one, as sufficient time would be required for the development of political parties country-wide, the organisation of a new electoral authority and the accompanying electoral machinery, and the delineation of new state boundaries and legislative bodies.

The Minister of the Interior, Hon. Baba Gana Kingibe, is also the minister responsible for the

maintenance of prisons, but he does not have responsibility for political prisoners. Those detainees who do fall in his jurisdiction are, he stated, held under the laws of the land, and only when court orders are properly issued. While admitting that prisons are over-crowded, he claimed that detention is nevertheless carried out under humane conditions. However reliable sources informed us that in Lagos prisons alone there are some 300 deaths a year, in part because of poor food and inadequate medical treatment.

Contrary to comments made by many other individuals and groups, the Solicitor General, Hon. Tochukwa Onwugbufor, stated that there is no breakdown of law and order, that court orders are properly issued and that it is not possible to be remanded in prison for lengthy periods (one or two years) without the case being heard. Moreover an effective legal aid system operates to assist with many of these cases. In Abiola's case, the delay in bringing it to trial is, he declared, the result of mishandling by and internal conflict among his own lawyers.

The complacent approach of Mr. Onwugbufor contrasts with the views of many lawyers both in Nigeria and abroad who express concern over the level of abuses by both the police and the military, are shocked at dehumanising prison conditions and appalled at the extent of the erosion of rights under rule by decree.

In each of these meetings; the mission requested permission to visit detainees Abiola and Obasanjo, and in each case, were told that authority to grant such permission, resided elsewhere. There seemed to be some confusion, real or manufactured, as to where such authority lay. In any event, the request by the members of the mission to visit these two key prisoners was not granted.

## **FRUSTRATION OF THE RIGHT OF CITIZENS TO CHANGE THEIR GOVERNMENT**

*"We pledge to work with renewed vigour on the protection and promotion of democracy, democratic processes and institution..." - clause 9, Harare Commonwealth Declaration*

### **A Political Vacuum**

Continuous military rule has obviously meant that citizens could not exercise their democratic rights. But General Babangida's annulment of the 1993 election was a more telling denial of those rights than most other attacks. That step was taken in the face of a specific and historic expression of the will of the Nigerian people, an expression in which there was a deliberate, positive vote across ethnic and regional lines in favour of a return to civil rule. By denying the poll result Babangida sought to deal a crippling blow to genuine multiparty politics and to cripple the flowering of democracy.

The new Head of State, Gen. Abacha, had a perfect opportunity to redress the situation and, initially, was trusted by a cross-section of society, including some pro-democracy leaders, to do just that. His entrenching of himself in office, under the perennial excuse of heading a transition regime, was a cruel blow and the second time in less than a year that the military had botched the chance to set Nigeria on the road to democracy.

The costs in Abacha's case are proving to be higher than he might have anticipated since he is confronting an aroused population which had expressed in the 1993 election process their support of Nigerian nationality and a clear desire for national unity. The population is cognisant of the fact that the Abacha government has not given any indication of having a sense of direction and purpose. Not only does it not seem to have solutions to the major problems of the country, it makes little attempt to address them and does not seem to be bothered about this.

There is no creative policy line coming out of Abuja. As Head of State Abacha does not normally meet with his cabinet collectively and, it appears, rarely individually. Nigeria is saddled with a government in a caretaker mode - but for an indeterminate 'transition' period. A government which is non-accountable to the electorate and non-participatory in its operation cannot perform effectively and cannot command the respect of Nigerians. If some aspects of society are working it is in spite of military rule, not because of it<sup>(7)</sup>.

Nigerians are quite clear that military rule has not served them well. They point out that they have not even had the benefits which military regimes occasionally manifest elsewhere – of organisational competence, of a disciplined, if controlled, society, the benefits of an efficient public service and smoothly running institutions, or of control over crime and corruption. Rather there has been a degeneration on all of these fronts and a raping of the national wealth in the shade of a thriving and predatory military class and its hangers-on.

### **Threats To National Unit**

In the absence of respected and accepted national political institutions the country has been brought to an advanced stage of political deterioration. The possibilities now exist for even greater turmoil. In some quarters the frustration and desperation is encouraging the development of various ethnic and

regional groupings as outlets for real or perceived concerns, and in anticipation of further decentralisation. This is a process which feeds on itself for, in the absence of political parties and political expression, ethnic factionalism, instability and criminal excesses can become predominant. Such a situation also provides an excuse to perpetuate military rule.

The resulting widespread disaffection is infecting all sectors of society and a seething resentment is growing among ordinary people. There may well be significant disaffection within the military, which over the years has seen many respected officers killed, imprisoned or sent into early retirement. This situation leads many Nigerians to fear a drift into ethnic confrontation between the North and the South, or more specifically between the Fulani/Hausa, whose representatives are in control of the government, and the Yorubas, who are its leading opponents. Some pro-democracy activists are already specifically suggesting that only by dividing Nigeria into two distinct countries could there be any hope of getting rid of military rule.

Fortunately however the forces favouring cohesion are still greater than the separatists and it is still true that in a free election a candidate wishing to win will have to be seen as a figure for national unity. It is also true that, while respected figures in the North are not agitating, like their Southern counterparts, for a recognition of the June 12 election results as a necessary first step on the road back to democratic order, they certainly are in favour of having democratic elections as soon as possible.

The long years of military rule mean that some elements of civil society are underdeveloped; there is a clear need for strengthening trade unions, for bolstering political parties when they do get established eventually, for skills training in organising and networking on public issues and for building community organisations at the grassroots level.

## CONCLUSION

Nigerians do not want a civil war but they are tired of military rule. After two bloody confrontations with the regime in 1993 and 1994, the majority of the pro-democracy forces are still advocating the installation of an interim government led by Chief Abiola as the way forward. Abacha so far seems intent on controlling whatever process for the return to the polling booth he eventually approves. While some political elements in the society will undoubtedly co-operate with Abacha's proposed constitutional changes of October 1, and participate in elections held under them, it is unlikely that the populace will take part with the vigour and determination that was exhibited in 1993.

For their part the pro-democracy forces are bound to oppose the proposed changes actively. Since these forces are being brutally suppressed at home, they look to the international community to support their cause and to facilitate Abacha's exit. They are fearful of any semblance of return by the outside world to business as usual with Nigeria until democracy is restored.

The events of the last six months present a challenge to the international community to show that it can be effective in defence of human rights and in fostering democracy. The breakdown of Nigeria will be a blow to the cause of other multi-ethnic states in the continent. Currently Nigeria is a more manageable case than Angola, Rwanda or Bosnia because, amongst other factors, an ethnic civil war is not as yet a factor.

Just as a satisfactory settlement in South Africa had immediate positive spin-offs in Angola and Mozambique, it is also true that bringing democratic order to Nigeria is bound to have positive effects throughout West Africa, in particular in Gambia, Liberia and Sierra Leone. But Nigeria's natural influence and impact extends not only to West Africa. As black Africa's largest nation and potential economic leader it qualifies as the standard bearer for the continent.

Liberal Nigerians fear that, short of the outbreak of ethnic conflict, the international community will continue to tolerate the excesses of the Abacha regime; especially if the worst abuses are toned down, as well they might be once enough of the opposition is killed or incarcerated. Punitive measures will, it is felt, only be applied if Western investment interests are threatened. This perception might well lead some opposition figures to seek to raise the stakes by turning to subversion and to clandestine attacks on oil companies as a possible lever to spur serious Western involvement.

Nigeria presents an opportunity for the West to take a strong stand supporting positive values for their own sake and not because of political competition as in the Cold War, of protection of economic interests as in the Gulf, or of concern about regional stability as in Bosnia. The adoption by leading states of an effective sanctions policy on Nigeria would be a watershed in international political co-operation, as it would prove that protestation about the priority of democracy have come of age.

## **The Challenge To The Commonwealth**

The Commonwealth has a particular reasonability to give leadership on the issue of Nigeria, a leading member state. It is well positioned to do so since, over the past few years, the Commonwealth has successfully facilitated the transition from one-party or military regimes to electoral democracy in many of its member states; it therefore has a wealth of experience to offer Nigeria in this respect. It also has a responsibility and a vested interest in ensuring that the regime in Nigeria does not frustrate that country's democratisation process.

We believe that with sufficient international pressure the Nigerian regime can be convinced to take steps to act consistently with Commonwealth standards and to establish an authoritative civilian transition regime sooner rather than later. There is little justification, after the prolonged transition process of Gen. Babangida and after an actual election, for another transition process under a military regime. The Commonwealth, in a sustained and high profile effort, should offer its political and diplomatic resources to assist the Abacha regime to return to democratic order in a reasonable time.

The long absence of political parties in Nigeria means that there are serious weaknesses in the capacity and skills for national political organisation, mobilisation and networking and a lack of effective structural links between the middle classes and the grass roots. When, eventually, valid elections are held the Commonwealth, in both its official and non-official sectors, should offer every assistance to ensure that they are as free and fair as possible and, most importantly, in the post-election phase provide Nigeria with a wide range of moral and technical assistance, in rebuilding a society that is democratic at both the governmental and civic levels.

The Commonwealth has long advocated both democracy and development, and in the Harare Declaration it emphasised the links between human rights, democratic policies and sustainable development. By contrast 25 years of military rule in Nigeria have shown how, in the absence of democracy, in a country rich in talents and resources, the whole framework of human rights gets subverted, and how development itself becomes a casualty.

The Commonwealth should affirm its priorities. It should not accept military annulment of an election. It has to insist on the legitimacy of the opposition's role. It must condemn the widespread violation of the person by the security forces. It should oppose the curbing of freedom of expression and of the right to associate, the assault on personal liberty, and the physical abuse of individuals in and out of detention. It must reiterate its concern over the comprehensive degeneration of the social and economic rights of the Nigerian people.

In the Harare Declaration of 1991 all Commonwealth states pledged to promote and protect all these rights.

The mission which was in Nigeria from 21 July 1995, met with the following groups and individuals:-

**Consolidated Programme**

Friday 7 July

In Lagos

Concerned Professionals:

- Mr Asuerinme Ighodalo
- Ms Obi Ezekwesili
- Dr Ayo Aghodaro
- Anthony Goldman, BBC
- Dr Beko Ransome-Kuti, Campaign for Democracy (CD)

Saturday 8 July

- Mr James Jukwey, Reuters Correspondent
- Dr Beko Ransome-Kuti, Campaign for Democracy
- Mr Clement Nwankwo, Constitutional Rights Project
- Dr Tunji Abayomi, Human Rights Africa
- Mr Femi Falana, National Association of Democratic Lawyers
- Mr Olisa Agbakoba, Civil Liberties Organisation
- Dr Owens Wiwa, Movement for the Survival of the Ogoni People

Sunday 9 July

Press groups:

- Mr Dapo Olorunyomi, Editor-in-Chief, The News Magazine
- Mr Lemi Gholahan, Producer/Head of Programme, Channels Television
- Mr Dele Alake, Editor, Sunday Concord
- Mr Owei Lakemfa, Editor, TNT Newspapers
- Bayo Onarugan, AM News
- Kayode Olaruyi, The News
- HE Dr Walter Carrington, Ambassador of the United States
- Mrs Yemisi Soyemi, Executive Director, Nigerian Network of Non-Governmental Organisations
- HE Mr Thorold Masefield CMG, British High Commissioner,

Monday 10 July

- Senator Kofoworola Bucknor-Akerele, NADECO
- Chief Mrs Priscilla Kuye, President, Nigerian Bar Association

- Dr B A Oye-Adeniran, President, Nigerian Medical Association
- Chief M G Dabibi, Senior Staff, PENGASAN
- Alhaja Kudirat Abiola (wife of Chief MKO Abiola)
- Mrs Stella Obasanjo (wife of Olusegun Obasanjo)
- Mr Ayo Aderinwale, Secretary-General, African Leadership Forum

Tuesday 11 July

- Alfred Ilenre, Secretary General, Ethnic Minority Rights Organisation of Africa
- Mr Adekunle Olumide, Director General, Lagos Chamber of Commerce and Industry
- Chief Bola Ige, (former Governor, Oyo State)
- Mr Adenola Ojinda, General Director, Tell Magazine
- Mr David Barinsa, Executive Editor, Tell Magazine
- Chief Anthony Enahoro
- Mr Asuerinme Ighodalo, National Democratic Coalition

Meeting of Commonwealth High Commissioners:

- Mr G Punugwe, Charge d'Affaires, Zimbabwe High Commission
- Mrs Marilyn Collier, Charge d'Affaires, High Commission of the Republic of Trinidad and Tobago
- HE Mr S K Munbukwanu, High Commission of the Republic of Zambia
- HE Mr Joseph C Blell, High Commission of the Republic of Sierra Leone
- HE Mr Ndeutapo W Arnagulu, High Commission of the Republic of Namibia
- HE Mr Mukarram J Syed, High Commission for the Islamic Republic of Pakistan
- Mr Francis K Mwangi, Charge d'Affaires, High Commission of the Republic of Kenya
- HE Mr Tengku Idriss Ibrahim, High Commission of Malaysia
- HE K S Bharti, Charge d'Affaires, High Commission of India
- Mr Audley Rodrigues, Charge d'Affaires, High Commission of Jamaica
- HE Mr John Kofi Barkli Tetiegah, High Commission of the Republic of Ghana
- HE Mr Howard C Brown, Australian High Commission
- HE Mr J T Masefield, British High Commission
- HE Mr Omar Secka, High Commission of the Republic of Gambia
- HE G Shipo Nene, South Africa High Commission

Wednesday 12 July

In Abuja

- Dr Tadudu, Legal Adviser to the Head of State
- Hon Baba Kingibe, Minister of Internal Affairs
- His Grace, the Rev. A Onaiyekan, Roman Catholic Bishop of Abuja
- Hon Thomas Ikimi, Minister of Foreign Affairs

Thursday 13 July

In Kano

- Alhaji Ahmadu-Rufai (former Governor of Kano)
- Justice Pay Mahmoud, High Court of Kano
- Raymond Tin, Canadian Community Co-ordinator
- Alhaji Maitama Sule (former Federal Minister)

#### Friday 14 July

Internal briefings and return to Lagos

#### Saturday 15 July

In Lagos

- Justice Mohammed Bello, Chief Justice

Women's groups:

- Adeloun Ilumoka, EMPARC
- Mrs Florence Ajomale, YWCA.
- M A Omibiyi-Obidike, WORDOC
- Beth Gunn, Canadian Women's Club
- William Bloxon, UNCHS-Sustainable Ibadan Project
- Pearl Nwashili, STOPAIDS Organisation
- Roson Monfort, Educational Co-operation Society
- Alberta Ngwana, Educational Co-operation Society
- Mrs T Chikwe Ochiagha, YWCA
- Mrs Belinda Bobby Diel, Executive Director, Women Justice Programme
- LeVonne Harrell, Africare
- Mrs Rahmtallah Ogunmuyiwa (Alhaja)
- Rev Sister Anne Maria Ezenwa, Justice, Peace and Social Development Commission
- Anne E Aimua, Staff Attorney
- Henry Osadolor, CUSO
- Ayo Atsenuwa, Legal Research and Resources
- Ibiba George-Chichi
- Mana Aikoku, JHYIPCS
- Mrs Adenike Yesufu, Executive Director, Women Advancement Forum
- Joyce Fatona, Nigerwives Nigeria
- Dr Irene M Thomas, Inter-African Committee on Harmful Traditional Practices
- Glory Afi Kilanko, National Co-ordinating Secretary, Women in Nigeria (WIN)
- C O Williams, General Secretary, Christian Association of Nigeria

#### Sunday 16 July

In Port Harcourt

- HE Lt Col Dauda Musa, Kano Military, Administrator
- Ogoni Delegation: Relatives and colleagues of murdered leaders, Ogoni Traditional (Anti-MOSOP) Group:

- Eugene Tomubari
- Justin Naata Kobani
- Alhaji Muhammed Kobani
- Mrs Anne Chizoma Kogbara
- Dr C D Kpakol
- H G N K Gimma (Gbenemene Tua-Tua-Tai)
- George S Kqbimi
- Suage A Badey
- Ms Priscilla Vikue
- Mrs Rose Kobani
- Dmaka Pueba
- Ignatius S Kogbara (Spokesman)
- Mrs Jane Shaw, Canadian Community Co-ordinator
- Shell Petroleum Development Company of Nigeria
- Mr E U Imomoh, General Manger East
- Mr Nnaemeka Achebe, Director and General Manager, Business Development
- Daughters of Charity of St Vincent de Paul Eleme
- Mrs Ken Saro-Wiwa (wife of Ken Saro-Wiwa)
- Mrs Diana Wiwa, Federation of Women's Association

Ceremony at re-opening of Kaa village primary school destroyed in Ogoni violence of May 1994.  
Briefing by several individuals maimed in same violence of May 1994.

- Dr Mofia T Akobo, Southern Minorities Organisation
- Mrs Thomas, Southern Minorities Organisation

#### Monday 17 July

In Lagos

- Mr Tochukwu Onwugbutor, Solicitor General, Federal Ministry of Justice

#### Tuesday 19 July

- Mr Rafi Peers, First Secretary (Economic), South African High Commission
- Justice Mohammed Belo, Chief Justice, Supreme Court
- Ms Belinda Bobby Diel, Women's Justice Programme

#### Thursday 20 July

- Ambassador (Ret'd) Ono, Foreign Political Consultant

#### Friday 21 July

- Mr Olisa Agbakoba, Civil Liberties Organisation
- Mr Abdul Oroh, Civil Liberties Organisation
- HE Calvin Smith, High Commissioner of Trinidad & Tobago

**Chronology of Key Events 1993**

June 12	Presidential elections held
June 23	Election results annulled
July–August	Public unrest in support of Chief Abiola and recognition of election results
August 26	Gen. Babangida resigns
August 27	Chief Shonekan appointed to lead interim government
Sep–Nov	Public unrest continues; massive non-acceptance of interim regime
Nov 17	High Court declares interim government illegal
Nov 17	Gen. Abacha installs himself as Head of State; ostensibly at the request of Shonekan election

**1994**

January	Abacha announces that he would establish a Constitutional Conference(CC)
Jan-May	Continued public unrest in criticism of proposed CC and against Abacha's interim regime
May 17	National Democratic Coalition formed amongst various opposition groups; calls on Abacha to install Abiola as President by end May and for boycott of CC elections on May 23 April-May Ethnic clashes in Ogoniland; security forces clampdown harshly; murders of 4 elders lead to arrest of Ken Saro-Wiwa and other MOSOP leaders
May 23	Elections to Constitutional Conference -very low turnout of voters
May-June	Members of disbanded legislature plan to reconvene; in early June many arrested
June 11	Chief Abiola declares himself President and unrest increases
June 16	Two major newspaper groups proscribed
June 23	Chief Abiola arrested and later charged with treason
June 27	Strike announced by oil workers union as part of mounting unrest; strike joined later by other unions and becomes national
June 28	CC convened
August	Executive of oil workers unions and of Nigerian Labour Congress dissolved in late August
Sept 5	Abacha announces a series of decrees which increase arbitrary powers of government
Sept 12	Attorney-General Olu Onagoruwa dismissed by Abacha for criticism of recent decrees
June-Dec	Government constantly harasses pro-democracy supporters; many NADECO leaders arrested; some passports seized; a number of dissidents flee abroad

**1995**

Mar 8	Resolution led by European Union fails at UN Human Rights Commission in Geneva
Mar 3	Arrests of several serving military officers and a few civilians on charge of

plotting a coup; later retired generals Obasanjo and Yar'Adua, a former President and vice-President respectively, also arrested on related charges

June Trials of alleged coup plotters begin

July Trials completed and it is announced that some 50 persons were tried on various charges, including Obasanjo and Yar'Adua who were sentenced along with the rest

July Vigorous protests in Nigeria and abroad at reports, not denied, that most sentences were either for death penalty or life imprisonment. Appeals for clemency from a wide range of political leaders. Growing . call for sanctions against Nigeria from foreign governmental and non-governmental sources.

**Unofficial List of Those Sentenced July 1995**

Death Sentence:

Major General Shehu Yar'Adua  
Colonel R. Emokpae  
Colonel R. Bello Fadile  
Colonel Lawan Gwabede  
Colonel O. Oloruntoba  
Lt. Col. (Ret'd) M.A Ajayi  
Lt. Col. V.O. Bamgbose  
Lt. Col. K. 'Happy' Bulus  
Lt. Col. M.A Igwe  
Lt. Col. Ndubese  
Lt. Col. R.D. Obiki  
Lt. Col. S.E. Oyewole  
Major (Ret'd) Akinloye Akinyemi

Life Sentence:

General Olusegun Obasanjo  
Lt. Col. O.E. Nyong  
Capt. M. A, Ibrahim  
Capt. A.A. Ogunsuji  
Capt. U.S.A Suleiman  
2nd Lt. Richard Emonula  
Mrs Chris Anyanwu  
Julius Badejo  
Peter Ijaola  
Alhaji Sanusi Mato Felix Ndmaigida

## Appendix 4

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows: -

### Part 1 - CONSTITUTION OF CIVIL DISTURBANCE INVESTIGATION COMMITTEE

1. (1) Whenever the President, Commander-in Chief of the Armed Forces if of the opinion that
  - (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 or life or property or injury to person;

he may constitute a special investigation committee (hereafter in this Decree 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 the 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.

## LIST OF OFFENCES

### SCHEDULES

#### SCHEDULE 1                      Section 3 (1)

#### **A- CRIMINAL CODE**

1.        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.
13.       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.       Attempt 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.

33. Managing an unlawful society, membership of an unlawful society.
34. Unlawful assemblies, breach of the peace.
35. Rioting.
36. Any other offences relating to or connected with civil disturbances as defined in this Decree.

## **B - PENAL CODE.**

1. Insulting or exciting contempt of religious creed.
2. Injuring or defiling place of worship.
3. Disturbing religious assembly.
4. Committing trespass on place of worship.
5. Culpable homicide punishable with death.
6. Culpable homicide not punishable with death.
7. Hurt
8. Grievous hurt.
9. Voluntarily causing grievous hurt.
10. Voluntarily causing grievous hurt without provocation. .
11. Voluntarily causing hurt with provocation.
12. Voluntarily causing hurt or grievous hurt by dangerous means.
13. Voluntarily causing hurt to extort property or to constrain to an illegal act.
14. Causing hurt by endangering life or personal safety of others.
16. Assault.
17. Assault or criminal force to deter public servant from discharge of his official duty.
18. Assault or criminal force to a woman to outrage her modesty.
19. Theft.
20. Theft in a dwelling home.
21. Theft after preparing to cause death, hurt or restrain in order to commit theft.
22. Extortion.
23. Putting person in fear of injury in order to commit extortion.
24. Extorting by putting a person in fear of death or grievous hurt.
25. Extortion by threat of accusation of an offence punishable with death.
26. Mischief
27. Mischief by fire or explosive with intent to cause damage.
28. Mischief by fire or explosive with intent to destroy house.
29. Mischief committed after preparation made for causing death or hurt.
30. Rape.
31. Treason.
32. Act of gross indecency.
33. Unlawful possession of human head.
34. Death caused in act of committing offence.
35. Death caused when intention is to cause hurt only.
36. Causing disappearance of evidence of offence or giving false information to screen the offender.
37. Destruction of document to prevent its production as evidence.
38. Taking gratification to screen an offender from punishment.
39. Offering gratification in consideration of screening offender.
40. Unlawful assembly.

41. Joining unlawful assembly armed with deadly weapon.
42. Promoter of an unlawful assembly liable as a member.
43. Member of an unlawful assembly.
44. Rioting.
45. Rioting armed with deadly weapon.
46. Criminal conspiracy.
47. Unlawful society.
48. Management and membership of unlawful society.
49. Attempt to commit offences.
50. Disturbances of public peace.
51. Inciting disturbance.
52. Sedition.
53. Any other offences relating to or connected with civil disturbances as defined in this Decree.

STATEMENT ON NIGERIA BY THE  
COMMONWEALTH SECRETARY-GENERAL

Commonwealth Secretary-General Chief Emeka Anyaoku made the following statement today:

*"The recent confirmation by the Nigerian military government of an attempted coup d'etat and reports of a new wave of arrests and detentions of more citizens constitute a serious turn for the worse in the country's continuing drift towards a self-inflicted tragedy.*

*International concern and disapproval has in this connection been heightened by the reported arrest and detention of General Olusegun Obasanjo, widely known as the only Nigerian military head of state to have relinquished power voluntarily and returned the country to a democratically elected government.*

*These developments underscore the point that, unless and until the military government speedily returns the country to democratic rule, Nigeria's current ills, including instability and potential for disastrous conflict, will continue to worsen. I am therefore contacting the Nigerian Government to further explore ways in which the country can be assisted to hasten the return to democracy".*

16 March 1995  
Commonwealth Secretariat  
Marlborough House, London

**EXTRACT FROM SPEECH TO 51<sup>st</sup> SESSION OF THE UN COMMISSION ON  
HUMAN RIGHTS  
GENEVA 28.2.95**

**BY**

**Chief Michael Agbamuche, Attorney General  
Ministry of Justice of Nigeria**

In Nigeria we are fulfilling obligations entered into under human rights instruments by creating a positive environment for our people to enjoy basic human rights. The citizens are guaranteed the enjoyment and protection of their rights and freedoms within the provisions of the law. Infringements of rights can be redressed and are actionable within our legal system after thorough investigation. To this end, therefore, this administration cherishes an independent judiciary free from all forms of encumbrances. The doctrine of the separation of powers contained in the 1979 Constitution is still respected as far as independence of the judiciary is concerned. Our judiciary has remained one of the most vibrant in the world. However, the State should not be precluded from enacting laws for the good governance of society and the maintenance of law and order. It is, therefore, the responsibility of the Nigerian State to promote and protect the well being of its citizenry by ensuring the peaceful co-existence of all segments of the society and it is also its duty to prevent acts prejudicial to law and order.

LAGOS

18 July 1995

H E General Sani Abacha  
Head of State and Commander-in-Chief of the Armed Forces of Nigeria  
ABUJA

Excellency

OPEN APPEAL FOR CLEMENCY

The members of the Commonwealth Human Rights Group which has been in Nigeria over the last 12 days on a fact-finding mission to investigate the situation in respect of human rights and the prospects for democracy, have learnt with grate misgivings of the verdict of the Special Military Tribunal which tried some 50 Nigerians, civilian and military, accused of plotting a coup d'etat in March 1995.

Without prejudice to the rights, wrongs and validity of the trial, which we note was held in secret and without benefit of free choice of counsel, we most earnestly urge Your Excellency and the Provisional Ruling Council in the use of your authority, to temper the judgement of the tribunal by exercising that sensitivity, generosity and leniency which are the hallmarks of a regime that seeks to honour its goal of building a durable democratic society. In particular, we appeal that no death penalties be applied as we are certain that all Nigerians sanctify human life, as indeed the country has asserted in its ratification of the African Charter of Human and Peoples' Rights, Article 4 of which states "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right".

We recall that in assuming office, Your Excellency said that your purpose was to provide well thought out and permanent solutions to Nigeria's problems and would assume, as would people all over the world, that such sentiments were intended to reflect an enlightened ambition. The road to freedom and justice has never been through the exercise of arbitrary power and after 20 months in office the Provisional Ruling Council has now a unique opportunity to demonstrate to the watching world its magnanimity and that it is indeed dedicated to putting a stop to the depressing and self-perpetuating cycle of coups, arbitrary arrests and state executions which have scourged Nigerian society over three decades.

Hon. Flora MacDonald, P.C.  
Former Secretary of State for External Affairs, Canada

Justice Enoch Dumbutshena  
Former Chief Justice, Republic of Zimbabwe

Dr Neville Linton  
Former Senior Official, Commonwealth Secretariat

**THE HARARE COMMONWEALTH DECLARATION 1991**

Key excerpt:

4. Its members also share a commitment to certain fundamental principles. These were set out in a Declaration of Commonwealth Principles agreed by our predecessors at their Meeting in Singapore in 1971. Those principles have stood the test of time, and we reaffirm our full and continuing commitment to them today. In particular, no less than 20 years ago:

we believe that international peace and order, global economic development and the rule of international law are essential to the security and prosperity of mankind;

we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives;

we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil;

we oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality;

we recognise the importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world, and seek the progressive removal of the wide disparities in living standards amongst our members. ...

9. Having reaffirmed the principles to which the Commonwealth is committed, and reviewed the problems and challenges which the world, and the Commonwealth as part of it, face, we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas:

- the protection and promotion of the fundamental political values of the Commonwealth:
  - democracy, democratic processes and institutions which reflect national circumstances,
  - the rule of law and the independence of the judiciary, just and honest government:
- fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
- equality for women, so that they may exercise their full and equal rights;
- provision of universal access to education for the population of our countries; ...
- extending the benefits of development within a framework of respect for human rights;



**The Team in Ogoniland**

**Left:** Dr Neville Linton, Former Senior Official, Commonwealth Secretariat

**Centre:** Justice Enoch Dumbutshena, Former Chief Justice, Republic of Zimbabwe

**Right:** Hon Flora MacDonald, PC, Former Secretary of State for External Affairs, Canada