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# QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

## Situation of human rights in Nigeria

## Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre W. N'diaye, and the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 1996/79

## Addendum

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## Introduction

1. The present report is an addendum to the report on the situation of human rights in Nigeria (E/CN.4/1997/62) submitted to the Commission on Human Rights by Mr. Bacre Waly N'diaye, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers, pursuant to resolution 1996/79 of the Commission on Human Rights.

2. The Special Rapporteurs deeply regret that they are unable to report to the Commission their findings based upon a visit to Nigeria. As noted in their report, the Special Rapporteurs had hoped to carry out a fact-finding mission to Nigeria prior to the fifty-third session of the Commission on Human Rights (see E/CN.4/1997/62, para. 2). In fact, a mission was agreed upon between the Special Rapporteurs and the Government of Nigeria and was to take place from 23 February to 5 March 1997. However, following the arrival of an advance party in Nigeria, it became obvious that the Government of Nigeria was not prepared to allow the Special Rapporteurs to meet certain detainees. In the view of the Special Rapporteurs, this is a violation of the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, and therefore, as a matter of principle, was unacceptable to them. Accordingly, the Special Rapporteurs informed the Government that they would not carry out the mission under those conditions.

3. The present report is divided into three chapters. Chapter I contains a summary of the communications and meetings between the two Special Rapporteurs and the Government of Nigeria between the finalization of the report and the date on which the addendum to the present report was finalized. Chapter II contains an analysis of the allegations the Special Rapporteurs have received concerning issues that fall within the scope of their respective mandates. Chapter III contains the conclusions and recommendations of the Special Rapporteurs.

## I. COMMUNICATIONS AND MEETINGS BETWEEN THE SPECIAL RAPPORTEURS AND THE GOVERNMENT OF NIGERIA

4. The Permanent Mission of the Federal Republic of Nigeria to the United Nations Office in Geneva (hereinafter the Permanent Mission) transmitted Note Verbale 36/97 on 5 February 1997 to the High Commissioner/Centre for Human Rights (hereinafter the Centre), stating the following:

(a) The Government of the Federal Republic of Nigeria has accepted to receive the two Special Rapporteurs on a joint mission to Nigeria from 23 February to 5 March 1997. In arriving at the above period for the visit, the Government took into consideration the initial request for an extended visit of 14 days. The rapporteurs are expected to arrive on 23 February and depart on 5 March 1997.

(b) The Government of Nigeria regrets its inability to accede fully to the latter request owing to other prior commitments and engagements. Indeed, the Government had been committed to receive the African Commission on Human and Peoples Rights, precisely during the period latterly proposed by the

Special Rapporteurs, but has had to shift the visit of the African Commission to a later date in order to accommodate the Special Rapporteurs. It is also pertinent to point out that the Government has scheduled nationwide local government elections, on a party basis, in furtherance of our country's transition to civil rule programme.

(c) In accepting to receive the visitors, the Government has taken due note of the clarifications and assurances received from the two Special Rapporteurs as conveyed to the Government by the High Commissioner/Centre for Human Rights on the concern expressed about their impartiality. The Government has also noted the intention of the High Commissioner/Centre for Human Rights to send an advance party. We welcome that. Further, the proposed places to be visited and the officials to meet with have been noted.

(d) The Government of the Federal Republic of Nigeria expects to receive confirmation of the visit and the travel plans of the Special Rapporteurs, as soon as possible.

5. In a letter dated 7 February 1997, the Special Rapporteur on the independence of judges and lawyers informed the Permanent Representative of the Federal Republic of Nigeria to the United Nations Office in Geneva that he and his colleague, the Special Rapporteur on extrajudicial, summary or arbitrary executions, were pleased to accept the invitation of the Government. In that letter, he proposed an itinerary for the visit, reiterating the request contained in the aide-memoire to visit Lagos, Abuja, Port Harcourt, Kano and Kaduna. In order to maximize the use of the limited time available to them in Nigeria, he proposed that the mission should divide into two teams that would undertake simultaneous visits to Port Harcourt and Kano/Kaduna. He also requested an agenda of meetings organized by the Government, making reference to the list of officials contained in the annex attached to the aide-memoire presented to the Nigerian delegation on 14 January 1997. He also reiterated the Special Rapporteurs' request that meetings with officials be scheduled in the morning, thereby leaving the afternoons free for meetings with non-governmental organizations and private individuals, as well as for visits to prisons. In that regard, he noted that a complete list of the detainees whom they would like to meet would be transmitted during the course of the following week.

6. In Note Verbale 47/97 dated 12 February 1997, the Permanent Mission responded to the letter dated 7 February 1997 from the Special Rapporteur on the independence of judges and lawyers. While noting with approval the arrival dates of the advance party, the Permanent Mission wished to address the following issues:

"(a) As to the cities which the Special Rapporteurs requested to visit, the Government of Nigeria has no objection. Similarly, the intention of the Special Rapporteurs to split at some point is also noted. However, the Mission wishes to recall that in its Note Verbale No. 262/96 of 18 October 1996, it was stated that decisions about the Special Rapporteurs' itinerary, places and persons to visit 'should be a matter to be mutually agreed'. This position was acknowledged by the Special

Rapporteurs in their letter No. G/SO 214 (3-3-/) of 18 October 1996, recognizing that 'specific details of the mission, such as the locations and officials to be visited, are matters which must be mutually agreed upon'.

"(b) Therefore, while noting the proposed itinerary of the Special Rapporteurs, the Government of Nigeria is of the view that such issues should be matters to be mutually agreed, upon the Special Rapporteurs' arrival in Nigeria.

"(c) As to the officials the Special Rapporteurs wish to meet, the Government of Nigeria wishes to draw to their attention that Abuja is its Federal Capital Territory and the seat of the Federal Government. Thus, Abuja will be the venue of all such meetings. The Special Rapporteurs may, therefore, wish to report to the Federal Capital Territory on their arrival and at the conclusion of their mission, before departing for their destinations via Lagos.

"(d) While assuring the Special Rapporteurs full cooperation, the Government of Nigeria stands ready to extend the necessary courtesies to them in order to facilitate the mission ..."

7. In a note verbale dated 13 February 1997, in response to Note Verbale 47/97 from the Permanent Mission, the Centre informed the Permanent Mission that the Special Rapporteurs welcomed the opportunity to meet with federal officials on their arrival and at the conclusion of their mission. Accordingly, the Special Rapporteurs proposed that they should hold meetings with federal officials in Abuja on 24 and 25 February and at the conclusion of their mission on 5 March.

8. Further, as a follow-up to the letter of 7 February 1997 from the Special Rapporteur on the independence of judges and lawyers, the Centre transmitted to the Permanent Mission a list of the detainees with whom the Special Rapporteurs wished to meet during their mission to Nigeria, thereby enabling the Government of Nigeria to make the necessary arrangements for these meetings. It was also stated in the note verbale that the Special Rapporteurs might provide additional names of detainees during the course of the mission. The list transmitted to the Permanent Mission contained the following names: Chief Moshood Abiola; Chris Anyanwu; Kunle Ajibade; Ben Charles-Obi; Dr. Beko Ransome-Kuti; Shehu Sani; General Olusegan Obasanjo; Colonel Lawan Gwadabe; Colonel R.S.B. Bello-Fadile; Major-General Shehu Musa Yar' Adua; Rebecca Onyabi Ikpe; Sanusi Mato; Dr. Frederick Fasheun; Chief Olu Falae; Frank Kokori; and the 19 Ogoni prisoners held in Port Harcourt (the list contained the names of these 19 detainees).

9. On 19 February 1997, pursuant to a recommendation of the Special Rapporteurs, which had been welcomed by the Government of Nigeria, a human rights officer from the Office of the High Commissioner/Centre for Human Rights travelled in advance of the Special Rapporteurs to Lagos to arrange the logistical details of the visit with government officials and non-governmental organizations. It should be recalled that in Note Verbale 47/97 from the Permanent Mission, referred to in paragraph 6 above, it was acknowledged that the human rights officer would arrive in Lagos on 19 February. Further, the Resident Representative of the United Nations Development Programme (UNDP) in

Lagos also informed the Ministry of Foreign Affairs by a note verbale dated 19 February that the human rights officer would arrive in Lagos on 19 February. However, despite the Government's acceptance of the recommendation for an advance party and its acknowledgment of the date of arrival in Lagos, it neither requested nor organized any meetings with the advance party.

10. In the absence of meetings with the Government, the advance party met with officials of UNDP and the United Nations Information Centre in Lagos, as well as with a limited number of non-governmental organizations and private individuals with whom the Special Rapporteurs wished to meet following their arrival. The purpose of the advance party's meetings with non-governmental organizations was to receive background information and tentatively to organize meetings for the Special Rapporteurs based upon their anticipated itineraries. The representatives of NGOs with whom the advance party met on 20 and 21 February included representatives of the Civil Liberties Organization, representatives of the Nigerian Bar Association and Chief Gani Fawehinmi.

11. The advance party also took cognizance of various reports that were appearing in the local newspapers in Lagos concerning the visit of the Special Rapporteurs. These reports stated that the Special Adviser to the Head of State on Legal Matters, Dr. Anwalu Yadudu, had announced on 19 February that the mandate of Special Rapporteurs did not extend to meeting detainees. Dr. Yadudu was quoted as stating: "The team visits all countries. It has nothing to do with human rights abuses and I should state that the team's mandate is restrictive and specific".

12. Based upon these press reports, the Special Rapporteurs immediately expressed their concern by transmitting a fax dated 20 February 1997 to the Permanent Mission in which they sought clarifications and assurances that their visit to Nigeria would take place in accordance with the terms agreed upon after consultations between the Nigerian delegation headed by the Special Adviser (Legal Matters) to the Head of State, and the High Commissioner/Centre for Human Rights. In particular, they wished to receive clarification that they would have access to Chief M.K.O. Abiola and to the 19 Ogoni detainees. In this connection, the Special Rapporteurs drew the Permanent Representative's attention to Note Verbale No. 18/97, dated 20 January 1997, addressed to the High Commissioner/Centre for Human Rights, in which the Permanent Mission inter alia affirmed, with regard to the Special Rapporteurs interviewing detained persons, that "there is no objection", merely indicating that more information, particularly on the time and date of the interviews, was needed for further action to be taken. The two Special Rapporteurs expressed the hope that the newspaper clippings did not fully reflect the real attitude of the Nigerian authorities towards their visit, and that the requested assurances be provided to them prior to their departure for Nigeria.

13. The Resident Representative of UNDP in Lagos also conveyed this message to the Government of Nigeria by a telephone call to the Special Adviser (Legal Matters) of the Head of State. According to the Resident Representative, the

Special Adviser stated that the press reports were not accurate and that the Government remained flexible with regard to the issue of meetings with detainees. The Special Adviser also emphasized that the Government wished to cooperate fully with the Special Rapporteurs.

14. By Note No. 57/97 dated 21 February 1997, the Permanent Mission responded to the Special Rapporteurs' fax of 20 February as follows:

> "The Government of the Federal Republic of Nigeria wishes to state that the visit of the Rapporteurs will be in accordance with terms agreed upon following the consultations held with the staff of the Centre for Human Rights on 14 January 1997, and further correspondence over the matter, particularly our Note No. 47/97 of 12 February 1997.
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> "It should be observed that, at no time, was any agreement reached as to which detainees the Special Rapporteurs would meet. In fact, at the meeting with [a representative of the Secretariat] on 14 January 1997 in Geneva, he presented an aide-memoire which contained a list of officials and persons, and not detained persons, they would wish to meet. During that meeting and in subsequent correspondence over the matter, Nigeria merely noted their request without indicating any commitment.
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> "Regarding the Mission's Note Verbale No. 19/97 of 20 January 1997 to the High Commissioner/Centre for Human Rights, the affirmation that 'there is no objection ' appeared to have been quoted out of context because the Note under reference related to the aide-memoire, which contained no list of any detainees. The other occasion on which Nigeria expressed 'no objection' was in its Note Verbale No. 47/97 at paragraph 2 (a), namely, '... as to the cities which the Special Rapporteurs requested to visit, the Government of Nigeria has no objection'. The Note further added that as to the Special Rapporteurs' itinerary, places and persons to visit, this should be a matter to be mutually agreed.
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> "The list of detainees that the Rapporteurs would wish to meet was received on 18 February 1997 in the Centre's letter No. G/SO 214 (3-3-7). The list has been noted and is being considered by the appropriate authorities. While noting some discrepancies between the list and the content of the Centre's unnumbered letter of 20 February 1997, which specifically requested clarification as to whether or not the Special Rapporteurs would have access to 'Chief M.K.O. Abiola and the 19 Ogoni detainees ', for the avoidance of doubt, a formal request should be made as to precisely which detainees they would wish to meet. Nevertheless, the Special Rapporteurs are assured that their request will be duly considered and strictly in accordance with their mandate.
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> "The Centre may wish to note that Mr. Cumaraswamy, Special Rapporteur on the independence of judges and lawyers, was widely quoted by the Nigerian press to have asserted, as the attached Nigerian Guardian newspaper report of Tuesday, 11 February 1997 indicated, that 'the Federal Government has acceded to a request by

the United Nations Human Rights Investigators to meet with political detainees, Moshood Abiola and jailed former Head of State, General Olusegan Obasanjo ... Olabiyi Durojaiye, Olu Falae ...'. He was reported to have made this disclosure in an interview he granted to Voice of America (VOA) on Monday, 10 February 1997 during its 'Daybreak Africa' programme. There has not been any such agreement.

"The Federal Government of Nigeria wishes to state further that as a responsible government, it does not conduct its policy on the pages of newspapers. We wish to reassure the Special Rapporteurs of our full cooperation and support. The Special Rapporteurs would have access to, and could meet with, any groups or individual during the period they have requested to be set aside in the programme."

15. On the afternoon of 22 February 1997, the advance party met with representatives of the Ministry of Foreign Affairs in Lagos. At this meeting, the advance party informed the representatives that the Special Rapporteurs had found the clarifications and assurances contained in Note No. 57/97 unsatisfactory and that they would delay their arrival in Nigeria until they received assurances that they would be allowed to meet the detainees whose names had been transmitted to the Government in the note verbale from the High Commissioner/Centre for Human Rights dated 13 February 1997. The representatives of the Ministry of Foreign Affairs reiterated the request contained in Note No. 57/97 that the Special Rapporteurs should make a formal request, indicating precisely which detainees they would wish to meet.

16. After consulting with the two Special Rapporteurs, the advance party handed the following letter to the representatives of the Ministry of Foreign Affairs reading as follows:

"In response to Note Verbale 57/97 dated 21 February 1997 from the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office in Geneva, which called for the Special Rapporteurs to make a formal request as to precisely which detainees they should wish to meet, the Special Rapporteurs have instructed me to inform the Government of Nigeria that they wish to have access to the following individuals during the course of their visit to Nigeria: [the names contained in the list transmitted to the Permanent Mission in the note verbale dated 13 February were reproduced in their entirety]

"The Special Rapporteurs would once again like to draw your attention to the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, which provide inter alia that special rapporteurs should be given guarantees and facilities by the Government which invited them to visit the country as to 'freedom of inquiry, in particular as regards: (a) access to all prisons, detention centres and places of interrogation ... (d) contact with witnesses and other private persons considered necessary in fulfilment of the mandate ...'.

"The Special Rapporteurs also wish to recall the aide memoire that was presented to the delegation which met with officers from the Centre for Human Rights on 14 January 1997. In paragraph 5 of this aide memoire, the Special Rapporteurs requested 'the Government to provide access to prisons and/or places of detention of inter alia the 19 Ogoni who are awaiting their trial before the Civil Disturbances Tribunal, in addition to 43 persons who were tried and convicted in 1995 by the Special Military Tribunal'. The Special Rapporteurs also note that Note Verbale 06/97 dated 15 January 1997 from the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office in Geneva also makes reference in paragraph 15 to the fact that the Secretariat told the delegation that the Rapporteurs would also wish to interview a number of detained persons, whose cases they considered to be relevant to their respective mandates, including the 19 Ogonis and the 43 others who were tried and convicted in 1995 by the Special Military Tribunal.

"Further, in Note Verbale 18/97 dated 20 January 1997, which contained the preliminary reaction of the Permanent Mission to the aide memoire, paragraph (g) concerning detained persons clearly indicated that 'there is no objection' on the part of the Government.

"Subsequently, in a note verbale dated 13 February 1997, the High Commissioner/Centre for Human Rights transmitted a list containing the names of detainees with whom they wish to meet during their mission to Nigeria, which are the same names as those mentioned above.

"In the view of the Special Rapporteurs, these communications left no doubt as to which detainees they wished to meet. Further, the Government's acceptance of the Terms of Reference and the affirmation contained in Note Verbale 18/97 that 'there is no objection' to interviewing detained persons do in fact constitute an agreement on the issue. Accordingly, the Special Rapporteurs are troubled that Note Verbale 57/97 states that 'there has not been any such agreement' and that 'their request [to have access to Chief M.K.O. Abiola and the 19 Ogoni detainees] will be duly considered and strictly in accordance with their mandate'.

"While welcoming the assurances of the Government that they have its full cooperation and support and that they would have access to, and could meet with, any groups or individuals during the period they have requested to be set aside in the programme, the Special Rapporteurs nevertheless still seek explicit assurances from the Government that they will be granted access to the above-mentioned detainees. Without such assurances, in writing, ... the Special Rapporteurs are not prepared to travel to Nigeria."

17. On 23 February 1997, the representatives of the Ministry of Foreign Affairs requested the advance party to travel to Abuja to discuss these issues with federal officials. The advance party agreed to this request in the hope

of resolving the dispute so that the mission could go forward. However, he emphasized that he did not have the authority to negotiate issues of principle, in particular whether the Special Rapporteurs would be given access to detainees. Indeed, in the view of the Special Rapporteurs, they themselves did not have the authority to negotiate the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights. What the advance party could do was provide an explanation as to why the Special Rapporteurs considered access to particular detainees important for fulfilling their respective mandates, and negotiate the logistics of the visit, i.e. when and where the Special Rapporteurs would meet the detainees.

18. On 24 February 1997, the advance party met with two representatives of the Ministry of Foreign Affairs to discuss the issue of access to detainees. The representatives sought clarification on the list of detainees submitted to the Government and its conformity to their mandates. The representatives underlined the distinction the Government made between what constituted detention and imprisonment, in contrast to the general term “detainee” used by the Special Rapporteurs. They also stated that the inclusion of convicts whose cases had been settled under existing Nigerian law was beyond their concern, as they were outside the scope of their mandates.

19. In response, the advance party explained that the term “detainee” as contained in the standard terms of reference for fact-finding missions of special rapporteurs referred to anyone deprived of his or her liberty, including those convicted and sentenced by a court of law. He also pointed out that during their in situ missions, in accordance with the standard terms of reference, virtually all special rapporteurs, both thematic and country-specific, routinely visited prisons and places of detention to meet detainees whose rights allegedly had been violated. More specifically, the two Special Rapporteurs concerned, had both met with detainees during missions to Colombia, Indonesia, East Timor, Burundi and Rwanda. Moreover, on those missions they had regularly met with a broad range of people, such as religious or traditional leaders, community leaders and members of civic organizations even though their respective mandates were not directly related to the specific issues of concern to those individuals or organizations. Therefore, the Special Rapporteurs were of the view that the principles of impartiality and non-selectivity dictated that they must not compromise, vis-à-vis their visit to Nigeria, the guarantees established under the standard terms of reference that granted them access to prisons, detention centres and places of interrogation and contact with witnesses and other private persons considered necessary in fulfilment of their mandate.

20. The advance party also explained that while it was true that thematic rapporteurs had mandates that focused on specific thematic questions, they were nevertheless rapporteurs of the Commission on Human Rights and must place the specific thematic question they were investigating within the context of the overall human rights situation in a country. In the case in question, that was even more relevant owing to the fact that the Special Rapporteurs were mandated to report to the Commission pursuant to a resolution entitled “The situation of human rights in Nigeria”.

21. The advance party also emphasized, however, that the Special Rapporteurs were of the opinion that the reasons for requesting visits to the detainees on the list transmitted to the Government concerned issues that fell clearly within the scope of their respective mandates. On the one hand, the Special Rapporteur on the independence of judges and lawyers considered it necessary to meet all those who were reported to have been affected by the alleged flawed judicial system in order to realize the objective of his mandate. Foremost among such people were those who had stood accused before the system and had been convicted and sentenced, and those who were languishing in detention centres awaiting their trials before such a system. Issues of concern included the establishment of ad hoc tribunals, alleged interference in the judicial process by the executive, undue delays in the judicial process and lack of access to counsel for defendants. On the other hand, the Special Rapporteur on extrajudicial, summary or arbitrary executions considered it important that he should meet those who had been detained on charges of murder and who might be subjected to the death penalty, as in the case of the 19 Ogoni detainees. Further, he had received numerous allegations of deaths in prison and places of detentions and, therefore, considered it important that he should visit such places. More importantly, there were allegations that those detainees whose names had been provided on the list transmitted to the Government included individuals whose lives were at risk because of the harsh conditions to which they had been subjected in detention, and that the Government had failed to provide adequate medical care to those individuals.

22. He also noted that the Special Rapporteur on the independence of judges and lawyers had repeatedly stated in his reports to the Commission on Human Rights and in speeches to various bodies, that an independent and impartial judiciary could only flourish in a democratic setting. Part I, paragraph 27 of the Vienna Declaration and Programme for Action 1993 supported that view. Consequently, he was of the view that his mandate extended to reporting on the programme of transition to democracy in Nigeria.

23. In response, the Nigerian representatives expressed their view that the mandate of the Special Rapporteur on the independence of judges and lawyers was not an all-inclusive investigatory mission that extended to the transition programme of the Government. They noted that such desires of special rapporteurs had always been the subject of virulent debates and even acrimony at the Commission on Human Rights. The interference in domestic affairs implicit in the attempt by the Special Rapporteurs to investigate the transition programme would be inconsistent with the mandates of both Special Rapporteurs, and as such, would not be acceptable to the Government. They added that the transition process was on course and what was expected at that particular point was a positive contribution from home and abroad, including from the Special Rapporteurs, to a successful conclusion of the laudable efforts of the Government to establish a durable democratic system in Nigeria.

24. Regarding the issue of lack of access to counsel and delayed judicial process, especially with regard to Chief Abiola, one representative pointed out that the claim did not reflect the true situation. He noted that Chief Abiola, from the beginning of his trial had freely appointed a counsel of his choice in the person of Chief G.O.K. Ajayi. However, owing to some

unexplained family squabbles, the issue of legal representatives had become a problem, as some members of the family had decided to appoint another counsel, in the person of Chief Rotimi Williams, to replace the one already handling the case, who, as indicated had been appointed at the instance of Chief Abiola. However, earlier in September 1994, Chief Ajayi as Abiola's counsel had requested and had been granted a stay of the proceedings. Those were the causative factors of the delay in the case.

25. On the issue of detainees, particularly the "Ogoni 19", the advance party was informed that the Government was seized of the matter and appropriate consideration was being given to the subject.

26. The advance party then emphasized that the Special Rapporteurs were requesting, as a matter of principle, assurances in writing, that they would be able to meet with all the people on the list submitted to the Government. He also provided the names of two additional detainees with whom the Special Rapporteurs wished to meet, Chief. O. Durojaiye and Mr. Godwin Agbroko. He said that the Special Rapporteurs recognized that logistically it might be impossible to meet with all the individuals on the list, given the fact that the detainees were dispersed throughout the country, but in principle the Government needed to accept the standard terms of reference before the Special Rapporteurs undertook the visit.

27. The government representatives reiterated that Nigeria was open to further dialogue on those issues, as evidence of the Government's commitment to the visit. It was, however, emphasized that all cases already settled under existing laws of Nigeria were beyond the mandates of the Special Rapporteurs. The point was made unequivocally that it would be unacceptable for the Special Rapporteurs to examine in the course of the visit matters falling outside the jurisdiction of their mandates.

28. The advance party replied that the Special Rapporteurs would agree that they must carry out their activities pursuant to the mandates they had been given by the Commission on Human Rights. He also reiterated the position of the Special Rapporteurs that they were not prepared to travel to Nigeria unless they were given assurances that they would be granted access to the detainees they had requested to meet.

29. At this point the meeting was adjourned for consultations. It was reconvened in the afternoon, at which time the representatives presented the advance party with a letter from the Protocol Officer of the Ministry of Foreign Affairs containing the Government's response to the letter dated 22 February in which the Special Rapporteurs sought explicit assurances that they would be granted access to detainees they had requested to meet. This letter of response, dated 24 February, states:

> "Since the receipt of the said letter [of 22 February] you are well aware that Nigerian officials have been in constant and formal consultations with you upon your movement from Lagos to Abuja on Sunday, February 23, 1997. During these consultations Nigeria has explained fully its position that we are unable to permit, as a pre-condition for the visit, access to certain

identified categories of persons who have either been duly convicted by tribunals established by domestic laws and serving prison terms or have been remanded on court orders. This has arisen from our understanding of the mandate of the Rapporteurs as derived from the enabling resolutions, the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, existing practice and the emerging human rights jurisprudence governing similar missions. Be that as it may, Nigeria agrees to permit the Rapporteurs to have access to the '19 Ogoni detainees' as per their request in both the [advance party's] letter under reference and the unnumbered letter from the Centre of Human Rights dated 20 February 1997.

"In conclusion, may I reiterate Nigeria's resolve to fully cooperate with the Rapporteurs so as to make their joint mission a success. We also wish to reiterate earlier assurances given, namely that they will have access to any individuals or groups whom they wish to meet with in the fulfilment of their mandate. Nigeria is satisfied that we have invested so much towards the preparation for this joint investigative mission and that there is much more to it than meetings with any particular individual to warrant aborting or postponing it on account of lack of agreement as to the precise extent of the mandate of the Rapporteurs on this issue."

30. Based upon this response, the Special Rapporteurs felt they had no choice but to cancel the visit scheduled for 23 February to 5 March. This decision was conveyed orally to representatives of the Ministry of Foreign Affairs on 24 February by the advance party and in a note verbale dated 27 February transmitted by the Centre for Human Rights to the Permanent Mission.

31. In the view of the Special Rapporteurs, the basis for the Government's decision to deny access to a certain class of detainees is not only an unacceptable interpretation of their respective mandates, but, more importantly, is contrary to the standard terms of reference for fact-finding missions of special rapporteurs/representatives of the Commission on Human Rights, which call upon the concerned Governments to give, inter alia, guarantees on freedom of movement and freedom of inquiry in particular as regards: (a) access to all prisons, detention centres and places of interrogation ... (d) contact with witnesses and other private persons considered necessary in fulfilment of the mandate (emphasis added). Further, in the view of the Special Rapporteurs, there had in fact been an agreement on the issue. In the aide-mémoire presented to the Government by the High Commissioner/Centre for Human Rights to clarify its concerns about the standard terms of reference, and in the meeting held between the Secretariat and representatives of the Government on 14 January, the Special Rapporteurs made known their desire to meet with detainees, in particular those sentenced and convicted in the 1995 trial of coup plotters, and the 19 Ogoni. At no point during this meeting or in subsequent correspondence did the Government indicate that it did not accept the standard terms of reference. More

specifically, it never indicated that it considered it outside the scope of the respective mandates of the Special Rapporteurs to meet with detainees. While it is true that Note No. 19/97 stated that "more information, particularly on the time and date of the interviews is needed for further relevant action to be taken", the Special Rapporteurs did not interpret this as an indication that the Government had reservations on this issue. To the contrary, the note stated unequivocally: "there is no objection". Of course, the time and place of such meetings had to be arranged, but the Special Rapporteurs had anticipated that the advance party would be able to make such logistical arrangements. The Special Rapporteurs consider it an act of bad faith on the part of the Government to announce on the eve of their arrival that they would not be allowed to meet certain detainees. The Government argues that there is much more to the visit than "meetings with any particular individuals". However, some of these individuals are among the most important political leaders of the country. The Special Rapporteurs would also note that in its resolution 51/109 the General Assembly expressed concern that "persons in detention in Nigeria continue to face a flawed judicial process", thereby giving support to the position of the Special Rapporteur on the independence of judges and lawyers that it is necessary for him to meet all those who are alleged to have been affected by the alleged flawed judicial system in order to realize the objective of his mandate. It should also be recalled that the Commission on Human Rights in its resolution 1996/79 expressed its deep concern about violations of human rights and fundamental freedoms in Nigeria and called upon the Government of Nigeria urgently to ensure their observance, in particular by restoring habeas corpus, releasing all political prisoners, trade union leaders, human rights advocates and journalists who are at present detained , guaranteeing freedom of the press and ensuring respect for the rights of all individuals, including persons belonging to minorities. Therefore, the Special Rapporteurs cannot accept a conditional invitation from the Government of Nigeria that does not permit them to meet with detainees.

32. It should be recalled that the Special Rapporteurs first requested permission to visit Nigeria in November 1995 prior to the adoption of Commission resolution 1996/79. Since that time the Special Rapporteurs have proposed numerous dates for the visit and on two occasions definitive dates had been proposed by the Government. On each occasion the visit was delayed, although the reasons for the delay put forward by the Government have varied. First, the Government indicated that the timing of the visit was not convenient and thus it could not accept the dates proposed for July 1996 by the Special Rapporteurs. The issue of timing was also invoked as a reason not to accept the dates proposed by the Special Rapporteurs for November 1996, at which time the Government also questioned the length of the visit proposed by the Special Rapporteurs. Then the Government, following the issuance of their interim report to the General Assembly, questioned the integrity and impartiality of the two Special Rapporteurs. Finally, the Government questioned the standard terms of reference, although it should be noted that until the eve of their scheduled arrival in February 1997 the Government never questioned the right of the Special Rapporteurs to have access to detainees; it merely stated that it needed further information on the logistics of the meetings.

33. The Government of Nigeria maintains that it has cooperated fully with the Commission on Human Rights. Note No. 68/97 dated 28 February 1997 from the Permanent Mission to the Centre sets forth the reaction of the Government to the cancellation of the visit:

> "The Government of the Federal Republic of Nigeria expresses its dismay at the sudden decision of the two thematic Special Rapporteurs to cancel their visit, despite the assurances of its full cooperation and support to ensure the success of the visit.
>
> "Further to the Permanent Mission's Note No. 47/97 of 12 February 1997, the Government had stated that outstanding issues pertaining to the request to visit certain individuals would be discussed and mutually agreed, upon the arrival of the Special Rapporteurs.
>
> "Accordingly, the Government of Nigeria had expected the thematic rapporteurs to embark upon, and continue with, the mission while efforts were made to resolve the outstanding issues. This would have enabled the thematic Special Rapporteurs to hold dialogue with Government about its efforts to implement obligations under relevant human rights instruments to which Nigeria is a party.
>
> "Had the thematic Special Rapporteurs cooperated or directly held prior consultations with the Government of the Federal Republic of Nigeria over the outstanding issues, the need would not arise for them to submit a report on the situation of human rights in Nigeria to the Commission on Human Rights at its fifty-third session, which would now be based entirely on information from third party sources, and which would not take into account the views of the Government of the Federal Republic of Nigeria.
>
> "Moreover, the abrupt cancellation of the visit failed to take into account the efforts made by both the Federal Government of Nigeria and the advance party of the two thematic Special Rapporteurs, who spent five days in Nigeria making arrangements for the visit with NGOs, individuals and officials of the Ministry of Foreign Affairs. It should be recognized that efforts and resources were invested by the Government of Nigeria, the thematic Special Rapporteurs and the Centre for Human Rights towards making the visit a success. Therefore, more plausible reasons would be needed to warrant the cancellation.
>
> "Nevertheless, the Government of the Federal Republic of Nigeria reaffirms its decision to continue its cooperation with the thematic Special Rapporteurs and to renew its invitation to them to undertake the mission, pursuant to resolution 1996/79 of the fifty-second session of the Commission on Human Rights.
>
> "The Permanent Mission requests that this Note, and other relevant written reaction of the Government of Nigeria to the report which the thematic Special Rapporteurs may present, be published as

part of the background document of the Commission on Human Rights at its fifty-third session, under agenda item 10 dealing with the situation of human rights in Nigeria."

34. The Special Rapporteurs would submit that the Government has been well aware of their position of principle that it must accept unconditionally the standard terms of reference for fact-finding missions of special rapporteurs prior to their undertaking the visit. The Government states that it has provided assurances of "its full cooperation and support to ensure the success of the visit", but its refusal to guarantee access to detainees, as required by the standard terms of reference, demonstrates otherwise. The principle of non-selectivity and impartiality dictates that the Special Rapporteurs cannot accept the conditions which the Government has established for the visit. If the Special Rapporteurs were to compromise this principle and accept the conditions established by the Government of Nigeria, they would be doing a disservice to the entire special procedure system.

35. The mandate of the Special Rapporteur on the independence of judges and lawyers not only includes inquiries and identification and recording of attacks on the independence of judges and lawyers, but also investigation on progress achieved in protecting and enhancing their independence. The Special Rapporteur therefore considered that it was imperative for him to inquire into the extent of implementation of the Government's proposed programme for transition to democracy in order to report on its impact on protecting and enhancing judicial independence in Nigeria.

36. Further, the Special Rapporteur on the independence of judges and lawyers had received numerous allegations that many individuals had been detained and continued to be detained either upon conviction or remand by alleged seriously flawed judicial process before tribunals which did not conform with universally accepted norms. Some of these norms are: article 14 of the International Covenant on Civil and Political Rights; articles 6 and 7 of the African Charter on Human and People's Rights; Principles 5, 6, 7 and 8 of the Basic Principles on the Role of Lawyers. The Special Rapporteur considers that a tribunal which disregards these norms or is prevented from applying them cannot possibly be deemed as independent and impartial.

37. After the trial, conviction and execution of Ken Saro Wiwa and eight other Ogonis by a flawed tribunal and the Government's implicit admission of such, it is difficult for the same Government to disregard these allegations outright. Inquiry by the Special Rapporteurs into these allegations without their first meeting with the detainees, or at least some of them, directly affected by such alleged flawed judicial tribunals would have seriously affected the integrity of the resulting report of the Special Rapporteurs. The very concern of the Government of Nigeria expressed in Note No. 68/97 dated 28 February 1997 that the Special Rapporteurs were going to submit a report to the Commission at its fifty-third session "based entirely on information from third party sources and which would not take into account the views of the Government of the Federal Republic of Nigeria" could, conversely, have been expressed by the detainees and all those concerned if the Special Rapporteurs had proceeded with the mission and met just with government officials and not with the detainees. In the circumstances, the

Government's contention that detainees “convicted by tribunals established by domestic laws ... or remanded on court orders” are no concern of the Special Rapporteurs is wholly unacceptable.

38. A compromise with the Government of Nigeria on these fundamental principles would have seriously undermined, eroded and adversely affected the integrity of the special procedure system established by the Commission. The Special Rapporteurs would have done a grave injustice to the several procedures, both thematic and country, under this system if they had compromised on the standard terms of reference for fact-finding missions of special rapporteurs and proceeded with the mission.

## II. VIOLATIONS OF HUMAN RIGHTS

### A. Extrajudicial, summary or arbitrary executions

39. Section 30 (1) of the Constitution of the Federal Republic of Nigeria, of 1979 provides that “Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”. However, section 30 (2) provides that “a person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary - (a) for the defence of any person from unlawful violence or for the defence of property; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) for the purpose of suppressing a riot, insurrection or mutiny”.

40. It is of concern to the Special Rapporteurs that the very provision within the Constitution that is intended to guarantee this fundamental right actually gives the security forces sweeping powers to derogate from the right. The Special Rapporteur recognizes that the security forces must be given some discretion in the exercise of their duties to maintain law and order, but the law must be strictly defined and narrowly interpreted. The use of broad and general language in the Constitution does not adequately control and limit the circumstances in which a person may be deprived of his life by the security forces. It is particularly disturbing that the Constitution allows for the use of lethal force for the defence of property. The Special Rapporteurs are also concerned that section 30 (1) states that “no one should be deprived intentionally of his life ...”. In the opinion of the Special Rapporteurs, the Constitution should be consistent with the language of article 6 of the International Covenant on Civil and Political Rights and should use the term “arbitrarily”, which has a broader connotation than “intentionally”.

41. The Special Rapporteur on extrajudicial, summary or arbitrary executions has been reporting to the Commission on Human Rights for the past several years on the serious allegations he has received pertaining to Nigeria. For example, in 1995, the Special Rapporteur transmitted to the Government of Nigeria 14 cases of alleged extrajudicial, summary or arbitrary executions of over 200 persons. The majority of these allegations related to killings by the security forces (see E/CN.4/1996/4, paras. 338-357). In their interim report to the General Assembly at its fifty-first session (A/51/538), the

Special Rapporteurs reported on allegations received during 1996. Since the finalization of the interim report, the Special Rapporteurs have continued to receive serious allegations concerning killings by the security forces. On the basis of the information received during the past several years, a general pattern has emerged that demonstrates three categories in which the majority of extrajudicial, summary or arbitrary executions may be placed: (i) victims killed in police custody; (ii) victims killed while attempting to avoid being stopped or arrested by the police; and (iii) victims killed when security forces indiscriminately fire upon demonstrators.

42. In the first category, the Special Rapporteurs have received numerous allegations about the use of torture that results in death, or extrajudicial, summary or arbitrary execution by the police following the arrest and/or detention of criminal suspects. In these reported cases, the police beat to death the suspect or arbitrarily execute the suspect by shooting him or her at close range. These reports demonstrate that there is an urgent need for the law enforcement authorities to receive training on the Standard Minimum Rules on the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials.

43. In the second category, the police or security forces shoot the victims as they attempt to avoid being stopped or arrested. These cases frequently occur at police checkpoints when the victims refuse to obey police orders to stop. In both the first and second categories, the police invariably claim that the victims were armed robbery suspects. Irrespective of the veracity of these claims, the frequency of deaths at the hands of the police or security forces demonstrates that there is an urgent need for law enforcement officials to be trained in the use of force and firearms to minimize damage and injury, and respect and preserve human life.

44. The third category of cases involves the indiscriminate use of force by the police or security officers to break up demonstrations. During the past year alone, there have been several reports of demonstrators being killed when the police or military fired upon the crowd to disperse the participants. For example, reports provided to the Special Rapporteurs in September 1996 indicate that dozens of demonstrators were killed in Kano and Kaduna when the police fired on demonstrators who were protesting the arrest of a well-known religious leader. In their interim report to the General Assembly, the Special Rapporteurs reported on the killings of three minors when the police intervened in non-violent demonstrations held by members of the Ogoni minority commemorating the International Day of the World’s Indigenous People (A/51/538, para. 39).

45. Within this context, the ouster clauses contained in section 30 (2) of the Constitution appear to create an environment in which the security forces can act with impunity. Although section 298 of the Criminal Code provides that “Any person authorized by law to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes excess”, it is rare for police or security officials responsible for these killings to be prosecuted. Moreover, human rights organizations claim that no known cases of extrajudicial killings involving policemen or security officials in Nigeria have been seriously investigated with a view to bringing their perpetrators to justice. The right to life guaranteed by section 30 (1)

of the Constitution is further eroded by the numerous military decrees which absolve security agents from criminal prosecution in the exercise of their powers under such decrees.

46. The Special Rapporteurs remain concerned that the death penalty may be applied following hearings before ad hoc tribunals. These tribunals are composed of members appointed on an ad hoc basis by the Head of State or the Ruling Provisional Council. There are also numerous allegations that the hearings before these tribunals violate international standards on the right to a fair trial before an independent and impartial tribunal, thereby violating article 14 of the International Covenant on Civil and Political Rights and the Safeguards guaranteeing protection of the rights of those facing the death penalty. Further, under many of the decrees establishing the special tribunals, there is no right of appeal. The Special Rapporteurs welcome the decision of the Government to implement the recommendation of the fact-finding mission of the Secretary-General to allow for appeal against a decision of the Civil Disturbances Tribunal. They note that the appeal is to a special, ad hoc appellate tribunal whose members are also appointed by the Head of State. The Special Rapporteurs would also point out that, to their knowledge, the implementation of this recommendation does not extend to other special tribunals, but applies only to the Civil Disturbances Tribunal.

47. The Special Rapporteurs have also received alarming allegations of the deaths of scores of detainees owing to the harsh conditions in prisons and other places of detention, and to the subsequent lack of provision of adequate medical attention to the detainees. To the extent that the Government does not take corrective measures to improve the unacceptable conditions and/or knowingly denies medical care to detainees who are suffering from serious health problems, the Government's lack of action may be considered a violation of the right to life.

48. The Special Rapporteurs are also concerned that the Government of Nigeria has not adequately addressed the problem of communal violence that exists within various regions of the country, such as the religious conflicts in the north of the country and the civil unrest in Ogoniland. The Government must take preventive measures to avoid further incidents of communal violence.

## B. Independence of judges and lawyers

### 1. Erosion of the Constitution

49. The military revolution which took place on 17 November 1993 effectively abrogated the whole pre-existing legal order in Nigeria except for what has been preserved under Constitution (Suspension and Modification) Decree No. 107 of 1993. Pursuant to Decree 107 of 1993 the Federal Military Government was established with absolute powers to make laws "for the peace, order and good government of Nigeria". In exercise of that power the Federal Military Government permitted certain provisions of the Constitution of 1979 to remain in operation. Among those retained was section 6 of the 1979 Constitution which vests the judicial power in the courts.

50. The effect of the retention of section 6 was severely diluted by section 3 (3) of the same Decree No. 107, which provides that "provisions

of a Decree shall prevail over those of the unsuspended provisions of the said 1979 Constitution". Thus, the supremacy of the Constitution was ousted.

51. Pursuant to section 3 (3) of Decree No. 107, the Federal Military Government, by (Supremacy and Enforcement of Powers) Decree 12 of 1994, ousted the jurisdiction of the ordinary courts over some fundamental rights issues and made the judiciary subservient to the Federal Military Government. Decree 12 provides:

> "(i) No civil proceedings shall lie or be instituted in any Court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict, and if such proceedings are instituted before, on or after the commencement of this Decree the proceedings shall abate, be discharged and made void.
>
> "(ii) 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 purported to be done in pursuance of any Decree shall not be inquired into in any Court of law and accordingly, no provision of the Constitution shall apply in respect of any such question."

52. Chapter IV is the fundamental rights chapter in the 1979 Constitution. Decree 12 of 1994 also gives the military Government unbridled power to violate fundamental rights with impunity. There are today 39 other decrees ousting the jurisdiction of the courts.

### 2. Executive disobedience of court orders

53. The situation is further aggravated by governmental lawlessness in the form of refusal by the military Government and its agencies to obey court orders. This phenomenon is reportedly so rampant that some judges have simply stopped issuing orders on the military Government or its agencies because they will never be obeyed.

54. There are several ways in which the military Government disobeys court orders. In some instances, it simply ignores court proceedings or orders. In others, it will promulgate a decree nullifying a judgement or order. It is alleged that there have been instances of reprisal action being taken against judges for issuing such orders. It is also alleged that in recent times there has hardly been any instance in which the military Government has obeyed a court order. This is considered as the rudest affront to the independence of judges and the rule of law in Nigeria.

55. The following is a list of court orders reported to have been disobeyed by the Government between February 1995 and February 1997. The list is not all exhaustive:

1. Chief Frank Kokori to be produced in court;

2. Bashorun M.K.O. Abiola to be produced in court;

3. Bashorun M.K.O. to have access to his lawyers and newspapers;

4. Chief Anthony Enaboro to be produced in court;

5. Sylvester Odion-Akhaine to be produced in court;

6. Concord to be reopened;

7. African Concord to be reopened;

8. Chief Wariebi Agamene to be produced in court;

9. Guardian to be reopened;

10. Punch to be reopened;

11. Chief Gani Fawehinmi to have access to his medication;

12. National Democratic Coalition chieftains, Senator Adesanya, Chief Dawodu and Chief Adebanjo, to be produced in court;

13. Chief Durojaiye Olabiyi to be produced in court;

14. Dr. Beko Ransome-Kuti to be produced in court;

15. Dr. Fasehun to be produced in court;

16. Major General Bamaiyi to reopen a car dealer's premises.

56. Credit must be given to some of the courageous judges who have reacted most angrily over such government lawlessness.

57. In the case of Attorney-General of the Federation v. Nigerian Bar Association in 1992 Justice A.F. Adeyinka said the following:

> "The conduct of the Attorney-General and of the Federal Government of Nigeria in disobeying the Court Orders is reprehensible. The Government's disobedience of Court Orders is, in fact, destroying the basis in which lawyers can defend the rights of Nigerian Citizens which the Government is now seeking to protect by this action ... If citizens whose rights the Federal Government now seeks to protect follow the Government's bad example and refuse to obey Court Orders, it will lead not only to the disruption of the due administration of justice and the transition to the Civil Rule Programme, but also, to chaos, anarchy and the ultimate dismemberment of the Federal Republic of Nigeria."

58. In February 1996, in the case Ibrahim v. Emein, Justice Muhammad, sitting in the Court of Appeal, said:

> "I am of the firm view that for a nation such as ours, to have stability and respect for democracy, obviously the rule of law must be allowed to follow its normal course unencumbered. If, for any reason, the executive arm of government refuses to comply with court orders, I am afraid that arm is promoting anarchy and executive indiscipline capable of wrecking the organic framework of the society."

59. Also in February 1996, Justice James Oduneye, sitting in the High Court, was reported to have said in frustration when the Court's order granting an interim injunction restraining the Inspector-General of Police, the Attorney-General and the Minister of Justice from arresting or detaining Chief Akinmaghe was disobeyed:

> "I don't like my orders being flouted, no matter who is involved ... If the orders of the court cannot be complied with, the court itself should be scrapped and let us live in a country of anarchy and chaos."

### 3. Differential treatment in the allocation of resources to the ordinary courts and the special and military tribunals

60. It has been reported that the judges of the ordinary courts are poorly paid and conditions of service are very poor. Working facilities in these courts are simply not available. An average state High Court judge earns about US$ 60 per month and payment is irregular and uncertain. It is alleged that the Chief Justice of Nigeria is paid about 2 per cent of the salary of his counterparts paid in the United Kingdom.

61. This is in stark contrast to the situation in the special and military tribunals which are said to enjoy elite status. (Fourteen decrees have been passed creating such tribunals; for more details on these tribunals, please refer to the interim report to the General Assembly A/51/538, paras. 60 and following). These tribunals are provided with computers, machines for recording of proceedings, a public address system, qualified personnel to act as registrants, with adequate renumeration and allowances, etc. This status of the Tribunals has led to a great scramble and lobbying by judicial personnel to be appointed as chairmen or members of the tribunals. Nevertheless, those appointed to sit are not always legally qualified. Because of these facilities, proceedings in the tribunals are faster and judgements are delivered on time. The speed of their proceedings is used as a weapon to justify the existence of these tribunals and to attack the delays in the ordinary courts, and thereby undermining public confidence in them. The ordinary courts are presented as corrupt, incompetent and incapable of responding to the "military's speed and alacrity in dealing with the issues that occasioned their being set up".

### 4. Detentions

62. It is also learnt that a total of 70,000 people are being detained in Nigeria today either upon conviction, remand or without trial. It is further learnt that about 60 per cent of them are awaiting trial. Some have been detained as long as for 12 years without trial. Among those convicted are several people alleged to be victims of flawed judicial process in the special or military tribunals.

63. Chief Masood Abiola continues to languish in detention awaiting his appeal to the Supreme Court of the decision of the Court of Appeals on his application for bail. It is learnt that the Supreme Court is unable to hear his appeal. Of the 12 judges of the Supreme Court, eight were obliged to disqualify themselves from sitting on his appeal on grounds of possible bias.

These eight are litigants in a civil defamation suit against the Concorde newspaper group in which Chief Abiola has a substantial interest. The minimum number of judges required to form a quorum of the Supreme Court is five. It is also learnt that the number of judges of the Supreme Court has been increased to 15. Despite this, the appeal remains in the Supreme Court docket.

### 5. Committee on judicial reform

64. A committee of inquiry set up in 1994 to examine ways to reform the judiciary (known as the Eso Committee after its chairman, Kayode Eso, a retired Supreme Court judge) submitted its report in 1995, but there has been no response from the military Government. It is said that the committee recommended laudable measures to ensure the independence of the judiciary, including its financial and administrative autonomy.

### 6. The legal profession

65. The Nigeria Bar Association is the umbrella body of legal practitioners in Nigeria. The Association has a national headquarters and branches in all the state capitals and sub-branches in all judicial divisions. States have an average of three judicial divisions.

66. The Nigerian Bar Association at the national level has been in disarray since 1992. The origin of the crisis was an attempt by the Government to impose a national leadership on the association at its biannual conference in Port Harcourt. This was resisted by a majority of the members and the elections for the national executive could not be held. Subsequently, the Government issued a decree handing over the affairs of the Association to the Body of Benchers, made up of the attorneys-general of the federation and of the states, the Chief Justice of the federation and the chief judges of the states, and selected appellate judges and senior advocates. The Decree ousted the jurisdiction of the courts to question any act of the Body of Benches. It also provided that such inquiry was an offence punishable by imprisonment; that provision has been amended, however.

67. The decree has been widely criticized by lawyers and denounced by the African Commission on Human and Peoples Rights' as a breach of the independence and impartiality of the judiciary and the legal profession protected in the African Charter on Human and Peoples' Rights.

68. It is said that the military Government is bent on direct control of the Bar Association. All attempts by lawyers to reconvene the national association have been thwarted by the Government. For instance, in August 1995, lawyers representing various state branches of the association, convened a meeting in Jos to discuss ways of reconstituting the national association. The meeting was broken up by the police and the conveners arrested.

## III. CONCLUSIONS AND RECOMMENDATIONS

69. Although the Special Rapporteurs were unable to examine the situation in situ in Nigeria, they wish to emphasize that the findings and recommendations of the present report are based upon Nigerian

legislation, international human rights instruments and findings of other United Nations bodies, as well as credible and reliable information from non-governmental organizations and private individuals.

70. It appears that under the military Government of Nigeria today the rule of law is on the verge of collapse, if it has not already collapsed. Among the several decrees promulgated by the military Government Decrees 107 of 1993 and 12 of 1994 sounded the death knell for any form of constitutional order in the country. Power is now vested solely in the hands of the military Government. Executive disobedience of court orders is an affront to the concept of accountability which is the essence of a democracy. It is therefore impossible for an independent and impartial judiciary to exist as an institution and for independent judges and lawyers to function and discharge their rightful roles in such an environment.

71. Judicial independence in Nigeria can only be realized if there is political will in the military Government to infuse constitutionalism into the machinery of government to respect the rule of law and to return the country to a democratic state. The separation of power and executive respect for such separation is a sine qua non for an independent and impartial judiciary to function effectively.

72. The Bar Association of Nigeria has been seriously marginalized, in violation of the Principles on the Role of Lawyers.

73. Nigeria continues to violate provisions of the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights to which it voluntarily acceded. In addition it has not respected and continues not to respect the Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers. The decrees of the military Government have undermined the Constitution of Nigeria. Whether there is a Constitution left is debatable.

74. Death sentences have been passed by the courts, in particular by the special tribunals, without the safeguard of fair trial that is required by articles 6 and 14.1 of the International Covenant on Civil and Political Rights and there is no meaningful right of appeal against such sentences. Furthermore, the death sentence is imposed for offences which do not constitute “the most serious crimes”, as required by article 6 of the Covenant. The Special Rapporteurs also consider public executions to be incompatible with human dignity.

75. The excessive use of force and firearms by law enforcement officials while carrying out their duties constitutes a violation of article 6 of the International Covenant on Civil and Political Rights. The failure of the Government to investigate fully cases in which individuals are killed or injured by law enforcement officials has created a situation of impunity which encourages further violations of international human rights norms.

76. The poor conditions that exist in places of detention, including severe overcrowding, lack of sanitation, lack of adequate food, clean water and health care have contributed to an unacceptably high level of death in custody and constitute a violation of article 10 of the International Covenant on

Civil and Political Rights, as well of as the Standard Minimum Rules for the Treatment of Prisoners. The Special Rapporteurs are particularly concerned that the Government of Nigeria has reportedly denied medical care to detainees who are in an alleged life-threatening condition.

77. The Government of Nigeria has failed to cooperate with the Commission on Human Rights by not allowing the Special Rapporteurs to carry out a visit to the country under conditions in accordance with the standard terms of reference for fact-finding missions of Special Rapporteurs/Representatives of the Commission on Human Rights.

78. Subject to what has already been said in the present report concerning the importance of and need for a constitutional order in Nigeria, the Special Rapporteurs make the following recommendations to the Government of Nigeria:

(a) All decrees revoking or limiting guarantees of fundamental rights and freedoms should be abrogated.

(b) All courts and tribunals must comply with all the standards of fair trial and guarantees of justice prescribed by article 14 of the International Covenant on Civil and Political Rights.

(c) All decrees which establish special tribunals or oust the jurisdiction of the ordinary courts should be abrogated.

(d) The ordinary courts should be given the necessary support and assistance to carry out their duties. Further, the Government must cease to interfere with and hinder the judicial process and must obey court orders.

(e) Those who have been convicted and sentenced by special tribunals in which there have been violations of the right to a fair trial, such as those convicted by the Special Military Tribunal in the so-called coup plotters' trial, should be pardoned and immediately released from detention. Further, these victims should be compensated for the injuries they have suffered as a result of these violations.

(f) In regard to the trial of Ken Saro-Wiwa and others, the Government of Nigeria should implement fully all the recommendations contained in the report of the fact-finding mission of the Secretary-General;

(g) The recommendations of the Human Rights Committee made at is fifty-sixth session should be implemented fully.

(h) Those who are awaiting trial should be afforded all the guarantees of a fair trial explicitly provided for in article 14 of the International Covenant on Civil and Political Rights, and those who have been convicted and sentenced should be granted the right to have their convictions and sentences reviewed by ordinary appellate courts in accordance with article 14.5 of the Covenant.

(i) The Government of Nigeria must take effective measures to prevent extrajudicial, summary or arbitrary executions, as well as torture, ill-treatment and arbitrary arrest and detention, by members of the security

forces. In particular, law enforcement officials should urgently receive training on the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

(j) The Government of Nigeria shall investigate allegations brought against law enforcement officials in order to bring before the courts those suspected of having committed or participated in crimes, punish them if found guilty and provide compensation to victims or to their families.

(k) The commissions of inquiry that have been established to investigate alleged extrajudicial executions or murders, such as the one established in the case of the murder of Mrs. K. Abiola, should complete their investigations and make their reports available to the public.

(l) The independence of the Nigerian Bar Association must be restored. It must be permitted to regulate and govern itself.

(m) The Government of Nigeria should take preventive measures to avoid further incidents of communal violence.

(n) The Government of Nigeria should take all necessary measures to ensure that the conditions of detention of persons deprived of their liberty fully meet the provisions of article 10 of the International Covenant on Civil and Political Rights and the Standard Minimum Rules for the Treatment of Prisoners. The overcrowding of prisons, which poses a serious health risk to the inmates, should be reduced by overcoming delays in the trial process, by considering alternative forms of punishment, by allowing the release on bail of non-violent pre-trial detainees and by increasing the number of prison places.

(o) Detainees should be allowed visits by family members and their attorneys. They must also be granted access to adequate medical care.

(p) The Government of Nigeria should consider the abolition of the death penalty and sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. At a minimum, it must respect the Safeguards guaranteeing the protection of the rights of those facing the death penalty.

(q) Section 30 of the Constitution, on the right to life, should be amended so that it conforms with article 6 of the International Covenant on Civil and Political Rights.

(r) In order to restore public confidence in its commitment to transition to democracy, the Government of Nigeria should fully implement all the recommendations of the Secretary-General’s fact-finding mission concerning the implementation of the transition programme. In particular, the Government should abrogate Decree No. 2 of 1984, concerning arrest without trial of political opponents of the regime, and section 6 of Decree No. 1 of 1996, concerning the promulgation of the transition programme, as well as other decrees restricting political activities and freedoms, and it should release all political prisoners and detainees. Further, the Government should make

public the report of the Constitutional Conference submitted to the President in June 1995 and should register all political parties to enable them to participate in the forthcoming elections.

79. Given the seriousness of the human rights violations reported in Nigeria and the failure of the Government to cooperate with the Commission on Human Rights, the Commission should renew the mandate on the situation of human rights in Nigeria and appoint a country-specific special rapporteur. Further, as the Government read the mandates of the present thematic Special Rapporteurs restrictively and refused them permission to meet and interview detainees, a country-specific special rapporteur would be most appropriate, in the circumstances, to monitor and report on human rights violations generally.

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