

## **VOLUME TWO**

### **INTERNATIONAL CONTEXT**

#### **CHAPTER ONE**

##### **INTRODUCTION**

1.1 In this volume, we place the work of the Commission within an international context. Six major themes constitute the division of the volume.

1.2 Chapter 2 describes the impact of human rights violations in the country by previous regimes on the country's image abroad and in its international relations with other countries during the period covered by this report.

1.3 In chapter 3 we examine Nigeria's compliance with international human rights standards during the same period, that is, between January 15, 1966 and May 28, 1999.

1.4 Chapter 4 looks at Nigeria's compliance with international humanitarian law standards during the country's civil war between July 1966 and January 1970.

1.5 Chapter 5 discusses Nigeria's domestic and international legal obligations to investigate human rights violations.

1.6 In chapter 6, we identify specific obstacles that have prevented the Nigerian state from fulfilling its legal obligations to promote human rights and to prevent their violations.

1.7 In the final chapter of the volume, chapter 7, we provide an overview of comparative regional experiences with the establishment of commissions with similar terms of reference and mandate as our own Human Rights Violations Investigation Commission. In this respect, our focus is on the process of institutionalizing such commissions, their role in promoting national reconciliation, how they approached the vexed question of granting immunity to past or serving heads of state, and what lessons Nigeria can or should learn from these regional experiences.

## **CHAPTER TWO**

### **IMPACT ABROAD**

#### **INTERNATIONAL STATURE OF NIGERIA**

2.1 Nigeria occupies a strategic economic, military and political position in Africa, as is captured by the reference to her as “The Giant of Africa”.

2.2 The geo-political importance of Nigeria is deep-rooted in history and has impacted variously, negatively and positively, on her relations with countries in Africa and the rest of the world.

2.3 Within Africa, Nigeria has defined her own political and socioeconomic security with that of the rest of Africa, playing a prominent and frontline role in African politics, in the establishment of the Organization of African Unity (OAU), and of its successor, The African Union (AU), and of the Economic Community of West African States (ECOWAS); in the formation of ECOMOG and in the liberation of Southern Africa.

2.4 Within the United Nations and in other multilateral international organizations, Nigeria has also been a foremost African country, earning respect for herself as a champion of African causes and contributing men and materiel to UN and other peacekeeping operations in various parts of the world.

2.5 Because of the international stature of the country, other countries and international organizations continue to show keen interest in her domestic politics and economic policies, including the protection and promotion of human rights.

## **CONSTITUTIONAL PROVISIONS FOR HUMAN RIGHTS**

2.6 In the area of human rights, the country's Independence Constitution of 1960 entrenched a bill of primarily civil and political rights. Although they applied to all Nigerians as individuals, as such, the rights were intended to guarantee minority ethnic rights and, therefore, not only to assuage their fears of discrimination but also to take the steam out of their demand for the creation of more states in the country before independence.

2.7 It was not until the 1979 Constitution that this bill of rights was expanded to include cultural and economic rights as well as collective ethnic group rights.

2.8 However, the conflict between rights, defined as individual rights belonging to the person as such, and rights as collective ethnic group rights, remains a sore point in the constitutional provisions of human rights, reflected in the tension between citizenship and indigeneship in the country.

## **EXTERNAL PERCEPTIONS**

### **THE JANUARY 15, 1966 COUP AND ITS AFTERMATH**

2.9 The first major dent in the international image of the country in the human rights area was provided by the military coup of January 15, 1966, during which the Prime Minister of the Federation of Nigeria, the Premiers of the Northern Region and the Western Region, the Federal Minister of Finance and a number of high-ranking military officers were assassinated. This was followed by the ethnic massacres of 1966 and 1967, especially of the Igbos, and the country's descent into civil war in mid-1967, with the declaration of the Republic of Biafra by dissident elements in the Igbo military and political leadership.

2.10 The international community was outraged by these apparently ethnic-motivated assassinations and massacres, which were also condemned within the country.

2.11 It needs to be underscored that a military coup by its nature is a fundamental breach of the inalienable rights of citizens to choose their rulers and to hold them accountable for their action in office. It is for this reason that, no matter the mitigating or extenuating circumstances, the international community usually condemns military rule.

#### **EXTERNAL PERCEPTIONS:**

#### **THE CIVIL WAR, 1967-1970**

2.12 Another major dent in the country's human rights record was the prosecution of the civil war, with charges and counter-charges by both sides in the war and by their supporters of the use of starvation as a weapon of war, of the deliberate killing of civilians by the federal and Biafran troops and the ill-treatment of captured soldiers, "prisoners of war," by both sides.

2.14 The international community generally distinguished between the humanitarian and political dimensions of the war.

2.15 While many African countries and most of the rest of the world, particularly Great Britain, United States of America (USA), the Union of Soviet Socialist Republics (USSR), the Commonwealth of Nations and the United Nations, threw their support behind the federal government for economic and political reasons, they predicated the support on the need to exert a moderating influence on the conduct of the war by the federal government.

2.16 Reference was made above to the apparently ethnic - motivated assassinations that followed the military coup of 15 January 1966, and its denouement in the civil war.

2.17 Following upon the pogroms of May 1966 and of September to October 1966, there seemed to have been an initial groundswell of international support for the attempt to justify the secession of Biafra on the grounds of self-determination by, and the fear of genocidal extinction of the Igbo-speaking people.

2.18 However as the war progressed, the appeal of self-determination to justify secession waned among the international supporters of Biafra.

2.19 The minority ethnic groups in Biafra began to assert their own claim to self-determination, on the basis of their pre-independence demand for their own states and their fear of Igbo-domination, as established by the Willink Commission.

2.20 With the military success of the federal government virtually assured, the international supporters of Biafra took a pragmatic position by imploring the Biafran leadership to take a more flexible position, arguing that secession was not the only way to assert a claim to self-determination, and that, consequently the Biafran leadership should seek and negotiate other options compatible with self-determination for the Igbos with the federal government.

2.21 The use of the fear of genocide by the Biafran leadership to secure international support turned out to be counterproductive, as it became clear that Biafra was unable to substantiate the claim that federal troops were engaged in a military campaign to exterminate the Igbos, in the face of

the federal government's attempt, in deference to world opinion, to control the behaviour of its troops on the battlefield.

2.22 There were two important developments in this respect.

In a broadcast at the end of her visit to Nigeria and Biafra in September 1968, Dame Margery Perham of Oxford University, a foremost British authority on Nigeria and a leading supporter of Biafra in Great Britain, absolved the federal government of genocidal intentions and called on the Biafran leadership to surrender. More damning was the subtle point in her speech that the Biafran leadership was deliberately exposing its people to suffering in order to score political points and to gain international support and sympathy.

2.23 The other development was the report of the International Observer Team from Canada, Poland, Sweden and the United Kingdom, which was set up to investigate the conduct of federal troops.

2.24 The report of the team, on the basis of evidence on the ground and of its findings, absolved the federal government from charges of genocide.

#### **EXTERNAL PERCEPTIONS:**

#### **ANNULMENT OF 1993 PRESIDENTIAL ELECTIONS**

2.25 Another major dent in the international human rights record of the country was the annulment of the June 12, 1993 presidential elections, won by Chief M.K. Abiola, of the Social Democratic Party (SDP), by the federal military government, under General Ibrahim Babangida.

2.26 The annulment was condemned by the international community, which saw it as a preemptive coup d'état to deny Nigerians their basic right to choose their rulers in what was regarded as the freest and fairest presidential elections ever held in the country.

2.27 Pressures from domestic and international sources to de-annul the elections were mounted. Although not successful in achieving this objective, the pressures were partly responsible for the decision of President Babangida “to step aside,” in August 1993 and to hand-over power to the controversial Interim National Government (ING), under Chief Ernest Shonekan.

## **EXTERNAL PERCEPTIONS:**

### **THE ABACHA REGIME**

2.28 The unwholesomely negative international perception of the human rights situation in the country reached its nadir during the administration of the military ruler, General Sani Abacha.

2.29 Under Abacha’s regime, pro-democracy activists were hounded, sometimes into exile. Political assassinations of prominent pro-democracy activists like Pa Alfred Rewane and Alhaja Kudirat Abiola, wife of Chief M.K. Abiola, winner of the June 12 (1993) presidential elections, were allegedly instigated by the state. A virtual state of terror prevailed in the country.

2.30 The judicial murder in November 1995 of Ken Saro-Wiwa, leader of the Movement for the Survival of the Ogoni People (MOSOP) and of the Ethnic Minorities Rights Organization of Africa (EMIROAF) and eight others, in spite of appeals from the international community for the regime to spare their lives, triggered prompt punitive response from the international community.

2.31 The 15 member countries of the European Union, as well as the United States and South Africa recalled their high commissioners and ambassadors for consultations in protest. Nigeria, which applies the principle of reciprocity strictly, recalled its own high commissioners and ambassadors



from these countries. Trade sanctions were imposed on Nigeria and travel restrictions to some of these countries were imposed on functionaries of the Abacha regime.

2.32 The most drastic punitive response came from the Commonwealth of Nations, which suspended Nigeria from membership of the organization for two years, with South Africa's President Mandela playing a leading role in the decision.

2.33 Within Africa, relations between Nigeria and South Africa became chilly, as the moral weight of President Mandela was lent to the domestic and international critics of the human rights violations committed under the Abacha regime.

2.34 The African mood was reflected in the fact that the African Commission on Human and Peoples' Rights (ACHPR) used the occasion of its second extraordinary session to take the unusual step of condemning human rights violations in Nigeria.

## **CHAPTER THREE**

### **NIGERIA'S COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS - (JANUARY 1966-MAY 29, 2002)**

#### ***NIGERIA'S RATIFICATION OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS***

3.1 Nigeria has been a party, since December 1993, to *the International Covenant on Civil and Political Rights (ICCPR)*, and *the International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

3.2 Among other international covenants or agreements on human rights, which it has signed and ratified are the following: *the Convention on the Rights of the Child (CRC)*; *the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*; *the Convention on the Elimination of Forms of Racial Discrimination (CERD)*; *the Convention on the Prevention and Punishment of Genocide*; *the Slavery Convention of 1926*; *the Convention and the Protocol Relating to the Status of Refugees*.

3.3 Nigeria is a signatory, and not a ratifying member-state to the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*.

3.4 In principle, states, which are party to these various instruments, are obliged to comply with their provisions.

#### ***NIGERIA'S RECORD OF COMPLIANCE***

3.5 In recent years, various United Nations Human Rights mechanisms, governments and Non-Governmental Organizations (NGOs), have alerted

the UN Human Rights Commission on the deteriorating situation of human rights in Nigeria.

3.6 In 1993, the UN Working Group on Arbitrary Detention adopted a decision [No.22/1993-Nigeria] stating that the detention of three prominent human rights activists, Chief Gani Fawehinmi, Dr Beko Ransome-Kuti and Femi Falana was arbitrary. The Working Group also deplored the military government's rule by emergency decrees without a formal declaration of a state of emergency in the country.

3.7 These three human rights activists had been arbitrarily arrested and repeatedly detained for days because of their progressive activities in defence of the promotion and protection of human rights.

3.8 On May 30, 1994, the UN Special Rapporteur on Torture, Inhuman or Degrading Treatment or Punishment transmitted an urgent appeal to the Government of Nigeria on behalf of Ken Saro-Wiwa, the leader of MOSOP who had been arrested, allegedly detained incommunicado, handcuffed and beaten under severe conditions since May 20, 1994, although he was said to be suffering from a serious heart condition.

3.9 The Report of the Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions to the 51<sup>st</sup> Session of the Commission on Human Rights in 1995 confirmed that extra-judicial, summary and arbitrary executions and kindred gross violations of the basic right to life by agents and functionaries of the state were occurring in Nigeria.

3.10 The Special Rapporteur called on the Nigerian government to take necessary steps to ensure that the security forces respect human rights and fully abide by the norms and regulations governing the use of force and to bring to justice those who violate them.

3.11 The UN Human Rights Commission expressed deep concern about the human rights situation in Nigeria, following the trial and execution of Ken Saro-Wiwa and the 8 MOSOP leaders.

3.12 The UN General Assembly at its 50<sup>th</sup> Session in December 1995 condemned the arbitrary execution of Saro-Wiwa and the 8 Ogoni leaders. Expressing concern about other gross violations of human rights, the resolution called upon the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions and the Working Group on Arbitrary Detention to investigate the human rights situation in Nigeria and to report their findings to the UN Human Rights Commission at its next session in March 1996.

3.13 The UN Human Rights Commission requested the Nigerian government to submit a report on the human rights situation in the country, with particular reference to the application, within the country, of Articles 6, 7, 9 and 14 of the ICCPR, for consideration at the Commission's 56<sup>th</sup> session in March/April 1996.

3.14 During the discussion that followed the submission of the report by the Nigerian government, the UN Human Rights Commission noted fundamental inconsistencies between the obligations undertaken by Nigeria under the covenant to respect, promote, protect and ensure rights guaranteed under the covenant and the implementation of those rights in Nigeria.

3.15 In particular, the Commission observed that the *incommunicado* detention for an indefinite period and the suppression of *habeas corpus* (violation of Article 9 of the covenant) and the establishment of decree of several types of special tribunals constituted violations of rights under articles 14, 6(1) and (2) of the covenant, resulting, as in the case of Saro-Wiwa and the 8 other MOSOP leaders, in the arbitrary deprivation of life.

3.16 The Commission recommended the abrogation of all decrees, which, either establishing special tribunals or ousting normal constitutional guarantees of fundamental human rights or the jurisdiction of the normal courts, violate some of the basic rights under ICCPR.

3.17 It also recommended that urgent steps be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial, as provided in articles 14(1) (2) and (3) and to have their convictions and sentences reviewed by higher tribunals, in accordance with article 14(5) of the ICPR.

3.18 The Commission requested the Nigerian government to inform it of the steps it had taken to implement these recommendations, at the resumed sitting of the Commission in July 1966.

3.19 The Report of the Commission of Inquiry of the International Labour Organization (ILO), which visited Nigeria in August 1998, at the invitation of the Nigerian government, highlighted the profound improvement in the human rights situation in the country, since the inception of the administration of General Addulsalami Abubakar, that took over after the sudden death of General Sani Abacha in July 1998.

3.20 The ILO Report commended the Abulsalami Abubakar administration for the positive measures it had taken to promote, protect and enhance the enjoyment of human rights in the country, including the release of all political prisoners and detainees, the strengthening of the judiciary to enhance the rule of law, prison reform and the repeal or amendment of decrees that had infringed or derogated from fair trial guarantees, freedom of opinion and freedom of association.

## CHAPTER FOUR

### DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS STANDARDS

4.1 Nigeria became a party to the *African Charter on Human and Peoples' Rights (ACHPR)* in 1983. The charter, which obliges member-states of the Organization of African Unity (OAU) to recognize the rights, duties and freedoms enshrined in it and to undertake to adopt legislative measures to give effect to them, became part of the laws of Nigeria by virtue of the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, cap.10 Laws of the Federation of Nigeria, 1990*.

4.2 Nigerian courts have since then been applying the charter in human rights cases.

4.3 In response to complaints it received on the deteriorating human rights situation in Nigeria, particularly since 1990, and in line with its mandate under the charter, the African Commission on Human and Peoples' Rights (ACHPR) has issued pronouncements, enjoining the Nigerian government to comply with its obligations under the charter.

4.4 The following examples underscore this concern of the ACHPR's concern with compliance with the charter by the Nigerian government.

4.5 In the wake of the political and constitutional crisis created by the annulment of the June 12 (1993) presidential elections, the ACHPR expressed grave concern at the development and called for the observance of human rights principles by the Nigerian government.

4.6 At its 17<sup>th</sup> ordinary session in Lome, Togo in March 1995, the ACPHR considered communication from the Civil Liberties Organization (CLO) of Nigeria complaining about various decrees of the Nigerian government, including Decree No. 107 of 1993, which suspended the Nigerian Constitution and ousted the jurisdiction of regular courts on matters for which the decrees had been promulgated.

4.7 Decree No. 107 of 1993, the Constitution (Suspension and Modification) Decree, which amends parts of Chapter IV of the 1979 Constitution of Nigeria, dealing with Human Rights, specifies that the constitution and other laws, including international treaties, were subordinate to executive decrees. Judicial review of the decrees was ruled out, in particular as to questions touching Chapter IV of the 1979 Nigerian Constitution.

4.8 In spite of judicial pronouncements to the contrary, these executive decrees continued to operate up to May 1999, in violation of the African Charter and international human rights standards.

4.9 In response to the communication from the CLO, the ACHPR declared that the act of the Nigerian government to nullify the domestic effect of the African Charter constituted an affront to the African Charter.

## **CHAPTER FIVE**

### **NIGERIA'S COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW STANDARDS:**

#### **CIVIL WAR PERIOD & BEYOND**

5.1 The level of actual implementation of *International Humanitarian Law (IHL)* in Nigeria is high.

5.2 During the country's civil war, 1967-1970, Nigeria demonstrated in practice her commitment to the implementation of IHL, particularly with the instructions given to federal Nigerian troops.

5.3 The Nigerian government has adopted the following national measures:

1. Incorporation of IHL in Nigerian domestic law: Nigeria has not only ratified the 1949 Geneva Convention and the additional protocols of 1977 but also transformed the convention into domestic law by enactment, namely in the form of the Geneva Conventions Act Cap. 162 Laws of the Federation, 1990. Furthermore, Nigeria has enacted the Nigerian Red Cross Act, cap. 324, Laws of the Federation, 1990, by incorporating the Nigerian Red Cross. The Federal Government issued an operational code of conduct to the Nigerian Armed Forces during the Nigerian Civil War, 1967-70. However, Nigeria is yet to enact into its domestic laws the 1977 Additional Protocols to the Geneva Convention which it ratified in 1988.
2. A programme of teaching and dissemination of IHL is presently being carried out in all the military educational institutions in Nigeria, with



the support of the International Committee of the Red Cross (ICRC) in Lagos.

3. A legal adviser has been appointed in the Armed Forces. The Directorate of Legal Services in the Nigerian Army is fully responsible for dissemination, education and advice on matters relating to IHL in the Nigerian Armed Forces. Presently, the Nigerian Army has produced a series of instructional manual on various aspects of IHL. Every member of the Nigerian Armed Forces has an identity card, which he/she must carry on him/her everywhere and at all times.
4. Some of the faculties of law in Nigerian universities have included the teaching of IHL in their curricula.

## **NIGERIAN OPINIO JURIS**

5.4 The first observation to be made regarding Nigerian *Opinio Juris* is that Nigerian state practice recognizes the distinction between a *combatant and a civilian*. Indeed, the *Opinio Juris of Nigeria* is that the principle of distinction between combatants and civilians is part of customary international law.

5.5 During the country's civil war, the federal Nigerian government issued an operational code of conduct, which distinguishes between combatants and non-combatants, to guide the Nigerian Armed Forces in their prosecution of the civil war on the battlefield.

5.6 A combatant is one who must be attacked because he/she is "engaged in hostility against federal government forces, and can be women or children or adult males."

5.7 The operational code further stipulated that the instructions in the code must be read in conjunction with the Geneva Convention. This

means that Nigeria recognizes the principle of distinction in the Geneva Convention.

5.8 The second observation we wish to make regarding Nigerian *Opinio Juris* is that, according to the Nigerian practice, civilians lose their protection when they are hostile to federal forces, although nowhere in the code is “hostile” defined or operationalized. The *Opinio Juris* of Nigeria, therefore, is that it is regarded as part of customary international law that civilians lose their civilian status and, therefore, the protection due to them in a war situation, when they engage in acts of hostility against federal troops.

5.9 Our third observation is that paragraphs (d) (f) and (g) of the code distinguishes the civilian objects from military objectives. In line with the Hague Rules, the Nigerian military subscribes to the view that military objectives are subject to attack.

5.10 For example, during the Nigerian civil war, the Nigerian Air Force discriminated between military and non-military targets. In their bombing raids against Biafran enclaves, they only bombed civilian targets and avoided civilian ones.

5.11 Nigeria’s *Opinio Juris* is, therefore, that the distinction between civilian objects and military objectives is part of customary international law.

5.12 Our fourth observation is that Nigerian *Opinio Juris* holds that the prohibition of direct attacks on civilian population as well as the abolition of indiscriminate attack is part of customary international law.

5.13 As a result, Nigerian practice forbids direct attacks on civilians. Paragraphs (a) (b) (c) and (d) of the code protect pregnant women, women

generally, school children and youths from attacks and molestation. Paragraphs (f) and (g) prohibit such indiscriminate attacks as the malicious destruction of property, building, churches and mosques.

5.14 Other aspects of Nigeria's *Opinio Juris* indicate that:

- (i) it prohibits disproportionate attacks;
- (ii) it requires mandatory warnings, if military exigencies permit and unless surprise attack is considered essential to success;
- (iii) it forbids the use of human shields;
- (iv) it stipulates that soldiers who surrender must not be killed but should be disarmed and treated as Prisoners of War (POWs);
- (v) it prohibits pillage;
- (vi) it recognizes the prohibition of the improper use of emblems;
- (vii) prohibits the tampering and molestation of hospitals, hospital staff and patients, including by implication military objects;
- (viii) it recognizes and accepts the need to protect civilian populations against starvation, thus reject starvation as a weapon of war;
- (ix) it accepts the protection of relief personnel as a part of customary international law;
- (x) it recognizes the protection of cultural and religious objects;
- (xi) it recognizes the requirement of IHL to search for and take care of the wounded, the sick and the shipwrecked;
- (xii) it recognizes the protection of persons in detention or otherwise in the power of the adversary, except for mercenaries who have no right of combat or of prisoners of war;
- (xiii) it accepts the practice of release and return of captured civilians to their respective towns, at the end of hostilities;
- (ixx) it recognizes the right to try individuals who violate international humanitarian law;
- (xx) it endorses the education of members of the armed forces in international humanitarian law;

(xxi) it recognizes the duty to disobey illegal orders or an order to commit a violation of international humanitarian law.

## **CHAPTER SIX**

### **NIGERIA'S INTERNATIONAL & DOMESTIC OBLIGATIONS TO INVESTIGATE HUMAN RIGHTS VIOLATIONS**

6.1 Nigeria's legal obligations to investigate and provide remedies for gross violations of human rights derive from the international treaties, which it has ratified or acceded to, from customary international law and from its own domestic law, to all of which references have been made in previous chapters.

#### **OBLIGATIONS UNDER INTERNATIONAL LAW: INTERNATIONAL TREATIES**

6.2 Under international treaties on human rights, there are, in principle, two ways to address the issue of violations of human rights.

6.3 The UN Declaration of Basic Principles of Justice for victims of crime and abuse of power proposes two definitions for such violations. The first definition characterizes them as "a violation of criminal laws operative within member-states, including those laws proscribing criminal abuse of power." Central to such violations is the individual or collective harm and suffering caused to persons, including physical or mental injury, through acts or omissions that can be imputed to the state. The second definition concerns those "acts and omissions, imputable to the state, that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights."

6.4 The international obligation of the Nigerian government to investigate human rights violations in the country is contained in the

international instruments relating to human rights, both in hard law and in soft law instruments.

6.5 Examples of the government's obligation in this respect are to be found in

- (i) Article 2(3) of the *International Convention on Civil and Political Rights (ICCPR)*;
- (ii) Article 12 of the *Convention Against Torture (CAT)*;
- (iii) Articles 11, 19(2), and implicitly Articles 33 to 36 of the *Convention on the Rights of the Child (CRC)*;
- (iv) Article 2(d) in connection with Article 4(a) (b) and (c) of the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*;
- (v) Article 8 of the *Code of Conduct for Law Enforcement Officials (CCLEO)*;
- (vi) Article 22 of the *Basic Principles on the Use of Force and Firearms (BPUFF)*;
- (vii) Article 9 of the *Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*; and
- (viii) *The African Charter on Human and Peoples' Rights*.

6.6 Brief references to some of the provisions of these international covenants or instruments on human rights are made in the paragraphs that follow to underscore Nigeria's obligation under them.

6.7 Article 2(3) of the *International Convention on Civil and Political Rights* provides as follows

*"Each state party to the present covenant undertakes... to ensure that any person whose rights or freedoms as herein recognized are violated shall have effect or remedy, notwithstanding that the violation has been committed by persons acting in an official capacity..."*

6.8 Article 12 of the *Convention Against Torture* stipulates that

*“Each state party shall ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed any territory under its jurisdiction.”*

6.9 Paragraph 9 of the *UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* provides that there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death.

#### **OBLIGATIONS UNDER CUSTOMARY INTERNATIONAL LAW**

6.10 To supplement the more general language of its human rights treaties, the United Nations has developed a large body of materials, including the *UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution (UN Principles)*, and the *UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (UN Manual)*.

6.11 These materials describe methods for combating immunity and addressing extra-legal, arbitrary and summary executions. According to them, the Nigerian state, for example, is responsible for providing thorough, prompt and impartial investigations of cases of extra-judicial, arbitrary and summary executions by competent investigators. Prosecutions, involving the families of the deceased and their lawyers, should follow the investigations.

6.12 The *UN Principles* prohibit the use of blanket immunity and the defence of superior orders. Furthermore, commanding officers and other

public officials may be held responsible for their subordinates' violations, where there is a reasonable opportunity to prevent such violations.

6.13 Although not binding on states, the materials are evidence of customary international law, providing authority to supplement the broader treaty terms that bind governments.

### **OBLIGATIONS UNDER DOMESTIC LAW**

6.14 Nigerian domestic law provides the authority for the legal obligation of the Nigerian state to investigate and prosecute the perpetrators of gross and other human rights violations in the country.

6.15 For example, the Nigerian Constitution in its Preamble urges the state and its functionaries to promote *“the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice...”*

6.16 More specifically, other sections of the constitution entrench the following principles: adherence to the rule of law and consistency with the supremacy clause of the constitution (Sections 1,4,5 and 6); the state's duty to promote and protect human rights and to provide effective remedies to victims of human rights violations (Sections 6(6), 13-20, and 33-46); independence of the judiciary and its capacity to enforce human rights (Sections 6, 46, 235, 241 and 272).

6.17 Section 5 of the National Human Rights Commission Decree No. 22 of 1995 also provides a legal basis for the obligation of the Nigerian state to investigate and prosecute cases of gross and other violations of human rights in the country.

6.18 The section empowers the National Human Rights Commission to deal with matters relating to the protection of human rights, including



monitoring and investigation of alleged cases of human rights violations in the country, as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter on Human and Peoples' Rights, the UN Charter and the Universal Declaration of Human Rights, and other international treaties on human rights to which Nigeria is a party.

## **STATE RESPONSIBILITY UNDER INTERNATIONAL HUMAN RIGHTS LAW**

6.19 International Human Rights Law (IHL) creates legally binding obligations for states. It is that branch of public international law that deals with the protection of individuals and groups against violations by governments of their internationally guaranteed rights, and with the promotion of those rights.

6.20 The obligations of the state under international human rights law extend to all entities and persons acting on behalf of the state, including public officials. At the international level, therefore, the states themselves are accountable for the individual practices of their officials, as well as for the legislative and other actions of their governmental agencies.

6.21 As we pointed out in *Volume 1, Chapter 2* of this Report, it was not until the end of the Second World and the establishment of the United Nations that human rights were universalized as a new type of rights, denoting fundamental human rights, which belong to all peoples as such, by virtue of their humanity.

6.22 This new concept of human rights, as we have shown, has been variously elaborated, expanded and incorporated into national legal systems and domestic laws by international agreements and treaties.

6.23 As most breaches of human rights are caused by the state acting against those in its jurisdiction, much of international human rights law

operates beyond the national legal system, in order to provide redress for those whose human rights have been infringed upon or violated; and to provide an international yardstick by which the state's compliance with human rights standards can be objectively adjudged.

6.24 As we have pointed out in *Volume 1, Chapter 2*, if the promotion and protection of human rights is to be meaningful in international law, then the traditional international law of state-based jurisdictional exclusivity must give way, making it difficult for states and regimes to claim a *domain reserve*, which excludes the investigation of their human rights practices by the international community.

6.25 There are, of course, various ways of calling states to account at the international level for their decisions and practices in relation to human rights.

6.26 The exact procedures by which states can be held accountable for human rights violations are spelt out in all sources of law, including the decisions of international and regional courts, the resolutions of the UN General Assembly and in specialized human rights instruments.

### **CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS**

6.27 In recent years, it has been generally acknowledged that companies in general and multinational corporations in particular, often controlling budgets bigger than those their host states in developing countries, and which, as a result, have a significant power and influence, have a social responsibility to actively and positively promote and protect human rights in their areas of operation.

6.28 To take one example: the dominant position of the oil companies in Nigeria's political economy should bring with it a special responsibility to monitor and promote respect for human rights.

6.29 But the oil companies also have specific social responsibility in respect of the human rights violations connected with their field operations, seen or viewed against the context of their oil exploration and production in the country. They have a duty to avoid both complicity in and deriving advantage from human rights abuses in the country generally and specifically in their area of operations and explorations, mainly in the Niger-Delta.

6.30 Nigerian laws require oil companies to respect and maintain high environmental standards in order to prevent and remedy pollution; to protect inhabited areas from oil flaring and other dangerous aspects of oil production and to provide fair and adequate compensation for buildings, crops, fishing rights or other property adversely affected by their operations.

6.31 Nigerian laws incorporate the principle of strict liability for damage caused by oil spills, so that it is not necessary to prove negligence by the operator, although if spillage is due to sabotage, the strict rule does not apply and negligence must be established.

6.32 However, the Federal Environmental Protection Agency (FEPA) and the Department of Petroleum Resources, the governmental agencies charged with the responsibility of enforcing these laws, suffer from a dearth of technical expertise and resources, which coupled with problems caused by overlapping mandates and corruption, prevent effective policing of environmental standards. As a result, the oil companies fall short of their obligations to maintain environmental standards.

6.33 For example, investigations carried out by Human Rights Watch, an international human rights NGO, have clearly shown that oil companies operating in Nigeria have generally not followed or complied with environmental standards and that they have failed to provide compensation for damage and oil spillage from oil exploration and production.

6.34 The case of Ogoniland is illustrative of the corporate irresponsibility of the oil companies in the area of environmental protection.

6.35 It has been shown by various studies that oil exploration activities in Ogoniland since 1958 have not only caused serious economic hardship to the Ogonis but have also led to environmental devastation and degradation on an indescribable monumental scale in the area.

6.36 Of the harmful ecological impact of the activities of the oil companies in Ogoniland and in other communities in the Niger-Delta (Akwa Ibom, Cross Rivers, Delta, Edo, Imo, Ondo and Rivers states), Eghosa Osaghae has observed that,

*“gas flaring...has unleashed a permanent scorched-earth regime. Spillages from oil-pipelines which are laid bare across farmlands have destroyed farmlands and marine life.”*

6.37 This harmful impact was directly responsible for the high profile mass action against the oil companies, particularly Shell and Chevron, and the Nigerian government, which the Ogoni, for example, so effectively and vigorously embarked upon locally and internationally in 1990. The mass action drew attention of Nigeria and the wider world to the plight of the Ogoni and, by extension, that of the other communities in the oil-rich Niger-Delta.

6.38 The Ogoni presented a Bill of Rights to the Nigerian government and to the United Nations sub-committee of Human Rights on the Prevention of Discrimination against and Protection of Minorities, to the African Human Rights Commission, to environmental protection groups and to other NGOS in Europe and North America.

6.39 In reaction to the complaint it received from the Ogoni, the Rain Forest Action Group and the Green Peace Organization wrote to Shell International in respect of the Ogoni claims about such specific aspects of environmental degradation as oil spillages and leakages.

6.40 The Ogoni case was also presented in 1992 to the tenth session of the Working Group on Indigenous Populations in Geneva and in 1993 to the General Assembly of the Unrepresented Nations and Peoples Organization at the Hague.

6.41 Summarized, the core of the Ogoni case was the demand for the right to self-determination, for the payment of arrears of rents, royalties and reparation for past ecological degradation and improvement in standards of living.

6.42 In a letter to Shell, Chevron and the Nigerian National Petroleum Corporation (NNPC) in December 1992, the Movement for the Survival of the Ogoni People (MOSOP) made the following demands, giving the oil companies an ultimatum to meet the demands within 30 days, failing which they (the Ogoni) would embark on mass action to disrupt their operations in Ogoniland: (a) "payment of US\$6 billion for accumulated rents and royalties for oil exploration since 1958"; (b) "payment of US\$4 billion for damages and compensation for environmental pollution, devastation and ecological degradation"; (c) immediate stoppage of environmental degradation and in particular gas flaring in Yorla, Korokoro and Bomu"; (d) "immediate

covering of all exposed high pressure oil pipelines”; and (e) “initiation of negotiations with Ogoni people with a view to reaching meaningful and acceptable terms for further and continued exploration and exploitation of oil from Ogoniland and to agree on workable and effective plans for environmental protection of Ogoni people.”

6.43 The reaction of the Nigerian government and of the oil companies to these demands was to tighten security at the oil installations, with the federal government dispatching troops to protect them. The government issued a decree, which declared disturbances at oil installations to be acts of treason punishable by death.

6.44 The Ogoni case took a different and more tragic dimension when violent and murderous conflicts broke out between the Ogoni and their neighbours, the Andonis, another oil producing community, between July and September 1993, and with the Okrikas in Port Harcourt in December 1993.

6.45 Over ten Ogoni villages were destroyed, about 1,000 Ogonis killed and 30,000 rendered homeless, during the conflicts.

6.46 The Ogonis and their sympathizers attributed these conflicts to instigation and funding by *agents provocateurs* in the pay of the oil companies, to counter and undermine Ogoni militancy.

6.47 To conclude this section, we must observe that the Ogoni case illustrates too poignantly the on-going crisis of confidence in the oil producing communities of the Niger-Delta; a crisis which is symptomatic of the more general and pervasive issue of corporate responsibility and accountability to these communities who continue to suffer neglect and the gross violations

of their rights, on account of oil exploration and exploitation in their communities.

6.48 The Ogoni case also raises long-standing and simmering fundamental issues of the right to ethnic self-determination and revenue allocation in the Nigerian federation.

#### **NATIONAL REMEDIES FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS: GENERAL OBSERVATIONS**

6.49 In purpose and scope, criminal law is normally more concerned with the perpetrator than with the victims of crime. In Nigeria, a court has no power to award compensation to the victim in a criminal trial. Compensation as well as redress for victims of crime quite often becomes the object of subsequent civil litigation, for recovery of damages.

6.50 Yet, victims of gross violations of their human rights deserve particular attention, for the very fact that the violations in question may have been, and are generally committed by the state, through its agents.

6.51 For this reason, too, special attention should be paid to gross violations of human rights. Indeed, if agents of the state commit the violations, this fact is likely, in the long run, to erode confidence in public institutions and in the government, with citizens seeing the state as enemy. In such a circumstance, the social trust that should glue and bind society and state together on the basis of reciprocity and mutuality will necessarily be weakened.

6.52 In addition to civil proceedings, victims of human rights violations have other ways of seeking remedies at the national level. It is only when they have exhausted domestic remedies that victims (of human rights violations) can seek redress at the international level, although there are

some exceptions to this requirement of exhaustion of domestic remedies, as when the application of the remedies is unreasonably long or the existing domestic remedy mechanisms are inadequate.

6.53 International human rights instruments like the *Convention on the Elimination of All Forms of Racial Discrimination (CERD)* in its Article 14(2) sometimes make provision for the establishment of human rights complaint mechanisms at the national level.

6.54 Two types of such complaint mechanisms have generally been established in many countries: the *National Ombudsman or Public Complaints Commission*, and *National Human Rights Commission*.

6.55 The effectiveness of these mechanisms varies from country to country, depending on such factors as the commitment of national governments to the promotion and protection of human rights, the existence of countervailing forces in each country to limit arbitrary rule and ensure accountability, the resources, particularly human and material, made available to strengthen and empower the mechanisms, and a citizenry conscious of and ready to defend human rights.

## **NATIONAL REMEDIES:**

### **PUBLIC COMPLAINTS COMMISSIONS**

6.56 Public Complaints Commissions or similar institutions, under different names, have been established in many countries, usually through legislative act, with the primary functions of protecting the rights of individuals who claim to be victims of unjust action by public functionaries.

6.57 But these commissions are not always restricted to acting upon complaints. They are sometimes empowered to initiate investigations on their own.



6.58 While public complaints commissions are not exactly the same, in terms of their structure and powers, they typically follow the same procedure in performing their functions.

## **NATIONAL REMEDIES:**

### **NATIONAL HUMAN RIGHTS COMMISSIONS**

6.59 Human Rights Commissions, which typically function independently of other organs of government, are concerned primarily with the protection of citizens against discrimination and with the protection of their human rights. They are typically empowered to receive and investigate complaints from individuals and, occasionally, from groups, alleging human rights abuses committed in violation of existing national law.

6.60 Some human rights commissions concern themselves with alleged violations of any rights recognized in national constitutions, while others can consider cases of discrimination on a broad range of grounds, including race, colour, religion, sex, national or ethnic origin, disability, social condition, sexual orientation, political convictions and ancestry.

6.61 The Nigerian National Human Rights Commission was established by Decree No. 20 of 1995, with the primary promotional, protective and advisory or recommendatory functions and powers, among others, as spelt out in Section 5 of its enabling law, to:

- “(i) Deal with all matters resulting to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter on Human and Peoples’ Rights, the UN Charter and the Universal Declaration of Human Rights, and other International Treaties on Human Rights to which Nigeria is a party;
- (ii) Monitor and investigate all alleged cases of human rights violations in Nigeria and make appropriate recommendations to the Federal

Government for the prosecution and such other actions as it may deem expedient in each circumstance;

- (iii) Assist victims of human rights violation and seek appropriate redress and remedies on their behalf;
- (iv) Undertake studies on all matters pertaining to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights...”

## **SYNOPTIC COMPENDIUM OF DECISIONS BY INTERNATIONAL ORGANIZATIONS ON HUMAN RIGHTS CASES BROUGHT AGAINST NIGERIA**

6.62. We provide below in tabular form a number of decisions and observations on decisions by international human rights organizations and similar bodies on cases involving human rights violations in Nigeria. The list, while comprehensive, is not exhaustive. As the tabulation indicates, what is provide is the following in respect of each case: the name of the case, the nature of the alleged violation and the result/decision.

Table of decisions on Nigeria by the African Commission on Human and Peoples Rights (Taken from the 10<sup>th</sup> through the 14<sup>th</sup> Annual Activity Reports)

### **Name of Case Violation Result**

\* There were no cases against Nigeria reported in either the 10<sup>th</sup> or 11<sup>th</sup> Annual Activity Reports.

140/94, 141/94, 145/95

Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda (15 November 1999)

Alleged violation of Articles 5,6,7, 9, and 14 of the African Charter:

- Decrees issued by Nigerian military government proscribed the circulation on various newspapers

- Unlawful arrest and detention of six activists without charges; destruction of their property; detention in conditions that contributed to the decline of their health

Nullification of lawsuits in progress against government violates Art 7(1)(a)2.

- Decree prohibiting publishing of certain newspapers without remedy violates Art 9(1)3.

Suspension of free expression obligations in the African Charter during emergency violates Art 9(2)4.

Government's sending of armed gangs to attack journalists and activists violates Art 55. Arbitrary detention of journalists and activists violates Art 66.

Destruction of newspaper offices, journalists' and activists' homes violates Art 14.

143/95, 150/96 Constitutional Rights Project and Civil Liberties Organisation (15 November 1999).

Alleged violation of Articles 5, 6, 7 and 26 of the African Charter:

- Decree of military government prohibiting courts from issuing writs of *habeas corpus* for production of person

- Decree was used to detain aid workers, activists, and opposition politicians in appalling conditions without access to legal advice and healthcare, contact with family, and subject to torture and vigorous interrogations

1. Detention in degrading conditions without charge or trial violates Arts 6 & 7(1)(a) and (d)

2. Deprivation of *habeas corpus* alone does not violate Art. 6, though where *habeas* is such an important way of safeguarding against widespread abuse of Art. 6, the suspension of *habeas* may be characterised as a violation of Arts. 6 & 7(1)(a) and (d).

3. Prohibiting access to counsel violates Art. 7(1)(c)4.

Prohibiting access to family violates Art. 185.

Executive's failure to recognise grant of bail issued by judiciary erodes judicial independence violating Art. 26.

148/96 Constitutional Rights Project (15 November 1999).

Alleged violation of Article 6 of the African Charter:

- 11 soldiers continue to be detained after two separate trials acquitting each of them as well as subsequent (and legally unnecessary) state pardons

1. Unlawful detention is a clear violation of Art 6.

151/96 Civil Liberties Organisation (15 November 1999).

Alleged violation of Articles 5, 7(1)(a), (c) and (d) and 26 of the African Charter:

- 13 people sentenced to life imprisonment, reduced to fifteen years, in connection with an alleged plot to overthrow the military government

- Those sentenced were subjected to secret tribunals following procedure of court-martial with no access to legal defence and no knowledge of charges until trial. Detention is in military detention centres and not in regular prisons; complainants have no access to family, health care, or sufficient food or medicines.

1. Because of removal of widespread areas of the law from the jurisdiction of ordinary courts as well as the composition and procedure of the special tribunals, these special tribunals violate Arts. 7(1)(d) & 26

2. That the decisions of the special tribunals are not subject to appeal, but are subject to executive confirmation violates Art. 7(1)(a).

3. Lack of access to counsel, even after trial and conviction, violates 7(1)(c).

4. Military detention camp is not per se inhuman or degrading, but there is an obvious danger that normal safeguards on the treatment of prisoners will be lacking. Conditions of detention (no access

to family, lack of light, insufficient food, lack of medicine and health care) do violate Art. 5.

153/96 Civil Liberties Organisation (15 November 1999).

Alleged violation of Articles 6 and 7 of the African Charter:▪

5 people accused of serious crimes ranging from robbery to kidnapping have been detained for over two years without charge for investigative purposes under authority of a military government's decree.

1. Because the committee that reviews continued detention is too much under the influence of the executive, as well as that detention is automatically renewed unless the committee says otherwise violate Art.

6.2. Detainees' lack of right to appeal and failure to be tried within a reasonable length of time violates Art. 7(1)(a) and 7(1)(d). 3.

206/97 Centre For Free Speech (15 November 1999).

Alleged violation of Articles 6, 7 and 26 of the African Charter and Principle 5 of the U. N. Basic Principles on the Independence of the Judiciary:▪

Journalists were arrested and tried by a secret military tribunal whose decision was final. 1.

Trial by secret military tribunal whose decision was final, as well as lack of choice in representation or access to legal advice constitutes a violation of Arts. 6 and 7(1)(c). 2.

Composition of military tribunals (lack of independent, professional, and competent judges) constituted a violation of Art. 26.

215/98 Rights International (15 November 1999).

Alleged violation of Articles 5, 6, 7 (1)(c) and 12 (1) and (2) of the African Charter:▪ Ogoni student was arrested by armed soldiers, held for 8

days at a military detention camp in a cell with 45 other detainees and subjected to repeated whippings and other torture▪

The student was given no access to legal advice, no explanation of charges or information regarding the reason for detention, and no access to relatives.

▪ Student was eventually charged with an unlawful

assembly meeting that took place after his arrest while he was in detention, and the student was granted bail.

1. The student's torture violates Art. 5.
2. Illegal arrest and detention violate Art. 6.
3. Non-disclosure of reasons for detention and lack of access to counsel constitute violation of Art. 7(1)(c).
4. The student's flight to Benin and a subsequent grant of refugee status is illustrative of a violation of Art 12.

205/97 Kazeem Aminu (11 May 2000). Alleged violation of Articles 3(2), 4, 6 and 10(1) of the African Charter:

- Nigerian man was subject to repeated arbitrary arrests and short detentions. He alleged torture and inhuman treatment, but no specific allegation was made and the Commission declined to make a finding on this account.

- The man is currently in hiding for fear of his life.

1. The repeated arbitrary arrests and detentions violated Art. 3(2).

2. In the absence of specific information on the nature of the alleged inhuman and degrading acts complained of, there is no violation of Art. 5.

3. Driving someone into hiding for fear of losing one's life is a deprivation of the right to life, as contained in Art. 4.

4. Repeated arrests and failure to provide charges or reasons for treatment constitute a violation of Art. 6.

5. Failure to allow man to congregate with whom he wishes as long as he remains within the bounds of the law violates the free association right in Art. 10(1).

224/98 Media Rights Agenda (6 November 2000)

Alleged violation of Articles 6, 7, 9 and 26 of the African Charter:

- Editor was arrested for his views toward certain leaders in the military government. There were no charges or arrest warrant for his arrest, during which time he had no access to his family, a doctor, or a lawyer of his choice. Two months after his arrest he was accused of involvement in a coup attempt and was sentenced to life imprisonment by a military tribunal consisting of hand-picked members of the military government.

- Editor was chained to the floor by hand and foot day and night, and was not allowed to take a bath for 147 days.

1. Failure to advise the editor of the charges against him is a violation of Art. 7.

2. Failure to allow an appeal to a civil court is a violation of Art. 7(1)(a).

3. The military government's efforts at pre-trial publicity to persuade public of the editor's guilt violates Art 7(1)(b).

4. That the proceedings were closed violated Art 7(1)(c).

5. The tribunal was made up of military officials chosen by the executive and was not impartial because many members of the tribunal were members of the government leadership that was the victim of the alleged plot; this lack of impartiality violates Art 7(1)(d).

6. The tribunal's military officers were not qualified or trained in law, violating Principle 10 of the UN Basic Principles on the Independence of the Judiciary and Arts. 7 & 26.

7. The editor's views toward certain leaders in the military government led to his arrest, contrary to the principle of free expression in Art. 9.

8. The conditions of the editor's imprisonment (having his arms and legs chained to the floor day and night, not being allowed to take a bath for 147 days) constituted cruel and degrading treatment, a violation of Art. 5.

9. Editor's arrest and detention for two months prior to the disclosure of his charges at trial constituted arbitrary detention, a violation of Art. 6.

225/98 Huri-Laws (6 November 2000)

Alleged violation of Articles 6, 7, 9, 10, 14 and 26 of the African Charter:

- Founder of Huri-Laws, a Nigerian NGO was arrested at airport upon return to the country and later taken to NGO offices in an effort by the military government to collect incriminating evidence. No charges were made against the founder, and no arrest or search warrants were used to justify the treatment afforded the founder or the NGO. Officers destroyed the offices, and confiscated computers, diskettes, and file cabinets.

- The NGO alleges it was targeted as several other staff members have been arrested and interrogated. Some have been subjected to mandatory daily reporting to the State Security Service (SSS) Office. The NGO's staff counsel was arrested by National Drug Law Enforcement Agency officers and detained by SSS without charges.

- During the detentions of the founder and the lawyer, both were denied access to family, medical attention, and legal advice.

1. Degrading conditions of detention for the founder and attorney constitute violates of Art 5. (Additionally, mental anguish from uncertainty regarding arrest and detention added to the Art. 5 violation.)

2. Arbitrary arrest and detention of the NGO staff without disclosing the reasons for the arrest to the detainees aware constituted a violation of Art 6.

3. Due to the suspension of *habeas corpus* claims and the lack of appeal, those arrested had no recourse to challenge the legality of their detention, a violation of Art. 7(1)(a) and (d). No recourse to civilian courts existed, a violation of Art. 26.

4. The failure of the government to bring those detained before a judicial body for charging constituted a violation of Arts. 7 and 26.



5. That the NGO was targeted because of the expression of opinions of its members and its collective mission constituted a violation of Arts. 9 & 10. 6. That NGO counsel and founder were arrested at entry points to Nigeria constitute infringement on their freedom of movement, a violation of Art 12(1) & (2). 7. The seizure of NGO property without justification constituted a breach of Art. 14.

218/98 Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project (7 May 2001).

Alleged violation of Articles 4, 5, 6, 7 and 26 of the African Charter:

- Special military tribunal tried 27 people, six of whom were sentenced to death for roles in a coup plot. The tribunal included some sitting judges, but was chaired by a Provisional Ruling Council (PRC) member, a high-level part of the executive. No appeal was possible from the hearing, and sentence was subject to confirmation of the PCR, an exclusively military group of executives.

1. The trial of the military officers and the involved civilian before a military tribunal itself does not constitute a per se violation of human rights norms. The civilian was part of the common conspiracy and it is reasonable that he would be charged with his military co-accused in the same judicial process. However, it is important that Art. 7 be kept inviolable as it provides the minimum of protection to civilians and military alike, especially in unaccountable and non-democratic regimes. The critical factor is that judicial processes must be fair, just, and impartial. Trial of the civilian before a military tribunal, given these circumstances, was not a violation of Art. 7(1)(d).

2. Even in cases where a military tribunal hearing is legitimate, the automatic assignment of military officers as defence counsel over the objections of the accused in light of the likelihood of military collusion and or bias and lack of attorney/client privilege violates Art. 7(1)(c). The

accused should have been able to choose their own counsel, particularly in this case because of the seriousness of the sanctions (death).

3. The foreclosure of the avenue of appeal to a competent higher court, particularly given the seriousness of the crime and sentence, constitutes a violation of Art. 7(1)(a). This also violates 6 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty & Art. 6(4) of the ICCPR.

4. The military tribunal was convened in secret, and since Nigeria has offered no evidence that it allowed the accused to mount a defence involving the testimony of witnesses and other indicia of a fair and open trial, there exists a violation of Art. 7(1)(a).

5. The military tribunal was not an independent judicial body because of its ties to the PCR, a violation of Art. 7(1)(d).

6. In absence of specific details of allegations of violations of Arts 5 and 6, the Commission cannot find violations of these Articles.

102/93 Constitutional Rights Project and Civil Liberties Organisation (5 May 1999).

Alleged violation of Articles 6 and 13 of the African Charter:

- The annulment of the election results and announcement of an interim government, coupled with the removal of jurisdiction from the courts to hear election disputes (this legislative power to remove jurisdiction from the courts has subsequently been rejected by the Court of Appeal in the case Chief Gani Fawehinmi v General Sani Abacha (12 December 1996), but the Commission found that Nigerians continue to face legal obstacles in challenging new law).

- Includes the arrest and detention of election protestors and activists; targeting and proscription of certain specific media organisations:

1. The criteria for what constitutes free and fair elections are internationally agreed upon. It would be contrary to the logic of international law of a national government with a vested interest in the outcome could

act as final arbiter of whether the election took place in accordance with international standards. The right to participate freely in the government through freely chosen representatives entails the right to vote for representatives. Annulment of election results which international observers have demonstrated reflect the clear choice of the voters, is a violation of Art. 13.1. 2.

Arrest and detention of individuals without charges being filed after a three year period, even where those individuals have subsequently been released, constitutes as violation of Art. 6.

3. *Ad hominem* legislation targeting specific newspapers and magazines by name raises the possibility of discrimination and lack of equal treatment before the law, a violation of Arts. 2 and 3. The freedom of individuals to receive, express, and disseminate opinions was curtailed by governmental targeting of the media, a violation of Art. 9.

105/93, 128/94, 130/94, 152/96 Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project (5 May 1999).

Alleged violation of Articles 6, 7, 9, 14 and 16 of the African Charter:

- Government decrees banned the publication of two magazines and 10 newspapers; operators were not publicly accused of any wrongdoing nor given an opportunity to challenge the ban in court;
- Government decree gave sole discretion to Newspapers Registration Board for the licensing of all newspapers with no procedure for challenging a negative decision; decree punished with stiff fine and imprisonment any failure to register within a short three-week period, as well as required a large registration fee and an even larger security deposit to meet penalties and damages levied against the operator;

- Editor in Chief of popular weekly critical of the government was arrested and detained without charge, as well as denied access to his family, legal counsel, or medical attention despite deterioration of his health.

1. Payment of a registration fee and pre-registration deposit for payment of penalties and damages are not per se violations of freedom of expression enshrined in Art. 9. However, the amount of the registration fee should be no more than necessary to ensure administrative expenses are covered; the pre-registration deposit should be no larger than necessary to secure against the owner. Excessively high fees restrict the media. The fees here of a N100.000 registration fee and a N250.000 deposit are not so clearly excessive that they constitute a serious restriction or a violation of Art. 9.

2. Total discretion and finality of decision of the Newspaper Registration Board gives government total power of unreviewable censorship, a violation of Art. 9.1.3.

The retroactivity of the newspaper registration decree, even where no identifiable infliction of punishment has taken place, undermines certainty in the rule of law, a violation of Art. 7.2.4. In that the newspaper decree was declared null by domestic courts with no effect, Nigeria shows shocking disrespect for court judgments, a violation of Art. 7.1.5.

Dissemination of opinions may be restricted by law, but all limitations must conform to Art. 27.2 of the Charter, which requires that all limitations be exercised with due regard to the rights of others, collective security, morality, or the common interest. All justifications for limitations must be founded on legitimate state interests, strictly proportionate with and absolutely necessary. No limitation may result in a right becoming illusory. Targeting of specific newspaper was not for a legitimate Charter reason, a violation of Art. 9.2.6.

Criticism of the government may not be assumed to constitute an attack on the personal reputation of the head of state as highly visible public persons must face a higher degree of criticism than private citizens. Libel actions are more appropriate to seizure of an entire edition of a magazine prior to publication when a governmental official is allegedly insulted. Seizure and sealing of newspaper premises is a violation of Arts. 9.2 and 14. 7.

The nature of military regimes is not a valid defense of decrees ousting courts from wide areas of jurisdiction, such as the examination of government actions. The widespread removal of jurisdiction from courts is a clear violation of Art. 7.1.8.

The denial of access to legal advice for an Editor in Chief who was arrested and detained without charge violates Arts. 7.1(c) and 6 while the denial of access to medical care while the detainee's health is deteriorating violates Art. 16.

137/94, 139/94, 154/96 and 161/97 International PEN, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation (5 May 1999).

Alleged violation of Articles 1, 4,5, 7, 9, 10, 11, 16, and 26 of the African Charter:

- Government arrested Saro-Wiwa, president of the Movement for the Survival of the Ogoni People (MOSOP), and many other MOSOP members
- Those detained were subjected to severe beatings, unjustified restraint in manacles, leg irons and handcuffs, and poor conditions of detention including denial of access to family, medical attention, and legal counsel. Those detained were held approximately eight months before charges were filed giving the reasons for the arrest.
- Before and during trial, defendants not allowed to meet with counsel, nor was any information given to the defense about the charges. Defense

counsel was subjected to severe harassment, such that two separate teams, including one directly appointed by the tribunal, withdrew from the case leaving the defendants without any legal counsel. Prior to withdrawal, a military officer was present at confidential meetings between defendants and counsel. There was additionally evidence of witness bribery, as well as evidence of bias by tribunal members.

- Following trial, Saro-Wiwa and 8 others were sentenced to death. Provisional Ruling Council should have reviewed the sentencing tribunal's record before confirming the sentence of death, but no records were seen before the PRC confirmed the sentence.

- The executions were carried out while case was pending before the Commission but before the Commission could discuss the case with Nigerian authorities.

1. The subjection of defendants to beatings, their detention in airless and dirty cells while being forced to wear manacles, leg irons, and handcuffs all constitute violations of Art. 5. Refusing blood pressure medication was also a denial of Art. 5.

2. Government decree authorising up to a three month detention without charge prima facie violates the right not to be arbitrarily arrested or detained; therefore the government has violated Art. 6.

3. Special tribunals composed at the discretion of the executive are not impartial, regardless of the qualifications of the individuals chosen for a particular tribunal. The defendants in question were therefore denied the right to a fair trial, a violation of Art. 7.1(d).

4. The lack of appeal possibility to any independent court or impartial tribunal constitutes a violation of Arts. 7.1(a) and 26.

5. The defendants were not presumed innocent, a violation of Art. 7.1(b).

6. Harassment of defense counsel resulted in the withdrawal of two separate teams of attorneys (the second of which had been assigned by the tribunal). Court proceedings were then continued without the defendants having any access to counsel, a violation of Art. 7.1(c).

7. Trial itself violates Art. 7, therefore the executions arbitrarily deprived those sentenced to death the right to life, a violation of Art. 4. 8.

Denial of blood pressure medication seriously endangered the life of one defendant, a second violation of Art. 4.9. The defendants' alleged culpability was based on their organisation and participation in a public rally and their work in an organisation. This logic adversely affects the right to assemble as well as constitutes government prejudice toward certain opinions, a violation of Arts. 11 and 10.1, as well as 9.2. 10.

Responsibility of government is heightened when an individual is in its custody. Denial of medical attention to a defendant who was allowed to deteriorate to the point of his life being endangered was a violation of Art. 16.

11. To say that Nigeria violated the Charter in blatantly ignoring the Commission's request to stay the executions until the Commission could consider the pending case is a clear understatement. A legally bound state must abide by the Charter. In failing to do so, Nigeria has violated Art.

The following conclusions are summarized from reports of international bodies overseeing various international treaties such as the CCPR and the CDESCR concern Nigeria (collected at <http://www.unhchr.ch/TBS/doc.nsf>)

**Committee on Economic, Social and Cultural Rights**E/1990/5/Add.31State Party Report, Initial report, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ffc817a2e433eb18c1256381004f1e44?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ffc817a2e433eb18c1256381004f1e44?Opendocument)The **National Primary Health Care Development Agency** (NPHCDA) was established in 1992 with the following fundamental goals and objectives:

With respect to Health:

1. Reducing the infant mortality rate through the minimization of occurrence of childhood diseases in general.
2. Promoting safe motherhood through the improvement and expansion of existing material and child health care facilities and services; development

and/or adoption of technologies aimed at the protection of the health of mothers and children.

3. Reducing the incidence and prevalence of disability; providing adequately for the rehabilitation of the disabled.

4. Providing an ever-widening sphere of basic immunization coverage.

5. Reduction of measles deaths by 95 per cent (compared with pre-immunization levels).

6. Achieve a cumulative immunization coverage level of 80 per cent against diseases such as diphtheria, pertussis, tetanus, poliomyelitis, tuberculosis.

7. Immunization coverage level of 90 per cent against measles for “under-ones”, and tetanus toxoid for women of child-bearing age.

8. Incorporation of yellow fever and hepatitis B vaccines into the Expanded Programme on Immunization (EPI) scheme

9. Promoting the Household Food Security Programme.

10. Combating HIV and other STD's through establishing condom supply systems, and sponsoring and promoting health education such as adult health literacy programs

With respect to education:

1. Increasing access to primary schools for school aged children, reducing drop-out rates.

2. Eliminating gender disparity in enrolment

3. Reviewing curricula to make it female friendly.

4. Promoting adult literacy and adult education programs

Continuous training of teachers.

E/C.12/1/Add.23 Concluding observations of the **Committee on Economic, Social and Cultural Rights**, at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/dae3f1565f6d74f98025662c004f26c7?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/dae3f1565f6d74f98025662c004f26c7?Opendocument).

1. Institute rule of law and strengthen judiciary; eliminate rule by military decree.

2. Restore academic freedoms and respect for trade unions (including the immediate release of all union members who are being held without charge).



3. Provide redress for indignities visited upon the Ogoni people, as well as other ethnic minorities
4. Enact legislation to reduce homelessness, drop-outs, child labour, child malnutrition, and to end discrimination against children born out of wedlock; Abolish the practice of female genital mutilation; retract legal provisions which permit the beating (“chastisement”) of women by their husbands; reduce polygamy rate.
5. Enact legislation to accomplish its goals under “Education for All by the year 2000” and greater enforcement compulsory free primary education
6. Case the massive and arbitrary evictions and take such measures as are necessary in order to alleviate the plight of those who are subject to arbitrary evictions or are too poor to afford a decent accommodation; this includes the allocation of adequate financial resources.

**Committee on the Elimination of Discrimination Against Women**

A/53/38/Rev.1, paras.138-174 Concluding Observations of the **Committee on the Elimination of Discrimination Against Women**, at [http://www.unhcr.ch/tbs/doc/nsf/\(Symbol\)/e24a4ea73704b14e8025666500559974?OpenDocument](http://www.unhcr.ch/tbs/doc/nsf/(Symbol)/e24a4ea73704b14e8025666500559974?OpenDocument)

1. Nigeria should reply to all questions in periodic reports concerning the state of implementation of CEDAW.
2. Work to reduce religious and customary laws and practices that violate CEDAW; including forbidding women to travel without a male relative, polygamy, one-sided repudiation, and unequal subsistence rights and shares.
3. Collect statistical data on domestic violence, prostitution, women’s labour, including in the informal sector, and women’s and children’s health to ensure compliance with CEDAW; all statistical information should be disaggregated by sex in all areas of importance in the lives of women.

4. Implement special measures to install additional women in the judiciary (through temporary special measures in accordance with article 4, paragraph 1, of CEDAW).
5. Implement legislation, programs, and policies regarding domestic violence; including the establishment of shelters for victims and measures to ensure that women are protected from reprisal for reporting victimization
6. Implement a specific program to reduce illiteracy among women, particularly in rural areas, and promote access by girls to free secondary education.
7. Increase efforts to guarantee access to medical services and hospital medical facilities, particularly in the context of women's health needs; including family planning, maternal education, sexual education, and the collection of statistical data on these areas.
8. Strengthen socio-economic programs so as to ensure equal access to credit by women, including rural women.

### **Committee on the Elimination of Racial Discrimination**

A/48/18, paras.306-329

Concluding observations of the Committee on the ***Elimination of Racial Discrimination***, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/1bd4e2fb0e7ec004c1256b5000581199?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/1bd4e2fb0e7ec004c1256b5000581199?Opendocument).

1. Enact legislation defining racial discrimination according to the Convention, prohibiting racist organizations and propaganda activities that incite racial discrimination, promote effective protection and remedial processes to redress for acts of racial discrimination (including acts by State parties).
2. Collect better data on the racial and ethnic composition of Nigerian society.

A/50/18, paras.598-636 Concluding observations of the ***Committee on the Elimination of All Forms of Racial Discrimination***, at <http://>

www.unhcr.ch/tbs/doc.nsf/(Symbol)/e05ed5f12981bce480256560005513b0?Opendocument.

1. Review the effectiveness of the protection current legislation provides against racial discrimination and the enjoyment of civil, political, economic, social and cultural rights.
2. Review and take remedial measures against situations of ethnic disorder and its causes including the immediate protection of ethnic minorities and access to remedial measures such as judicial review.

**Committee on the Rights of the Child** CRC/C/15/Add.61 Concluding observations of the **Committee on the Rights of the Child**, at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/9e0fac74300c69edc12563ef0046b3a7?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/9e0fac74300c69edc12563ef0046b3a7?Opendocument).

1. Consider and adopt a children's decree, drafted in conformity with the principles and provisions of the Convention on the Rights of the Child.
2. Undertake a comprehensive review of all national legislation to ensure its conformity with the Convention on the Rights of the Child.
3. Review measures to ensure maximum allocation of resources to ensure the implementation of the economic, social and cultural rights of the child.
4. Implement and extend a child's rights awareness program to all those adults and professionals working with or for children.
5. Develop mechanisms to collect statistical data and indicators disaggregated by gender, rural/urban division, and ethnic origin as the bases for designing programmes for children.
6. Integrate "best-interests of the child" into policy formulation and discussion.
7. Address harmful practices such as early marriage, child betrothals, female genital mutilation, familial child abuse; with respect to female genital mutilation, all eradication measures must be taken on a priority basis; with respect to public awareness and information campaigns, these must support

education and advice on other family matters, including equal parental responsibilities and family planning in order to foster good family practices.

8. Ensure equal access to quality health care

9. Harmonize formal and informal education systems in an effort to apply a national curriculum, and implement measures to improve school enrolment and school retention, especially for girls.

10. Harmonize criminal legislation with the Convention on Rights of the Child, including the setting the age limit for criminal responsibility at 18; including safeguarding fair trial procedures for juveniles.

11. Reduce the detention and institutionalisation of children in an effort to eliminate child abuse and homelessness through the development of alternatives; establishment of an independent system for monitoring the situation of such children to illustrate elimination of the problem.

12. Enact legislative measures to combat child exploitation, both economically and sexually.

CRC/C/8/Add.26

State Party Report, Initial Reports of States parties due in 1993, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f5c4157cf6f755abc125635d005157e2?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f5c4157cf6f755abc125635d005157e2?Opendocument)

This report includes Nigeria's specific plans and methods to implement the CRC by the year 2000. It might be helpful, but is too detailed and covers too much ground to be effectively summarized.

### **Human Rights Committee**

CCPR/C/79/Add.64 Concluding observations of the Human Rights Committee: Nigeria, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/837fe395750a6520c12563dc00513807?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/837fe395750a6520c12563dc00513807?Opendocument)

1. Revocation of all military tribunals and "ouster" clauses, ensuring fair trials and access higher tribunals for conviction and sentence review

The following conclusions come from reports of Charter-based bodies that concern Nigeria (collected at <http://www.unhchr.ch/huridocda/huridoca.nsf>)

E/CN.4/RES/1997/53

**Situation of human rights in Nigeria**, ECOSOC Commission on Human Rights Resolution 1997/53, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/740e4df108c5b850802566480057972f?Opendocument>

1. To release all political prisoners, trade union leaders, human rights advocates and journalists currently detained; to improve detention conditions
2. To ensure that all trials are held fairly and promptly and in strict conformity with international human rights standards;
3. To ensure the independence of a National Human Rights Commission and to cooperate fully with this Commission and its mechanisms.

E/CN.4/RES/1998/64 Situation of human rights in Nigeria, ECOSOC Commission on Human Rights resolution 1998/64, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/ba4214dc929b1de08025666c00376f0b?Opendocument>

1. To repeal all relevant decrees which oust the jurisdiction of the courts and to ensure that court orders are promptly and fully implemented
2. To ensure that all trials are held fairly and promptly and in strict conformity with international human rights standards.
3. To ensure that the treatment of prisoners and their conditions of detention are in accordance with recognized international standards

E/CN.4/1997/62/ Add.1

Report of Special Rapporteurs on the situation of human rights in Nigeria, Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions, Mr. Bacre W. N'diaye, and the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, at <http://>

[www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a65d4f9daf5e2123802566c9005e6d29?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a65d4f9daf5e2123802566c9005e6d29?Opendocument)

1. Recognize and strengthen judicial independence
2. De-marginalize the Bar Association of Nigeria
3. Consider the abolition of the death penalty; at the very least eliminating public executions, and reserving execution for only the “most serious crimes”
4. 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.
5. 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.
6. Reduce overcrowding of prisons, 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.
7. Allow Detainees should be allowed visits by family members and their attorneys and be granted access to adequate medical care.

A/53/366

Report by the **Special Rapporteur of the Commission on Human Rights on the situation of human rights in Nigeria**, Interim report on the situation of human rights in Nigeria, prepared by the Special Rapporteur of the Commission on Human Rights, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/eda3335b2fa15a00802566be00580144?Opendocument>

1. Strive to ensure electoral fairness and create the Independent National Electoral Commission.
2. Fully respect the rights to freedom of opinion, expression and association, freedom of the press, and the right to peaceful assembly, as set out in the International Covenant on Civil and Political Rights.
3. Immediately release all political prisoners, trade union leaders, human rights advocates and journalists currently being detained without charge or trial.
4. All decrees which oust the jurisdiction of courts in matters involving life and liberty of the person should be repealed.
5. All legal proceedings must be conducted in public before independent courts whose proceedings conform to international norms of due process.
6. Put a moratorium on executions, with a view to completely abolishing the death penalty. Alternatively, impose the death penalty only in strict compliance with article 6 of the International Covenant on Civil and Political Rights, and never on persons under 18 years of age.
7. Improve prison conditions.
8. Repeal laws contrary to the equal rights of women.
9. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

E/CN.4/1999/36

Report of the Special Rapporteur on the situation of human rights in Nigeria, Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/6e56e4aeeb8d8f118025673700450453?Opendocument>

1. Repeal determination of rights by military and other special tribunals.
2. Repeal All repressive decrees which infringe freedom of expression and freedom of the press, freedom of assembly and association.

3. Modify the provisions of the Failed Bank Decree relating to bail to enable courts to award bail in genuine and exceptional circumstances, eliminate provision that allows liability to be attached to another when the primary offender absconds, expeditiously try offenders of this Act, if necessary by establishing additional courts.
4. Put in place immediate measures to eliminate the causes leading to delays in trials and to ensure prompt trial of persons in jail for long periods awaiting trial even if it means that additional courts, sufficiently staffed need to be established.
5. Formulate immediate measures to ensure that the conditions of detention fully comply with article 10 of the International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners, and the Basic Principles for the Treatment of Prisoners: including allowing visits by family and access to reading material and other basic amenities, access to lawyers and doctors of the detainees' choice should never be denied
6. Promptly compensate those whose human rights have been violated.
7. Increase budgetary funding of the health sector including the provision of aid to health institutions to enable them to procure modern medical equipment

A/50/960

Report of the fact-finding mission of the SG to Nigeria, Letter dated 23 May 1996 from the Secretary-General addressed to the President of the General Assembly, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/8fe00949a4149d9380256727003ac8e8?Opendocument>

1. Creation of a committee comprised of representatives of the Ogoni community and other minority groups to be chaired by a retired judge of the High Court for the purpose of introducing improvements in the socio-economic conditions of these communities, including enhancing employment opportunities, health, education and welfare services and to act as



ombudsman in any complaint/allegations of harassment at the hands of the authorities

2. Lift existing restrictions in law, in fact, and in practice as well as refrain from imposing other restrictions on political and professional associations and labour unions, in accordance with the national and international norms on freedom of association.

3. Remove restrictions on the right of freedom of expression of the press, release journalists and refrain from harassing the media

E/CN.4/1998/62

Report of the Special Rapporteur on the situation of human rights in Nigeria, Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a55c3d667425f3cfc125660f004afbcf?Opendocument>

1. Immediately release all political prisoners, trade union leaders, human rights advocates, and journalists currently being detained without charge or trial.

2. Immediately repeal all decrees which suspend the human rights provisions in the Constitution, including all decrees which oust the jurisdiction of courts in matters involving life and liberty of the people should be repealed.

3. Abolish practice of using secretive and special military tribunals; the determination of rights and obligations including any criminal charges should be made by regular courts of law; alternatively, the composition of all special tribunals should be made independent and perceived to be so by the community at large. Those sentenced by less than fair measures should be immediately released.

4. Eliminate the involvement of the Provisional Ruling Council in confirmation or reversal of conviction and sentence.

5. Nigeria should abolish the death penalty. In the alternative, imposition of the death penalty should occur only in strict compliance with article 6 of the ICCPR, and in no circumstances should death sentences be carried out on persons under the age of 18 years;
6. Prompt compensation should be paid to persons whose human rights have admittedly been violated.
7. Prison conditions should be redressed as a matter of urgency. Immediate measures should be adopted to ensure that the conditions of detention fully comply with article 10 of ICCPR, the Standards Minimum Rules for the Treatment of Prisoners and other relevant international instruments. Solitary confinement should only be in rare cases of security risk where specific reasons for solitary confinement are recorded in writing. Those detained should be afforded periodic visits by family and should not be denied reading material and other basic amenities; they should also be given access to lawyers and doctors of their choice.
8. Repeal restrictions on the freedom of expression and freedom of the press; Cease practice of impounding passports without notice and without grounds should immediately terminate including providing a right of appeal against the impoundment to a judicial body.
9. Laws contrary to the equal rights of women should be repealed to bring compliance with CEDAW, including the adoption of urgent measures to curtail the practices of female genital mutilation and forced marriage.
10. Immediate measures should be initiated to strengthen safeguards for children in detention in respect of their recovery and rehabilitation.
11. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
12. An international observer team should be given observer status and permitted attendance at criminal trials for alleged crimes of treason and other crimes involving the death penalty or long-term imprisonment

## **CHAPTER 7**

### **OBSTACLES TO NIGERIA'S HUMAN RIGHTS LEGAL OBLIGATIONS**

7.1 The failure of the state in Nigeria to comply with its international and domestic legal duties to investigate and provide effective remedies in cases of gross violations of human rights has cumulatively, over the years, encouraged and, indeed, given rise to a culture of impunity, whereby agents of the state, public functionaries and others generally need not fear punishment or the application of sanctions for violating the human rights of other citizens.

7.2 The major obstacles in Nigeria preventing investigation and the application of effective remedies in case of gross violations of human rights in Nigeria are:

- (i) the long period of military rule, which engendered a culture of disrespect for the rule of law;
- (ii) the menace of impunity and law enforcement agents;  
and
- (iii) non-observance of the due process of law.

### **MILITARY REGIMES' DISRESPECT FOR THE RULE OF LAW**

7.3 The rule of law, by which is generally meant that *laws and not men should govern*, is an important principle of *limited or constitutional government*, which by and large, and in general terms, came under assault during Nigeria's long experience with military rule.

7.4 One critical aspect of this disrespect for the rule of law under military rule in the country was rule by military decree, in spite of the country's constitution. Successive military governments in the country shrouded their illegitimacy and unconstitutional rule in the constitution by suspending it only in part upon seizing power by force.

7.5 They modified the principle of separation of powers by proscribing and abolishing the legislature, whose functions and powers are *fused* with those of the executive branch, while retaining the judiciary. However, the judiciary is hamstrung through decrees enacted to oust the judicial review of certain legislative action, in the form of enacted decrees and edicts by the executive branch.

7.6 The result is what may be described as legislative supremacy. This is a fundamental derogation from the *principles of separation of powers and judicial review, which define a federal system of government.*

7.7 But it is similar to what obtains in countries with no written constitutions or with supreme parliaments, although with the difference that, unlike what obtains in a military dictatorship, the legislature, in a democratic country such as Great Britain, where Parliament is supreme, the legislature represents the symbolic expression of the popular will, determined through the participatory democratic choice of the electorate in periodic competitive elections, conducted under universal adult suffrage, which not only ensure the accountability of members of parliament but also strengthen the legal tradition of the rule of law, due process and the democratic ethos of the imposition of limits and checks on rulers, on which the political system is anchored.

7.8 The constitutional or legal status of military rule and military regimes has been a major bone of contention in Nigerian constitutional law. In **Lakanmi and Anor. v. A.G. of Western State**, the issue of the status of the military regime was raised, namely whether the enabling statute for the regime was the take-over decree or the 1963 Republican Constitution. The Supreme Court ruled in the case that the 1963 Constitution was the enabling statute.

7.9 In reaction to the decision of the Supreme Court in the *Lakanmi case*, the Supreme Military Council enacted a corrective law, *The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970*, asserting the nature of the change of government brought about by military take-over of government, and affirming that the 1963 Nigerian Constitution was not the legal basis for the new government. An important implication of the decree was that the 1963 Constitution and other constitutions in force whenever the military illegally seizes power remain in effect only to the extent that decrees enacted by military regimes in the country allow.

7.10 Another constitutional issue pertains to the status of the constitutional provisions and existing laws, which decrees enacted by military regimes do not expressly suspend.

7.11 In **State v. Nwoga and Okoye, and in Jackson v. Gowon & Ors.**, the courts upheld constitutional supremacy over military enacted decrees. However, in a number of later cases, e.g. **Ogunlesi & Ors. v. A.G. of the Federation**, and in **Ojokolobo & Ors. v. Alanu & Anor.**, the courts have upheld the legislative supremacy of military enacted decrees over all existing laws, including the unsuspended provisions of the Nigerian Constitution, in force when the military seized power. The Court of Appeal had, indeed, argued in **Lahanmi and Anor. v. A.G. of Western State**, that

*“Once a decree is made, as provided in Decree No. 1 of 1966, even the provision of the Constitution can derogate therefrom. Section 1...clearly establishes the supremacy of a Decree over the constitution itself and one may say that Decrees become the magic of the Federal Military Government...”*

7.12 If military rule is inherently subversive of constitutional or limited government and of the rule of law, Nigerian courts have tried to limit its arbitrary excesses and to force it to act in conformity with the laws it had enacted, in other words to respect due process and the rule of law, in respect of the decrees, which it had promulgated.

7.13 This was the decision of the court in **Chief Davis & Ors. v. Chief Abey and Ors.**, where it was held that,

*“It is axiomatic that when an executive action is mala fide, then the authority who purportedly [seeks] to exercise the action cannot be heard to parade before the court an ouster clause...ouster clauses anticipate lawful acts taken according to the enabling law...Unless so, the executive can, with deliberate impunity, flout the law and hide under a well phrased ouster clause...”*

7.14 The debate over due process and the rule of law under military rule has, therefore, revolved around whether military regimes can lawfully exercise governmental powers inconsistently with the ground norm laid down by them after seizing power.

7.15 In a more recent case under the administration of General Babangida, the Supreme Court in its ruling reminded the military that it could abolish the judiciary as it has done with the legislative branch, if it [the military] was not prepared to obey court rulings and court orders.

7.16 However, Section 2(b)(i) of Decree No. 12 of 1994 asserted that,  
*“No civil proceedings shall lie or be instituted in any court for or on account or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and if such proceedings are instituted before, or after the*

*commencement of this Decree the proceedings shall abate, be discharged and made void.”*

7.17 This provision effectively ousted the competence and jurisdiction of the courts from enquiring into the validity of decrees made by the military government. Similar provisions are contained in almost all decrees affecting human rights proclaimed by the military since 1994

7.18 Most courts cited the provision as a basis for declining jurisdiction, especially in cases involving violations of human rights by the military authorities.

7.19 Further illustration of the problem posed for the rule of law and for the promotion and protection of human rights under military rule is provided by the combined effect of the following features of military enacted decrees: *retroactivity; ouster clauses; legislative judgment; and prohibition of judicial appeal.*

7.20 *Retroactivity of decrees:* Sometimes decrees enacted by military regimes are backdated to legitimize illegalities or to make certain persons guilty of specific offences, which did not constitute offences at the time they were carried out. Retroactive decrees are not limited to the deprivation of individual liberty. The following examples are illustrative of the nature of retroactive decrees, namely that they were used by military regimes not only in criminal cases, where they were considered most harmful but also in other circumstances to take away rights previously granted by contract or public appointment, or to invalidate decisions of public agents or public functionaries, which had been validly made:

- (a) In 1984, the military regime enacted the *Special Tribunal (Miscellaneous Offences) Decree*, providing the death penalty for a wide range of offences,

including arson, tampering with oil pipelines or electric or telephone cables, importation of mineral oil, dealing in cocaine, etc. Three suspects, Messrs Owoh, Ogedengbe and Ojuolope were charged retroactively, under the *Special Tribunal (Miscellaneous Offences) Decree*, with having dealt in cocaine before the decree was enacted. They were tried by a Special Military Tribunal, which found them guilty. They were sentenced to death and were subsequently publicly executed.

- (b) *The Satellite Town (Title Vesting and Validation) Decree No. 5 of 1991*, signed into law on 16 January 1991 but backdated to have retroactive effect from 18 September 1975, affected the property rights of land owners in a suburb of metropolitan Lagos, known as Satellite Town, by annulling all court orders and judgments on land-ownership in the area, which were passed before or after the commencement of the decree.

Although the application of retroactive or ex post facto laws is prohibited under Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR), and by the 1979 Constitution of the Federal Republic of Nigeria, there was no legal remedy against them [retroactive decrees] in Nigeria under military rule because, as we pointed out previously, judicial review of decrees for violating Chapter 4 of the 1979 Constitution of the Federal Republic of Nigeria, containing provisions on Fundamental Human Rights had been revoked by another decree.

7.21 **Ouster Clauses:** Another feature of decrees enacted by military regimes in Nigeria is that they sometimes contained ouster clauses, which



typically remove (“oust”) the jurisdiction of civil courts in matters regulated by the decrees. But under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. This right is also guaranteed by the 1979 Constitution of the Federal Republic of Nigeria, which, at Section 236(1) grants the High Court

*“unlimited jurisdiction to hear and determine any civil proceedings in which [the] existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is an issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.”*

We have discussed above [Sections 12-18 of this chapter] the attempt of the courts in Nigeria to come to terms with ouster clauses. As the Honourable Justice Niki Tobi has put it,

*“The courts have also insisted that executive actions purportedly exercised under an enabling Decree or Edict must strictly comply with the procedure laid down by the Decree or Edict.”*

[Niki Tobi, Hon. Justice. “The Legislative Competence of the Armed Forces Ruling Council,” in Justice: A Journal of Contemporary Legal Problems, Vol 1, No.4, August 1990, p.39]

7.22 **Legislative Judgment**: This is another feature, which sometimes characterizes decrees enacted by military regimes in Nigeria. Legislation is conceived as a system of general and uniform rules. To single out a person for individualized treatment by legislation is arbitrary and discriminatory

and it can lead to oppression. It amounts to legislative judgment, which can be used to influence the outcome of judicial proceedings. This type of legislative judgment was routinely used by military regimes in Nigeria. Decrees passed judgments, in the form of legislative judgments, aimed at specific individuals or situations. An example is *The Reporter (Proscription and Prohibition from Circulation) Decree of 1993*, which barred the publication of The Reporter, a daily newspaper. Another example is offered by decrees, which create special tribunals for the adjudication of specific situations and persons, as in the trial of Ken Saro-Wiwa and 8 others in November 1995.

7.23 ***Prohibition of Judicial Appeal***: A feature of decrees setting up military tribunals, enacted by military regimes in Nigeria, is that they do not provide for appeals to the regular courts. Occasionally, the only appeal allowed is to the executive power, the head of state. This feature contravenes the provision of Article 14(4) of the *International Covenant on Civil and Political Rights (ICCPR)*, which stipulates that “everyone has the right to his conviction and sentence being reviewed by a higher tribunal according to law...”

## **THE MENACE OF IMPUNITY AND LAW ENFORCEMENT AGENTS**

7.24 A second major obstacle to the prevention, investigation and application of effective remedies of gross violations of human rights in Nigeria under military rule has been the menace of impunity and law enforcements agents.

7.25 The nature of state responsibility for violations of human rights is different from that of violators within the private domain. This is because the official capacity within which a public functionary operates gives him a higher degree of responsibility and public trust.

7.26 His/her liability is even greater for violating this public trust and responsibility, especially when he/ she has sworn to faithfully carry out such a responsibility. A breach of this responsibility and trust, as well as the failure of the state to apply sanction to redress or punish the breach, as we have pointed out earlier in this chapter, is likely in the long run, to weaken the social fabric, encourage disloyalty and erode general confidence in the state and the legal process.

7.27 Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) and Section 32 of the 1979 Constitution of the Federal Republic of Nigeria guarantee the right to liberty and security of person and, to this end, provide for the protection of the right to personal liberty, except in the execution of a lawful order of a court or on reasonable suspicion that an offence has been committed by a suspect.

7.28 For example, by virtue of Section 10(1) of the Criminal Procedure Act and Section 24 of the Police Act, the Police are empowered to arrest suspects, without a warrant, under certain circumstances.

7.29 The Nigerian experience has been that the right to liberty is regularly breached or violated by agents of the state.

7.30 The Police in many cases had gone beyond their power to arrest suspects and have arrested innocent citizens. They are known to have arrested relatives or friends of suspects, holding them as hostages, if suspects were not available.

7.31 Military regimes in Nigeria promulgated several decrees that infringed the right to liberty. The most infamous of such decrees is the *State Security (Detention of Persons) Decree*, which empowered the Inspector-General of Police or the Chief of General Staff to detain persons for up to

three months without trial, for example, upon suspicion of their being involved in actions prejudicial to state security, either for economic, political or other reasons. No writ of *habeas corpus* or an order of prerogative or any other order of a court may be issued for the production of a person detained under the decree.

7.32 *The State Security (Detention of Persons) Decree* was amended in 1993 by the administration of General Abacha to make it more stringent. Law enforcement personnel were given a *carte blanche* to detain opponents of the regime at will. Thus journalists, politicians, human rights activists, labour union leaders, students and other pro-democracy advocates, who were critical of the regime, were detained under the decree. As long as the government produced evidence in court that a person was being detained under the decree, regular courts were precluded from examining the legality of detention orders issued under the decree.

7.33 Another example of the menace of impunity and law enforcement agents by military regimes is provided by the incidence of extra-judicial killings, in contravention of Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 of the African Charter, both of which stipulate that the right to life is non-derogatory and cannot be suspended under any circumstances.

7.34 The *United Nations Special Rapporteur on Extra-Judicial or Summary Executions* has defined executions as being arbitrary and summary when life is deprived as a result of a sentence imposed by a procedure in which the minimum principles of due process as spelt out in Articles 6 and 14 of *the International Covenant on Civil and Political Rights (ICCPR)* have been neglected.

7.35 In the last ten years of military rule in Nigeria, i.e. between 1989 and 1999, there were widespread allegations of extra-judicial killings by agents of the state. For example, it was alleged that were “missing” from police custody; indeed allegations of police killings in the country were generally not investigated.

7.36 The general impression was that police authorities, reacting with apathy and sometimes setting up inquiries, were more anxious to cover any abuses and violations of human rights by policemen and policewomen than to investigate and punish erring police officers.

7.37 In the aftermath of the annulled presidential elections of June 12, 1993, there were reports that over a hundred unarmed civilians were killed, allegedly shot by the army and police, during protests against the annulment.

7.38 The Special Security Task Force, established to deal with armed robbery, was generally believed to be in the habit of abusing its powers, by carrying out extra-judicial killings, summary executions, arson, looting, arrest, detention, torture, rape and extortion, especially in Ogoniland and other parts of the Niger-Delta, where the Force was deployed to subdue popular uprisings.

### **NON-OBSERVANCE OF DUE PROCESS**

7.39 The third obstacle to the investigation of, and the application of effective remedies for gross human rights violations in Nigeria during military rule is the non-observance of due process.

Due process of law means a course of legal proceedings in accordance with the rules and principles established for the enforcement and protection of rights, including all the guarantees necessary to ensure that proceedings

are fair, just and equitable. It implies that the powers of government must be exercised within the limits of the law.

7.40 The last seven years of military rule in Nigeria between 1992 and 1999, witnessed a number of prominent cases in which due process was not observed.

7.41 The coup trials of 1995 are typical of such cases. A brief examination the respect in which these coup trials violate due process follows.

7.42 On March 10, 1995, the military government of General; Abacha announced the discovery of a plot to overthrow the government.

7.43 Initially, 29 persons, mainly serving and retired military officers, were arrested and detained. The list of suspects had grown considerably by the time their trial by the Special Tribunal (The Treason and Other Offences Special Military Tribunal) started in June 1995. The Tribunal, which was empowered to try any person including non-military personnel, was composed entirely of military personnel. It was presided over by a member of the Provisional Ruling Council, Brigadier-General Patrick Aziza.

7.44 At the end of the trials 41 persons were convicted and were given sentences ranging from long imprisonment to the death penalty.

7.45 Fourteen accused persons, including General Yar'adua and Colonel Fadile, were found guilty of treason and received death sentences. General Obasanjo and three other accused persons received life sentences; while 14 others, including the pro-democracy advocate, Dr Beko Ransome-Kuti and the journalists Mrs Chris Anyanwu, George Mbah and Kunle Ajibade were each sentenced to 25 years imprisonment.

7.46 Although appeals against the convictions could only be made to the Provisional Ruling Council, the death sentences were commuted to life and some of the other sentences were reduced by a few years, after international and national outcry against them.

7.47 Prominent among the suspects on trial were former Head of State and Government, General Olusegun Obasanjo and his Deputy, the Chief of General Staff, General Shehu Musa Yar'Adua.

7.48 The trials fell short of the requirement of due process in the following respect.

7.49 First, the trials, by their structure and rules of procedure and proceedings, violated provisions of UN Human Rights Commission that civilians should only be tried by military courts under very exceptional circumstances; and that in such exceptional circumstances, such courts must afford all guarantees set out in Article 14 of the *International Covenant on Civil and Political Rights (ICCPR)*.

7.50 Secondly, the *Special Tribunal* sat in secret. Journalists were not allowed to cover its proceedings. The defendants were not allowed to have their own lawyers and were, instead, given military lawyers to defend them. These military lawyers were answerable only to the tribunal and most of the documents needed by the defence were not made available to them.

## **CHAPTER 8**

### **OVERVIEW OF COMPARATIVE REGIONAL EXPERIENCES**

#### **SIGNIFICANCE OF TRUTH AND RECONCILIATION COMMISSIONS**

8.1 As the twentieth century dawned, many deeply-divided or “plural” societies were struggling to overcome a heritage of collective violence and gross violations of human rights in their societies.

8.2 The twentieth century is, perhaps, best remembered for its legacy of gross violations of human rights, characterized by mass atrocities, violent conflicts, massacres and the oppression of one ethnic or religious or other sectarian group by another group; and tearing apart the social fabric of countries in every part of the world at the seams.

8.3 The killing fields of Cambodia, South Africa’s brutal apartheid system, genocide in Nazi Germany, and in Rwanda and Burundi, ethnic cleansing in the former Yugoslavia, brutal ethno-religious wars in India, Pakistan, Ireland, Spain and the Middle East are typical examples of the collective brutality and carnage that the world experienced in the twentieth century.

8.4 But the twentieth century also witnessed concerted efforts at the national and international level to combat the scourge of ethnic chauvinism, political intolerance and economic devastation that detract or diminish from the worth of the person as such and to make the world safe and conducive for the promotion and protection of human rights and world development.

8.5 To this must be added the growing national and international concern that to move beyond the ugly past of collective violence, it would be necessary to engage in some form of healing process and reconciliation in



countries that had experienced violent conflicts and gross violations of human rights.

8.6 It in the context of achieving such a healing process and reconciliation that at least nineteen countries in the world [as at 2001], including Argentina, Chile, El Salvador, Guatemala, Nigeria and South Africa established *Truth Commissions or similar commissions or panels*, as temporary bodies, with official status and sometimes quasi-judicial truth-finding functions and powers, to investigate past histories of human rights abuses and violations in the various countries in which they were set up.

8.7 The establishment of these truth commissions was based on the assumption that they were necessary for countries in transition to democratic rule, and that are determined to heal wounds inflicted by particularly brutal autocratic and military regimes, as a precondition to moving forward in a spirit of national unity and reconciliation.

8.8 It was this consideration, in the case of South Africa, for example, that led to the rejection of the suggestion of a Nuremberg-type tribunal to prosecute apartheid-era perpetrators of crime against humanity.

### **EXPECTED POSITIVE IMPACT OF TRUTH COMMISSIONS**

8.9 Truth commissions are expected to impact in a number of positive ways on the countries, which have established them. In fact, it is the expectation of this positive impact that usually provides the justification for their establishment.

8.10 The following summarizes some of the expected positive impact of truth commissions.

8.11 First, truth commissions force countries, which established them to confront their tortuous past squarely. To ignore such a past can lead to collective amnesia, pent up anger, agony, hatred, resentment and revenge, all ready to burst and consume the nation in yet more traumatic decimating explosion.

8.12 Secondly, truth commissions offer victims of gross human rights violations legitimate for a to reclaim their human worth and dignity. At the same perpetrators of these violations are offered the opportunity to expiate their guilt.

8.13 Thirdly, truth commissions can facilitate a national catharsis. In this way, future generations would be served by the knowledge that the record of past abuses was as complete as it could have been. It would also expectedly ensure the avoidance of gross violations of human rights in the future and facilitate the development of a culture of respect for human rights.

8.14 Fourthly, truth commissions can satisfy the retribution impulse. The naming of perpetrators and the exposure of their violations constitutes punishment through public stigma, shaming and humiliation.

### **LIMITATIONS OF TRUTH COMMISSIONS**

8.15 While truth commissions is expected to lay the foundation for a shared future by coming to terms with the past, it is often difficult, however, to prosecute architects, instigators and perpetrators of human rights abuses and violations, especially when the number of such perpetrators is huge.

8.16 Given the scale of collective violence in places like Bosnia, Cambodia, Ethiopia and Rwanda, it is not feasible to prosecute all alleged offenders, and to attempt to do so will lead to thousands of suspected persons

languishing in jail. In the case of Nazi war crimes, for example, fewer than 6,500 of the 90,000 cases brought to court resulted in convictions.

8.17 Few countries in transition to democracy have strong legal institutions and resources that are required for successful domestic prosecution. Critical records and evidence are likely to be missing or to have been destroyed. Indeed, the systematic suppression or destruction of incriminating evidence is a common problem.

8.18 In Guatemala, records from a secret military archive on the fate of 200 victims of human rights abuses who “disappeared” while under custody of the Guatemala military were made available to the American Association for the Advancement of Science (AAAS) and other human rights associations after the publication of the report of the Guatemalan Truth Commission, but not to the commission itself.

8.19 In South Africa, the apartheid regime routinely purged the archives of huge volumes of sensitive data, and in the penultimate years of the regime, South African security forces undertook a more systematic and vigorous destruction of state records.

8.20 South Africa’s unsuccessful effort to prosecute General Magnus Malan, Army Chief and Minister of Defence in apartheid South Africa, for authorizing the assassination squad responsible for numerous extra-judicial executions, shows how difficult it can be to gather evidence to successfully prosecute alleged perpetrators.

8.21 Another problem that faces truth commissions is that what constitutes “*the truth*” may be more subjective than objective, a matter of perception than of fact, resulting in serious contention. Determining and

sieving “*the truth*” from complex social events and situations is difficult under the best of circumstances.

8.22 *Facts* are far from being self-explanatory and waiting to be discovered. Thus, truth commissions operate all over the world in politically and emotionally charged situations in which there are necessarily conflicting versions of what transpired in the past.

8.23 What this suggests is that the documentation and interpretation of “*the truth*” is more complex than many proponents of truth commissions tend to assume. Social, technical and methodological constraints, as well as epistemological limitations on what can be known or what constitutes the truth, all affect a truth commission’s ability to produce an authoritative account of a contested, contentious and controversial past.

8.24 Producing such an authoritative account, in an objective and systematic manner consistent with the canons of historical and social science research, requires more than the accumulation of anecdotal evidence to support widely held views about what happened and who were responsible.

8.25 The experience of South Africa with its truth and reconciliation commission has shown that if the process and proceedings of truth commissions are not managed well, it may degenerate into a witch-hunt, opening old wounds as well as fresh ones, and aborting the healing and reconciliation process, as well.

8.26 Indeed critics of South Africa’s truth and reconciliation commission have asserted that perpetrators of gross human rights violations under the apartheid regime virtually got away with murder, and that the commission sacrificed justice for the search for truth.

8.27 Another limitation that emerges from comparative experience in the work of truth commissions is that, generally, their reports fail to address the vexed issue of international involvement in sponsoring or tacitly, if not overtly supporting human rights violations. It was common during the cold war for the great powers to turn deaf ears and blind eyes to such violations by their surrogates in the third world.

8.28 In a number of cases, the great powers even encouraged political assassinations of democratically elected leaders who toed an independent line, sometimes engineering the staging of coup d'états against them, and the installation of military dictatorships to replace them.

8.29 However, the Chad Commission is an exception, insofar as it investigated and reported on the international financial support given to the Chadian regime, including the extent of intelligence training provided by foreign governments.

The Chilean Commission's report included a section on international reaction to the Chilean regime, briefly outlining relations between it and the United States, without going further than that.

### **SETTING THE TERMS OF TRUTH COMMISSIONS AND RELATED ISSUES**

8.30 It is now appropriate to look at what comparative experience indicates about the terms of reference of truth commissions.

8.31 An important issue in establishing truth commissions is their duration or life span. The general opinion is that their duration should be limited but long enough to ensure efficacy and timeous completion of the task. Experience shows that the terms of reference should allow a truth commission some time and provide adequate resources to enable it lay the administrative and logistical foundations, without which it would lose precious time out of its limited life span.

8.32 Thus, it would have considerably helped the truth commissions in Argentina, Chile and El Salvador if they had had more than the nine months each of them was given to complete its assignment, given the enormous workload and the administrative and logistical problems it had to cope with.

8.33 At the other extreme is the Ugandan Commission of Inquiry into Violation of Human Rights, established in 1986, whose duration is not limited by statute and is yet to report.

Comparative experience shows that truth commissions should be given broad mandates that will allow them to interpret their functions and powers in a flexible manner.

8.34 In El Salvador, the truth commission 's mandate was broad enough to allow it investigate what it considered to be serious acts of violence and human rights violations. In South Africa, the mandate of the truth commission was broad enough to allow the members of the commission considerable latitude and discretion, especially in respect of the definition of "gross violations."

8.35 The success of the truth commissions in Argentina and Chile shows the centrality of an operational and well-resourced commission's bureaucracy to the work of truth commissions. This was particularly true of El Salvador's truth commission, which was able to carry out in-depth investigations, on account of its broad mandate, sufficient funding and international staff.

8.36 On the other hand, in Uganda the work of the Commission of Inquiry into Violations of Human Rights was adversely affected by an initial deficiency of staff, and financial and logistical resources. Its poor staffing and financial resources were only partially alleviated by a grant from the Ford Foundation.

8.37 The staffing of commissions has varied. Whereas Latin American truth commissions have enjoyed relatively large staffing, African truth commissions have been much less endowed.

8.38 The general comparative pattern has, therefore, been that truth commissions that were well-funded and staffed have been more successful in depicting the overall picture of human rights abuses and violations and in contributing to the achievement of national reconciliation.

8.39 The South African truth and reconciliation was the first truth commission to be given the power to subpoena witnesses. This power also gave it the power to offer amnesty in exchange for the truth. It is this offer, some have argued, that has enabled South Africans to know a lot more about the past than would have otherwise been possible.

8.40 Some have argued that the goal of a truth commission should be to identify institutions, parties, ideologies and structures that encouraged gross violations of human rights. According to this view, truth commissions should only secondarily be concerned with identifying particular individuals who played roles in, or who contributed to the abuses.

8.41 It has also been argued that the findings of a truth commission, made through public hearings or other public processes must be unequivocal, based on the best scientific methodologies and practices. The findings should be victim-centered, telling the story from their point of view and validating their experiences, while also narrating the story as told by the perpetrators.

8.42 It is for this reason that it is absolutely important for truth commissions to conduct their own investigation, in order to create as complete a picture as possible of human rights abuses in their countries.

They need to do this to complement the testimony of victims and perpetrators and on records compiled by governments or non-governmental organizations, which, for political and other reasons, may be biased, inaccurate or slanted.

8.43 At the very least, a truth commission should present a narrative that becomes the central component in the debate about the past and the future, which it has helped to create and shape.



