Mission Report to Nigeria

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REPORT OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLES' RIGHTS
MISSION TO NIGERIA
7 – 14 MARCH 1997

INTRODUCTION

I. 1. Every country has one voice in the comity of nations. But, in fact, some countries weigh more than others. Nigeria is such a country. The most populous black country in Africa, this distinction of Nigeria in Africa extends to the utter most part of the earth. Of every five Africans, one of them is a Nigerian. Added to its enormous human resources, is her mineral wealth. It is a leading oil producer in the world, and its gas reserves, much of which was flared up, can satisfy the requirements of many nations in the sub-region of which she is a part. Nigeria is thus strategically placed to influence for good or ill in respect of human and peoples' rights.

2. Variety in ethnic background is counted in the hundreds, and tension among some of them sometimes manifests itself in violent ways. It saw its nadir in the coup d'état of 1966\(^1\) which, in a sense, occasioned the civil war.

3. The military have dominated the political scene since Nigeria's independence in 1960, ruling for twenty-eight or so years and thus forcing the civilians to content themselves with some ten odd years rule. As is the case with military regimes, those in Nigeria have wielded extensive legislative and administrative powers, exercising power of detention without trial, ousting the jurisdiction of the courts to hear appeals and the issue of prerogative orders of prohibition, mandamus, certiorari and quo warranto over a number of issues; and the government cancelling the Presidential election of 12 June 1993 in which it was generally acclaimed M.O.K. Abiola was poised to win. He was later imprisoned for declaring himself head of state. In frustration, Nigerians, led by non-governmental organisations, notably Civil Liberties Organisation and Constitutional Rights Project have resorted to Treaty bodies such as the African Commission on Human and Peoples' Rights. The nature and frequency of allegations of violations of human rights determined it to send a mission to Nigeria. The execution of Ken Saro-Wiwa and others necessitated the

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\(^1\) That the military takeover of power on January 15, 1966 in Nigeria led by Major Nzwoegu and others was followed by one in Ghana on 24 February 1966 in which Major A.A. Afrifa played a prominent role shows the impact of events in Nigeria on West Africa, as other military regimes followed Ghana's.
only extraordinary session of the Commission, which did not deal with procedural matters.

5. In a spirit of conciliation and dialogue which characterises the work of the Commission, the goals of the Mission were to nurture a relationship which would make it easy to resolve amicably communications against Nigeria pending before the Commission; reduce, if not eliminate, areas of conflict over human rights; encourage civil society in its work in human rights; and present a picture of the human rights situation in Nigeria, as far as was possible, within the short duration of the Mission.

II. TERMS OF REFERENCE

6. The Mission was to be undertaken with the terms of reference stated below:

(a) Resolve amicably communications against Nigeria brought before the Commission.

(b) Present to the Commission the human rights situation in Nigeria.

(c) Meet with as many members of civil society as possible with the view to making the work of the Commission known; and encourage them in their human rights work.

III. ORGANISATION OF WORK AND ACKNOWLEDGEMENT

7. As has been the practice of Missions of the Commission, members flew from their respective countries or wherever they were to Nigeria, in the instant case from The Gambia, Ghana and Togo. Shortly before the Mission, a delegation of the government of Nigeria visited the headquarters of the Commission in Banjul, The Gambia to have discussions with the Secretariat over the Mission. Subsequently, they came to Ghana, where at the Nigerian High Commission in Accra a similar discussion was held with Prof. E.V.O. Dankwa.

8. The purpose of the visit to Accra was to underscore the resolve of the government of Nigeria to have the Commission’s Mission in Nigeria, the leader of the delegation, Mr. C.A. Osah, stated. Members of the Mission would be free to visit wherever they chose, and see whomsoever they desired; and the government would facilitate these objectives. The need to see other parts of Nigeria apart from Lagos was stressed; and the advisability of making the long stretches in the programme by air was underscored.
9. On arrival in Abuja, the administrative capital of Nigeria, the Mission met a delegation of the government to draw up a programme for the Mission. As it began, the Mission would end in Abuja, it was finally agreed.

10. The Commission had been the kind beneficiary of a grant from the government of Sweden, which was to be administered by the Raoul Wallenberg Institute for Human Rights and Humanitarian Law. One of the agreed projects which was to be financed out of this fund was Missions of the Commission. The airfares of members of the Mission were paid out of this fund, and so was an abated daily allowance. The Commission is much obliged to both the government of Sweden and the above Institute for their valuable contributions to the Mission.

11. Each and every member of the Mission was met on arrival in Lagos by at least one official of the Federal Government of Nigeria. The vast expanse of Nigeria could not have been traversed in the manner the Mission did, visiting Abuja, Kano, Kaduna, Lagos, Port Harcourt and Ogoniland, within the brief duration of the Mission, had the host government not extended the assistance it did to the Commission. Travel by road from Lagos to Abuja, by the same means of transportation to Kaduna, Kano and Ogoniland, and by air to Lagos (thrice), Port Harcourt and Abuja (twice) were all provided by the host government. The Commission appreciates this important contribution of the government of Nigeria to its work.

IV. MEMBERSHIP OF THE MISSION

12. The composition of the Mission changed on a number of occasions. Originally it was to consist of Prof. I. Nguema and Prof. Uji O. Umozurike. Dr. Hatem Ben Salem was subsequently added to it. At a later stage, it was decided that Commissioners of host states should not be members of Missions, such as the present one, visiting their countries. Accordingly Prof. E.V.O. Dankwa was substituted for Prof. Uji O. Umozurike. The Secretary of the Commission, Mr. G. Baricako was to accompany the Mission.

13. Eventually the Mission was undertaken by Prof. E.V.O. Dankwa, Vice-Chairman of the Commission and Mr. Atsu-Koffi Amega, a member of the Commission. Dr. Essombe Edimo Joseph, Legal Officer at the Secretariat of the Commission accompanied the Mission.

A note from the Secretariat of the Commission to Prof. E.V.O. Dankwa stated that Prof. I. Nguema had asked Mr. Atsu-Koffi Amega to take the former’s place on the Mission.
14. The Mission was planned long before it was embarked upon. Permission to undertake the Mission took sometime before it was granted by the host government, and then it was once postponed at the instance of the government because the original dates proposed by the government fell within the Ramadan holidays which were national holidays in Nigeria. For one reason or the other Prof. I. Nguema could not make the trip on a number of occasions, when Prof. K. Oji Umozurike, the other member was expecting him.

15. Long before the Mission took place, Prof. E.V.O. Dankwa wrote to the secretariat of the Commission suggesting to the latter the need to impress upon the government the importance of meeting as many non-governmental organisations as cared to do so. The letter is attached herewith and marked "Appendix A".

16. The Secretariat of the Commission sent out a programme for the visit. On receipt of a copy, Mr. Chidi Anselem Odinkalu of Interights responded with useful comments. Some of the personalities set down for meetings with the Mission were either no longer in office or in the cities stated against their names.

17. Unknown to members of the Mission, an objection had been raised to the Mission as regards its timing and composition. Constitutional Rights Project had written to Prof. E.V.O. Dankwa, using the Secretariat’s address in Banjul, The Gambia although the addressee lives in Ghana. The gravamen of the objection was that Mr. Atsu-Kofi Amega, who had previously been the leader of a United Nations fact-finding Mission ought not participate in a similar Mission. Relatively, as the Government of Nigeria had not granted permission to visit Nigeria by the United Nations Special Rapporteur on extra-judicial executions, Mr. Bacre Waly Ndiaye and another U.N. representative on terms they demanded, the Commission’s Mission should be called off. Furthermore, the Secretary, Mr. G. Baricako and not the Legal Officer, Dr. Essombe Edino Joseph was the official mandated by the Commission to accompany the Mission.

18. Constitutional Rights Project must be given credit for its active participation in the work of the Commission which is open to NGOs and its generally acknowledged productive work in Nigeria. But the irony of the situation was that it was Constitutional Rights Project which had urged the Commission to undertake the Mission, an event which would help arrest the deteriorating situation. It is recalled that at the Commission’s Session in Lome, the author of the above letter of protest against the Mission Mr. Clement Nwako had pleaded with the Commission not to delay the Mission: the mere presence of the Mission in Nigeria would have a beneficial impact on the human rights situation in Nigeria, he asserted. The contradictory stance expressed in the protest letter was, therefore, not easy to understand.
19. While the Commission must work in concert with international organisations with similar goals, especially bodies of the United Nations, the fate of a Mission of the United Nations, should not necessarily result in a long planned Mission of the Commission being cancelled. This is more so, when members of the Commission’s Mission had not been notified of the fate of the U.N. Mission; and neither were they aware of it.

20. A complaint that the Mission refused to meet NGOs in Lagos must be addressed. Inclement weather and poor visibility led to the journey from Lagos to Abuja being undertaken by road instead of air, as was originally planned by the host government. Unknown to members of the Mission while they were on their way to Abuja, a good number of representatives of NGOs were waiting to have a meeting with the Mission.

As stated previously, the Mission had expressed its strong desire to meet the NGO community, and as this was strongest in Lagos, nothing could have been more desirable. However, neither the venue, date nor time was known by the Mission. While the disappointment of all who waited long hours without having a meeting with members of the Mission was understandable, and very much regretted, it was not of the making of the Mission. A boycott of the work of the Mission by Lagos NGOs purveyed by journalists was therefore unjustifiable.

21. A related complaint must be dealt with to set the record straight. It has been alleged that the Mission was so fastened to the apron-string of government that officials of the latter never left our company. Nothing could be further from the truth. Despite the widely publicised boycott by NGOs in Lagos of the work of the Mission, the latter insisted on visiting two well-known NGOs, Civil Liberties Organisation and Constitutional Rights Project. While government officials aided us to locate these two organisations, there was no official at our meeting with the Executive Director of Constitutional Rights Project. The meeting with officials of Civil Liberties Organisation is worthy of a separate account.

22. After leading the Mission to the offices of Civil Liberties Organisation, government officials were asked to withdraw for a Mission-NGO meeting. Officials of the latter insisted that the government officials should stay because there was nothing to hide. Eventually, the leading government official ordered his men to leave the venue of the meeting, and this was obeyed.

It must be stated that the Mission was so desirous to have a meeting with NGOs in Lagos that it delayed its scheduled programme for hours to have the meetings with the two named NGOs.
It should also be stated that while some NGOs kept their distance, at least one was eager to see us. We had a meeting with Mr. Akinola Aina, Chairman of the Nigerian Bar Association, Lagos Branch and some of his colleagues. He presented a twenty-two page Memorandum to us.

V PERSONS SOUGHT TO BE SEEN

23. In its communication of 26th February 1997 to the government of Nigeria, the Secretariat of the Commission informed the former of the Mission's desire to meet, inter alia, Chief M.K.O. Abiola, Dr. Beko Ransome Kuti and the Ogoni 19. But as recounted below, we met the Ogoni prisoners, and not the others.

VI VISITS AND MEETINGS

24. To have a fair idea of the human rights situation in Nigeria, we had meetings with individuals and organisations across the length and breadth of the country. Much of what was said was in response to our questions. The summary below partially provides a basis for the Findings and Recommendations in the report, as it also indicates in part the source of same. Wherever considered appropriate, names are withheld.

25. Kano, 9 March 997
Alhaji Ahmadu Rufai

A civil servant for 32 years, he was working as a Consultant in Agriculture. He had been in active politics, contested the governorship of one of the States and won the primaries. Alhaji Rufai saw himself as leader in the community who had close and extensive contacts with members of his community. He was also a keen observer of what was going on in Nigeria.

In his view government was serious about handing over power to a civilian administration because the programme for the transition has been followed with only slight modification in time. There would be local government election on a non-party basis. In 1996, 90% of eligible voters were registered without any mishap. Admittedly, there were a few fraudulent practices but they would have no significant consequence on any election. He observed the registration exercise at many centres.

No less than two or more than five are the ideal number of parties for Nigeria. The 5 existing parties are not government parties although government has to provide guidance for their functioning.
26. Shuaib Uthman Yolah

Formerly in the Nigerian Foreign Service, Mr. Yolah once served as Assistant Secretary-General of the O.A.U. and Under-Secretary General of the United Nations during the term of office of Perez de Cuellar.

27. The length of the transitional process should be viewed against the structure of government: a federation of 36 states with a three-tier system, local and state government, two houses of federal legislature, and a presidency. The electorate should be given sufficient time to listen to and assess the various candidates. While he had no objection to the length of the transition period, he would like it to be honoured, and would not support any extension.

28. The current administration has saved the country from disintegration. Considerable amount of money was being spent on maintenance of peace. Fallen standards in education and health were being addressed. Problems with the banking and financial sectors were also being tackled. Some of these were unpaid loans by the elite and collapse of banks. Measures taken to deal with the problems have had a positive impact on the economy: the cost of living had come down.

29. There was no alternative to the transition programme. Two dire consequences would follow failure of the programme: the assumption of power by a worse military regime with uncertain future and possible disintegration of the country.

30. Freedom of expression in Nigeria was among the highest in the world.

31. The Bar Association, Kano

We met three members of the above Bar: Alhaji A.B. Mahmoud, Jele Olawman and Alhaji Aliyu ............

Individual practitioners give pro bono service to the indigent. A Legal Aid Council in the city offers legal advice and service in criminal and violation of human rights cases. Judges of the High Court also assign lawyers to defend indigent persons.

The state branches of the bar are active, but not the national body.

32. Abuja 10 March 1997
Chief Judge M.D. Salem

The executive respects court decisions, especially those concerning detainees. However, security consideration may lead the military to arrest again a released detainee. If against a court order, a person is not
produced before the Court, it is not because the executive deliberately wants to ridicule the judiciary. It is because lawyers do not educate state officials to obey court orders. In his case, none of his orders to produce a person has been disobeyed. Sometimes the order to produce a person is not served on the one holding him.

33. The Chief Judge was in the habit of visiting the prison within his jurisdiction to ensure that those who should not be in prison were kept out. Those detained under detention warrant were not the concern of judges. Judges are responsible for those detained by court orders.

34. Ouster clauses in relation to the African Charter on Human and Peoples’ Rights is designed to preserve the security of the State. It is in the interest of the people. International instruments are adapted to suit local conditions.

34. Political and ethnic considerations have affected the leadership of the Bar at the national level, but not the regional level.

36. **Problems of the Judiciary.** The Judiciary has no failure. But it must have its own financial resources. He hoped that by the end of the year, the judiciary would have money to control its affairs. Meanwhile salaries have been improved. As regards security of tenure of judges, an Advisory Judicial Council (AJC) recommends to the Military Council the removal of judges. AJC recommends the appointment of judges of Courts of record to the Head of State who appoints them. A Judicial Service Committee appoints Chief Registrars and those below him.

37. **Solicitor-General, Honourable Towachukwu Onwabugfor**

A cordial relationship exists between the executive and the judiciary. Detainees are produced on the orders of the Court. Very often orders against the government are made ex parte; and the government applies to have the orders discharged. He recalls an order made by a Federal High Court in Lagos against the National Drug Enforcement Agency (NDEA). The Court ordered the confiscation of 57 cars. NDEA cordoned the whole area and the Court ordered the release of all cars not included in its original order.

38. Almost everybody who has been detained (about 95%) have been so confined under Court orders. There is total respect for the Rule of Law.

39. As regards newspapers, Court orders are also obeyed. For instance, Guardian Newspaper Publication was cordoned off. A lower court said it had no jurisdiction to deal with the matter. On appeal, the newspaper opened because of the order of the Court. The same is true of “Punch” (newspaper). “TELL” magazine was not banned entirely. Only one issue
was banned because it published a Cabinet decision relating to a matter between Nigeria and another country.

40. On the question of ouster clauses, they usually deal with matters affecting the security of the state. Decree 107 of 1993 re-enacted the basic law.

41. Tribunals are set up in sensitive areas where public morals are corrupted. The regular Courts cannot cope expeditiously with such matters as armed robbery, drugs, money laundering and failed banks.

42. There was the right of appeal at the time of the trial of Ken Saro-Wiwa. There is an Appeal Tribunal for all the Tribunals made up of 3 judges (Chief Judge of the respective States and High Court Judges, usually retired ones).

43. The security of tenure of judges is entrenched in the legal system of Nigeria. To illustrate, the Sokoto Chief Judge was accused of embezzlement. The State governor dismissed him. The Chairman of the Judicial Advisory Council (JAC) informed the governor that his action was unlawful. A Committee of JAC inquired into the allegations against the Chief Judge and reported back to JAC. The dismissal was not upheld.

44. Transitional Implementation Committee (TIC) Chairman, Justice Mamon Nasis (Rtd. Court of Appeal Judge)

The Chairman gave a brief history of his Committee. Following the crisis resulting from the annulment of the elections of June 12, it was feared that the Federation of Nigeria might come to an end. There was, therefore, relief for the nation when the military announced that they had taken over power.

45. The military sought the advice of a Constitutional Conference of 270 persons in addition to 90 people of merit appointed by government. Justice Karibi White, a renowned and respected Judge was Chairman. The Conference was given a free hand to produce a Constitution and make recommendations to government on ending military regimes.

A new Constitution was accordingly produced; and recommendations on political and social aspects of life were made to government. Government culled out from the Constitution and recommendations a Transitional Programme. The recommendations also resulted in the establishment of TIC.

46. The annulment of the June 12 election was an experience in development process. June 12 is not greater than such events as coup, counter coup, civil war etc.
Under the new Constitution, the winner does not take all, and so no single party will be in charge of government. The whole nation will then participate in government.

47. The Mission raised the detention of Chief Abiola and how it could have a deleterious effect on the whole transition programme. In response, efforts by the Head of State to resolve the issue out of court was outlined. The stance of a wing of the immediate family of the Chief frustrated the efforts and goal of the Head of State, we were informed.

48. A representative of the National Electoral Commission (NEC) stated that allegations of fraud have not been confirmed by NEC.

49. Civil Liberties Organisation (C.L.O), Lagos, 12 March 1997

As stated previously, the Mission was determined to meet NGOs in Lagos. With the help of government officials, the above was traced. A meeting was held with the following officials of CLO: Innocent Chukwuma, Coordinator, International Lobby Project, Udeme Essien, Head, Legal Resources and Tunde Akani, Head, Campaigns.

50. The Mission explained to the three gentlemen why the former were not present at the NGO forum. We were not aware of the meeting. On their part, they stated that the date for the meeting had been received from the Secretariat of the Commission, which also had suggested the meeting. It seemed perfectly clear to the Mission that an understanding had been reached concerning the unfortunate incident of not being present at a meeting specifically organised by the NGO community for the Mission.

51. At the Offices of the Constitutional Rights Project, the Mission had a meeting with Mr. Clement Nwankwo, Executive Director. It was here that members of the Mission saw, for the first time, the text of a letter co-authored by Mr. Nwankwo objecting to various aspects of the Mission.

52. Port Harcourt, 12 March 1997

The Mission had a meeting with Chief Ebenezer Isokari, Secretary of State Government and Head of Service; members of the Executive; Directors of Health, Education, Women and the Solicitor General. The sum total of their work is respect of human rights.

53. We also met in Port Harcourt the Acting Chief Judge, the Deputy Chief Registrar and other officials of the judiciary. According to the Ag. Chief Judge there has been no confrontation with the administration. The Executive obeys the orders of the Court and also respects the judgments of the Court.
54. Ouster clauses are not looked upon with favour. Legally qualified lawyers constitute tribunals. The Ogonis had a fair trial. They were all free to have counsel. Saro-Wiwa’s lawyer was overruled, and he withdrew from the case. The problems facing the judiciary are limited manpower and financial constraints, but these are universal. When the judiciary becomes self-accounting most of its problems will be solved.

55. Press Freedom obtains in Nigeria

56. Chairman, Civil Service Commission, Vice-Chancellor, University of Port Harcourt, Tom Orage (Member of National Human Rights Commission) and Director-General, State Commission For Women at the Office of the Chairman, Civil Service Commission.

57. The civil service has not yet attained the 60/40% ratio of men and women which is the desideratum. Some top posts are occupied by women (4 out of 14 Directors General are women), and efforts are being made to redress the imbalance between men and women. Towards this end, a Women’s Commission has been established.

58. At the University of Port Harcourt, there is no affirmative action. Marks are not lowered for women for admission purpose. Within the administration a large number of women hold high positions. Some are Heads and Acting Heads of Departments. Primary and Secondary Schools have large percentage of female. This is reflected at the University of Port Harcourt.

59. It is noted that the Chairman of the Public Service was a woman and an Ogoni. The Vice-Chancellor of the University of Port Harcourt is also an Ogoni.

60. Chief Ofirikuma, Retired Permanent Secretary, Ministry of Finance. He retired from the Civil Service in 1966. Okrika Community has suffered a lot of degradation as a result of oil production. Other communities have suffered as much from oil production as the Ogonis.

61. Akuro Richard George, Chairman of Port Harcourt Branch of the National Bar Association. He had also served as Secretary and Vice-Chairman of the Branch.

There is an unwillingness on the part of the oil companies to accept that they have a social obligation towards the oil producing communities. Environmental degradation is such that no one can fish in Okrika.

62. EMPEDEC cannot function as it was expected to do. Government must search for credible leaders who will enter into dialogue with the former on
behalf of their community. Government must understand and accept that it cannot do away with the community. The people should be allowed to present their needs and priorities to the oil companies and the government. People from the local communities should also be part of the manpower of the oil industry.

63. The antecedents of what happened in Ogoni are still around. The seeds of resentment are present.

64. **The Oil Mineral Producing Areas**

Development Commission was set up by statute in 1992 with the noble intention of receiving 3% of the Account of the Federation. Whether the 3% represents gross or net income has not been settled. The Commission left a debt of N53 billion. It should have prioritised its activities and dealt with less ambitious programmes. The oil companies have authorised a study, Niger Delta Environmental Study, to enable them deal more effectively with the concerns of the people and the impact of their operations on the environment.

65. The basic human right problem is not localised. There are too many agencies of government responsible for arrest. Several task forces exist without any coordination. It is important to know who effects arrests, and where to go when someone is arrested. There are eight agencies dealing with offences which should ordinarily have been dealt with by the police.

66. A military regime is an aberration. The powers of arrest for security reasons are too extensive.

67. Ouster clauses are repressive. “Security reasons” used to oust the jurisdiction of the Courts are too nebulous. Fundamental enforcement rules are sometimes ousted by legislation.

68. Disobedience of Court orders by the government and government agencies was becoming an increasing problem in the country. Ilorin and Kwara State are illustrations. A Federal High Court Judge’s order for the production of people arrested about one and a half years ago has not been obeyed. The Judge’s police orderly was withdrawn for sometime. It has not, however, occurred in Rivers State.

69. Environmental degradation has produced restlessness among the communities who see so much being taken out without their getting much benefits. The communities are left worse off than before oil exploitation partly because almost everything which is brought for exploitation including pre-fabricated buildings are taken back.
70. There is a proliferation of Special Tribunals. Some of the offences dealt with by the tribunals could have been dealt with by the regular courts.
Meeting with

i) Kenneth Kobani, son of Chief Edward Kobani who was murdered on 21 May 1994 at Giokoo in Gokana Rivers State.

ii) Alhaji Mohammed Kobani, brother of the murdered chief.

iii) Mr Suage Alex Badey, son of Chief Albert Badey who was also murdered on the same day at the same site.

iv) Mr. Orage, son of Chief Samuel Orage who was also murdered as the above chiefs.

The 4 gentlemen complained about the neglect of the plight of dependents of the murdered chiefs. The print media in Nigeria is dominated by a particular ethnic group. One of the four identified the murderers. He was an eye witness of the murder.

The Ogoni 19 are not human rights activists. What happened (murder of chiefs) was carefully planned. The 4 were executed by Movement for Survival of Ogoni People (MOSOP). The mission was given “MOSOP, THE TRUE STORY” (pp 140). It includes the 63 page judgement in the trial of Kenule Beeson Saro-Wiwa, Ledum Mitee, Dr. Barinem Nubari Kiobel, John Kpuinen and Baribor Bera. Members of the Tribunal which tried the accused persons were Mr. Justice I.N. Anta (Chairman), Mr. Justice E.E. Arikpo and Lt.-Col. H.I. Ali.

The enormous literature which was available to us on the above trial, the situation in Ogoniland and related matters include:

i) Judicial Murder! A Report on the trial of Ken Saro-Wiwa and Others by Sam Amadi (One of the Ogoni Defence Counsel for the Civil Liberties Organization) which was Presented to The Extra-ordinary Session of the African Commission on Human and Peoples’ Rights, 18-19 December 1995.

ii) Defence Statement of Ken Saro-Wiwa which he was not allowed to read as stated by Afronet.

iii) The Trial of Ken Saro-Wiwa, Ledum Mitee And Other Ogoni Leaders (Charges)

iv) Green peace Report, Shell-Shocked
The environmental and social costs of living with Shell in Nigeria

It should be stated that voluminous literature was also provided us by the National Electoral Commission of Nigeria and other officials. It includes:

i) June 12 and the Future of Democracy in Nigeria
ii) Guidelines For Local Government Elections on Non-Party Basis
iii) Guidelines For The Formation And Registration of Political Parties
iv) Guidelines For Registration of Voters
vii) Transition To Civil Rule (Political Programme) Decree 1996, Decree No. 1.
ix) Voters Register, Feb. 1997
x) Manual For Poll Officials and
xi) Transition To Civil Rule Time-Table (1995-1998)

75. Tour of Ogoniland 13 March 1997

Eleme which used to be part of Ogoni has been separated from the latter. Building of houses by governments in Eleme was in progress. Okrika, Andoni and Ndoki share borders with Ogoni.

76. We met the Paramount Ruler of Gokana including Giokoo, as he was described to us, where the 4 chiefs were murdered. According to him the election campaign ended on 20th May. Ken Saro-Wiwa, therefore, had no business being at Giokoo. He did not hail from there, and had not submitted forms for the election.

77. One G.K. Korsi, introduced as a member of the Traditional Council asserted that he witnessed the attack: it was a violent attack by many young people.

78. A burnt car was pointed out as having belonged to Chief Badey. It was allegedly burnt on the day of the attack.

79. Cerstine Meabe was introduced to us as a witness of the murder.

80. We inspected a “FLOW STATION” where water, gas and crude oil were separated. It was pointed out that damage had been caused here by the National Youth Council.

81. We saw a hospital at Gokana which, we were informed, was partly renovated by the State government. Shell supplied drugs to the hospital.

82. A state hospital was sited at Khana within the headquarters of Ogoni (Bori).

83. We observed a damaged Flow Station in Khana Local Government area. We also met the Chairman of the Local Government of Bakana.

84. At Bane, and in the family house of Ken Saro-Wiwa, we met the mother and sister as well as other family members of the deceased. None of them, however, would enter into any dialogue with us. The mother said simply that she had given everything to God.

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85. One refused to register for voting on pain of not being allowed into the market, an informant told us.

86. At Shell Petroleum Development premises in Port Harcourt, we had a meeting with Chris Hayvel, General Manager, Victor Olu Daniel also of Shell and other officials of the same company. Shell has entered into a joint venture with Nigerian National Petroleum Company with the latter having 55% interest. Shell produces 41-42% of oil produced in Nigeria. Of this half is produced in Port Harcourt.

87. Shell had commissioned a study of the basic problems related to its operations in Nigeria. It aims at finding out what the people want. Instead of handouts, the company will let the people indicate their priorities. There was a movement from community assistance to community development.

88. Ogoni 19

The government acceded to our request to meet the above who were detained in connection with events connected to Ken Saro-Wiwa:

Benjamin Kabari
Samson Intigini
Michael Dogala
Nyieda Nasikpo
Adam Kaa
Ngbaa Baori
John Banatu
Balituli Lebe
Friday Gburuma
Blessing Israel
Chief Babina Vizor
Mwimbary Abere Papah
Samuel Asiga
Popgbara Zorzor
Baribuma Kumanwe
Paul Deekor
Kagbara Bassee
Godwin Gbodor and
Taaghalobari K. Monsi
89. Looking haggard and unkempt, they nevertheless expressed their delight at seeing us although they had expected the African Commission to visit them a long time ago. Their spokesman proclaimed their innocence at any wrongdoing. They were anxious to resume their studies at Universities and other places of learning. Their lives were being wasted without any justification.

One of them had saved his food for the day to show us how small it was. It indeed was small.

90. So concerned were we at the plight of the Ogoni 19 that we took up their issue with government officials before our departure from Abuja. It was not in the interest of Nigeria to continue detaining them without trial, we counselled. Their complaint about insufficient food was genuine and needed to be addressed. An early trial would serve the interest of all concerned. These sentiments were also conveyed in a letter to the government.

91. Up to the hour of our departure, we entertained the hope that we would be allowed to see Chief M.O.K. Abiola as we kept up the line of communication towards this goal throughout the duration of the mission. But sad to relate, this was not to be. In respect of Dr. Beka Ransome-Kuti we were informed that he had been duly convicted and was serving a lawful sentence. On that basis permission was denied. In a letter to the government, after the Mission, we expressed the view that it would be in the interest of the government to open up on issues in this paragraph.

VIII 92 COMMUNICATIONS AGAINST NIGERIA

It had been agreed at the beginning of the mission that the cases against Nigeria before the Commission would be taken up with the appropriate authorities. The hope was that all of them would be settled amicably.

We did have this meeting on the last day of the mission, Friday, March 14, 1997. Dr. A.H. Yadudu addressed us on diverse matters including the Communications against Nigeria. His response on this issue as on other issues is so self-explanatory that it is attached to the Mission Report as Appendix “G”.

93. Meetings with the Chief Justice and members of the National Commission on Human Rights (NCHR) emphasised the awareness of human rights and the importance of their protection. The Head of State had personally intervened to ensure that the NCHR had the requisite government grant to start its work. It was hoped that the judiciary and NCHR would make significant contribution towards the respect and protection of Human Rights in Nigeria.
It ought to have been stated that in Kano and Kaduna the Governors of the two cities received the mission at their official residencies. Incidentally, the Governor of Kaduna Lt. Col. H.I. Ali was a member of the Tribunal which tried Ken Saro-Wiwa and 4 others.

94. Meeting with the Head of State and Commander-In-Chief of the Armed Forces of Nigeria, General Sani Abacha.

General Sani Abacha was gracious enough to make time out of his undoubtedly busy schedule to grant us audience. We conveyed to him our gratitude for the consent of the government of Nigeria to the mission and the government’s subsequent invitation to undertake it although it was postponed on a number of occasions. We were also grateful for the preparation and the most helpful assistance extended to our mission by the Government.

We pointed out that the human and material resources of Nigeria put her in a position to offer leadership in Africa. We expressed the hope that this would be so in the area of human rights. We also expressed our appreciation at the active participation of Nigeria in the work of the Commission with attendance by representatives of government during the open sessions of the Commission. The dialogue between government and the Commission has been strengthened by the Mission, and we hope that it would be sustained and nurtured.

Responding to our remarks, the Head of State stated his respect for African institutions. We know and understand our circumstances better than foreigners. He wished us and the Commission all the best.

IX FINDINGS

1. Nigeria is truly a vast and populous country with many ethnic groups. So complex is the society and arduous its governance that a former military governor of one of the then four states of Nigeria (East, West, Mid-West and North) has concluded that it is "beyond the managerial capability of any single individual".

2. Diffusion as opposed to concentration of power appears to be the road to stability and sustainable development.

3. Any patronising perception should be forgiven, but Nigeria has a band of dedicated and capable civil service. This is matched by an equally articulate and well-organised community of non-governmental organisations, especially in Lagos.

4. There is general awareness of human rights, and their violations are deeply resented.
5. While a generality felt that a civilian administration was more protective of the rights of citizens, a convinced minority had become cynical of all governments: they are all the same; they seek only their interest; “noting much will change if the military hand over power to civilians”, a dejected gentleman in Abuja intoned.

6. People in the oil-producing areas are sorely aggrieved that their wealth is being salted away while their environment is degraded, and a good number of them live in abject poverty. They feel that communities from which oil is produced in particular should have noticeable benefits from oil exploitation.

7. Ouster clauses, beyond the question of national security, are perceived as an effective block to the vindication of rights in the Courts. Justice Uraifo of the Court of Appeal expressed the point thus:

> “Once the provisions of a decree or Constitution ousting the jurisdiction of the courts on any specific matters are clear and unambiguous, the courts are bound to observe and apply them. They are not entitled even when the ouster has a drastic effect on the right of any person, to approach its interpretation by a false or twisted meaning given to it by unacceptable restricted constitution.”

Okeke v Attorney-General of Anambra State
(1992) 1 NWLR (Part 215) 60 at 86

A not so bright picture of the protection of human rights by the Courts as a result of ouster clauses is painted in Nwosu v Imo State Environmental Sanitation Authority (1990) 2 NWLR (Part 135), 688, Supreme Court of Nigeria.

In that case, Justice Belgore stated:

> “......in military regimes, decrees of the Federal Military Government clearly oust the court’s jurisdiction, there is no dancing around the issue to find jurisdiction that has been taken away......... It is for that purpose that legal practice will attract more confidence if administrative avenues are pursued rather than pursuit of a court action in such matters.

Admittedly in Gani Fawehinmi v General Sani Abacha (1996) 9 NWLR (Part 475) 710, the Court of Appeal held that the incorporated African Charter on Human and Peoples’ Rights was superior to other legislations. The Court, however, held that ouster clauses in legislations prohibited review by the Courts of the wrongfulness of the detention of the appellant.

8. Nigeria has a robust and vigorous press despite proscription or seizure of newspapers.
RECOMMENDATIONS

1. The programme for transition of power from the military to civilians should be followed.

2. Nigerians should be allowed to freely decide on those to govern them.

3. The Constitution should be published for everyone to know their future fundamental law, and express views on it.

4. While we encountered divergence of opinion on whether the executive obeys the orders of the Courts, it is important to emphasise that respect by the executive of the orders of the Courts is essential and fundamental to a stable society without which sustainable development is impossible.

5. The ambit of ouster clauses is very wide, and thought should be given to the narrowing of its scope.

6. The number of bodies exercising judicial power seems to be on the high side. Equality of treatment suggests their reduction.

7. A dialogue between government, the oil companies and the communities from which oil is produced is essential. The degradation of the environment from oil exploitation is real; and it is important that the communities in those areas are made to feel that this damage is compensated for with tangible benefits. The suggested approach is likely to produce a harmonious relationship which will be beneficial to all parties in this enterprise.

8. There is grave danger of “national security” considerations resulting in arbitrary arrest; and so even under a military regime detention without trial should not be treated lightly. There should be regular review of all detainees who should also have access to medical facilities as well as contact with the outside world. The observance of the United Nations Minimum Rules For The Treatment of Prisoners is consistent with implementation of the African Charter on Human and Peoples’ Rights, and the former should be applied to detainees.
9. We single out the Ogoni 19, and ask that they be brought to trial. Meanwhile the conditions under which they live should be improved. In particular their food ration should be improved. Generally we recommend short remand periods.

10. Nothing should be done by government to erode the high standard of freedom of expression manifested in newspapers.

11. Whatever legal impediments stand between Chief M.K.O. Abiola and freedom, we appeal to the Head of State and Commander-in-Chief of the Armed Forces of Nigeria to exercise his authority as the fountain of Justice and order his release.
Mr. Germain Baricako,  
Secretary, African Commission on Human and Peoples Rights,  
P.O. Box 673,  
Banjul,  
The Gambia.

Dear Secretary,

Thank you very much for up-dating me on the Mission to Nigeria by telephone and fax.

While regretting the turn of events, I suggest that we fix a firm date for the Mission. We should endeavour to undertake the Mission before the next Session, and I suggest 11th - 15th March 1996. A greater impact will be made by a pre rather than post Session (19th) Mission.

We need to inform the appropriate Nigerian authority (Ministry of Foreign Affairs) that the delegation will take up all the Communications against Nigeria during the visit; and they should know of each Communication. At least half a day will be spent on the Communications. We should also be able to meet all NGOs who so desire. These items should, therefore, be incorporated into the official programme.

I confirm in writing what I told you during our telephone conversation: I have no objection to the new dates for the 19th Session contained in your letter of 14th February 1996 i.e. 26th March - 4th April 1996.

I should be grateful if you could let the Chairman know the contents of this letter.

Wishing you the best.

Yours sincerely,

[Signature]

Prof. E.V.O. Dankwa
Mr Chairman,

It is my pleasure to formally welcome you to Nigeria, although you have been with us for the past one week. I am all the more happier to do so now that your visit, which was scheduled to take place about now last year, has now come to pass. You will recall that our invitation to your Commission to visit Nigeria on a promotional outing and to assess things for yourselves was extended to you in October 1995 at Praia, Cape Verde. We are aware that your Commission has subsequently chosen to delay considering the various Communications it has received against Nigeria until after such a visit. This is a novel but happy development as the visit will provide members of the Commission with a first hand opportunity for a better understanding of the Nigerian situation. This novel procedure will also enrich the robust development of the jurisprudence of the Commission.

I am happy to note that, from reports available, you have by now met with many officials of government at state and federal levels; held fruitful discussions with various federal agencies charged with responsibility to implement the transition to civil rule programme; consulted with various non-governmental organizations and individuals all over the country; and even conferred with other persons whom you have requested to meet. I am also glad to learn that all persons and agencies concerned have extended to your Mission the necessary cooperation and have facilitated your visit. What is more, I have learnt that, due to poor weather
conditions upon your arrival in Lagos, you have had to travel by road from Lagos to Abuja and on to Kaduna and Kano. Although that is a taxing exercise, its rewards to you lie in the rare opportunity it has afforded you to witness how vast our country is and how diverse its peoples are. I do hope too that, through your various encounters with our pressmen and from reading the variety of newspapers that are published daily in Nigeria, you have had a good taste of what freedom the press and individuals enjoy in our land. I hope that, on the whole, the visit has been enriching to you as it has been our pleasure to host your esteemed members.

My intention in this address is primarily to highlight what efforts the present administration has been putting in the area of the promotion, protection and observance of human rights within the context of our laws, constitutional provisions and the African Charter on Human and Peoples Rights which, as you are well aware, has been domesticated in its application in Nigeria. I will also, in very general terms, address certain issues raised in various Communications which we have to date been served. I shall also indicate what measures government has taken to implement the transition to civil rule programme outlined on October 1, 1995 which will lead to full democratization by October 1, 1998.

TRANSITION TO CIVIL RULE

I shall start with the last objective. May I then outline below the steps that government has so far taken to return the country to a democratically elected civilian administration in October 1998. In doing so, I should point out that government's irrevocable commitment to executing the Transition to Civil Rule Programme, as announced on October 1, 1995, is not in doubt as implementation of the various segments outlined since then has been faithful and on time. Some of the important steps taken to date include:

[i] Several decrees have since been promulgated to give legal backing to the entire transition programme.

[ii] Various Commissions and other bodies, established under these decrees such as the independent electoral body, the National Electoral Commission of Nigeria (NECON), which WILL conduct all elections, register political
parties, delimit constituencies etc, have taken off.

[iii] NECON conducted election to all the 589 municipal authorities, otherwise known as Local Government Councils on non-party basis in March 1996. By all accounts the elections were conducted peacefully, turnout by voters to participate in the electoral process had been massive and the exercise was generally free and fair.

(iv) Government had also established an autonomous National Human Rights Commission on which registered NGO’s, private media organizations and members of the Bar are well-represented. The aim is to create an independent body which will assist government in the implementation of its treaty obligations.

[v] In October 1996, NECON, whose chairman and members you have met with, registered 5 political parties under the platform of which all elections will be contested. Indeed NECON will conduct nation-wide polls on party basis to install democratically elected Chairmen and Councillors to the well over 750 municipalities in the country tomorrow, Saturday, March 15, 1997.

[vi] New States and Local Government Councils were created in October last as part of the transition to civil rule programme.

I am sure that in your earlier exchanges with the Chairmen of the three transition implementation agencies and other actors involved in the exercise, you must have learnt far more than this sketchy outline can provide.

DEVELOPMENTS IN HUMAN RIGHTS SPHERE

In September 1995, our nation took another significant step to facilitate the implementation of its various international treaty obligations with the enactment of the National Human Rights Commission Decree No 22 of 1995. This decree has established an autonomous National Human Rights Commission (NHRC) which is headed by a retired justice of the Supreme Court and whose membership is drawn from representatives of the private media, locally-registered human rights organizations, private legal practitioners, a variety of interest groups.
including women and other minorities. Decree No 22 of 1995 has invested the
NHRC with very wide-ranging powers to, among many other functions: a)
investigate all cases of human rights violations referred to it and recommend
remedial measures, including the prosecution of offenders and payment of
compensation to victims; b) encourage dialogue between the government and
NGO's; c) carry out promotional activities to enlighten the public about human
rights issues generally; d) interact and cooperate with local and international
NGO's working in the human rights area; and e) publish periodic reports of its
activities and findings.

As partly stated in the preamble to the decree, the Nigerian government enacted
this law to create an enabling environment for the extra-judicial recognition,
promotion and enforcement of all rights enshrined in our constitution; to reaffirm
the sacred and inviolable nature of human and other rights; and provide a forum
for public enlightenment and dialogue over human rights issues. I am happy to
report that the 16-member NHRC, inaugurated on June 17, 1996, has since
commenced work. In the discharge of its statutory obligations, it has begun to
investigate cases referred to it; organized promotional activities and attended
several international meetings of UN and OAU Human Rights Committee
sessions and applied to both the UN Human Rights Centre in Geneva and your
own esteemed body for affiliation as a national institution. Indeed your Mission
has been a witness to their robust activities with the hosting of a symposium
yesterday under their auspices which the Vice-Chairman, ACHPR and Leader of
the Mission to Nigeria had graciously accepted to participate in.

You will recall that in March 1996, the UN Secretary General, in the exercise of
his good offices and at the invitation of the Federal Government of Nigeria, sent
a fact-finding mission composed of highly experienced and responsible human
rights practitioners, including Hon. Justice Atsu Koffi Amegah, to Nigeria. They
had unfettered access to places and groups throughout the country. They spent
close to two weeks conducting their mission. Their recommendations, which are
a matter of public records, endorsed the transition programme, discounted the
option of imposing any form of sanctions on Nigeria as being counter-productive
and unhelpful and commended the sincerity of the Head of State and his
administration in its implementation of the transition programme. It also
recommended the adoption of certain actions and steps designed to assist as
confidence building measures. In its report, the UN Fact-Finding Mission
recommended the abrogation of certain decrees, the review of the Civil Disturbances Decree, the suspension of the trial of persons currently before the Special Tribunals or their trial under the amended Decree, the taking of measures to ensure that persons standing trial before such tribunals are guaranteed a fair trial and their conviction and sentences are made subject to appeals, the release of political detainees. All the foregoing recommendations of the Fact-Finding Mission were of an advisory nature.

Since the receipt of the Report, the FMG has responded positively to various aspects of its recommendations. The following are some such steps taken since that time.

By a letter to the UN Secretary General dated 21 May 1996 - published in UN GA document No A/50/960 and dated 28 May 1996 - the Nigerian Head of State, General Sani Abacha, promised to amend several decrees pertaining to the Civil Disturbances Tribunal so as to exclude members of the armed forces from serving on the Tribunal and make the tribunal's verdict and sentences subject to appeal. Nigeria also undertook to restore the writ of habeas corpus to detainees under Decree No 2 of 1984 by repealing Decree No 14 of 1994; to establish a Review Panel which would carry out the immediate review of cases of detainees under the Decree No 2 of 1984; and to direct the Oil and Mineral Producing Areas Development Commission (OMPADEC) to "look into whether there are peculiar ecological and environmental problems in the Ogoni area with a view to ameliorating them.

As of today all the promises made to the Secretary General have been fulfilled. The Civil Disturbances (Special Tribunal) (Amendment) Decree was enacted on June 5, 1996 to remove the military from serving on the tribunal and to provide for the right of appeal from its sentences and conviction. Similarly the State Security (Detention of Persons) (Amendment) (No. 2) (Repeal) Decree was enacted on 7th June 1996 to repeal Decree No 14 of 1994 which precluded courts from issuing the writ of habeas corpus to detainees under Decree No 2 of 1984. Finally, a panel was constituted to review all cases of detainees under Decree No 2 of 1984. In accordance with its recommendation well over 20 detainees have so far been released.
RESPONSE TO COMMUNICATIONS

In the Commission's Note Ref. ACHPR/PA/A064 dated 26th February, 1997, the Secretariat of the ACHPR reminded Nigeria that during the Mission's visit it will like to discuss various communications which were listed with a view to amicable resolution; would like to be informed about Nigeria's efforts to implement the Commission's decisions on certain communications; and would like to be informed if persons listed in the communications were still in custody of the state. Regarding the issues raised above, I would like to make the following general remarks:

(i) many of the communications are repetitive of complaints about the same subject matter - such as on ouster clauses and detention of persons.

(ii) to the best of our knowledge, Nigeria has not been served most of the communications dated 1996 and, as such, we are unaware whether or not the Commission has considered them admissible.

(iii) Assuming Nigeria was served any of the communications dated 1996, we would like to observe that, with the establishment of the National Human Rights Commission which by Decree 22 of 1995 is competent to investigate the allegations contained therein, such communications ought not be admitted by the Commission as they violate the provisions of Article 56(5) of the ACHPR. Moreover, some of these communications, as pointed out in our submission to the Commission, were already pending before the ordinary courts of our land. For example, Communications 140/94, 141/94, 145/95 etc in which the petitioners complained of the closure of the some newspaper houses, arbitrary arrests, ouster clauses were the subject matter of court actions. Refer to suits FHC/L/CS/777/94 and FCH/L/CS/969/94 filed by Messrs Abdul Oroh, Agbakoba, Falana and others before the Federal High Court challenging the legality of many decrees. These two legal actions were abandoned.

(iv) The domestication of the provision of the ACHPR in Nigeria and its consequent enforceability by our courts calls for greater caution and restraint on the part of the Commission in admitting each and every communication sent. The Commission ought to complement, rather than
run counter to, the judiciaries of member states. In this connection it is instructive to note that as recently as December last year, the Court of Appeal by a unanimous decision held that a domestic law could not override the provisions of the ACHPR. Refer to Chief Gani Fawehinmi Vs. Attorney General of the Federation and others, copy attached.

Be that as it may, the Mission may wish to recall that during the 19th Ordinary Session of the Commission in Ouagadougou the Nigerian delegation, at a private session held on 31st March 1996, responded to 11 communications. A written response was formally submitted to the Commission. In addition to the foregoing general remarks, Nigeria would like to stand by that submission and has the honour to invite the Commission to review that as a basis of the amicable resolution of the issues. We do hope that your visit and various interactions your Mission has had with groups and individuals would put you in a position to better understand and appreciate the responses already submitted.

In conclusion, I would like to address in greater detail two issues that have agitated the minds of the members of the Mission: ouster clauses and MKO Abiola trial. I am aware that the Solicitor General of the Federation, whom you have already met, has explained the situation to you.

ON OUSTER CLAUSES

On the question of many decrees containing ouster clauses, it is sufficient to explain that although it is conventional for most decrees enacted by the present and past military administrations to contain provisions which preclude courts from enquiring into the validity of such decrees, Nigerian courts have always asserted their judicial independence and have in a number of cases questioned such decrees despite the ouster clause in the exercise of their inherent judicial powers as conferred on them by section 6 of the 1979 Constitution, as amended. The example of the proscription of the Guardian Newspapers can be cited to illustrate the point. It will be recalled that following the closure of the premises of the Guardian on August 10, 1994, its owners sued the government before a Federal High Court in Lagos seeking for a declaration that the closure was illegal and claiming some compensation. The Court obliged the Guardian's requests. In the meantime, a decree had been enacted to give legal backing to the closure and
proscription of the Guardian and ousting the jurisdiction of courts to enquire into the legality of such action. The Guardian went to another division of the Federal High Court seeking to enforce some constitutional rights. At the court of first instance, the judge, while declining to entertain the suit, claimed that his jurisdiction has been ousted. On appeal to the Federal Court of Appeal, the lower court’s ruling was overturned. The appellate court observed that the judge should have enquired whether it was right for a decree to nullify a judicial order already granted and if he was not duty bound for that alone to assume jurisdiction.

On the matter of the ouster clauses, it should also be pointed out that all such decrees are enacted to meet the exigencies of the moment and to meet emergency situations and that given an improvement in the political and security situation in the country, they would be reviewed. Indeed following the order of the Appellate court, the premises of the Guardian were unsealed and the decree proscribing the newspaper was repealed.

EXPLANATORY NOTES ON MKO ABIOLA TRIAL

Much confusion has surrounded the stalled trial of Chief MKO Abiola which is pending before the Federal High Court, Abuja. Although the Solicitor General of the Federation must have explained the matter to you in greater details during your meeting with him, I feel it is not out of place to recount certain facts for the records with the hope that it may guide your Mission to better understand the case.

On June 11, 1994, a whole year after the annulment of the inconclusive 1993 election and some months after the resignation of Chief Ernest Shonekan, the Head of the Interim National Government installed following the annulment, Chief MKO Abiola declared himself President and paraded the streets of Lagos. He was arrested, arraigned before the Federal High Court, Abuja and charged with the commission of the offence of treason on June 23, 1994. He has since then been in detention on orders of the court.

At the start of the trial, pleas were made both by his lawyers and other well-wishers for his release on bail. On August 6, 1994 when he was offered a conditional bail order allegedly negotiated by the Nigeria Labour Congress (NLC), his lawyers turned it down. Since that failed attempt, the Federal
Government has made it quite clear that Abiola's matter is before a duly constituted court of law on whose orders he has remained in detention. It is a matter which is sub judice.

The following chronology of the case may help for a better understanding of the actual situation of the trial as of today:

[1] In September 1994, Chief Ajayi requested and obtained from Justice C. Senlong, the trial judge in the substantive matters, a stay of all proceedings in the criminal matter pending the determination of the various appeals and cross appeals that had been filed by him and the Solicitor General of the Federation.

[2] Since November 1994, no court in Nigeria had given any order directing the release of the accused person.

[3] When in November 1994 the Court of Appeal sitting in Kaduna granted bail to the accused on the condition that he does not disturb the peace of the nation, two developments occurred:

(i) His lawyers did not take steps to file the necessary court papers to effect his immediate release.

(ii) Meanwhile the Attorney General of the Federation appealed to the Supreme Court against the bail grant and asked the Court of Appeal to stay executing its own order pending the determination of the appeal. This was perfectly in order under Nigerian law. The Court of Appeal granted a stay of the execution of the order.

[4] In April 1995, before the actual hearing of Government's appeal pending at the Supreme Court, Chief Ajayi, leading Counsel for Abiola, filed two applications to the Supreme Court requesting the court to [a] dismiss the appeal filed by Govt against the grant of bail and [b] vacate the stay of execution order earlier made by the Court of Appeal in Kaduna. The aim was to get the Supreme Court to effect the release of Abiola without hearing his pending appeal on its own merits. The court declined prayer [a] and fixed the date for the hearing of the appeal on 1st June 1995. As
for prayer [b] the court fixed 18th May 1995 to hear it.

[5] On May 18, 1995, Chief Ajayi came to the Supreme Court and requested nine (9) Justices to abstain from hearing any matter in which Chief Abiola was involved. He drew the attention of the court that, in the interest of fair hearing and natural justice, all justices who had taken the Concord Newspaper to court should not hear a matter involving Abiola, its publisher. Accordingly, the then Chief Justice of the Federation, who was one of those who had dragged the Concord to court, ruled that all the cases involving Abiola and pending before the Supreme Court be adjourned till July 18, 1995 when the court will deliver its judgement for withdrawing from the case.

[6] On July 18, 1995, the Supreme Court delivered its judgement in which it stated that, although the Concord Newspaper is a legal person separate from its publisher, Chief Abiola, there would be the appearance of bias to the ordinary person if justices litigating against the paper were to preside over a matter involving its proprietor. Accordingly they withdrew from the case. And with that all his applications and that of government pending before the Supreme Court were adjourned indefinitely.

[7] In March 1996, Chief Ajayi, leading Counsel for Chief Abiola, sued the Chief Justice of Nigeria, the Attorney General of the Federation and the President of the Court of Appeal before the Federal High Court, Lagos accusing them of failing to make recommendations to the Provisional Ruling Council (PRC) for the appointment of additional justices to enable the court form a quorum so as to proceed with the appeals pending before

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1 It should be recalled that some time early in 1994, the Concord Newspaper accused justices of the Supreme Court of taking bribes from the Government. In its story, the paper alleged that each of the nine justices had been bribed with a Mercedez Benz car by the IBB administration. The affected justices demanded that the newspaper withdraw its story and publish an apology failing which they filed a suit at the High Court in Lagos against the paper for defamation. The suit was recently settled out of court.
the court. The suit was struck out. He threatened to sue the PRC to compel the body to appoint additional justices.

[8] Chief GOK Ajayi sued the PRC seeking to compel the body to appoint additional justices to form a quorum in April 1996. Thereupon, Chief Rotimi Williams countered Ajayi’s suit claiming that he has been briefed to take over the conduct of the case from him and that Ajayi had no authority of the client to sue. Thus began the tussle between Williams and Ajayi as to who is the rightful counsel to Chief Abiola. This matter has gone from the Federal High Court up to the Court of Appeal and the Supreme Court. Last week, the courts settled the dispute in favour of Chief Ajayi.

The notable things to observe from the foregoing developments are:

(a) it is very clear that it is Abiola’s lawyers, not the government, that are not keen in seeking for his release. This is because, they would always find one technicality or another to mire the case.

(b) It is not a plausible excuse to, in the first place, appeal to the Supreme Court seeking for reliefs and, when you do not get them, to challenge their capacity to entertain the suit. Obviously, Abiola’s lawyers had other reasons for taking any delaying tactics in the on-going suits.

(c) It should be emphatically stated that there is no pending order issued in favour of Abiola directing government to release him. The fact of the matter is that there are many pending appeals, most of them initiated by Abiola’s lawyers, and which are stalled by the very same lawyers.

(d) the actual criminal trial has been stalled on the application of counsel to Abiola way back in September 1994. It is not for the State to vacate that order.

I do hope that the foregoing accounts will go a long way in assisting the Commission to dispose of the Communications which are pending before it. I am available to provide further clarifications should your require any.

I wish you very safe return to your respective destinations.