



**ARTICLE 19 and Media Rights Agenda**

**UNSHACKLING THE  
NIGERIAN MEDIA  
AN AGENDA FOR REFORM**

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# **FOREWORD**

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This report is the first to be produced jointly by ARTICLE 19, the International Centre Against Censorship, and Media Rights Agenda (MRA), a non-governmental organization in Nigeria. It represents a starting point in what we expect will be a long-standing programme of cooperation and collaboration between the two organizations in promoting the right to freedom of expression, including media freedom, in Nigeria as part of a larger objective of bringing about respect for human rights and democracy in the country.

Freedom of expression — the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers — must be assured if the fight for human rights, development and human progress is to have any meaning and possibility of realization. Without access to information, individuals are denied the opportunity to make informed decisions about matters affecting their lives and the lives of their families, including their health, welfare and livelihood. And without free speech, they are denied the right to discuss and debate such matters openly and without interference, and to participate fully in the wider decision-making processes of their society.

A country which dramatically demonstrates this state of affairs is Nigeria. With a population of over 100 million, one in every four Africans is a Nigerian. Along with South Africa, it is one of the two most powerful countries in sub-Saharan Africa,

wielding tremendous economic and political influence over its smaller and less powerful neighbours in West Africa.

The official onslaught against freedom of expression in Nigeria is a central aspect of the wider contempt for human rights which the present military government under General Sani Abacha has displayed since coming to power in November 1993. The parlous state of media freedom is symbolized by the continuing ordeal of four journalists: Kunle Ajibade, Chris Anyanwu, George Mbah and Ben Charles Obi. They have served two years of 15-year jail sentences imposed after unfair and secret trials by a Special Military Tribunal in 1995 which resulted in their conviction on charges of being "accessories after the fact" of treason. It could have been even worse. Their initial sentences were life imprisonment until General Abacha decided upon a degree of commutation. Their real crime: to have filed stories in their newspapers about the arrests of army officers in connection with an alleged coup plot.

Nigeria's military government has embarked on a "transition" programme from military rule to civilian democracy. It is scheduled to terminate with a handover of power to a civilian president on 1 October 1998. But the transition programme is justifiably viewed with scepticism by many Nigerians and large sections of the international community. The "transition" has been tightly controlled. Its main feature has been the exclusion from participation of critics and opponents of the military administration. There are growing suspicions that the primary objective of the "transition" is to create an environment which will enable General Abacha to succeed himself as President and throw a civilian disguise around continued military rule. The five political parties which have been registered and allowed to operate under the transition programme are led by politicians who maintain close links with the military. Meanwhile, leading figures in the main opposition grouping, the National Democratic Coalition (NADECO), are in detention awaiting trial for treason on charges which appear to be politically motivated.

It is tragic that a country with so much energy, diversity and talent should have become one of the world's pariah states when it could be such a force for good, both regionally and internationally. But until people like Kunle Ajibade, Chris Anyanwu, George Mbah and Ben Charles Obi are free once more, that is unlikely to change. Indeed, it should not change. ARTICLE 19 and Media Rights Agenda dedicate this report to them and look forward to the day of their freedom.

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## I INTRODUCTION

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*"My freedom has not changed anything. In fact, the Nigeria I left in December 1995 is better than the one of June 1996 ... . The policy of official antagonism towards **Tell** has not changed. So long as the siege subsists, I cannot say I am free. If I cannot come to my office and work for fear of being rearrested, I cannot say I am free."*

— Nosa Igiebor, editor-in-chief of *Tell* magazine, interviewed in July 1996, following his release after six months in detention without charge or trial.

Nosa Igiebor's words remain as true today as they were a year ago. Since the present military government came to power in Nigeria in November 1993, it has harassed and intimidated its political opponents and critics. A key target has been the independent press. Journalists, editors and publishers have been subjected to arbitrary detention; the misuse of criminal charges and unfair trials by special tribunals; torture and ill-treatment; and, on at least one occasion, a suspected assassination attempt. Two journalists have also "disappeared" in mysterious circumstances. The newspapers and magazines for which they work have been the victims of arbitrary banning orders; mass confiscations; concerted attempts to disrupt printing, publication and distribution; arson attacks; the distribution of "false editions"; and the withholding of government advertising for political reasons.

Despite this appalling record, the government of General Sani Abacha has pointed to the existence of an independent press to support its own claim to respect and promote human rights. But this is far from the truth. In fact, the independent press is under constant attack. The latest government threat is that it will set up a special "press court" to try journalists accused of making "false reports".

Unlike most of sub-Saharan Africa, Nigeria has a long history of an independent press. Indeed, over the past three decades, the press has been one of the few means by which Nigerians have been able to hold their governments to account for their actions. Now, at the very time when an independent press is beginning to emerge in many other African countries, in Nigeria it is being forced to fight for its future.

The aim of the present military government is not necessarily to destroy the independent press, but rather to tame it. In addition to its daily acts of harassment and persecution, the government has been seeking to entrench a long-term institutional and legal framework to regulate and control the press as a whole. This entails significant threats to press freedom. The most important decrees in this regard are the **Nigerian Press Council Decree, No. 85 of 1992**, and the **Newspapers Decree, No. 43 of 1993**, which the present military government inherited from its military predecessor under General Ibrahim Babangida.

Such an institutional and legal framework is already relatively entrenched for radio and television broadcasting. The relationship between those branches of the media and governments both past and present has in the past been much less fraught. Until recently, private ownership of radio and television was not permitted. Federal and state radio and television were entirely government-owned and used as outlets for official propaganda.

The **National Broadcasting Commission Decree, No. 32 of 1992**, provides for the regulation and control of broadcasting. It has opened the way for private ownership of radio and television, but hopes that it would usher in a new era of pluralism in the field of broadcasting have so far been disappointed.

The process of opening up the broadcasting sector to private ownership has not advanced significantly under the present military government. Federal and state radio and television still largely echo government views, while the few private radio and television stations which exist are largely silent on political matters. Critics claim that some of those granted licences to set up private stations are characterized by their closeness to the military government. The one private radio station which is vocal on political matters broadcasts to Nigeria from outside the country. Radio Kudirat was established in June 1996 by supporters of the Nigerian pro-democracy movement in exile.

The most sensitive political issue in Nigeria is the so-called "transition to civilian rule", which is due to culminate in a handover of power by the army on 1 October 1998, following national legislative and presidential elections. Overall, the broadcasting media, whether publicly or privately owned, has so far failed dismally to reflect the full spectrum of debate about the "transition". With a few exceptions, the government's critics have rarely been heard or seen on either radio or television.

The Nigerian Government has an international legal obligation to respect and promote the right to freedom of expression and information, including media freedom, under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the African Charter on Human and Peoples' Rights (ACHPR). While the right to freedom of expression and information, including media freedom, is not absolute, the limitations placed upon it in Nigerian law go far beyond the limitations permitted under international human rights standards.

The international community should do everything in its power to ensure that the Nigerian Government implements a comprehensive programme of human rights reform, including full safeguards for media freedom. This is essential if the current "transition" is to have any credibility. The United Nations (UN) Commission on Human Rights and the African Commission on Human and Peoples' Rights, both of which have been active — with varying degrees of effectiveness — on the issue of Nigeria, have an important role to play over the coming months. But world attention is increasingly turning to the Commonwealth, which is due to meet in Edinburgh in October 1997, where it will review its suspension of Nigeria, imposed in the wake of the executions in November 1995 of Ken Saro-Wiwa and eight other Ogonis following grossly unfair trials.

Section II of this report details the patterns of official harassment of the media in Nigeria since the present military government took power. Section IV critically surveys the most important laws affecting the media in Nigeria. Section V sets out guidelines which government media should follow prior to, during and after the elections which are due to be held as part of the "transition". Section VI argues for a Freedom of Information Act in Nigeria and describes the campaign which has been initiated to achieve this goal. Section

VII outlines further steps which the international community should take over the coming weeks and months as part of efforts to establish respect for human rights, including media freedom, in Nigeria. Finally, section VIII summarizes Media Rights Agenda and ARTICLE 19's recommendations for action by the Nigerian Government and the international community to safeguard media freedom in Nigeria.

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## II OFFICIAL HARASSMENT OF THE MEDIA

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Within two months of seizing power in November 1993, General Sani Abacha's military government began a series of attacks on the media aimed at bending it to its will. The government has been provoked above all by the activities of a vibrant independent press which has been prominent in calling for an immediate and unconditional return to civilian rule.

Besides direct attacks on journalists and media organizations and the enactment of legislation restricting freedom of expression and information, the government has also employed a range of economic pressures to control the type of information published or broadcast by the media. The objective throughout has been to punish critical media organizations and support favoured ones or to deprive the independent press of revenue, thereby hampering their operations.

### a) Arbitrary detention

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The most common form of harassment of Nigerian journalists has been arrest and detention. Since November 1993, dozens of journalists working for the independent press have been arbitrarily arrested and detained incommunicado without charge or trial for prolonged periods. Hundreds more have been arrested and briefly detained, sometimes repeatedly, by security agents of the government — either as a warning to them not to pursue sensitive or controversial stories or as punishment for stories already published.

Those detained for prolonged periods are held under the **State Security (Detention of Persons) Decree, No. 2 of 1984**, which allows for the indefinite and incommunicado detention without charge or trial of any person who is considered to threaten the security or economy of the state.

Among the journalists most frequently harassed and detained is *Newbreed* magazine publisher and editor-in-chief Chris Okolie and the following members of staff at *Tell*

magazine: editor-in-chief Nosa Igiebor; managing editor Onome Osifo-Whiskey; executive editor Kolawole Ilori; and associate editor Ayodele Akinkuotu.

Others include the following members of staff of *Newswatch*: chief executive officer, Ray Ekpu; deputy chief executive, Yakubu Mohammed; editor-in-chief, Dan Agbese; and the deputy editor-in-chief, Soji Akinrinade. Also often targeted are senior figures at *The News* and *Tempo* magazines. These include Bayo Onanuga (editor-in-chief) and Dapo Olorunyomi (deputy editor-in-chief) of *The News*. In 1995, Dapo Olorunyomi fled to the United States, where he sought political asylum after a hunt for him by security officials who claimed that he was involved in an alleged coup plot to overthrow General Abacha's government (see below).

Bayo Onanuga, Olorunyomi's boss, has also been arrested and detained on numerous occasions. On one such occasion in March 1995, he was detained without charge or trial for 13 days — initially at the infamous Shangisha detention centre in the outskirts of Lagos, which is used by the Lagos State Directorate of the State Security Service, and later at the notorious federal Investigations and Intelligence Bureau at Alagbon in Lagos.

Bayo Onanuga spoke thus of his experience at Shangisha: "I was left at the reception, an open room with a cushion on which I slept for the number of days I was kept there. Nobody was allowed to see me. My wife was prevented from seeing me when she came. I did not change my clothes throughout my stay there. There was no bathroom, I only had a bath on Tuesday, March 14 (the fourth day) and in the open at the back of the main building. I was allowed this privilege of having a bath after days of persistent demand and protest. I was given routine foods; eba (cassava meal) and rice just to keep me alive. The foods were oily and I think they were prepared by some staff of the detention centre."

Among the journalists held for prolonged periods without charge or trial during 1995-6 was Nosa Igiebor, editor-in-chief of *Tell* magazine. He was detained between December 1995 and June 1996. His six months' detention was punishment for his refusal to reveal his sources for articles criticizing the military government. George Onah, defence correspondent for *Vanguard*, was arrested in May 1996 in connection with an article he had written about promotions and other changes in rank among Nigerian military officers. The authorities reportedly pressurized him to reveal his sources. He was finally released in May 1997, after a year in detention. Godwin Agbroko, editor-in-chief of *The Week*, was arrested in December 1996 in connection with an article which had appeared in the magazine about disputes within the army. This was the third time he had been arrested since 1995. He was also released in May 1997.

Even newspaper vendors have been targeted by the authorities. In March 1996, Jude Sinnee, a vendor in Bori, Rivers State, was arrested at his news-stand by security officials. His offence, apparently, was to have been selling "seditious" independent journals and newspapers. He remains detained incommunicado without trial.



One journalist is believed currently to be in detention: Okina Deesor, a producer for Radio Rivers in Rivers State, who was arrested in July 1996 for broadcasting the Ogoni "national anthem".

There have also been occasions when relatives or colleagues of a particular journalist being sought for arrest and questioning by the authorities have been briefly detained and used as "bait". In June 1994, the publisher of *Weekend Classique*, Mee Mofe-Damijo, was arrested at the airport when on her way to France. She was held in connection with a story about the existence of rifts within the ranks of the army. The authorities initially refused to release her unless the editor of the magazine, Ben Charles Obi, agreed to come forward. She was only released after three days because her lawyer initiated court proceedings on her behalf.

In 1993, security agents arrested and briefly detained Ladi Olorunyomi, wife of Dapo Olorunyomi, and their three-month-old baby, Aramide, when the security men could not find him at home. They were released the next day. She was arrested again in March 1997 and only released after 48 days in detention. No reasons were given by the authorities for her detention.

Many journalists, especially those working with *Tell* and *The News* magazines, are now forced to operate underground to avoid being arrested and detained.

## **b) Misuse of criminal charges and unfair trials**

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Abuse of the criminal justice system and the manipulation of the judicial process have been some of the other common methods of harassment of journalists working for the independent press. Criminal charges, once brought, are often never pursued before the courts but instead are left hanging over the journalists as a warning.

There was, however, a major exception to this pattern in 1995. Four journalists were tried secretly by a Special Military Tribunal on charges of being "accessories after the fact to treason" for writing stories about an alleged coup plot to topple the military government of General Sani Abacha. They were initially sentenced to life imprisonment in July 1995, but this was later commuted to 15 years' imprisonment.

The four journalists are Chris Anyanwu, publisher and editor-in-chief of *The Sunday Magazine (TSM)*, Kunle Ajibade, editor of *The News* magazine, George Mbah, assistant editor of *Tell* magazine, and Ben Charles Obi, editor of *Weekend Classique*.

They were among 43 people tried and imprisoned by the Special Military Tribunal headed by Brigadier-General Patrick Aziza in connection with an alleged coup plot. Their secret trials before the tribunal established under the **Treason and Other Offences**

**(Special Military Tribunal) Decree, No. 1 of 1986** were in breach of international standards for fair trials, including guarantees of the right to be represented by lawyers of their choice; trial by a competent, independent and impartial court; provision of adequate time and facilities for the preparation of their defence; the right to a public trial and the right of appeal to a higher and independent judicial body.

The four journalists are currently serving their jail-terms in different prisons across the country. Anyanwu is incarcerated at Gombe prison (about 1,200 kilometres from Lagos), Ajibade is at Makurdi (887 kilometres away), Mbah is held in Biu Prison (about 1,500 kilometres from Lagos) while Obi is at Agodi prison in Ibadan (141 kilometres away). They are imprisoned under punitive special conditions in solitary confinement and may only be visited once monthly by one of two named family members. But the distance and high costs involved in such visits have made it impossible for their family members to see them regularly.

Security agents have often arrested journalists in Lagos and taken them to Abuja, nearly 900 kilometres away, where they have had no access to their families or regular solicitors. The journalists have then been charged before one of Abuja's magistrate's courts, sometimes being denied bail. In other instances, a ruling on whether or not to grant them bail has been deferred until a week or two later, during which time the journalists have been held in custody. The charges laid against such journalists have almost always been withdrawn after they have been held in prison for a week or two. Few charges have ever been pursued to the point of judgment.

The use of special tribunals has been another favoured avenue for the manipulation of the judicial process for the purpose of punishing journalists. Since the return of military rule in 1983, a dual system of administration of justice has emerged in Nigeria. Successive military governments have established, at different times, special tribunals to try different categories of offenders, especially for economic and political offences. As a result of the unfair procedures adopted by these tribunals, they frequently provoke caustic criticism from journalists working for the independent press. This can lead to reprisals against publications critical of these procedures, or which give space to such criticisms. In such circumstances, members of tribunals have on occasions used their powers to declare a person in contempt of court as a way of "taking revenge", summoning journalists before them and remanding them in custody.

In one instance in May 1994, Justice Olufunmilayo Oni-Okpaku, chairman of the Currency and Miscellaneous Offences Tribunal in Lagos, summoned four journalists with *Newswatch* magazine, Ray Ekpu, Yakubu Mohammed, Dan Agbese and Soji Akinrinade, to appear before her the next day over the cover story in the magazine's March 1994 issue entitled "Stinking drug war: trial of a drug suspect opens a Pandora's box", which unearthed a simmering scandal over the controversial sale by her special tribunal of a Mercedes-Benz car belonging to a businessman charged with drug-trafficking offences.

All the journalists appeared before her, accompanied by their lawyer, Chief Gani Fawehinmi. Although Oni-Okpaku accused the journalists of attempting to tarnish her

name, she refused to formally charge them with any offence. After reprimanding them, she ordered that they should be remanded in prison custody for four days and refused to hear their lawyer or grant them bail.

Journalists are also sometimes denied bail without reasonable grounds by the ordinary courts. Osa Director, Kano correspondent of *Tell* magazine, was arrested in August 1995 following a story he wrote in *Dateline* newspaper, a sister publication, entitled "Buhari, Abacha at war over oil money". He was taken before a chief magistrate's court in Kano in leg chains and handcuffs, charged with inciting disaffection by publishing "false reports" in contravention of sections 416 and 418 of the Penal Code of the northern states of Nigeria, and then denied bail until October 1995. When the magistrate finally did grant Osa Director bail, he ordered him to report to the office of the State Investigation and Intelligence Bureau every month and barred him from publishing any material that was likely to cause any embarrassment to the government during the period of his bail. The charge continues to hang over Osa Director to this day.

According to Director, "I was remanded in detention custody twice *in absentia*. Obviously, the prosecution manipulated its way by either presenting someone else in court as and when due, or the judicial process was grossly and shamefully violated by refusing to present me in court. Yet, I was remanded. Even after 34 days, when I was finally taken to court in chains, the prosecution objected to my bail because investigation was still going on!"

Other criminal charges against journalists have included sedition and defamation. In April 1994, three journalists with *Newswatch* magazine, Ray Ekpu, Dan Agbese and Yakubu Mohammed, were arrested in connection with an article based on an interview with a retired senior military officer who alleged that General Abacha's coup was a "putsch against democracy". Several days later, they and two other *Newswatch* journalists were charged with sedition and criminal intent to cause fear and alarm to the public and to disturb the public peace. However, on the orders of General Abacha, the charges were dropped and the three men were released the following day. General Abacha portrayed this as an act of goodwill but warned that he expected journalists in future to show "discretion and self-control".

Foreign journalists too have not been immune from official suspicion and harassment. In January 1996, Paul Adams, Nigeria correspondent for the London-based *Financial Times*, was arrested and detained while in Ogoniland. He was eventually charged with possession of seditious materials — documents published by the Movement for the Survival of the Ogoni People (MOSOP) — and released on bail after a week in detention. The charges were later dropped.

## **c) Oppressive use of defamation proceedings**

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Defamation laws, originally meant to protect the reputations of members of the public, have become a very potent threat to media freedom in the manner of their application. Since 1991, under the previous military government of General Ibrahim Babangida, the courts have tended to award exceedingly high damages against publishers found guilty of libel. Some of the damages awarded have been such that they have threatened the very existence of the newspapers and magazines against which they have been made. Virtually all the extremely high awards have been made either to serving or former public officers. The trend appears to be towards ever more intimidating awards in the future. The result is that many newspapers and magazines tend to avoid publishing stories which may result in actions for libel, even when such stories are true.

Claims for damages in recent years have been as high as Naira 500 million (US\$6,250,000 — 80 Naira = US\$1) such as in the suit filed in 1993 by Major- General Ike Nwachukwu, a former external affairs minister in the Babangida regime, against *Fame* magazine. In January 1994, nine Justices of the federal Supreme Court, including the then Chief Justice of Nigeria, Justice Mohammed Bello, and his successor, Justice Muhammadu Lawal Uwais, sued the Concord Press Nigeria Limited, publishers of *Weekend Concord*, for Naira 450 million (US\$5,625,000) damages for libel over an alleged defamatory publication in a December 1993 issue entitled "Justice Mohammed Bello: Kick him out now! Lawyers demand". In August 1994, Dr Olu Onagoruwa, then the Attorney-General and Minister of Justice, sued Tell Communications Limited, publishers of *Tell* magazine, for Naira 100 million (US\$1,250,000) for libel in an article entitled "A junta's deadly romance" which appeared in the magazine's 29 August 1994 edition. In October 1994, the Minister for Transport and Aviation, Ebenezer Babatope, also sued *Tell* magazine for Naira 50 million (US\$625,000) over another article entitled "Raising the stakes" published in the same edition. All the above cases are pending to this day.

Besides the large damages which have often been awarded to successful plaintiffs, many newspapers and their owners incur major costs in defending libel suits which they can never hope to recover, regardless of the outcome of the case. There is no tradition of Nigerian courts awarding sufficient costs to cover the actual expenses of defending defamation suits. This allows frivolous suits to be brought. These costs arise from lawyers' fees, court fees, the expenses associated with frequently bringing witnesses to court and paying their transportation and accommodation costs, securing relevant documents and other incidental expenses.

## **d) Torture and ill-treatment**

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There have been numerous reports of torture and ill-treatment of journalists while in prisons or police cells since the present government took power in November 1993.

Besides those in custody, other journalists covering events or investigating stories involving military personnel are sometimes physically assaulted by military officers.

In January 1994, a reporter with *The Guardian*, Harry Awurimbe, and a photographer with the same newspaper, Patrick Bodu, were beaten up, tied together and kept in that state under the blistering sun for several hours while they were covering the demolition of "illegal structures" in Lagos by soldiers belonging to the Lagos State Task Force on Environmental Sanitation. They were released after 12 hours. Both journalists sustained severe injuries from the encounter and had to be briefly hospitalized. Bodu had to be given a blood transfusion while Awurimbe suffered a dislocated shoulder blade and walked with a noticeable limp for several weeks thereafter.

In June 1994, Sunday Jimoh, a photographer with *Vanguard* newspaper was beaten up by armed anti-riot policemen at the premises of the federal High Court in Lagos while covering the hearing of arguments on a bail application made on behalf of the then detained Chairman of the Campaign for Democracy, Dr Beko Ransome-Kuti. He was assaulted for attempting to photograph the arrest of five other persons in the court premises by the policemen.

Babafemi Ojuda, senior editor at *The News*, was severely beaten while briefly detained in custody in August 1996. He required hospital treatment after his release.

Imprisoned journalists are experiencing the same harsh conditions as other political detainees. Chris Anyanwu is hypertensive and suffers frequent bouts of malaria; George Mbah suffers from epilepsy; and Kunle Ajibade has a serious heart condition. All are routinely denied the medical attention which they need.

Godwin Agbroko, editor of *The Week* magazine, who was released after five months in detention in 1997, spoke upon his release of the ill-treatment he received during his detention. His legs were chained together virtually throughout the entire period of his imprisonment. Even when he had to take a bath, he had to remain in leg chains.

Journalists and their relatives have been subject to threats of violence and other acts of intimidation. For example, in July 1994, a previously unknown organization called the Patriotic Brigade for the Defence of the Suffering Masses warned several media houses in Lagos that if they continued to publish "unpatriotic" stories, violence would follow. Police and security officials often warn journalists not to cover a particular story or face serious consequences. Police raids on newspaper offices are a regular occurrence. Journalists also have their homes illegally searched by security men and are harassed and intimidated through a variety of other methods, including threatening telephone calls.

## **e) Suspected assassination attempts**

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In February 1996, Alex Ibru, owner of The Guardian newspaper group and a former Minister of Internal Affairs under General Abacha's government, was shot at point-blank range by unidentified assailants who had trailed him. He sustained gunshot injuries to the head and body and has been treated for his injuries in Lagos and in the United Kingdom, but his health has been permanently damaged by the attack. The police described the incident as a foiled armed robbery, but many observers suspect official involvement in the attack. He has remained in self-exile in the United Kingdom since the incident.

A previously unknown group calling itself the Revolutionary Movement for Hausa-Fulani Interest later claimed responsibility for the attack. Although the police claimed to be investigating the attack, to date nobody has been charged or brought to trial in connection with the incident.

The editor of *National Concord* newspaper, Dele Alake, claimed in October 1996 that he had narrowly escaped being killed or injured by armed attackers in Lagos. They had reportedly been following his movements prior to the incident. Such attacks appear to be part of a growing trend in which prominent critics of the government have been mysteriously murdered. For example, Alhaja Kudirat Abiola, senior wife of Chief Moshood Abiola, was murdered in Lagos in June 1996; Chief Abiola won the aborted presidential election in June 1993, but has been detained on treason charges since July 1994. Another suspicious case is that of Chief Alfred Rewane, a financial backer of the National Democratic Coalition (NADECO), who was shot dead by gunmen at his home in October 1995.

## f) "Disappearances"

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Two journalists were reported to have "disappeared" in 1996. The "disappearance" of at least one of them is believed by many to have been politically motivated.

Baguda Kaltho, a senior correspondent for *The News* magazine, who was based in Kaduna, "disappeared" in March 1996. Before his "disappearance", Kaltho was being sought by security agents from the Directorate of Military Intelligence about stories he had written about the alleged March 1995 coup plot over which four other journalists have been jailed by a Special Military Tribunal (see section b) above). He is alleged to have been arrested and briefly detained at the Yakubu Gowon Military Barracks in Abuja, but there is no confirmation of either his arrest or detention and it is feared that he may be dead.

Another journalist, Chinedu Offoaro, a reporter with *The Guardian* newspaper, also "disappeared" in May 1996 and was declared missing by the newspaper. He is reported to have left Lagos for Owerri, a city in eastern Nigeria, 555 kilometres away from Lagos, on 24 May and was expected back two days later. He has not been seen since.

Although both cases were reported to the police, there has been no serious investigation of either of these "disappearances".

## **g) Banning of publications**

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Attacks on media houses and organizations have also come in the form of newspaper and magazine bans. A total of 35 newspapers published by 12 media houses have either been proscribed by decree or simply closed by force over the last decade of military rule; nine news magazines published by six companies have also suffered the same fate, some of them on two or three different occasions. The present military government of General Abacha has been responsible for the proscription or closure of at least 20 publications since November 1993. These proscriptions or closures leave affected journalists and press houses totally helpless and at the mercy of the military government while depriving millions of Nigerians of their right to receive information and ideas without interference. The only publications that have been spared are either government-owned or those privately owned publications whose proprietors have close business or other links with the government.

The method used by the present military government has been the same in all cases; without any previous allegation of wrongdoing against a newspaper or magazine, or any warning or notice, armed security agents suddenly invade the premises of the affected news organization and harass the helpless workers before sending them away or arresting some of them and sealing off the premises.

On some occasions, the government has subsequently published a proscription decree claiming that the closure was carried out under the provision of that decree. The reasons most frequently adduced by the government for closing down a newspaper organization or banning publications are "irresponsibility" or "threats to national security" on the part of the affected newspapers. Such allegations are often never substantiated. In many cases, the government omits to cite the precise stories or series of articles published by the newspaper or magazine which necessitated the measures, leaving both publishers and members of the public in the dark. In every case, all the publications of a news organization have been banned for the (often unspecified) "sins" of one of them. The affected publications have never been given any opportunity before or after closure to defend themselves in relation to the offence allegedly committed.

In June 1994, security agents of the military government sealed off the premises of the Punch and the Concord newspaper houses. The proprietor of the Concord press house is Chief Moshood Abiola. They similarly closed down the premises of the Guardian press house in August 1994. The government subsequently issued three decrees in September 1994 banning all newspapers and magazines published by the three press houses for an initial period of six months, which it later extended. The government disregarded court

orders for the reopening of the press houses and the payment of damages to them for the illegal closure of the premises. Although the ban on the Guardian press house was lifted in July 1995 and those on the Punch and Concord press houses in October 1995, the threat of further closures of press facilities remains a potent one for independent press houses operating in Nigeria.

Such proscriptions or closures have a debilitating effect on the financial operations of affected press houses. The threat of proscription or closure and fear of the losses thereby incurred has often been sufficient to induce self-censorship by newspapers.

## **h) Disinformation**

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The distribution by the Nigerian authorities of "doctored" versions of some editions of magazines published by independent press houses was a method frequently used during 1994 to discredit such publications. Military intelligence are widely held responsible for flooding news-stands with bogus editions of such magazines.

The tactic was first seen in Nigeria in August 1993 when falsified issues of *Tempo* suddenly appeared on the streets and news-stands. During 1994, the main targets were magazines such as *Tell*, *The Sunday Magazine (TSM)*, and *Tempo*.

In March that year, a bogus edition of the 20 March issue of *Tell* magazine with the cover story, "Enter the new messiah" appeared in circulation. The 16-page publication carried falsified versions of many of the stories in the genuine 20 March edition of the magazine in a bid to drum up support for the new military government. In April 1994, the management of *Tell* magazine alerted the public over the circulation of another bogus edition of the magazine with the cover story, "Let's Give Abacha A Chance".

Another bogus edition of *Tempo* dated 18 June 1994 appeared with the cover story, "Zero hour: Abiola makes U-turn — says support Abacha". A third bogus issue of *Tell* magazine, with the cover title "NADECO breaks", also surfaced at about the same time.

A bogus edition of *The Sunday Magazine* which appeared at the same time had on its cover, "Public opinion poll: only Abacha can save Nigeria". In August 1994, another bogus issue of *The Sunday Magazine* appeared with the cover story, "Money tears NADECO apart".

It is difficult to estimate the real effect of these disinformation tactics. But the publishers of the genuine magazines were forced to expend considerable energy, time and cost in drawing public attention to the fake publications and disowning them.



## **i) Arson attacks on newspaper offices**

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In December 1995, there was a series of arson attacks against newspaper offices. During the night of 16 December 1995, the headquarters of *The Guardian* newspaper, which had been reopened only a few months earlier after a year-long ban, were set ablaze by unknown arsonists who sprayed petrol on the premises. The circulation department was substantially burnt and only quick action by firefighters saved the entire building from being completely burnt down.

Similarly, in the early hours of 31 December 1995, unknown persons also burnt the offices of the Independent Communications Network Limited, publishers of *The News*, *Tempo* and *Tempo Football* in Lagos. This time the damage was serious, destroying property worth millions of Naira.

Both incidents were reported to the police. But although they claim to have investigated the incidents, no progress appears to have been made in finding those who carried them out.

## **j) Seizures of independent newspapers and magazines**

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The confiscation of independent newspapers and magazines has been an extremely common tactic on the part of the Nigerian government since November 1993. This tactic has not only disrupted circulation, but has also deprived those newspapers and magazines affected of desperately needed revenue.

The magazines most commonly seized have been *Tell*, *The News* and *Tempo*. But the main victim has been *Tell*, which has lost more than 300,000 copies since General Abacha took power. In January 1994 security officials stormed the premises of Academy Press, commercial printers in Lagos, and confiscated 50,000 copies of the 10 January 1994 edition of *Tell* magazine. Similarly, in mid-December 1995, security officials again raided Academy Press, seizing 55,000 copies of the 25 December 1995 issue. The security officials repeated the exercise a week later and seized 50,000 copies of the magazine's 1 January 1996 edition. *Tell* magazine's managing editor, Onome Osifo-Whiskey, said the seizures were intended to cripple the magazine financially and make it incapable of further operations.

The seizure of printed copies of magazines such as *Tell* has exacted a considerable financial burden on the publishers, who incur major costs in producing and printing the magazine but do not then receive any return from sales. Advertisers are also unwilling to

place advertisements in such publications because of the real fear that their messages may never get across to the public.

## **k) Disruption of printing and distribution**

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Nigerian authorities have not only sought to disrupt publication and dissemination of independent journals and newspapers, they have also often tried to disrupt the printing and distribution arrangements upon which the press depends.

Because many magazine publishers depend on commercially run private printing facilities for printing purposes, security officials constantly mount raids on such facilities, resulting in the disruption of their activities for several hours or even days. The consequence of this is that many private printing facilities are reluctant to accept printing jobs from independent newspapers and magazines which are known to be critical of the government. The Academy Press in Lagos has been a major victim of this measure.

In July 1994, when journalists sought to resuscitate one of the Concord newspapers, *Community Concord*, a distribution subsidiary of the press house and printing press where the newspaper was being printed were both raided by security officials. Newspapers and magazines such as *Tempo*, *The News* and *Tell*, which are effectively operating underground, engage in a daily game of cat-and-mouse with the authorities to get their titles printed and distributed. The fear of falling victim to such a fate has compelled many publishers and journalists to censor their publications to avoid trouble with security officials.

## **l) Withholding official patronage and advertising from independent publications**

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In June 1994, the federal military government directed all its ministries, departments and agencies to stop buying newspapers and magazines, except for government-owned publications. At the same time, the federal government also ordered all its ministries, departments and other establishments to stop placing advertisements in privately owned newspapers and magazines.

The ban on advertising remains in force today. It acts as a clear signal to other advertisers to consider carefully whether it is in their interests to advertise in the independent press. It may have contributed to the demise of at least two titles which had been persistent

critics of the government. *The Sunday Magazine* and *A.M. News*, which were forced to close in June 1996, attributed their inability to continue publishing to poor finances.

## m) Official interference in editorial decision-making

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The successive military governments which have ruled Nigeria over the last decade have never been able to resist the temptation to place themselves in various newsrooms, literally and figuratively. The military government led by General Sani Abacha's regime has been no exception.

Official interference in the editorial decision-making process within the independent press has taken many forms since November 1993, as we have seen. However, one tactic not yet mentioned has been infiltration by security agents posing as independent-spirited journalists. Reports of government-paid security agents infiltrating independent newspapers and magazines are given credence by the fact that the government often betrays an uncanny knack for knowing when critical or adverse reports are due to be published. The authorities often seem well-placed to time their interventions to wreak maximum financial damage by seizing copies just after the cost of printing has been incurred but before distribution can take place.

Although the government has, since 1994, allowed private ownership of radio and television stations in Nigeria, these operate at the pleasure of the government, which retains legal powers to keep them in check through the **National Broadcasting Commission Decree, No. 38 of 1992** (see section IV below).

The many government-owned radio and television stations and the federal-controlled national newspapers, the *New Nigerian* and *Daily Times*, are run as part of the government's propaganda machine, giving little regard to balance and representation of contrary views.

Journalists and editors working in publicly owned and controlled newspapers, radio and television have complained that they are often directed by the Minister for Information and other senior government officials to publish stories, commentaries or editorial opinions written by government officials and sent to them from government offices. Editorial staff of government-owned and controlled media outlets are frequently reprimanded, suspended, demoted, redeployed or dismissed for transmitting or permitting reports which reflect unfavourably on the government or any of its officials, or which tend to portray some perceived opponent or critic of the government, in a good light. Over the past five years, the federal-controlled *Daily Times* newspaper has had five different managing directors.

In July 1994, the Cross River State government sacked Oqua Ita, the editor of the state-owned *Nigerian Chronicle* newspaper, for allegedly publishing an incorrect and inflammatory article criticizing the state's military administrator.

In October 1994, the Kwara State government sacked the editor of the state-owned *Sunday Herald* newspaper, Mola Olaniyan, following an editorial opinion published by the newspaper entitled, "Rotational presidency and the Nigerian future", which supported a resolution by the National Constitutional Conference that Nigeria should adopt a rotational presidency. On the orders of the Kwara State military administrator, Group Captain Baba Iyam, the newspaper subsequently published another editorial comment entitled, "Rotational presidency: A rethink", in which it criticized the idea of a rotational presidency and asked the Provisional Ruling Council to reject the conference's recommendation on the issue. Following appeals by representatives of the state council of the Nigeria Union of Journalists, Iyam reviewed Mola Olaniyan's dismissal and redeployed him to the Ministry of Information.

In July 1994, the Ogun State government directed the state-owned radio station, the Ogun State Broadcasting Corporation, to halt its daily review of newspapers. Following the official order, the management of the state-owned television station also stopped its version of the newspaper review known as "Headlines". However, following a public outcry the government reversed its order and the newspaper review programmes were resumed on both state radio and television.

In November 1995, shortly after the execution of Ogoni environmental rights activist, Ken Saro-Wiwa, and eight other Ogonis, the federal military government directed state governments to stop newspaper and magazine review programmes on state-owned radio and television stations. The federal government was angered by the fact that newspaper and magazine stories were being covered which referred to calls for international sanctions against Nigeria.

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### **III Excerpts From Interviews With Mrs Bose Agbe-Davies Mbah, Wife of George Mbah, Assistant Editor of Tell Magazine, and Mrs Bunmi Ajibade, Wife of Kunle Ajibade, Editor of *The News Magazine***

#### **A) Interview with Mrs Bose Agbe-Davies Mbah, 18 May 1997**

**How did you get to know that your husband had been arrested?**

I got the information unofficially. Even when I had been informed that my husband was at the Directorate of Military Intelligence (DMI), I was told point-blank when I got there that he was not there.

**How long was it before they finally acknowledged that he was there?**

Actually, the night I went there, a soldier told me that my husband was there. But he told me unofficially. After that, I got to know that Ben Charles Obi was also there. Despite all the information at my disposal that he was at DMI, I was not allowed to see him. The next day, I went to the same DMI to give him some food, clothes and so on, but the soldier I met on duty said there was no such person there. He said he did not know where my husband was.

**So when did they officially acknowledge that he was there with them?**

Up till now, the government has not officially acknowledged. I think people have taken that aspect for granted because there is a lot of publicity on it from activists and human rights groups.

**So they did not acknowledge that he was with them before his conviction?**

The only thing was indirect acknowledgement.

**Has your husband told you why he was convicted? The reason why they convicted him?**

He told me how he was picked up. He said they really did not come for him as George Mbah initially. He said they came to the *Tell* office for the editor, but the editors were not around and they were talking to him. At some point during the conversation, they asked him what his name was and he said "George Mbah". They said are you the George Mbah? Then they referred him to this *Dateline* publication and they arrested him. That was how it happened. He said they arrested him in connection with a coup story in a publication of *Dateline*. The story was about a suspected coup plotter, Major Oni. In the publication, the family had thought he had been killed in detention, but the government said he died a natural death. The major was buried in Ilorin. The story in question was written by Gbolahan Gboyega with additional reports by George Mbah, because he was covering the Defence Ministry.

**Was he tortured?**

I define torture in terms of solitary confinement. He was chained at DMI.

**When was the last time you saw him? And how was he?**

Two months ago. His spirit is quite high, but he is still very sick. As you know, in 1993, while covering the Abiola elections in Maiduguri, he was involved in a motor accident in which he sustained head injuries. He consequently had a plastic surgery, which needs to be carefully monitored. His top right eyelid is not healing well. The wound is now infected. On my last trip to see him, I noticed that the eyeball is becoming clouded. That worries me. The medical facilities available to him are grossly inadequate. I wouldn't want to risk further complications, so I have decided to wait for George to be released and then we'll seek adequate medical care. In the meantime, I hope his medical condition can be contained by the available facilities and the medication I can get to him. Apart from this, his skin has become quite dry and scaly, possibly due to the climate in Biu. He has also lost considerable weight. But that is only normal as he can't eat prison food.

**How regularly are you allowed to see him?**

Officially, they said I can see him every month.

**How much does it cost you to go down to the place?**

I spend a minimum of 25,000 Naira to 30,000 Naira (US\$312 to 375). If I go with my daughter, it is more. I still have to get SSS (State Security Service) clearance to see him in Maiduguri before going to Biu to see him. When he was asked to give the names of two people he would like to visit, he gave the names of myself and his father. And they said we are allowed to see him once a month. But the head of the prisons in Biu told me that whenever I come to see George, I must pass through the Maiduguri office for clearance. It is a day's journey by road to Maiduguri. Then another four hours drive to Biu. Although I can go through Kano, I am made to go through Maiduguri, because they say I have to report to the Maiduguri Superintendent of Prisons where I have to sign in to say I'm on my way to Biu. At Biu, I have to see the Superintendent of Prisons. If he is not there, I don't see my husband. The last time I was there, I had to wait for an extra day because the Superintendent was not around. I can go by air and take Ebube with me, but I don't have the resources to pay for the flight ticket and provide good hotel accommodation where the baby can be comfortable. So I travel alone by road. When I came into the prison, they said "Hello, Mrs Mbah" and then gave me the rules:

1. Don't tell him any bad news. He may get upset and if he gets upset, he refuses to eat and if he refuses to eat, he fall sick and if he fall sick, we have a problem on our hands because we have a responsibility to keep him alive.
2. Don't tell him you came by road or that you stayed in Biu. When he hears you came all this distance by road, it will upset him.
3. Tell him you are fine and that your daughter is fine.
4. Don't tell him what is happening on the outside.

5. You don't cry. If you do, we will stop the meeting.

But the first time I went there, I cried. I'm only human. I didn't know what to expect. George has done a lot to keep me going because his spirit is unbroken. He said I should not beg government because he has been incarcerated wrongly. We are in the right. His attitude is that they can only imprison his flesh, not his mind. He tells me: "I can think, I can dream. Try very hard so they don't incarcerate you as well. You are on the outside, but you may be imprisoned by putting a halt to your life and activities. If you do, you will be in prison also."

### **How have you been coping?**

No matter how exposed or confident you are, when such a thing happens to you, like a loved one is picked up, you don't know where he is, you don't know how to contact him, the first thing that happens to you is that you are enveloped with a total cloud of helplessness. It is a terrible thing. Nobody can reach you, you don't know how to reach out. It is a terrible, terrible thing. I think the body of journalists can help in breaking that wall. Somebody is picked up, you go to the Defence (Ministry), no answer; you go to DMI, no answer; you go to SSS, no answer. Even when you get to the exact place where he is, no answer. Where else can you go? You are confronted with these problems all alone. The NUJ (Nigeria Union of Journalists) can help in breaking down that wall for you. At least, there should be an information network.

Living without George has not been easy. Before his arrest, I had a lot of research consultancy jobs with firms and various organizations. But it's all gone. Some of my friends have also gone. But my philosophy is that anybody who does not want to see me now is not a friend.

If you are not a person of conviction, I don't need you. I only feel bad when the people who should know better are ready to be bought over. I realize that poverty is pervasive, cutting across economic groups, but there are some things that one should hold up against out of conviction.

### **How has his conviction affected your attitude towards journalism?**

My husband is a born journalist. I think that makes him happy. When he comes out, I will not in any way try to influence what he does with his life. My children can also aspire to be whatever they want to become. If Ebube grows up and says she wants to study journalism, I'll encourage her. My policy is whatever you do, do it well.

## **B) Interview With Mrs Bunmi Ajibade, 3 May 1997**

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**How did you hear about Mr Kunle Ajibade's arrest?**

One of my brothers-in-law informed me. Before he left home on Tuesday 2 May 1995, he told me he was coming that very day. So I was expecting him that day. I didn't see him on Tuesday. I didn't see him on Wednesday. I didn't even see him on Thursday. I wasn't afraid because sometimes he would go like that, he would say "I am coming now, now" and pressures of work won't let him return for days. So I just took it as one of those occasions. But this time, one of my brothers-in-law just came in and said "where is my brother?" I said he has gone to Lagos. He asked me "when did he say he is coming back?" I said on Tuesday; I have not seen him since. So he just brought out the newspaper and showed me that he (Ajibade) has been arrested.

**What were your immediate reactions to the news?**

I wasn't afraid. I didn't panic. I just took it as it has been happening to others. I told myself that after some days, he would be released.

**Were you able to see him before the trial?**

No

**What is your feeling about his sentence?**

Well, the first day I heard about it, I just laughed. I was even alone with Mayowa and I was pregnant. It was the last part of the news (Nigerian Television Authority — NTA News). I looked at it and said shame to Abacha! So it won't even be more than 15 years. But I know it is not real. My husband cannot spend 15 years in jail. For what? What has he done? But it is not news to me any more.

**Since he was sentenced, do you have any information about where he is incarcerated?**

Okay, all along I learnt he was in Lagos. That was before they were made to face the tribunal. Then, after they had been sentenced, the police came here to inform me. I think what happened was that the second day, I heard the news, I went to those vendors where we do normally collect newspapers. I asked them for my papers, but they said, "Madam, you don't have papers today". I didn't know that they were hiding it from me. They didn't want me to see the papers. So I went to work normally. When I got to school, I saw *Vanguard*. It was in *Vanguard* I read everything. I think about two or three days after, I learnt he had been transferred to Makurdi. Then later, the police came here and informed me that they are now sure he was in Makurdi and that they have sent people to find out what was happening to him over there.

**Were you asked to provide any lawyer for him or to defend him?**

Never.



**So he wasn't allowed access to a lawyer?**

I didn't even know how the trial went.

**Up till now?**

Up till now. Nothing. I was just told they were made to face a tribunal. That was just it.

**There has been no official information from them?**

I just heard about it over the news.

**When was the first time you saw him after the trial, after he had been sentenced?**

It was a year after he left home. I think it was, if I can remember, it was June 1996.

**Where?**

In Makurdi. I went to see him with my children and my brother-in-law.

**Can you just tell us about the circumstances of your visit?**

I went in November 1995. I was pregnant. I went with Mayowa. We were not allowed to see him. So we came back.

**In Makurdi?**

Yes.

**All the way from Ibadan to Makurdi?**

Yes.

**And they didn't allow you to see him?**

No. They didn't allow me.

**After he had been sentenced?**

Yes. The woman said that the order came that nobody should see him, that he should not be visited. So we came back. And I went back again in June 1996. I was allowed to see him. We got there, we were told by one of the warders who came to tell me that she wanted an application. After writing the application, I gave it back to the warder, the warder took it from me. Then later, the CSP (Chief Superintendent of Prisons) said that I should come in with my children and that my brother-in-law should not come in. They said he wasn't allowed to see him, his brother. We just went to his office, we sat down

there. He said they should go and bring my husband. And one warder went to bring him. He came into the room with one of the officials. The man was sitting between us, listening to all ...

**In between?**

Yes. In between us. I was sitting like this, the man was sitting between me and my husband. I didn't even know I had to pass all the things I took to him through that man. I just gave them to my husband straight. Because I took some pictures along which I intended to show him, and some other things. And the man said "Ah, we don't do that here. Why should you just give them to him?" I said I didn't know. So I gave them to the man who sat right between us.

**How many of you were there?**

Myself, the CSP, that man I just talked about now, Kunle and the children.

**What was his condition when you saw him in Makurdi?**

I wasn't impressed.

**What was his general feeling?**

He wasn't really feeling fine in my perception because what happened was, even when he was at home, he used to have malaria attacks not to talk of when he was complaining of mosquito bites seriously.

**What was your reaction like when you saw him?**

Well, I would say at first, I was really happy I saw him alive, but I wasn't impressed about his condition.

**How frequent are your visits to Makurdi?**

It has never been frequent because, you know it is not easy for me to be going to Makurdi once a month. The last time we went there, we were told that officially we are to visit him once a month. But how do I go to Makurdi, especially with these children. I cannot go without them. If I go there without them, Kunle will ask me what I have come to do. I have not been frequent.

**What is the length of the journey? How long does it take? How do you travel?**

By air, it is just an hour or an hour and 30 minutes journey. But by road, the last time we went, we went by road, it was a whole day. We spent a whole day. We left Ibadan around 10.00 a.m. and we got to Makurdi, say past 9.00 a.m.

### **Are there direct flights from Ibadan to Makurdi?**

No. From Lagos, anytime we are going, his colleagues will come and take us to Lagos.

### **So there is a direct flight from Lagos to Makurdi?**

Yes. Then coming back, when we get to Lagos, they (the colleagues) pick us up.

### **How do you understand or read the whole issue as it relates to this matter?**

You mean Kunle's matter? Everything looked like rubbish to me because I didn't understand. Even up till now, I can't understand why they are still holding him. People have been making comments here and there, both at home and abroad that they should leave these people alone. I am talking about the journalists. Those who are not soldiers and these four journalists, I can't still understand what is happening. I can't. I was even told sometime that our own President (General Abacha) doesn't even read newspapers. No wonder. How does he know what is happening if he doesn't read newspapers?

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## **IV THE INSTITUTIONAL AND LEGAL FRAMEWORK**

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In 1990, Attorney-General Prince Bola Ajibola, writing in the foreword to the revised *Laws of the Federation of Nigeria, 1990*, stated that "the revision of our laws has been lagging behind by at least three decades ... our efforts at law reform and revision have only touched the tip of an enormous ice-berg". A further seven years of arbitrary rule by military decree has done nothing to improve this situation.

The media has been one of the main targets for legal intervention by military governments over the past decade. A comprehensive agenda for reform of the law as it affects the media in Nigeria must address both a wide range of recent military decrees and longer-standing laws, many of which trace their origins back to the colonial period. The final piece in the jigsaw is the Nigerian Constitution itself, which should set out the broad principles, founded upon international standards, upon which legislation affecting the media is to be based, but which fails in important respects to do so. Media freedom cannot be properly safeguarded unless each of these elements is tackled together.

### **a) "Catch-all" decrees**

The most important military decree which the authorities use against journalists is not aimed at them specifically. It is the **State Security (Detention of Persons) Decree, No. 2 of 1984**, which allows for the indefinite and incommunicado detention without charge or

trial of any person deemed to threaten the economy or the state. By a 1994 amendment to this decree, courts were prohibited from issuing orders to the authorities to produce detainees before them. This amendment was repealed in 1996, but **Decree No. 2** itself contains a clause which prohibits judicial scrutiny of detentions under it.

The right to liberty of the person is further undermined by the **Constitution (Suspension and Modification) Decree, No. 107 of 1993**, which suspends a person's constitutional right to compensation or public apology if they are found to have been unlawfully arrested or detained.

**Decree No. 2** is one of many decrees containing clauses which "oust" the jurisdiction of the courts. In addition, the **Federal Military Government (Supremacy and Enforcement of Powers) Decree, No. 12 of 1994**, prohibits legal challenges to any of its military decrees or to any action which violates the human rights provisions of the Constitution.

Journalists are among those critics of the present military government who have experienced grossly unfair trials by special tribunals established by military decree. A Special Military Tribunal, established under the **Treason and Other Offences (Special Military Tribunal) Decree, No. 1 of 1986**, convicted four journalists on charges of being accessories after the fact to treason in 1995 (see section 1b) above).

There are other decrees on the statute book which do not appear so far to have been invoked against political critics, including journalists, but which might be in the future. For example, the **Treason and Treasonable Offences Decree, No. 29 of 1993**, provides for a sentence of death to be imposed upon any person who "utters any word, displays anything or publishes any material" which is capable of "breaking up Nigeria". This decree was met with widespread condemnation both within Nigeria and abroad. Perhaps for this reason, it has never been applied. However, it remains in force.

The **Transition to Civil Rule (Political Programme), Decree No. 1 of 1996**, makes punishable by five years' imprisonment any person who "organizes, plans, encourages, aids, cooperates or conspires with any other person to undermine, prevent or in any way do any act to forestall or prejudice the realization of the political programme"; or any person who "does or attempts to do any act to counsel, persuade, encourage, organize, mobilize, pressurize or threaten another person to join with him or with any other person or persons to misrepresent, accuse or distort the details, implications or purports of any item of the political programme".

## **b) Media decrees and laws**

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An important military decree which directly threatens media freedom is the **Offensive Publications (Proscription) Decree, No. 35 of 1993**. Promulgated by the previous military government of General Ibrahim Babangida, the decree provides for the proscription, seizure and confiscation of any publication which is likely to:

"(a) disrupt the process of democracy and peaceful transition to civil rule, having regard to its contents; or

(b) hinder or prevent the progress and process of the grassroot democracy as established by the transition to civil rule programme; or

(c) disturb the peace and public order of Nigeria"

The decree also "ousts" the jurisdiction of the courts from inquiring into whether any fundamental rights have been violated by a banning order. Although this decree has not yet been employed by the Nigerian authorities, it remains in force today and could be invoked at any point in the future.

Three military decrees are currently in force which seek to construct a long-term institutional and legal framework for the regulation and control of the media in Nigeria. The **National Broadcasting Commission Decree, No. 38 of 1992**, established a National Broadcasting Commission with powers to license and supervise radio and television. Its main weakness is its lack of genuine independence from government. Its members are government-appointed. It has powers only to recommend applications for radio and television licences to the Minister of Information and the President; they have the power to agree to or reject such recommendations. The Minister retains the power under Section 6 of the decree, "to give the commission directives of a general character relating generally to particular matters with regard to the exercise by the commission of its functions ... and it shall be the duty of the commission to comply with such directives".

Finally, the Commission has the power to deny or revoke licences where an applying body fails to persuade it that it will act or has acted "to promote national interest, unity and cohesion". Such phrases create enormous scope for politically motivated intervention.

The **Nigerian Press Council Decree, No. 85 of 1992**, was issued at a time when the previous "transition to civilian rule" under General Babangida appeared at last to be reaching a successful conclusion. After years of struggle between governments and the independent press over previous draconian proposals for an institutional framework for registering journalists, maintaining professional standards and adjudicating on complaints, this decree, creating a Press Council for these purposes, represented a relative advance. Even so, the Press Council lacks the necessary attributes to be considered fully independent of government. Its independence is compromised by the fact that the President has the power to appoint the chairman on the recommendation of the Minister of Information, by the presence on the Council of representatives of government-controlled bodies such as the News Agency of Nigeria and the Nigerian Television

Authority, and by the fact that it is government-funded. The general consensus among media practitioners is that the Press Council as a body has sought to operate independently and impartially since its inception. But its credibility has been diminished by the fact that the authorities, when subject to criticism by the Council, have simply ignored it.

But the most fundamental objection to the Press Council relates to the issue of registration. Firstly, there are no good grounds in any circumstances for official involvement in the registration of journalists. This should be a matter for self-regulation by journalists through their professional organizations. Secondly, there are no good grounds in any circumstances for compulsory registration of journalists. Compulsory registration constitutes an undue restriction upon media freedom and freedom of expression in general.

There are many within the independent press who view the Press Council as a potential trojan horse for the government. Such views can only have been reinforced by the announcement from the Minister of Information in January 1997 that a special "press court" would be created by promulgating an amendment to the **Press Council Decree, No. 85 of 1992**. To consist of journalists and be presided over by a high court judge, the court was described by the Minister as a means through which those who have been subject to "false reporting" could obtain justice. He also warned that journalists found guilty by such a court could be given prison sentences. He added that he intended to have recourse to it himself after he had retired from public office. Press organizations such as the Nigerian Union of Journalists and the Newspaper Proprietors' Association of Nigeria have condemned the proposal as a grave potential threat to media freedom.

It is unclear whether this "press court" is to be a reformed version of the existing Press Council or whether it will run in parallel to the Council. But there can be no doubt that the Minister of Information's overwhelming concern is to tame the independent press.

The **Newspapers Decree, No. 43 of 1993**, presents an equally grave threat to media freedom in Nigeria. This decree provides for the establishment of a Newspaper Registration Board within the Ministry of Information. It requires that all newspapers are registered annually with the Board, which will then issue a licence to operate. The cost of registration is extremely high. Newspapers have to pay a pre-registration deposit of Naira 250,000 (US\$3,125) and a non-refundable fee of Naira 100,000 (US\$1,250). Failure by a proprietor, publisher or printer to ensure that a newspaper is registered will lead to the closing down of a newspaper and court proceedings against them. If convicted, they can be fined Naira 250,000 (US\$3,125) or imprisoned for up to seven years — or both. Finally, the Board may refuse a licence to a newspaper if it is not "satisfied" with its "performance" during the previous year.

Although the Newspaper Registration Board has been established, opposition from the independent press has ensured that the remainder of the licensing proposals have not been implemented. It is significant that there has even been some opposition to the decree within the federal- and state-owned press. Legal challenges have been launched against

the decree. In November 1993, the High Court of Lagos State ruled that the decree was "null and void and of no effect whatsoever". However, within days the decree was revalidated under section 5 of the **Constitution (Suspension and Modification) Decree, No. 107 of 1993**.

Periodically, the Ministry of Information and the Newspaper Registration Board warn that the decree will soon be enforced, regardless of the fact that a number of legal challenges to it remain unresolved. They did so in mid-1996 and again in January 1997.

There is one further aspect of the decree which restricts media freedom. Section 18 of the decree stipulates that it is an offence to publish, reproduce or distribute false news. The sentence is a heavy fine of Naira 200,000 (US\$2,500) or ten years' imprisonment. To avoid conviction, defendants must demonstrate that they took all reasonable steps to check the veracity of a report. Defendants are in effect guilty until proven innocent. It is in order to try this offence that the government is now threatening to create a special "press court".

The **Daily Times of Nigeria Ltd (Transfer of Certain Shares), Decree No. 101 of 1979** establishes a legal basis for federal control of the daily national newspaper, the *Daily Times*. The *Daily Times* had previously been privately owned. The decree vested the 60 per cent stake in the *Daily Times* which the federal government of the time had acquired in 1976 in the federal-owned National Insurance Corporation of Nigeria. A second federal-controlled daily national newspaper, the *New Nigerian*, was established in 1977. The *New Nigerian* is aimed predominantly at a northern audience.

The operation of such government-subsidized daily newspapers violates Article 19 of the ICCPR by undermining media pluralism. While governments are entitled to publicize information about health, access to government services, legislation pending or enacted or court decisions, public funds should not be used to publicize the statements and opinions of government departments, ministers or officials. These already have extensive access to the media by virtue of their position in public life. Such government newspapers also pose a threat to the competitiveness of the independent press because of their preferential access to official advertising and because official subsidies allow them to undercut the cover price of rival newspapers. The circulation of the *Daily Times* has reportedly shrunk dramatically in recent years because it has slavishly followed the government line. Without official subsidy it may have folded. But this does not affect the essential principle: that neither federal nor state governments should own or control newspapers and news magazines.

A range of other laws or decrees completes the institutional and legal framework for the regulation and control of the Nigerian media. These are the **News Agency of Nigeria Act (1976)**, the **Federal Radio Corporation of Nigeria Act (1976)** and the **Nigerian Television Authority Act (1976)**. The News Agency of Nigeria (NAN) is controlled by the Minister of Information and has a monopoly over the sale of news to and from foreign news agencies. Inevitably, NAN tends to reflect the "government line" on political matters. These reports are relied upon particularly heavily by federal- and state-owned

newspapers, radio and television. The laws establishing the Federal Radio Corporation of Nigeria and the Nigerian Television Authority, which are the federal-owned operating companies in the spheres of radio and television and which are exempt from the need to obtain licences before opening stations, provide for governing boards and financial structures which are controlled by government and give it the power to intervene in the editorial decision-making whenever and however it so chooses.

Also on the statute book are a barrage of archaic laws which gravely restrict freedom of expression and information, including media freedom, all of which have their origins in the colonial period. Almost identical laws to those now in existence were used by the British authorities during the 1940s and 1950s against Nigerians who came to be venerated for their part in the independence struggle. The **Seditious Offences Act (1909)** introduced the offence of sedition onto the statute book in Nigeria. It is now incorporated into the federal Criminal Code, the Penal Code for the northern states of Nigeria and some other state legal codes. Under the federal Criminal Code, those found guilty may receive a sentence of two years' imprisonment or a fine and three years for a subsequent offence. Under the Penal Code for the northern states of Nigeria, the prison sentences are longer. The definition of "seditious intention" employed in both codes is broad and can potentially be interpreted by the authorities to embrace any expression of dissent of which they disapprove.

The **Official Secrets Act (1962)** establishes the principle of restricting access to official information. Section 1 of the Act makes it an offence to obtain, reproduce, retain or release official or classified matter when not authorized to do so. Classified matter is defined as anything which the authorities deem should not be disclosed to the public, whose disclosure would be "prejudicial to the security of Nigeria". Section 5 of the Act allows officials to arrest journalists in order to compel them to disclose the source of their information in such circumstances. Those found guilty under section 1 can be sentenced to 14 years' imprisonment.

Prosecutions under the Act have been rare, but it has been crucial to the construction of a culture of secrecy and intolerance of media scrutiny within government in Nigeria. The phrase "prejudicial to the security of Nigeria" is vague enough to be interpreted as the authorities might wish, allowing for the Act potentially to be misused against critics. In addition, a growing body of international jurisprudence holds that only in the most exceptional circumstances may "security" considerations be used as a reason to compel a journalist to reveal a confidential source. This should be the decision of a judicial, not an administrative body.

The offence of publishing false information, which is covered by the **Newspapers Decree, No. 43 of 1993** (see above), can also be found within the federal Criminal Code, the Penal Code of the northern states of Nigeria and some state codes. Section 59 of the federal Criminal Code makes it an offence to knowingly publish or reproduce any false statement, rumour or report "with intent to cause fear and alarm to the public". Once again, the onus is on defendants to prove that they had taken all reasonable steps to check the veracity of a statement, rumour or report. The sentence is three years' imprisonment.



The present law on defamation has been inherited largely unchanged from the colonial period. Criminal defamation is covered by provisions within the federal Criminal Code and some state codes. Civil defamation is encompassed by the **Defamation Act** (1961), some state codes and a large body of case law.

The use of criminal law to punish defamation is unacceptable and in practice is used primarily to restrict political criticism. With regard to civil suits, while the objective of balancing the right to freedom of expression and information against the right of individuals to protect reputations against inaccurate reporting is entirely legitimate, there is a clear need to review and revise the law to ensure that it adequately reflects recent developments in international jurisprudence.

These developments have contributed to a growing international consensus that the following broad principles should be reflected in laws on defamation: that defendants should not be required to prove the truth of value judgements, statements reflecting public opinion or allegations based on rumours or the statements of others; that a public official who brings a defamation suit should have to prove not just that he has been defamed but that the defamation was committed maliciously; and that a claim for defamation is weaker if the allegedly defamatory statement was made in response to a statement that was itself provocative or inflammatory; that the limits of acceptable criticism are wider as regards a government body or public figure than as regards a private individual; that the press has a pre-eminent role in informing public opinion on matters of public interest and in acting as a public watchdog and that the press be accorded particular latitude when commenting on matters of political or other public interest; that elected representatives, especially members of an opposition party, are entitled to greater latitude.

Finally, given the predilection of public officials in Nigeria for lodging frivolous or politically motivated suits for defamation, those reviewing and revising the law may wish to consider including a provision which stipulates that, where a court finds against them, litigants should pay costs which bear some relation to the expenses incurred by those they have sued. Litigants traditionally have not been required to do so. There have been occasions in the past where newspapers have been gravely financially weakened by a defamation suit even when they have been victorious.

Finally, the **Defamatory and Offensive Publications Act** (1966) extends the scope of the offence of defamation to include publications which are "likely to provoke or bring into disaffection any section of the community". The penalty specified for this offence is a fine or three months' imprisonment, or both. There is a marked similarity between the above offence and offences characterized as "seditious" elsewhere in Nigerian law. Here, too, the definition of the offence is so broad as to allow the authorities to use it against any expression of dissent of which they disapprove.

This survey of military decrees and archaic laws which threaten media freedom in Nigeria is far from comprehensive. Other legislation still in force which directly or indirectly affects media freedom and which would need to be encompassed within any

legal review process includes: the **Printing Presses (Regulation) Act** (1958), which gives the government unspecified powers to close down a printing press; the **Wireless Telegraphy Act** (1961), which establishes the principle of mandatory licensing by the government of all radio and television stations; the **Obscene Publications Act** (1962), which prohibits the publication, reproduction, distribution or exhibition of materials which "tend to deprave and corrupt"; the **National Film and Video Censors Board, Decree No. 88 of 1993**, which establishes a government-controlled National Film and Video Censors Board with extensive powers to deny permission to distribute or exhibit film or video; and the **National Economic Intelligence Committee (Establishment, ETC), Decree No. 17 of 1994**, which makes it an offence to publish exchange or interest rates other than those approved by the Central Bank of Nigeria.

## c) Constitutional provisions

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An ominous uncertainty surrounds the question of what constitutional protection is to be afforded in future to freedom of expression and information in Nigeria. A new Constitution is due to come into force after the end of the "transition". Ignoring calls from the pro-democracy movement for the election of an independent Constitutional Conference with binding powers to draft a new Constitution, the military government instead established in 1994 a government-controlled consultative National Constitutional Conference. This completed its work in June 1995. The government then amended the text presented to it before approving it.

The text of the new Constitution has not been made public. This outrageous and cynical act of suppression speaks volumes about the government's disregard for fundamental principles of democracy and accountability. It is not too late for the Nigerian Government to publish the text and allow open and public debate on it. The government should then agree with all interested parties an acceptable basis for amending the new Constitution to bring it fully into line with international human rights standards.

The indications are that the new Constitution will maintain the traditions set by its predecessors of 1979 and 1989, both of which unreasonably restrict human rights, including freedom of expression and information. The 1979 and 1989 Constitutions give the media the "freedom" to uphold the fundamental objectives of state policy and "highlight the responsibility and accountability of the Government to the people". But this "freedom" is really nothing other than a set of obligations, some of which may lead to restrictions upon media freedom. In addition, both Constitutions require "all organs of government" to uphold state policy. Government-owned media may be included within the definition of "organs of government". Finally, the 1979 and 1989 Constitutions both allow the government discretion to retain complete control over radio and television broadcasting.

Another likely inadequacy of the new Constitution is that it will retain the provision in the 1979 and 1989 Constitutions allowing for the restriction of basic rights, including freedom of expression and information, through "any law that is reasonably justifiable in a democratic society" to protect classified information and "the interest of defence, public safety, public order, public morality or public health". Nigerian courts have interpreted this provision in the past to declare as "constitutional" the prevailing legislation on official secrets, sedition and "false information".

Freedom of expression and information could be strengthened in the new Constitution if the traditional wording employed was replaced by the wording contained within Article 19 of the ICCPR, to which Nigeria has acceded. Article 19(3)(a) and (b) of the ICCPR allows for:

"certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

Indeed, it might be appropriate to consider adopting the entire wording of Article 19 of the ICCPR into the new Constitution. Constitutions can only set forth broad principles and their language is inevitably more or less vague. But complete incorporation of Article 19 would reduce that vagueness because, for the purpose of drafting or amending laws which affect the right to freedom of expression and information, it can be interpreted with reference to the international jurisprudence which has developed concerning it. The Nigerian courts might then reach different conclusions to those they reached in the past about the constitutionality or otherwise of existing legislation which affects media freedom.

Article 19 of the ICCPR affirms the right of every person to freedom of expression and information. It should be interpreted to include media freedom in all its aspects. Unfortunately, all too often this has not been the prevailing interpretation within African countries. However, in recent years a number of African states have sought to reduce the scope for judicial interpretations of their constitutions which might unduly restrict media freedom. The current Constitutions of Namibia and South Africa expressly state that freedom of expression includes freedom of the press and other media. The Constitutions of Malawi and Mozambique provide for freedom of the press as a fundamental freedom distinct from freedom of expression generally. The Constitutions of Malawi, South Africa and Mozambique also explicitly protect another right essential to the work of journalists and broadcasters, the right of access to information held by the state. Finally, the Constitution of Mozambique goes so far as to expressly protect a key aspect of media freedom: the right to professional independence and confidentiality. It may be appropriate for the new Nigerian Constitution to supplement the wording of Article 19 with specific guarantees of media freedom and the right of access to information held by the state.

Finally, the 1979 and 1989 Constitutions also provide for the derogation, during "periods of emergency", from other rights which are considered non-derogable under the ICCPR: the right to life; the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; and the right to freedom of thought, conscience and religion. Derogation from these rights would weaken any constitutional protection which may be provided for other rights, including freedom of expression and information. In addition, the 1979 and 1989 Constitutions allow for the derogation during states of emergency of the right to habeas corpus, which has been declared non-derogable by the UN Special Rapporteur on states of emergency and the UN Human Rights Committee.

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## V BROADCASTING FREEDOM

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Publicly funded broadcasting is likely to remain the main source of news and opinion in Nigeria for the foreseeable future. In Nigeria, radio is the most common means of disseminating information, in particular to the rural areas. For this reason, governments bear a particular responsibility to ensure that these media serve the essential public functions of the media: to inform the public promptly about matters of public interest and to serve as a "watchdog" of government; to adhere to the principle of pluralism in views, programming and information sources; to offer programming in the languages of minority groups which have substantial numbers in the area served by the broadcaster, and to grant such groups the opportunity to broadcast programmes which they have produced; and to strive to provide information about the full range of human rights, including information about basic needs such as the protection of health and personal safety and the availability of public services. The responsibilities of public broadcasters are especially great at times when elections are being held, as is now the case in Nigeria during the present "transition to civilian rule".

There are many preconditions for a free and fair "transition" in Nigeria. One of the most important is to ensure political impartiality and editorial independence within federal- and state-owned broadcasting prior to and during elections. While one of the National Broadcasting Commission's responsibilities is to secure "equity and fairness" throughout broadcasting, and the federal radio and television authorities are required by law to be objective and impartial, government control over these institutions means that these principles have counted for little in practice so far during the current "transition".

As we have shown, the entire institutional and legal framework for radio and television broadcasting needs urgently to be reformed. Preferably, this should be part and parcel of a comprehensive process of repealing all laws which unduly restrict freedom of expression prior to the holding of elections. However, "transitional" local elections have already been held. State, national and presidential elections are due to take place over the next 15 months. How might this circle be squared within such a tight timetable?

## **a) Election broadcasting during the "transition"**

One option might be for all interested parties to agree a set of interim guidelines with the aim of establishing a "level playing field" in broadcasting during the forthcoming state, national and presidential elections.

In 1994, ARTICLE 19 published a set of *Guidelines for Election Broadcasting in Transitional Democracies*. These guidelines may provide a useful point of departure for discussions in Nigeria about how to ensure political impartiality and editorial independence within federal- and state-owned broadcasting during the remainder of the "transition". Below is an abbreviated version of the guidelines:

***GUIDELINE 1:*** *During the period preceding an election, the government broadcast media have a duty to inform the public about the political parties, candidates, campaign issues, voting processes, and other matters relevant to the election.*

***GUIDELINE 2:*** *Government media have a duty to be balanced and impartial in their election reporting.*

***GUIDELINE 3:*** *Laws unduly restricting freedom of expression in violation of Article 19 of the Universal Declaration of Human Rights should be repealed.*

***GUIDELINE 4:*** *The government must exert special efforts to investigate, prosecute and punish all acts, or threatened acts, of violence, intimidation or harassment directed against media personnel, or any act of destruction of the property or premises of a media outlet, where there is any reason to believe that the act was motivated by an intent to interfere with media freedom, and to bring those responsible to justice.*

***GUIDELINE 5:*** *There must be no government censorship of any election programmes.*

***GUIDELINE 6:*** *It is strongly recommended that the media be exempted from legal liability for unlawful statements made by candidates or party representatives and broadcast during the course of election campaigns, other than those which constitute clear and direct incitement to violence. The parties and speakers should be held solely responsible for any unlawful statements they make.*

***GUIDELINE 7:*** *Any candidate or party that makes a reasonable claim of having been defamed or otherwise injured by a broadcast should either be granted the opportunity to reply or be entitled to a correction or retraction*

*by the broadcaster or by the person who made the allegedly defamatory statement. The reply or correction should be broadcast as soon as possible.*

***GUIDELINE 8:*** *Government media must be particularly scrupulous in complying with their obligation to provide accurate, balanced and impartial information in their reporting of news and current affairs.*

***GUIDELINE 9:*** *Government media must grant political parties or candidates airtime for direct access programmes on a fair and non-discriminatory basis. For the first multi-party election, it is strongly recommended that all major parties or candidates receive equal time.*

***GUIDELINE 10:*** *The media should broadcast programmes which provide an effective opportunity for journalists, current affairs experts and/or the general public to put questions to party leaders and other candidates, and for candidates to debate with each other.*

***GUIDELINE 11:*** *Government media are obliged to broadcast voter education programmes unless the government has undertaken other information initiatives which are likely to reach as many voters as would the broadcast programmes.*

***GUIDELINE 12:*** *If a broadcaster publishes the results of an opinion poll or election projection, it should strive to report the result fairly and, in particular, to publish all readily available information that would assist the listeners in understanding the poll's significance.*

***GUIDELINE 13:*** *Election broadcasts must be monitored and regulated by an independent and impartial body.*

***GUIDELINE 14:*** *Actions and decisions of a body charged with regulating election broadcasts must be subject to judicial review, which must be carried out on an expedited basis.*

***GUIDELINE 15:*** *In plebiscites or referendums, where the voters have the chance only of voting "yes" or "no" to a particular proposition, equal airtime must be allocated to each side. This formula stands even if more parties support one side of the issue than the other. Guidelines 1-14, to the extent relevant, are also applicable.*

***GUIDELINE 16:*** *The preceding guidelines should be appropriately modified and applied by local and regional government media in local, municipal and regional elections.*

A number of additional points need to be made regarding Guideline 13. Such an independent and impartial body for monitoring and regulating election broadcasts does not currently exist. At present, the National Broadcasting Commission fails to meet these criteria. In the absence of reform of the National Broadcasting Commission, a separate body should be established especially to handle election-related matters. This body may include representatives or appointees of government and political parties, but it should not be able to take decisions only upon the strength of the votes of the appointees of the government or of one party. If any parties are represented, it is recommended that the body include representatives of at least all major political parties. It is recommended that the body include independent media professionals. Furthermore, government media should facilitate media monitoring by non-governmental, non-partisan organizations, including by making tapes of election broadcasts available free of charge or at minimal cost. Finally, the election broadcast regulatory authority should be empowered to recommend, subject to judicial review, that an election be postponed, suspended or annulled if it can be established that there have been breaches of international or national law which might significantly affect or have affected the outcome.

Although small and of correspondingly less importance, the private broadcasting sector could also be involved in these discussions and encouraged to commit itself, as a matter of professional responsibility, to comply with the guidelines which apply to government media. With regard to news coverage, the private broadcasting sector should commit itself to observing high professional standards, for example in relation to the maintenance of balance and the separation of factual reporting from editorial comment. While private radio and television stations should not be under an obligation to carry direct access slots during the run-up to elections, if any decide to do so they should follow the same guidelines as those set out for state- and federal-owned radio and television. Finally, private radio and television stations presently are under no obligation to broadcast slots on voter education during the run-up to elections, but they should consider voluntarily agreeing to do so.

There are no grounds for believing that these, or similar, interim measures will be pursued in good faith by the present military government during the remainder of the "transition" unless there is concerted international pressure upon it to do so. For example, what prospect can there be of an inclusive, consensual process for agreeing guidelines of this character when the procedures for registering political parties have been framed in order to eliminate political critics of the "transition" from standing in elections? The range of political viewpoints between which Nigerians may choose in elections has been unfairly restricted, regardless of whether these viewpoints are given equal and impartial access to coverage by the government media.

It is little wonder that the current "transition" has been called a sham by Nigerian human rights and pro-democracy activists.

## **b) Institutional and legal reforms**

What principles should guide broader efforts to reform the entire institutional and legal framework for radio and television broadcasting in Nigeria? In 1995, ARTICLE 19 and Index on Censorship published *Measures Necessary to Protect and Promote Broadcasting Freedom*. Below is an abbreviated version of these measures:

***Recommendation 1:*** *The independence of the governing body of the public broadcaster should be guaranteed by law.*

***Recommendation 2:*** *The principle of editorial independence should be guaranteed by law.*

***Recommendation 3:*** *Public service broadcasting should be adequately funded by a means that protects the broadcaster from arbitrary interference with its budgets.*

***Recommendation 4:*** *The process for allocating broadcasting licences should be independent and non-discriminatory.*

***Recommendation 5:*** *Licences must be allocated by a body that is independent of government.*

***Recommendation 6:*** *Licences should be revoked only in extreme circumstances.*

***Recommendation 7:*** *Measures to limit media concentration and cross-ownership should be adopted to ensure pluralism in information sources.*

***Recommendation 8:*** *The government should create a legal climate conducive to freedom of expression.*

***Recommendation 9:*** *The government should create a favourable economic climate for broadcasting.*

***Recommendation 10:*** *The government should counter the impact of any "hate speech" by ensuring the maximum diversity of viewpoints on the airwaves.*

***Recommendation 11:*** *The government must ensure that the public are adequately informed about all matters related to their right to vote effectively. An independent mechanism should be established to ensure that all political parties have equitable access to, and fair coverage in, the public broadcast media during elections.*

***Recommendation 12:*** *An independent mechanism should be established for responding to broadcasting complaints.*



Several points of further clarification are required regarding some of the above recommendations.

A crucial aspect of recommendation 1 is ensuring that public radio and television are governed by a board which is independent of government. Government officials, Members of Parliament and political party representatives should not be eligible to serve on a governing board. Members of a board should not maintain any interest, financial or political, that could impair their ability to discharge their duties in a fair and impartial manner. Members should view themselves as independent trustees of the public interest in broadcasting, not as representatives of any special interests. Board members should be appointed for a fixed term, preferably after public hearings, according to publicly available criteria which guarantee diversity of political, ethnic, social and political background. The selection process should contain safeguards to ensure that neither the government nor any political party will be able to dominate or undermine it. The governing board should appoint the directors of public radio and television, who should report to the board; this will further promote the directors' independence from government. The directors of radio and television should be broadcasting professionals and should not hold leadership positions in any political party.

If recommendation 2 is to become reality, the editorial policy of publicly funded broadcasting should follow agreed standards of political fairness and impartiality. However, these should not be set down in such detail as would interfere with editorial independence. A difficult balance must be struck here. Editorial independence means the right of journalists and editors to make decisions on the basis of professional criteria, consistent with international standards, such as the newsworthiness of an event or its relevance to the public's right to know.

Funding of public service broadcasting in Nigeria, as covered by recommendation 3, is likely to come from the state for the foreseeable future. However, funding safeguards should be incorporated into the funding process in order to ensure to the greatest extent possible that the government or parliament does not reduce or manipulate broadcasting budgets in retaliation for programming decisions with which they disagree. If a system of licence fees for viewers and listeners is introduced, it should not reduce the broadcaster's audience levels.

Under recommendation 4, procedures should be established, preferably by statute, whereby private broadcasters can apply for and be awarded broadcasting licences according to a process that is fair and non-discriminatory, and for rates that are commercially viable. The criteria for awarding licences should take account of the public interest in promoting pluralism in views, programming and ownership. Licence application hearings should be public, so that the merit of an application and the reasons for a decision about the application are matters of public knowledge and debate.

The independent licensing authority stipulated by recommendation 5 may be the one which manages public broadcasting or a separate authority. However, a single authority with jurisdiction over public and private broadcasting is recommended because it

facilitates the development and implementation of broadcasting policy, including in relation to ensuring media pluralism. The independent licensing authority should also have responsibility for the allocation of frequencies and other technical aspects of broadcasting.

Regarding recommendation 6, by "extreme circumstances" is meant situations such as where a broadcaster has been engaged in direct incitement to racial or ethnic violence. Both of these categories come within a definition of "hate speech", as specified in recommendation 10.

While the authorities are obliged to take action to stop "hate speech", including through the revocation of licences, this is not the most effective way to combat "hate speech". "Hate speech" is best combated by more speech, from a diversity of sources, reflecting a tolerance of viewpoints. The most appropriate source through which to disseminate such viewpoints is through independent public broadcasting corporations, which generally reach the largest audiences. It is crucial to have an independent licensing body which is mandated to ensure the existence of a variety of viewpoints on the air. Finally, broadcasters should not be punished for broadcasting the views of others that are likely to incite hatred or violence provided that they do not themselves endorse those views, and provided that they broadcast views or else publicly express their disagreement with the views broadcast.

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## VI FREEDOM OF INFORMATION

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The Nigerian Constitution does not recognize any right of access to official information either by members of the public generally or by the press. No legislation or administrative procedures exist which specify channels for the release of official information to the public. The **Official Secrets Act** (1962) is solely concerned with establishing the terms upon which access to official information may be restricted.

The **Official Secrets Act** is made more forbidding by the fact that government documents are routinely marked "classified", "(top) secret" or "confidential". Members of the public have virtually no access to such documents except for those voluntarily released by very senior government officials or issued as press statements. There is no attempt to distinguish between documents which are genuinely confidential and those for which there is no basis for any sort of security classification.

Furthermore, anyone taking up government employment is obliged to subscribe to an oath of secrecy. Numerous other laws contain provisions prohibiting the disclosure of information even when no justification for such prohibition exists or is stipulated.

A democracy's health and longevity depends upon public trust and confidence in government and this is nourished by open access to information. A government is responsible to individuals and communities, which in turn have a right to know what the government is doing on their behalf. Openness and transparency help to improve government decisions, encouraging rational policy choices and enhancing the political process.

Access to information held by government is important if individuals are to be able effectively to challenge monopolies, to gain information about government policies and practices, and to obtain information on matters affecting the health and daily lives of individuals. Even if citizens at large do not themselves actively pursue information through legislation, they may support such access for their representatives such as the media, interest groups, trade unions, non-governmental organizations, and legislators. Even if access to information simply provides information after decisions have been taken, it still gives people an opportunity to know why the government came to that decision.

In countries where there is no constitutionally guaranteed right of access to information but where access to information legislation has been enacted, such legislation is founded upon a presumption of accessibility. A responsibility is thereby placed on public agencies to justify why such access is being denied, to base such a justification upon specific provisions of law and to clearly set out its reasons. This responsibility can be more appropriately discharged where there are clear, narrow exceptions set out in law and where an adequate review or arbitration mechanism is in place.

Freedom of information is also central to the right to development. As South African experts have concluded: "Open debate and transparency in government and society are crucial elements of reconstruction and development. This requires an information policy that guarantees active exchange of information and opinion among all members of society" Such a policy should include permitting the formation of independent human rights groups and other non-governmental organizations and encouraging their active participation in the decision-making process. In addition, there should be free and open debate about the policy alternatives which may exist to ensure that democratic principles are not set aside in the quest for development.

In two studies in the 1980s, the UN considered the factors that have an impact on development. These included the free choice by all citizens of the model for development, full participation in the definition and application of development policy, and the existence of effective safeguards against arbitrary government action and in favour of respect for human rights. In one of these reports, the UN stated that the "exercise of the various rights to participate may be as crucial in ensuring satisfaction of the right to food as of the right to take part in public affairs." The UN specified several rights considered particularly important to participation. These included freedom of expression and information.

The social and political role of information is critical in contemporary society. The right to seek and have access to information is one of the most essential elements of freedom of speech and expression. As the UN Special Rapporteur on Freedom of Opinion and Expression has stated: "Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked".

## **The Campaign in Nigeria**

In 1993, the Civil Liberties Organization, Media Rights Agenda and the Nigerian Union of Journalists agreed to work together to campaign for the introduction of freedom of information legislation in Nigeria.

In 1994, based on consultations among the three groups and drawing from the experience of other countries operating freedom of information legislation, Media Rights Agenda produced a draft bill entitled the Access to Official Information Act. This became the basis for further discussions and debates on the issue.

In March 1995, the three participating organizations jointly organized a two-day technical workshop to examine and revise the draft, taking into consideration the views of other interest groups which might use the proposed legislation. Participants in the workshop included human rights workers, journalists, lawyers, university lecturers and representatives of the National Broadcasting Commission and the Federal Ministry of Information. Based on discussions at the workshop, Media Rights Agenda produced a second draft of the proposed legislation later that year. In accordance with a resolution passed at the workshop, the second draft was entitled the Access to Public Records and Information Act.

Under this draft, members of the public have a right of access to information held by government officials or departments. The preamble states that the aim of the Act is "to make public records and information more freely available, to provide for public access to public records and information to the extent consistent with the public interest and the protection of personal privacy, to protect serving public officers from administrative retaliation and other adverse consequences for disclosing certain kinds of official information without authorization, to establish procedures for the achievement of those purposes, and to repeal certain statutory provisions inconsistent with the terms and purposes" of the Act.

The draft provides for the payment of fees (not exceeding 200 Naira — US\$2.5) by anyone requesting access to official records. These fees are intended to cover the cost of producing copies of documents, or reproducing records stored in some other retrieval systems such as computers, microfilm, video or audio equipment, or to cover additional personnel requirements where an extended search for records or information would be

involved in the request. The rationale for this provision is to forestall a situation where the government cites lack of resources as a reason for its unwillingness to enact freedom of information legislation or implement a regime of access to official information.

The draft also recognizes certain exemptions from the general right of access to all official records and information and outlines circumstances where the government may decline to grant access to certain kinds of information. Such circumstances include:

- a) when the request for access relates to information obtained in confidence by the government from a foreign government or institution, unless that foreign government or institution has consented to the information being released or has itself previously made the information public;
- b) when the request is for information pertaining to investigative techniques or plans for specific investigations which would reasonably be expected to be injurious to the conduct of any lawful investigation, such as the identity of a confidential source of information; or information which may be injurious to the security of any penal institution; or information which could reasonably be expected to facilitate the commission of a crime;
- c) when the request is for information whose release may be injurious to the conduct of the international affairs of Nigeria or its defence;
- d) when the request relates to trade secrets of third parties or trade and financial information, the disclosure of which could prejudice the competitive position of the government or any of its institutions;
- e) when the request pertains to any information covered by solicitor/client privilege;
- f) when the request is for personal information, especially relating to the health records of any individual, unless public interest in the disclosure of such information clearly outweighs the protection of the privacy of that individual.

The potential scope of these exemptions is mitigated by the fact that the draft also provides that all decisions by government officials to refuse access to any record or information should be subject to judicial review.

A key feature of the draft legislation is a requirement that every government or public institution should publish in the official *Federal Gazette* once every year a description of the institution, its responsibilities, including details of the programmes and functions of each division, branch or department, and a description of all classes of records under the control of the institution in sufficient detail to facilitate the exercise of the right of access.

At the March 1995 workshop, a Campaigns and Monitoring Committee was established to carry out follow-up actions on the campaign for the enactment of the second draft into law. Although getting constitutional backing for the legislation was crucial, and the National Constitutional Conference was then still in session, it was agreed by the participating groups that it would be inappropriate to lobby the Conference, which they rejected as lacking credibility. Therefore, the draft was never submitted to the Conference. However, it was sent to the Minister for Information, and the Minister of Justice and Attorney-General. Neither has to date responded. The Civil Liberties Organization, Media Rights Agenda and the Nigerian Union of Journalists continue to invite views from concerned parties within Nigeria and in the international arena on the current draft of the Access to Public Records and Information Act.

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## VII THE ROLE OF THE INTERNATIONAL COMMUNITY

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If the international community is to adequately discharge its responsibilities on Nigeria during what remains of the current "transition", it needs to focus much more deeply and concertedly than it has done hitherto on what is "sufficient" to ensure that basic human rights are fully protected.

The international community should remind the present Nigerian Government that last year it expressed a willingness to carry out a review of the overall legal framework for the protection of human rights in Nigeria, after a recommendation to that effect by the UN Human Rights Committee in April 1996, and should call for it to begin doing so in earnest. It should then make it clear to the government that unless it implements over the next year a comprehensive programme of human rights reform, including with regard to media freedom, its "transition to civilian rule" can have no credibility.

It should also make it clear that it will no longer tolerate continued obstruction by the Nigerian Government of international efforts to monitor and protect human rights in Nigeria. Over the past year, the Nigerian Government has failed to cooperate with efforts by the UN, the African Commission on Human and Peoples' Rights and the Commonwealth to send investigative missions to Nigeria. When each organization did finally succeed in sending missions to Nigeria, the authorities did their utmost to control and restrict their activities.

### a) UN Commission on Human Rights

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The decision of the UN Commission on Human Rights at its 53rd session in Geneva in April 1997 to appoint a country Special Rapporteur on Nigeria is a welcome indication that the international community has not lost all momentum on Nigeria. At its 52nd session in 1996, the UN Commission had been critical of Nigeria's human rights performance and mandated the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers to visit Nigeria and provide a joint report for the consideration of the 53rd session. However, the Nigerian Government persistently obstructed the efforts of the two Special Rapporteurs to visit. Although it was announced that the UN Special Rapporteurs would visit Nigeria between 23 February and 5 March 1997, the authorities imposed conditions upon their visit regarding their freedom of movement and their access to political prisoners which were unacceptable. The visit was cancelled. The UN Special Rapporteurs submitted their report to the Commission despite having been unable to visit Nigeria.

The new country Special Rapporteur will make an interim report to the 52nd session of the UN General Assembly in November 1997 and a final report to the 54th session of the UN Commission in March 1998. All UN member states should now commit themselves to do everything within their power to ensure that the Nigerian Government fully cooperates with the new country Special Rapporteur and implements the recommendations of the thematic Special Rapporteurs in their joint report to the 53rd session. The country Special Rapporteur should vigorously pursue the enquiries initiated by the thematic Special Rapporteurs. He/she should also ensure that he/she makes specific enquiries into the situation in Nigeria regarding freedom of expression and information, including media freedom. He/she should seek to agree with the Nigerian authorities an acceptable basis for visits to Nigeria prior to writing each of his/her reports. The country Special Rapporteur should then ensure that both the reports include specific recommendations for action on basic human rights by the Nigerian Government. Finally, the country Special Rapporteur should take steps to ensure that information is shared and exchanged with the Special Rapporteur on Freedom of Opinion and Expression.

The Nigerian Government has treated the UN Commission on Human Rights with contempt in recent years. By appointing a country Special Rapporteur, the UN Commission has passed an important test of credibility.

## **b) African Commission on Human and Peoples' Rights**

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The credibility of the African Commission on Human and Peoples' Rights concerning Nigeria has been damaged by its mission to that country in March 1997. Its original decision to send a mission, taken in 1995 following the execution of Ken Saro-Wiwa and eight other Ogonis, was an innovatory step. However, after months of unsuccessfully trying to agree the terms and time for the visit of the mission, the Commission allowed itself to be manoeuvred into visiting shortly after the UN thematic Special Rapporteurs

had refused to accept what they believed were unacceptable conditions upon their visit. The visit of an African Commission delegation was criticized by many Nigerians as untimely and ineffective.

There is no discernible sign that the mission is likely to produce tangible results. A formal report to the African Commission has not yet been submitted. Once it has, it should be placed on public record. The experience of the African Commission's mission to Nigeria shows that there is a need to agree a number of principles for future country missions of this nature. At the next meeting of the African Commission in October 1997, it should be agreed that in future all reports arising from such missions should be made public. It should also be agreed that in future African Commission delegations should be allowed to enter the territory of states parties without obstruction, should be free to undertake their activities without government restriction or hindrance, and should ensure that the views and evidence of representatives of civil society are adequately considered.

The capacity of the African Commission to monitor adherence to the African Charter on Human and Peoples' Rights has increased in recent years with the appointment of a number of Special Rapporteurs. But there is as yet no Special Rapporteur on Freedom of Opinion and Expression. The establishment of a thematic rapporteur on freedom of expression and opinion is essential if the African Commission is over time to become more effective in promoting adherence to all of the fundamental rights set out in the African Charter. The African Commission should establish such a Special Rapporteur at its next meeting in October 1997. The Special Rapporteur on Freedom of Opinion and Expression should be mandated to visit Nigeria and to report back to the African Commission before its next meeting. An effective intervention by such a Special Rapporteur during the final year of the "transition to civilian rule" would do much to enhance the credibility of the African Commission with regard to Nigeria.

## **c) The Commonwealth**

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Another intergovernmental organization for which Nigeria is an important test of credibility is the Commonwealth. The Commonwealth suspended Nigeria's membership at its last summit in November 1995 in Auckland following the grossly unfair trials and executions of Ken Saro-Wiwa and eight other Ogonis. In conformity with the Millbrook Plan of Action, it also set up an eight-member Commonwealth Ministerial Action Group (CMAG) to deal with serious or persistent violations of the 1991 Harare Declaration. Its remit in the first instance includes Gambia and Sierra Leone, as well as Nigeria. A report on Nigeria by CMAG is due to be considered by the Commonwealth Heads of Government ahead of their biannual meeting (CHOGM) in October 1997 in Edinburgh. That meeting will decide whether the Nigerian Government has done enough, in terms of improving human rights and moving towards restoring democracy, for its suspension from the organization to be lifted.



CMAG declared that it intended to visit Nigeria prior to writing its report. It initially rejected restrictions which the Nigerian authorities sought to place upon its proposed mission to the country. However, when a CMAG mission finally visited Nigeria in November 1996, it accepted restrictions which many felt were excessive. In particular, it failed to meet Nigerian political prisoners, including Chief Abiola, or hold proper meetings with leading Nigerian NGOs critical of the government. The Canadian Government, one of the members of CMAG, was amongst the critics of the mission. There was no Canadian representation on the mission.

At its sixth meeting in London in February 1997, CMAG sought to counter such criticisms by inviting further written submissions "from all interested parties" by the end of April 1997, "with a view to enabling CMAG to invite oral presentations at its next meeting in July 1997", prior to the finalization of its report to Commonwealth Heads of Government. When making its written submission to CMAG on 28 April 1997, ARTICLE 19 called upon CMAG to ensure that the views and evidence of Nigerian human rights organizations and other non-governmental groups were actively sought, in particular, that they should be adequately represented at the oral hearings in July 1997.

If CHOGM is to take effective and appropriate action on Nigeria, it is vital that the report which CMAG is due to produce should contain specific recommendations and a timetable for action on human rights, including media freedom, by the Nigerian Government, and should state clearly that without the implementation of a comprehensive programme of human rights reform, the "transition to civilian rule" can have no credibility.

Notwithstanding its flaws, the establishment of CMAG in 1995 was a major step forward for the Commonwealth. CMAG should be further developed, not scrapped. An important signal that CMAG is working towards greater openness and transparency in its *modus operandi* would be a commitment at its seventh meeting in July 1997 that its final report on Nigeria will be made public well in advance of CHOGM. Commonwealth Heads of Government should then address questions of openness and transparency systematically at Edinburgh when they review the operation of CMAG during its first two years. They should agree three principles for the future operation of CMAG: firstly, that all CMAG reports, including those by missions, should be published; secondly, that all member states, or states which wish to (re)join the Commonwealth, should not obstruct the efforts of CMAG representatives to enter the country and should not restrict or hinder their activities; and, finally, that CMAG will ensure that the views and evidence of representatives of civil society are always adequately considered.

The 1991 Harare Declaration makes no explicit mention of the right to freedom of expression and information. The parlous state of media freedom in Nigeria highlights the need for the Commonwealth to rectify that silence. Now is the time for proposals for the establishment of a Commonwealth Declaration on Freedom of Expression to be actively taken up. CHOGM should adopt such a declaration at Edinburgh in October 1997. By doing so, Commonwealth member states would be publicly recognizing that fundamental human rights cannot be safeguarded unless there is freedom of expression, including media freedom.

Finally, there is the issue for CHOGM of whether to lift Nigeria's suspension from the Commonwealth. Nearly two years on from Auckland, the human rights concerns about Nigeria which were expressed then by Commonwealth leaders have not been adequately addressed by the Nigerian Government. A further 19 Ogonis languish in appalling prison conditions threatened ultimately with an identical fate to that which befell Ken Saro-Wiwa. There has been no action taken with regard to the 43 people, including four journalists, tried and imprisoned on trumped-up treason charges following farcical secret trials in 1995. And, not least, media freedom remains hostage to the whims of the Nigerian authorities. There can be no interpretation of the 1991 Harare Declaration which justifies the lifting of Nigeria's suspension: at the very least it should be maintained.

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## VIII CONCLUSIONS AND RECOMMENDATIONS

The so-called "human rights reforms" introduced during 1996 by the Nigerian authorities did nothing to end the harassment and intimidation of journalists working for the independent press or to establish an institutional and legal framework which properly safeguards media freedom. Since 1996, even the pretence of commitment to reform appears to have been abandoned. Media Rights Agenda and ARTICLE 19 call upon the Nigerian Government, even at this late stage, publicly to commit itself to a comprehensive programme of human rights reform, including with regard to media freedom. They also call upon the international community to resist all temptation to succumb to fatalism about Nigeria.

The recommendations for action which follow are directed to the Nigerian Government and the international community. But the challenge of safeguarding media freedom does not rest solely with the Nigerian Government or the international community. Part of the burden falls upon Nigerian journalists themselves. Osa Director, Kano correspondent for *Tell* magazine, claims that the harassment and intimidation tactics of the Nigerian Government over the past three years have had considerable success in cowing the journalistic profession as a whole. He says that today "about 90 per cent of journalists are playing a safe game". Osa Director responds defiantly: "I refuse to be infested with the virus of docility". Nigerian journalists must fight the culture of fear and self-censorship which the authorities have worked so hard to create. The plight of Kunle Ajibade, Chris Anyanwu, George Mbah and Ben Charles Obi shows how high the cost of doing so can be. But the surest way of helping to secure their eventual freedom is for all Nigerian journalists to commit themselves — as their four colleagues did — to carrying out their work independently and impartially, without fear or favour.

### Recommendations

*Media Rights Agenda and ARTICLE 19 call on the Nigerian Government to:*

## **1 End all attacks on media organizations and those who work for them**

Specifically, the government should:

- immediately and unconditionally release Kunle Ajibade, Chris Anyanwu, George Mbah and Ben Charles Obi, the four journalists convicted in 1995 after grossly unfair trials in connection with the alleged "coup plot";
- immediately and unconditionally release Jude Sinnee and Okina Deesor — and all other journalists currently detained without charge or trial;
- order independent and impartial investigations into the alleged "disappearances" of Baguda Kaltho, senior correspondent for *The News*, and Chinedu Offoaro, a reporter for the *Guardian*, in March and May 1996 respectively;
- order independent and impartial investigations into the cases of Babafemi Ojudu, senior editor at *The News*, who was severely beaten while in police custody in August 1996, and the shooting in February 1996 of Alex Ibru, owner of the Guardian newspaper group;
- compensate individuals and media bodies which have suffered financial losses as a result of government actions;
- take immediate steps to end interference by government officials or governing boards in the editorial decision-making processes of media outlets which are currently federal- or state-owned, pending the implementation of necessary legal reforms (see recommendation 3 below).

## **2 Embark upon a comprehensive programme of reform to safeguard human rights, including media freedom**

This programme should include:

- repeal of the **State Security (Detention of Persons) Decree, No. 2 of 1984**, and all other decrees which allow for the indefinite or incommunicado detention without trial of political prisoners;

- repeal of the **Federal Military Government (Supremacy and Enforcement of Powers) Decree, No. 12 of 1994**, and all other decrees which "oust" the jurisdiction of the courts;
- repeal of the **Constitution (Suspension and Modification) Decree, No. 107 of 1993**, and the **Treason and Treasonable Offences Decree, No. 29 of 1993**;
- repeal of the **Treason and Other Offences (Special Military Tribunal) Decree, No. 1 of 1986**. All other special tribunals should immediately be brought fully into line with international fair trial standards or, if that is not possible, abolished;
- repeal of the **Offensive Publications (Proscription) Decree, No. 35 of 1993**;
- repeal of those sections of the **Transition to Civil Rule (Political Programme) Decree, No. 1 of 1996** which criminalize peaceful criticism of, or activities against, the current "transition";
- urgent review of all statutory provisions on **sedition** (e.g. sections 50-52 of the federal Criminal Code and the Penal Code for the Northern States of Nigeria) and the **publication, reproduction or distribution of "false" information** (e.g. section 59 of the federal Criminal Code) to ensure that the definition of these offences refers solely to an intention which is likely to incite violence;
- repeal of all statutory provisions which permit the use of the criminal law to punish **defamation** (see sections 373-81 of the federal Criminal Code and the **Defamatory and Offensive Publications Act**); review of all statutory provisions on **civil libel** (see sections 373-81 of the federal Criminal Code and the **Defamation Act**) to bring them into line with the recent developments in international jurisprudence;
- review of the entire framework of legal restrictions upon freedom of expression and access to information regarding national security. In particular, repeal of the **Official Secrets Act** (1962) and its replacement with freedom of information legislation which puts the onus on government to show why and when it should withhold information on security grounds; it should contain provisions which establish that only in the most exceptional circumstances may "security" considerations be used as a reason to compel a journalist to reveal a confidential source and that this should be the decision solely of a judicial body.

### **3 Undertake an urgent review of the institutional and legal framework at federal and state-levels for the regulation and control of the media**

This review should include:

- repeal of the **Newspapers Decree, No. 43 of 1993**;
- repeal of the **Nigerian Press Council Decree, No. 85 of 1992** and abandonment of proposals to amend the decree in order to create a special "press court";
- amendment of the **National Broadcasting Commission Decree, No. 38 of 1992**, to create a governing board and financial structure which is fully independent of government; repeal of section 6 of the Decree, which gives the government powers to direct the Commission in the exercise of its duties; repeal of section 9, which allows the Commission to withhold licences where the station has operated in a way "detrimental to the national interest";
- amendment of the **News Agency of Nigeria Act (1976)**, the **Federal Radio Corporation of Nigeria Act (1976)** and the **Nigerian Television Authority Act (1976)** to create governing boards and financial structures which are fully independent of government. The power of the government to intervene editorially in these bodies should also be repealed and the monopolies which they enjoy reviewed;
- the ending of the control or ownership at both federal- and state-level of newspapers and news magazines, including the federal-controlled *Daily Times* and the *New Nigerian*;
- review of the current structure of import duties on essential materials for the production of newspapers and magazines, including newsprint, and the establishment of a positive preference for low duties upon such materials.

### **4 Ensure that the new Constitution fully protects freedom of expression and information, including media freedom**

Specifically, the government should:

- make public the text of the new Constitution so that it can be subject to proper scrutiny;

- permit open and free public debate on the new Constitution, and agree with all interested parties an acceptable basis for amending the new Constitution to bring it into line with international human rights standards;
- support the repeal of any clauses which impose obligations upon the media to uphold state policy and which give the government the discretion to retain complete control over radio and television broadcasting;
- support the incorporation of the full wording of Article 19 of the ICCPR into the new Constitution;
- support the incorporation in the new Constitution of specific guarantees of the right to media freedom and the right of access to information held by the state;
- support the review of any "clawback clauses" in the new Constitution which permit the limitation of fundamental human rights, including media freedom, in non-emergency situations;
- support the incorporation of a provision into the new Constitution that the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment and the right to freedom of thought, conscience and religion may never be derogated from in any circumstances; in addition, support the incorporation of a provision prohibiting the suspension of habeas corpus in any circumstances.

## **5 Ensure that the conditions are established for equal and impartial coverage by the media of all political viewpoints during the remainder of the "transition to civilian rule"**

Specifically, the government should:

- support the agreement by all interested parties of guidelines for fair coverage of elections by the government media during the remainder of the "transition"; these should cover both the amount of time given to the various political viewpoints and the nature of the coverage of them;
- support the establishment of an independent body to monitor the implementation of the guidelines.

## **6 Cooperate fully with the international community in taking these steps**

*Media Rights Agenda and ARTICLE 19 call on the international community to:*

- put concerted pressure on the Nigerian Government to take the steps outlined above;
- do all it can to ensure that the Nigerian Government cooperates fully with the UN country Special Rapporteur on Nigeria appointed by the UN Commission on Human Rights at its 53rd session in Geneva in April 1997;
- make it clear to the Nigerian Government that, unless it implements a comprehensive programme of human rights reform, including with regard to media freedom, the "transition to civilian rule" can have no credibility;

*Media Rights Agenda and ARTICLE 19 call upon the UN country Special Rapporteur to:*

- vigorously pursue the enquiries begun by the thematic Special Rapporteurs on extrajudicial, summary and arbitrary executions and on the independence of judges of lawyers;
- make specific enquiries into the situation regarding the rights to freedom of expression and information, including media freedom, which are an integral part of his/her mandate on Nigeria;
- ensure that his/her interim report to the 52nd session of the General Assembly and his/her final report to the 54th session of the UN Commission both include specific recommendations for action on these basic human rights by the Nigerian Government;
- seek an acceptable basis for two visits to Nigeria before the 54th session of the UN Commission — the first prior to writing his/her interim report to the 52nd session of the General Assembly, and the second prior to writing his/her final report to the 54th session of the UN Commission;
- take steps to ensure that information is shared and exchanged with the Special Rapporteur on Freedom of Opinion and Expression.

*Media Rights Agenda and ARTICLE 19 call upon the African Commission on Human and Peoples' Rights to:*

- make public the full report of the March 1997 mission to Nigeria as soon as it has been completed;
- agree, at its next meeting in October 1997, the following principles: that in future all reports by such missions should be made public; that such missions should ensure that the views and evidence of representatives of civil society are adequately considered; and that states parties should allow such missions to undertake their activities without restriction or hindrance;
- establish, at its next meeting in October 1997, a Special Rapporteur on Freedom of Opinion and Expression and to mandate the new Special Rapporteur to visit Nigeria as a matter of priority and report to the African Commission at its first meeting in 1998.

*Media Rights Agenda and ARTICLE 19 call upon CMAG to:*

- ensure that its final report is made public well in advance of CHOGM and contains specific recommendations for action on human rights, including media freedom, by the Nigerian Government;
- ensure that the views and evidence of Nigerian human rights organizations and other non-governmental groups have been adequately considered when preparing its final report.

*Media Rights Agenda and ARTICLE 19 call upon CHOGM to:*

- at the very least maintain Nigeria's suspension from the Commonwealth, given the failure of the Nigerian Government to respond adequately to the human rights concerns expressed by Commonwealth leaders at the 1995 Auckland summit;
- demonstrate that lessons have been learnt from the operation of CMAG with regard to Nigeria by committing the Commonwealth in future to a more open and transparent approach in its efforts to establish full observance by member states of the principles embodied in the 1991 Harare Declaration on human rights;

This should include agreement of the following principles regarding CMAG: that all reports by it should be made public; that member states, or states which wish to be members, should not obstruct entry by CMAG representatives or restrict or hinder the activities of such representatives



once in the country; that the views and evidence of representatives of civil society should always be adequately considered by CMAG;

- adopt a Commonwealth Declaration on Freedom of Expression and Information.

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