

## NIGERIA

### CCPR A/51/40 (1996)

(discussion at the fifty-sixth session)

#### 1. Introduction

254. Deeply concerned by recent executions after trials that were not in conformity with provisions of the Covenant, the Human Rights Committee on 29 November 1995, acting through its Chairman, requested the Government of Nigeria to submit its initial report without further delay for consideration by the Committee at its fifty-sixth session in March/April 1996 and, in any event, to submit by 31 January 1996 a report, in summary form if necessary, relating to the application of articles 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights in the current situation.

255. The Committee appreciates the decision of the Government of Nigeria to submit its initial report (CCPR/C/92/Add.1) in time for consideration at the Committee's fifty-sixth session, as scheduled.

256. Given the importance of the report in the current situation and the constraints of the Nigerian delegation in being available for only one day, the Committee decided to divide the examination of the report into two parts, namely, the first part on articles 6, 7, 9 and 14 and the second part on the remaining articles of the Covenant.

257. The first part was considered at the 1494<sup>th</sup> and 1495<sup>th</sup> meetings of the Committee, on 1 April 1996. Further consideration of the report was adjourned to the Committee's fifty-seventh session (see paras. 267-305 below).

258. In the light of the examination of the first part of the report and the observations made by members of the Committee, the Committee adopted on 3 April 1996, at its 1499<sup>th</sup> meeting, the following preliminary observations and urgent recommendations.

#### 2. Principal concerns in respect of articles 6, 7, 9 and 14

259. The Committee noted fundamental inconsistencies between the obligations undertaken by Nigeria under the Covenant to respect and ensure rights guaranteed under the Covenant and the implementation of those rights in Nigeria.

260. In particular, the incommunicado detention for an indefinite period and the suppression of habeas corpus constitute violations of article 9 of the Covenant.

261. The establishment by presidential decree of several types of special tribunals, including their composition and rules of procedure, which exclude the free choice of a lawyer, and the absence of

any provisions for appeals constitute violations of rights provided under article 14 of the Covenant, as well as of article 6, paragraphs 1 and 2, when a sentence of death is pronounced.

262. The failure to respect those guarantees led to the arbitrary deprivation of life of Mr. Ken Saro Wiwa and the other accused.

263. There did not appear to have been any serious investigations into allegations of torture, ill-treatment or conditions of detention, which raise serious issues under article 7 of the Covenant.

### 3. Urgent recommendations

264. The Committee, in particular, recommends that all the decrees establishing special tribunals or revoking normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts (such as the State Security (Detention of Persons) Decree No. 2 of 1984, the Federal Military Government Supremacy and Enforcement of Power Decree No. 12 of 1994, the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987 and the Treason and Other Offences (Special Military Tribunal) Decree No. 1 of 1986), which violate some of the basic rights under the Covenant, be abrogated and that any trials before such special tribunals be immediately suspended.

265. The Committee recommends that urgent steps be taken to ensure that persons facing trial are afforded all the guarantees of a fair trial as explicitly provided in article 14, paragraphs 1, 2 and 3, and to have their conviction and sentence reviewed by a higher tribunal, in accordance with article 14, paragraph 5, of the Covenant.

266. The Committee requests the Government of Nigeria to inform the Committee at the resumed consideration of the report in July 1996 of the steps it has taken to implement the above recommendations.

(continued at the fifty-seventh session)

267. Following the examination of the initial report of Nigeria insofar as it related to the application of articles 6, 7, 9 and 14 of the Covenant in Nigeria, the Committee, at its 1499<sup>th</sup> meeting, on 3 April 1996, adopted certain urgent recommendations (paras. 264-266 above). These included the abrogation of all decrees establishing special tribunals or revoking normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts and the adoption of urgent steps to ensure that persons facing trial were afforded all guarantees of a fair trial.

268. The dialogue with Nigeria continued during the fifty-seventh session. At its 1526<sup>th</sup> and 1527<sup>th</sup> meetings, on 24 July 1996, the Committee adopted the following concluding comments.

#### 1. Introduction

269. The Committee welcomes the opportunity to resume the dialogue with the Government of Nigeria through a high-ranking delegation that included members of the newly established National Human Rights Commission.

## 2. Factors and difficulties affecting the implementation of the Covenant

270. The Committee notes that the continuation of the military regime and in particular the suspension of constitutional guarantees of rights by decrees of that regime are an obstacle to the effective implementation of rights protected under the Covenant.

271. The Committee notes also that the failure of the Government to undertake an analysis of laws and procedures, including customary laws, to assess their compatibility with the Covenant has prevented the effective implementation of rights protected by the Covenant.

272. The inter-ethnic and inter-religious violence which persists in Nigeria appears to affect adversely the enjoyment of rights and freedoms protected by the Covenant.

## 3. Positive aspects

273. The Committee notes the measures that have been taken by the Government since the fifty-sixth session to overcome some obstacles to the enjoyment of rights which were identified by the Committee. It appreciates that the newly enacted Civil Disturbances (Special Tribunal) (Amendment) Decree removes military personnel from the Civil Disturbances Tribunal and provides for the right of appeal from its sentences and convictions. It welcomes the repeal of Decree No. 14 of 1994 (which precluded courts from issuing writs of habeas corpus) by the State Security (Detention of Persons) (Amendment) (No. 2) (Repeal) Decree, adopted on 7 June 1996. It also notes that a panel has been established to review cases of detention under Decree No. 2 of 1984.

274. The Committee welcomes the fact that municipal elections have been held, that political parties have been registered, that preparations are proceeding for national elections and that the year for those elections has been announced.

275. The Committee welcomes the adoption of Decree No. 22 of 1995, establishing the National Human Rights Commission, which has been given certain responsibilities regarding the promotion and protection of human rights.

276. It further welcomes the establishment of the Ministry of Women's Affairs and Social Welfare and the measures taken to promote the participation of women at all levels of the political, economic and social life of the country.

277. The Committee also welcomes the willingness of the Nigerian Government to undertake an analysis of the legal system in the light of its obligations under the Covenant and to seek technical assistance from the United Nations Centre for Human Rights in that process.

## 4. Principal subjects of concern

278. The Committee notes with deep concern that measures have not been adopted to address all the issues of concern identified by the Committee at its fifty-sixth session and to implement the urgent recommendations in its preliminary comments (paras. 264-266 above). In particular, the Committee is concerned that the Government of Nigeria has not abrogated the decrees establishing

special tribunals or those revoking normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts. The Committee deplores the statement of the delegation that the decrees are not to be abrogated because they pre-dated the entry into force of the Covenant in Nigeria and are an essential part of military rule in Nigeria. The Covenant precludes measures derogating from the State party's obligations other than in the limited circumstances provided for by article 4, which have not been applied in the case of Nigeria.

279. The Committee expresses its grave concern that the continuation of military government and rule by presidential decrees, which suspend or override constitutional rights and are not open to review by the courts, are incompatible with the effective implementation of the Covenant.

280. The Committee wishes to reiterate that there remain fundamental inconsistencies between the obligations undertaken by Nigeria to respect and ensure rights guaranteed under the Covenant and the implementation of those rights in Nigeria. It is further concerned that there is no legal protection of rights in Nigeria, as a consequence of the non-applicability of the 1989 Constitution and the adoption of Decree No. 107 of 1993 that re-established the 1979 Constitution, while excluding the application of the section dealing with basic rights. Another concern of the Committee is the number of decrees suspending or restoring previous laws, with exceptions in some cases. The result appears to be uncertainty as to which rights may be invoked and which are suspended.

281. The Committee must repeat its earlier expression of serious concern in relation to the establishment by decree of special tribunals which operate without observing the requirements of fair trial, as required by article 14 of the Covenant.

282. The Committee is concerned that, under Nigerian law, the death penalty may be imposed for crimes which do not constitute "the most serious offences", as required by article 6 of the Covenant and that the number of death sentences passed and actually carried out is very high. The fact that sentences of death are passed without the safeguard of fair trial violates the provisions of article 14, paragraph 1, and article 6 of the Covenant. Public executions are also incompatible with human dignity.

283. The Committee notes with concern that, following the introduction of measures to overcome certain specific violations of rights in regard to the composition of special tribunals and the right of appeal, no compensation has been offered to victims of the human rights abuses which had already occurred under the previous measures.

284. The Committee is deeply concerned by the high number of extrajudicial and summary executions, disappearances, cases of torture, ill-treatment, and arbitrary arrest and detention by members of the army and security forces and by the failure of the Government to investigate fully those cases, to prosecute alleged offences, to punish those found guilty and to provide compensation to the victims or their families. The resulting state of impunity encourages further violations of Covenant rights.

285. The Committee is disturbed at the poor conditions in places of detention, including severe overcrowding and lack of sanitation, adequate food, clear water and health care, all of which contribute to a large number of deaths in custody. The Committee emphasizes that it is incompatible

with the Covenant to hold prisoners under conditions which do not meet the basic guarantees provided in article 10 of the Covenant as well as in the United Nations Standard Minimum Rules for the Treatment of Prisoners, despite the adoption by Nigeria of prison regulations and the Prisons Act (1990).

286. The Committee is concerned at the large number of persons detained without charge, and at the lengthy periods of pretrial detention, which are incompatible with article 9 of the Covenant. It is particularly concerned that incommunicado detention is commonly ordered, often for indefinite periods and without access to judicial review, in violation of article 9.

287. The Committee is seriously concerned at violations of the right to freedom of expression, as exemplified by the adoption of a number of decrees suspending newspapers and by the arbitrary arrest, detention and harassment of editors or journalists.

288. The Committee notes with concern the extent of restrictions to freedom of association and assembly in law and in practice. The Committee is concerned by numerous reports that members of unions were harassed and intimidated, sometimes even arrested and detained, and that the dissolution of certain unions was ordered by the Government.

289. The Committee is concerned at the arrest and detention of officers of human rights organizations, involving violations of articles 9 and 22 of the Covenant and interfering with the free exercise of the significant role played by such organizations in the protection of human rights.

290. The Committee takes note of allegations by a Nigerian non-governmental organization (Civil Liberty Organization) that two of its officials were prevented by the State Security Service from attending the fifty-sixth session of the Committee and had their passports impounded. It regrets that despite a letter by the Chairman giving details of those allegations, an investigation was not completed before the fifty-seventh session and no information could be provided about the circumstances alleged. Preventing persons from leaving their country violates article 12, paragraph 2, of the Covenant, and it is incompatible with the State's obligation to cooperate with the Committee to prevent persons from leaving their country in order to attend meetings of the Committee.

291. The Committee expresses its concern about the situation of women in Nigeria, particularly as regards their low level of participation in public life and the continued application of marriage regimes which permit polygamy and do not fully respect the equal rights of women. It expresses particular concern about the widespread practices of forced marriage and of genital mutilation of girls.

##### 5. Suggestions and recommendations

292. The Committee recommends that immediate steps be taken to restore democracy and full constitutional rights in Nigeria.

293. As already recommended by the Committee, all decrees revoking or limiting guarantees of fundamental rights and freedoms should be abrogated. All courts and tribunals must comply with

all standards of fair trial and guarantees of justice prescribed by article 14 of the Covenant.

294. The Committee recommends that a review of the legal framework for the protection of human rights in Nigeria be undertaken in order to ensure that the principles of the Covenant are incorporated into the legal system and that effective remedies are provided in case of violations of rights.

295. The Committee also recommends that Decree No. 107 of 1993 and any other measures which abrogate or suspend the application of the basic rights enshrined in the 1979 Constitution be abrogated so that the legal protection of those rights is restored in Nigeria. The Committee recommends that the State party ensure that there is no such abrogation or derogation in future other than in strict compliance with article 4 of the Covenant -that is, in time of public emergency which threatens the life of the nation and which is officially proclaimed and communicated to the Secretary-General of the United Nations.

296. The Committee requests the State party to take effective measures to ensure the full and equal enjoyment by women of the rights and freedoms protected by the Covenant. Those measures should ensure the equal participation of women at all levels of the political, social and economic life of the country. The Committee recommends that steps be taken, in particular through education, to overcome certain traditions and customs, such as female genital mutilation and forced marriage, which are incompatible with the equal rights of women.

297. The Committee recommends that the State party consider the abolition of the death penalty. Until its abolition the State party must ensure that the application of the death penalty is strictly limited to the most serious crimes, as required by article 6, paragraph 2, of the Covenant, and that the number of crimes for which the death penalty is imposed is reduced to the minimum. Urgent steps should be taken to ensure that persons facing trial are afforded all the guarantees of a fair trial, as explicitly provided for in article 14, paragraphs 1, 2 and 3 of the Covenant, and to have their conviction and sentence reviewed by a higher tribunal, in accordance with article 14, paragraph 5.

298. The Committee recommends that the Nigerian authorities take effective measures to prevent arbitrary, extrajudicial and summary executions, as well as torture, ill-treatment, and arbitrary arrest and detention by members of the security forces, and to investigate any such cases in order to bring before the courts those suspected of having committed or participated in such crimes, to punish them if found guilty and to provide compensation to victims or to their families.

299. The Committee recommends that urgent steps be taken to release all persons who have been detained arbitrarily or without charge and to reduce the period of pretrial detention. The practice of incommunicado detention should cease. Compensation should be provided in the cases indicated by article 9, paragraph 5, of the Covenant.

300. The Committee recommends that the State party take all necessary measures to ensure that the conditions of detention of persons deprived of their liberty fully meet article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The overcrowding of prisons should be reduced by overcoming delays in the trial process, by considering alternative forms of punishment or by expanding the number of prison places.

301. The Committee recommends that the legislation and practice relating to the exercise of freedom of expression be revised and amended in order to comply with the provisions of article 19 of the Covenant.

302. The Committee also recommends that measures be taken to ensure that the right to form and join trade unions is respected, as required by article 22 of the Covenant, and that the plan calling for trade union elections in October 1996 is implemented.

303. The Committee recommends that attention be given by the federal and state authorities to the situation of persons belonging to minorities so that their rights as enshrined in article 27 of the Covenant are fully protected. In this regard, due consideration should be given to the Committee's general comment No. 23 (50).

304. The Committee wishes to emphasize that the consideration of reports submitted under article 40 of the Covenant takes place in public meetings and in the presence of representatives of the State party concerned. Representatives of non-governmental organizations, whether internationally or locally based, are entitled to attend the meetings at which reports are being considered and to provide information to members of the Committee on an informal basis. The Government of Nigeria should ensure that individuals, including members of non-governmental organizations are not prevented from leaving Nigeria to attend the Committee's sessions, should conduct immediate investigations into the allegations mentioned in paragraph 290 above and should inform the Committee of the result of those investigations.

305. The Committee recommends that the Government of Nigeria ensure that the National Human Rights Commission, or other agency, takes steps to inform and educate the community about the rights and freedoms protected by the Covenant and the Constitution and about the remedies available in case of violation of rights. It should seek the assistance of the technical and advisory services of the United Nations Centre for Human Rights in that process.