

# TABLE OF CONTENTS

|  |    |
|--|----|
| 1.Introduction   | 1  |
| 2.Political background   | 3  |
| a)Constitutional developments  | 3  |
| b)Continued repression of political opponents                              | 3  |
| c)Growing international concern  | 4  |
| 3.Secret treason trials of alleged coup plotters                           | 5  |
| a)Initial arrests  | 5  |
| b)Special Military Tribunal  | 5  |
| c)14 July 1995 announcement of convictions                                 | 6  |
| d)1 October 1995 announcement of convictions and commutations              | 7  |
| e)Administrative detainees   | 8  |
| f)Conditions of imprisonment   | 8  |
| 4.Amnesty International's concerns about the treason trials                | 9  |
| a)Denial of the defendants' rights to a fair trial                         | 10 |
| i)The right to be safeguarded from ill-treatment                           | 10 |
| ii)The right to be informed of charges                                     | 11 |
| iii)The right of defence by lawyers of defendants' choice                  | 11 |
| iv)The right to open trial by an independent tribunal                      | 11 |
| v)The right of appeal  | 12 |
| b)Inadequate evidence  | 12 |
| i)Retired and serving armed forces officers                                | 13 |
| ii)Friends, family, journalists and human rights activists                 | 15 |
| 5.Other human rights concerns in Nigeria                                   | 16 |
| a)Moshood Abiola   | 16 |
| b)Administrative detention   | 17 |
| i)Detainees held since 1994  | 17 |
| ii)Detentions in 1995  | 18 |
| c)Trials and detentions in Ogoniland                                       | 19 |
| d)Soldiers detained since 1990 coup attempt                                | 19 |
| e)Return to mass public executions   | 20 |
| 6.Recommendations  | 21 |
| Appendix:Prisoners held in connection with alleged coup plot in March 1995 |    |

# ENIGERIA

## @A TRAVESTY OF JUSTICE

### Secret treason trials and other concerns

## 1. Introduction

Amnesty International is continuing to campaign for the freedom of human rights and pro-democracy activists and other prisoners of conscience who have been imprisoned to silence their criticisms of the military government in Nigeria.

They are among 43 prisoners convicted of treason and related offences after secret and grossly unfair trials by a Special Military Tribunal headed by a member of the military government. They are alleged to have been involved in plotting to overthrow the government in March 1995, a plot whose existence is widely doubted. Although the government commuted the death sentences on 14 of them on 1 October 1995, they and most of the other prisoners must now serve long prison terms of between 15 years' and life imprisonment. They have been sent to prisons hundreds of kilometres from their homes where conditions are harsh and pose serious risks to their health.

Amnesty International believes that most, and perhaps all, are prisoners of conscience who have not used or advocated violence, imprisoned because of their pro-democracy activities, their personal association with other defendants or because they have published or distributed information about the injustice of the trials.

Amnesty International is concerned that evidence of coup plotting appears to have been fabricated as a pretext to imprison key political opponents of the government as prisoners of conscience, in particular former Head of State retired **General Olusegun Obasanjo**, and his former Deputy, retired **Major-General Shehu Musa Yar'Adua**. Sentenced by the Tribunal to life imprisonment and death respectively, their sentences have been commuted to 15 and 25 years' imprisonment. The real reason for their conviction seems to have been their non-violent pro-democracy activities, General Obasanjo's in the international arena and in bringing together critics of the military government from all parts of Nigeria, and Major-General Yar'Adua's within Nigeria, particularly as a delegate to a constitutional conference in which he advocated an early end to military rule.

They were convicted primarily on the basis of statements from serving armed forces officers, also defendants, who were reportedly coerced into incriminating themselves and others by torture, threats and improper inducements. The Special Military Tribunal's trial procedures flouted virtually every right of defence guaranteed by the Nigerian Constitution and the international human rights standards to which Nigeria is committed.

Friends and relatives of the defendants, as well as journalists and human rights activists, who have exposed the injustices of these arrests and trials, have themselves been arrested and secretly convicted by

Nigeria: a travesty of justice - secret treason trials and other concerns

the Special Military Tribunal on charges of concealment of treason or being accessories to treason, and sentenced to long prison terms as prisoners of conscience. They include renowned human rights defender **Dr Beko Ransome-Kuti**, Chairman of the Campaign for Democracy, founding member of the Committee for the Defence of Human Rights, a former President of the Nigerian Medical Association and a former prisoner of conscience, and **Shehu Sani**, Vice-Chairman of the Campaign for Democracy; journalists including **Chris Anyanwu**, the woman editor-in-chief of *The Sunday Magazine*, and **Kunle Ajibade**, editor of *The News* magazine; and family and friends such as **Rebecca Onyabi Ikpe**, sister-in-law of defendant **Colonel R.S.B. Bello-Fadile**, and **Navy Commander L.M.O. Fabiyi**, his defence lawyer.

Other prisoners of conscience, including leading members of human rights organizations, have been detained without charge or trial in connection with the alleged coup attempt. Amnesty International is calling for the immediate and unconditional release of all prisoners of conscience and for the release of all other political prisoners unless they are to be tried fairly and promptly by independent and impartial courts or unless their convictions and sentences are to be reviewed by a higher and independent judicial body. It is also urging the Nigerian authorities to publish full transcripts of the secret treason trials.

Other prisoners of conscience remain imprisoned in Nigeria. Since June 1994 the military government, which itself seized power in a coup in November 1993, has imprisoned on treason charges **Moshood Abiola**, who was democratically elected in the presidential elections in 1993 which were subsequently annulled by the military government. Several other pro-democracy activists have remained in detention without charge or trial for over a year, and arrests have continued.

In Ogoniland in southeast Nigeria, at least three prisoners of conscience, including writer and environmental campaigner **Ken Saro-Wiwa**, face the death penalty imminently in politically-motivated murder trials before a special tribunal, outside the normal judicial system, which has shown itself to be neither independent nor impartial. One Ogoni detainee, **Clement Tusima**, died in detention in August 1995, apparently after months of serious medical neglect.

Amnesty International is urging the establishment of an independent investigation into Clement Tusima's death, and is also calling for all political prisoners to be allowed full access to their lawyers and families, and for safeguards to be introduced to protect political detainees from all forms of torture and ill-treatment, including medical neglect.

There have been more than 180 executions since the present military government came to power, all following convictions by Robbery and Firearms Tribunals, special courts which allow no right of appeal. After the return of mass public executions in Nigeria, Amnesty International is appealing for a halt to all executions.

The following report describes Amnesty International's concerns in more detail.

## 2. Political background

### a) Constitutional developments

Nigeria: A travesty of justice - secret treason trials and other concerns

There has been little progress towards restoring an elected constitutional government. A National Constitutional Conference, part-elected and part-appointed in 1994 to draft a new Constitution, presented its recommendations in August 1995. In March 1995 **Major-General Shehu Musa Yar'Adua**, the leader of a group of Conference delegates who had pushed through a motion that the military should hand over power to a civilian government by January 1996, was arrested and accused of coup-plotting; in April 1995, the Conference withdrew the motion and left the government free to decide the date of its handover to civilian rule. The Conference had come under pressure from the government, with reports of ministerial posts, land and money payments being made to delegates.

On 1 October 1995 **General Sani Abacha**, head of the military government, the Provisional Ruling Council, announced that the military government would stand down in 1998. The three-year timetable for the transition to civilian rule has been widely criticized as too protracted and lacking in credibility in view of the government's continued failure to release prisoners of conscience, such as **Moshood Abiola**, and to address the political crisis caused by the annulment of the 1993 presidential elections.

The timetable resembles the enormously expensive and repeatedly extended eight-year transition to civilian rule under the previous military government of **General Ibrahim Babangida**, which was aborted at the last moment in 1993 when it became clear that the government's favoured candidate had not won the 12 June presidential elections. Both within Nigeria and internationally there are fears that this military government will also prove unwilling to cede power to civilians and lose control of Nigeria's massive oil wealth.

## b) Continued repression of political opponents

Harassment and detention of human rights activists, journalists, opposition politicians and other critics of the government has continued. Although the government announced in June 1995 that it had lifted the ban on political activity, in force since it came to power, in practice opposition political parties have still experienced harassment and arrest when they have attempted to organize meetings of supporters.

The banning orders imposed on three newspaper groups in 1994 were lifted in 1995 - on the *Guardian* in July and the *Punch* and Moshood Abiola's *Concord* in October - but the government has continued to ignore court orders to pay financial damages for illegal closure. Journalists continue to be detained as prisoners of conscience for days or sometimes weeks, incommunicado and without charge, for criticising the government, and four have been sentenced to long prison terms for their newspapers' reports on the secret treason trials (see below).

The authorities are taking steps towards tight control of the press which could lead to the further imprisonment of prisoners of conscience. On 3 July 1995, in a newspaper advertisement, the government ordered the press to register with a Newspaper Registration Board based at security police headquarters and with the power to impose onerous and financially-crippling registration and censorship requirements. The Board had been declared illegal by the High Court in November 1993 and the government's attempt to revive it has apparently again been challenged in court. In October 1995 the government announced an amendment to the draft Constitution which will make it a criminal offence to publish "false reports".

Nigeria: a travesty of justice - secret treason trials and other concerns

Professional and other associations which have criticized the government, such as the Nigerian Bar Association, the Nigerian Medical Association, the Nigerian Union of Journalists, and the National Association of Women's Societies, as well as the Nigerian Labour Congress and leading trade unions, have been disrupted by internal divisions. These are reported to have been fomented by the authorities for the purpose of removing government critics from the leadership of such bodies.

There is no legal recourse against any human rights violations by the government, which has continued to show contempt for the rule of law, ignoring court orders and promulgating military decrees to prevent interference by the judiciary. The **Federal Military Government (Supremacy and Enforcement of Powers) Decree, No. 12 of 1994**, promulgated on 24 August 1994 but backdated to 18 November 1993, prohibited any legal action challenging any decree or upholding the fundamental rights provisions of the Constitution. This decree overturned a court ruling that the short-lived Interim National Government appointed by General Babangida in 1993 was illegal, a decision which threatened the legality of the present military government which succeeded it. The Decree states:

"[N]o civil proceedings shall lie or be instituted in any Court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to any Decree or Edict and, if such proceedings are instituted before, on or after the commencement of this Decree, the proceedings shall abate, be discharged and made void;

"[T]he question of whether any provision of chapter IV [Fundamental Rights] of the constitution of the Federal Republic of Nigeria 1979 has been, is being or would be contravened by anything done or purported to be done in pursuance of any Decree shall not be inquired into in any Court of law and, accordingly, no provision of the Constitution shall apply in respect of any such question."

### c) Growing international concern

Since the arrest of alleged coup-plotters became known in March 1995, there has been an unprecedented level of criticism by foreign governments, inter-governmental organizations and former heads of government over the secret treason trials and death sentences, as well as over the Nigerian government's failure to restore democracy quickly.

Appeals have come from the United Nations Secretary-General, many governments in Africa, the European Union and the Commonwealth, other governments including Japan, Jamaica, Russia, Sweden, the United States of America and the Vatican, as well as numerous non-governmental organizations and individuals both within and outside Nigeria. Political pressure has mounted for governments to take political and economic sanctions against the Nigerian government.

## 3. The secret treason trials of alleged coup plotters

### a) Initial arrests

Following newspaper reports in early March 1995 of the arrest of armed forces officers, the government

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Nigeria: A travesty of justice - secret treason trials and other concerns

first denied there had been any coup plot, saying officers were simply being questioned about rumour-mongering and for criticising the military government. On 10 March, however, it said that 29 civilians and officers had been arrested after a plot to overthrow the government on 1 March had been thwarted. There were international protests at the arrests, particularly of **General Olusegun Obasanjo**, former Head of State from 1976 to 1979, who was subsequently allowed to remain under house arrest until 13 June when he was again taken into incommunicado military custody. Detainees were interrogated by military investigation panels, reportedly in some cases for long periods at night.

The editors of news journals which first reported the arrests were themselves arrested - **Bayo Onanuga**, then editor of *The News* magazine, on 10 March, and **Chris Anyanwu** on 15 March - and detained incommunicado before being released uncharged on 23 March.

## b)Special Military Tribunal

On 5 June 1995, 22 defendants were brought before a Special Military Tribunal to be charged, the only day of any of the subsequent trials to be open to the press.

The Special Military Tribunal was established under the **Treason and Other Offences (Special Military Tribunal) Decree, No. 1 of 1986**, effectively a re-enactment of a 1976 decree of the same title. Appointed by the Head of State, a Special Military Tribunal is composed of armed forces officers. It has the power to try any person, whether military or civilian, on charges of treason or any other offence committed in connection with a rebellion against the government. It can award any penalty prescribed under criminal or military law but is not bound to follow the procedures of civilian or military courts. Its verdicts and sentences have to be confirmed by the military government and defendants before it have no right of appeal to any higher or independent court.

The Tribunal appointed specifically to try these cases was chaired by Brigadier-General Patrick Aziza, a member of the Provisional Ruling Council, the military government, sitting with six other armed forces officers at the Brigade of Guards Command Headquarters in Lagos.

## c)14 July 1995 announcement of convictions

After the trial of 22 defendants opened in June, further defendants were brought before the Tribunal but their numbers and identities were not revealed and the trials continued to be held in secret. On 14 July 1995 the government announced that, of 51 defendants charged before the tribunal, 40 had been convicted, three had been declared wanted for trial, seven had been discharged and released, and one had been discharged but was being re-investigated. However it did not reveal their identities, the charges on which they had been convicted or acquitted, or their sentences. Not until October did the authorities provide any further information, despite the numerous unofficial reports of death sentences and widespread international protests.

Such unofficial reports, inevitably, were sometimes contradictory. It was unclear, for example, how many prisoners had been sentenced to death and whether **Major-General Shehu Musa Yar'Adua**, former Deputy Head of State from 1976 to 1979, was among them, or whether **General Olusegun Obasanjo**

Nigeria: a travesty of justice - secret treason trials and other concerns

was among a group of civilian and military prisoners sentenced to life imprisonment. Others were reported to have received prison sentences of between two and 25 years' imprisonment.

Five people declared wanted for trial included two who were allegedly behind a failed coup attempt in 1990 and retired **Lieutenant-Colonel Sambo Dasuki**, *aide-de-camp* to former Head of State General Ibrahim Babangida and the son of Alhaji Ibrahim Dasuki, the Sultan of Sokoto and President of the Supreme Council of Islamic Affairs. A few weeks earlier, the government announced that a prominent traditional northern ruler had been placed under surveillance for anti-government activities. The government's accusation against Lieutenant-Colonel Dasuki was reportedly based on a letter from abroad in which he said that he would not return until the present government had left power and a later letter in which he said that he would be coming home in March 1995. It has been suggested that the real reason for the accusation was the criticism of the military government by his father and other northern leaders.

Seven prisoners were charged with concealment of treason but discharged and acquitted when the prosecution failed to produce any evidence at all before the Tribunal. Among the seven released were 78-year-old **Chief Adisa Akinloye**, a leading member of General Obasanjo's National Unity Organisation of Nigeria, and **Chief Titilayo Ajanaku**, a supporter of Major-General Yar'Adua, who later reported that she had been questioned only once during four months of incommunicado detention and then only about Major Yar'Adua's presidential ambitions and other political activities. **Chief Akin Ogunbola**, also a supporter of Major-General Yar'Adua, and **Abbas Muazu**, apparently an associate of Lieutenant-Colonel Sambo Dasuki, were among those discharged and released.

After 14 July 1995 there were further arrests and trials, apparently of people charged with being accessories after the fact to treason who were sentenced to life imprisonment for exposing the human rights violations being committed in the case. In early August the Tribunal ended its proceedings.

#### d)1 October 1995 announcement of convictions and commutations

On 1 October 1995 the government broadcast on national television the names of 44 defendants, the charges against them and their sentences. Fourteen had been convicted of **treason or conspiracy to commit treason**, offences under Section 37 of the Criminal Code carrying a mandatory death penalty for any person found to have levied war against the Head of State in order to intimidate or overawe the government, or to have conspired to do so. Five were convicted of **concealment of treason** and 14 of being **accessories after the fact to treason**, offences under Section 40 of the Criminal Code carrying a mandatory sentence of life imprisonment. Ten were convicted of other offences in connection with the alleged coup plot. Some serving or retired armed forces officers were also convicted of illegal possession of arms and ammunition for having service guns in their possession, and some serving officers were convicted of disciplinary offences.

On 10 October the government published the sentences imposed on each defendant by the Special Military Tribunal and the final sentences as commuted or confirmed by the Provisional Ruling Council, the military government. The government commuted death sentences on 14 defendants, to life imprisonment in three cases and to 25 years' imprisonment in 11 cases, and commuted life sentences on 18 defendants to 15 years' imprisonment. It confirmed nine prison terms of between six months and two

Nigeria: A travesty of justice - secret treason trials and other concerns

years, the retirement from the armed forces of two defendants, and the discharge and acquittal of one defendant.

The death sentence on **Major-General Shehu Musa Yar'Adua** was commuted to 25 years' imprisonment and the life sentence on **General Olusegun Obasanjo** to 15 years' imprisonment. Among those whose life sentences were also commuted to 15 years' imprisonment were **Dr Beko Ransome-Kuti** and **Shehu Sani** of the Campaign for Democracy, and four journalists including **Chris Anyanwu**, who had been re-arrested on 4 June 1995, **Kunle Ajibade**, **George Mbah**, assistant editor, *Tell* magazine, and **Ben Charles Obi**, editor, *Classique* magazine.

For a list of those tried and detained in connection with the alleged coup attempt, see appendix.

#### e)Administrative detainees

Several civilians and armed forces officers detained in connection with the alleged coup attempt reportedly remain in incommunicado detention even though no charges were brought against them or they were discharged and acquitted by the Tribunal. It is feared that, as with armed forces officers acquitted after secret treason trials in 1990 (see below), they could remain in detention for years, effectively silenced.

**Captain Usman Sudik Abdulyekeen Suleiman**, a lecturer at the Nigerian Defence Academy in Kaduna, is believed to remain in detention. He was reportedly arrested on 21 November 1994 after an anonymous denunciation that he had expressed anti-government views. Although listed among the initial 23 prisoners to go on trial on 5 June 1995, he did not appear in court on the first day of the trial when the press were present and was not listed on 1 October 1995 among those convicted or acquitted by the Tribunal.

Three leading members of human rights organizations which have criticized the government over the treason trials also remain in detention without charge or trial. **Dr Olatunji Abayomi**, lawyer and head of Human Rights Africa, was arrested on 27 July 1995 after calling for the release of General Olusegun Obasanjo at a press conference. **Chima Ubani**, General Secretary of the Democratic Alternative, and **Abdul Oroh**, Executive Director of the Civil Liberties Organisation, were detained on 18 and 28 July respectively after the government made an unsubstantiated accusation that human rights groups were plotting to free the treason trial defendants by force. Many human rights activists have had to go into hiding to avoid arrest.

The administrative detainees are probably held under the terms of the draconian **State Security (Detention of Persons) Decree, No. 2 of 1984**, which provides for the indefinite incommunicado detention without charge or trial of any person suspected of threatening the security or economy of the state. It has previously been used to detain prisoners of conscience without charge or trial for months and sometimes years, and to detain incommunicado prisoners awaiting trial or convicted prisoners who would otherwise be allowed normal rights of access to lawyers, families and doctors.



## f) Conditions of imprisonment

The prisoners were held in various different locations in Lagos before and during the trials including the Directorate of Military Intelligence (DMI) headquarters in Apapa; the national headquarters of the State Security Service (SSS), the security police, in Ikoyi; the Lagos State SSS headquarters in Shangisha; Kirikiri Maximum Security Prison; and Ikoyi Prison.

The prisoners have mostly been held incommunicado since their arrests, denied access to their families, doctors or lawyers of their own choice. Some have been allowed limited and closely supervised family visits in which they have been unable to talk freely, but others are held strictly incommunicado and denied any visits. Security was tightened considerably after information about the injustices of the trials leaked to the outside world.

Conditions for many of the prisoners have been harsh and some have suffered serious ill-health as a result of medical neglect. In the weeks following their arrest in May 1995, **George Mbah**, who requires regular treatment for a neurological complaint, is reported to have lost consciousness for a period; **Kunle Ajibade** reportedly collapsed from a kidney problem which he was having treated before he was detained; and **Ben Charles Obi** was reported to be suffering from malaria.

On 18 October 1995 the prisoners were dispersed to prisons throughout the country to serve their sentences, hundreds of kilometres from their homes. **General Olusegun Obasanjo** is reported to have been transferred to Jos, **Major-General Shehu Musa Yar'Adua** to Port Harcourt and **Dr Beko Ransome-Kuti** to Makurdi. Some are believed to have been sent to prisons in the extreme north where political prisoners have previously been held in severe conditions, in badly-ventilated cells, in extremes of temperature, and denied an adequate diet or advised medical treatment.

**Shehu Sani** has apparently been sent to Gashua in Yobe State in the north, where previous political prisoners, including Moshood Abiola in 1994, have been held in harsh conditions and denied appropriate medical treatment. There are fears for the health of prisoners requiring medical care such as **Colonel R.S.B. Bello-Fadile**, who has reportedly been transferred to Potiskum prison in Yobe State; he requires regular medication and tests for a serious heart problem and high blood pressure. The government has specified that these prisoners will receive the same treatment as any other prisoner. However, generally harsh conditions in Nigeria's prisons have for many years threatened prisoners' lives and health, with a high rate of malnutrition, disease and death from insanitary conditions, inadequate food and practically no medical care.

Sometimes families have been allowed to deliver food and medicines to political prisoners, even if they are not allowed to visit them, but those held at great distances from their homes and families are likely to suffer particular deprivation in this regard. It is not known, for example, whether **Rebecca Onyabi Ikpe** has received medicines sent to her; she was seriously anaemic at the time of her arrest, requiring iron injections to prevent complications such as heart failure, and requires regular monitoring for high blood pressure.

## 4. Amnesty International's concerns about the treason trials

While welcoming the government's commutation of the death sentences, Amnesty International remains concerned that most of the defendants are prisoners of conscience, imprisoned solely because of the non-violent expression of their political views or because of their personal association with critics of the government, who should be released immediately and unconditionally. Other political prisoners should be released if their convictions and sentences are not to be promptly reviewed by a higher and independent judicial body.

The defendants' trials before the Special Military Tribunal were a travesty of justice, with all their fundamental rights of defence denied and their treason convictions reportedly based on weak and irrelevant evidence. There seems to have been no evidence in most - and possibly all - cases that they had used or advocated violence.

### a) Denial of the defendants' rights to a fair trial

The defendants were denied all crucial rights of defence, including their right to be safeguarded from torture, ill-treatment or improper duress, to be informed of the substance of the charges against them, to be defended by a lawyer of their own choice and able to prepare their defence properly, to be tried in public by an independent and impartial court, and to appeal against the court's decisions to an independent and higher court.

This denial of rights is in contravention of Nigeria's own Constitution and of international human rights standards to which Nigeria is committed. These include the **African Charter on Human and Peoples' Rights**, the **International Covenant on Civil and Political Rights (ICCPR)**, both of which Nigeria has ratified, and the **United Nations (UN) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture)**, which Nigeria has signed but not yet ratified, obliging it to refrain from any act which would defeat the object and purpose of the treaty. Such standards require that courts be established and judges appointed under procedures which ensure their independence and impartiality, and that their verdicts and sentences be subject to review by a higher court; defendants should be allowed full rights of defence, safeguarded from ill-treatment and allowed full access to lawyers, families and appropriate medical care.

#### *The right to be safeguarded from ill-treatment*

There have been reports that some of the military detainees were tortured or severely ill-treated during interrogation in order to obtain incriminating statements. These reports could not be verified because the detainees have been held - and remain - incommunicado.

Political prisoners in Nigeria have no safeguards against torture or ill-treatment or any other form of duress, since they may be detained indefinitely and incommunicado under the 1984 State Security Decree without any legal recourse. There is no provision under the decree for medical examination of detainees by an independent doctor or access by any other independent person, or for regular review of the detention by any judicial or other independent body. The right to prompt and regular medical examinations is required under the **UN Body of Principles for the Protection of All Persons under Any**

Nigeria: a travesty of justice - secret treason trials and other concerns

**Form of Detention or Imprisonment** and by the **UN Standard Minimum Rules for the Treatment of Prisoners** which guarantees the right to independent medical visits (Rule 91).

In fact, the 1984 State Security Decree prohibits any legal proceedings against the government for any action taken under the Decree or any court action to contest any detention which contravenes the fundamental rights provisions of the Constitution. Despite this, some High Courts continued to order the authorities to produce detainees before them even though such orders were ignored, and on 1 October 1994 the government promulgated an amendment to the 1984 State Security Decree (**State Security (Detention of Persons) (Amendment) Decree, No. 14 of 1994**) which specifically prohibited the courts from issuing such orders, including by writ of *habeas corpus*. Both Decree and amendment violate Article 9 (4) of the ICCPR, which provides: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." "Lawful" in this context relates not only to Nigerian law but also to Nigeria's binding international obligations.

*ii The right to be informed of charges*

The defendants appear not to have been informed of the substance of the charges against them, to know exactly what actions they were alleged to have committed and in what way these acts were unlawful, in contravention of the ICCPR, Articles 9(2) and 14 (3)(a).

*iii The right of defence by lawyers of the defendants' choice*

Military lawyers assigned to defend the accused could not be considered independent, being dependent on the government for employment, promotion and pension. There were said to have been difficulties in finding a military lawyer willing to defend one of the main defendants, **Colonel Lawan Gwadabe**. **General Olusegun Obasanjo** apparently refused to recognize the Tribunal after it turned down his request to be allowed a civilian defence lawyer of his own choice, as guaranteed by Article 14 (3) (d) of the ICCPR.

The defendants were not allowed sufficient time or facilities to prepare their defence properly, as guaranteed by Article 14 (3) (b) of the ICCPR. The trials appear to have been carried out within days of their being informed of the charges against them, and to have been completed too hastily for serious testing and consideration of the evidence.

*iv The right to open trial by an independent tribunal*

The government made clear at an early stage that it believed **General Olusegun Obasanjo** to have been involved in treason. On 11 April 1995 General Sani Abacha reportedly told a delegation of traditional rulers from Ogun State, General Obasanjo's home area, that security agents had linked him to acts of destabilization.

Article 14 (1) of the ICCPR provides that everyone charged with a crime is entitled to be tried by "a competent, independent and impartial tribunal established by law." A Special Military Tribunal appointed by the Head of State and headed by a member of the Provisional Ruling Council, its verdicts and sentences requiring government confirmation, is more an arm of government than a court of law. As a special court using special procedures, it denied defendants their right, recognized in Principle 5 of the **UN Basic Principles on the Independence of the Judiciary**, "to be tried by ordinary courts or tribunals

Nigeria: A travesty of justice - secret treason trials and other concerns

using established legal procedures". The Tribunal appointed to try the recent treason cases could in no circumstances be considered independent. Nor was it impartial: its verdicts in most of the trials appear to have been incorrect in law and prejudiced in favour of the prosecution.

The trials were conducted in complete secrecy, with the press only allowed in on the first day of the trial of the first 22 defendants. It can only be concluded that the government has attempted to hide from public scrutiny the gross unfairness of the proceedings and the lack of evidence against the accused.

Both civilians and retired armed forces officers were tried by a military court. The Human Rights Committee, the body of experts which monitors implementation of the ICCPR, has stated that "military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties"<sup>1</sup>.

#### *vThe right of appeal*

The denial of the defendants' right to appeal against rulings by the Tribunal, its verdicts and sentences, and against the government's decisions on verdicts and sentences, especially in capital cases, flouts international standards of fair trial. These rights are guaranteed in Article 14 (5) of the ICCPR.

#### b) Inadequate evidence

There seems to have been inadequate evidence in most, and possibly all, cases that the defendants had used or advocated violence or that justified their convictions as charged or that justified their conviction of any criminal offence. The evidence has been kept hidden, and those who have distributed information about its weaknesses have themselves been sentenced to long prison terms as a result.

The government videotaped the *in camera* proceedings and on 1 October 1995 broadcast a 50-minute television programme of excerpts, with a commentator interpreting the defendants' mostly inaudible voices, which purported to provide evidence of two simultaneous and converging coup plots. However, the evidence shown - presumably the strongest evidence - was unconvincing, and raised more questions than it answered, in particular whether some statements had been made under duress, how some justified conviction on the existing charges and how some justified conviction of any offence. The broadcast also omitted significant information, such as that the evidence which it cited as leading to the conviction of **General Olusegun Obasanjo** and **Major-General Shehu Musa Yar'Adua** had been refuted by **Colonel R.S.B. Bello-Fadile** before the Tribunal on the grounds that it had been made under duress, throwing into serious question the prosecution case.

An independent and impartial court would in all likelihood have found inadmissible most of the prosecution's evidence, which appears to have been based primarily on statements by defendants and witnesses made in incommunicado detention, in circumstances in which there were no safeguards against torture, duress and improper inducement, and amid allegations of such abuses. At least one defendant refuted his statement in court on the grounds that it was made under duress; other defendants and witnesses are reported to have been tortured, others that they were offered reduced sentences, freedom or financial reward if they would testify for the prosecution and threatened with the death sentence or life

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<sup>1</sup>UN Doc. CCPR/C/79/Add.3, paragraph 9, 9 August 1993 (comment on report of Egypt)  
AI Index: AFR 44/23/95 Amnesty International, 26 October 1995

imprisonment if they refused.

These allegations raise serious concerns about the circumstances in which prosecution statements were obtained. As the Human Rights Committee has made clear, Article 7 of the ICCPR requires prompt and impartial investigations of all complaints of torture and ill-treatment<sup>2</sup>. Article 13 of the UN Convention against Torture imposes a similar obligation, and Article 12 requires prompt and impartial investigations whenever there is a reasonable ground to believe that torture or ill-treatment has occurred, even if there has been no complaint. Amnesty International is unaware of any such investigation by the Tribunal.

As a result of the failure of the court to conduct prompt and impartial investigation of reports and complaints that statements were made under coercion, it appears to have admitted such statements into evidence. Article 14 (3) (g) of the ICCPR guarantees the right of every defendant in a criminal case "[n]ot to be compelled to testify against himself or to confess guilt." Article 15 of the UN Convention against Torture provides that "any statement which is established to have been made as the result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

*Retired and serving armed forces officers*

There appears to be little evidence that serving or retired armed forces officers had used or advocated violence. Many appear to be prisoners of conscience, imprisoned for the non-violent expression of their political views. Some appear to have been imprisoned in order to justify the government's allegation that there had been a conspiracy to overthrow it.

According to the government's broadcast, retired **General Olusegun Obasanjo** and retired **Major-General Shehu Musa Yar'Adua** were convicted largely on the basis of a statement by another defendant, **Colonel R.S.B. Bello-Fadile**, that he had discussed a coup plot with them. Colonel Bello-Fadile, who denied the charges against himself, retracted that statement before the Tribunal on the grounds that he had signed it and read it out to the Tribunal under duress, that he had been tortured and threatened with further torture. The Tribunal seems to have ignored contrary evidence that the alleged meeting at General Obasanjo's home could not have taken place, including that General Obasanjo's passport apparently shows he was out of the country at the time.

Both General Obasanjo and Major-General Yar'Adua are believed to be prisoners of conscience, imprisoned because of their outspoken criticism of continued military rule. General Obasanjo succeeded as Head of State following the assassination of General Murtala Muhammed in 1976, and in 1979 effected General Muhammed's plans to hand over power to an elected civilian government, thereby becoming the only military head of state in Nigeria voluntarily to have done so. After retirement from government and the military in 1979, General Obasanjo became involved both in Nigeria and at an international level in working for good governance and accountability. His attempts to rally non-violent opposition among key political leaders in both the north and east of Nigeria, as well as in his own western homeland, appear to have been perceived as a political threat to the government's position. Major-General Yar'Adua was as a presidential candidate under the previous transition to civilian rule programme which was aborted in 1993 by the military government of General Babangida. He was briefly detained

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<sup>2</sup>UN Doc. HRI/GEN/1, General Comment 20, paragraph 14  
Amnesty International, 26 October 1995AI Index: AFR 44/23/95

Nigeria: A travesty of justice - secret treason trials and other concerns

without charge in January 1994 after he criticized the present military government at a press conference, and was a leading opponent of continued military rule as a delegate to the National Constitutional Conference.

There were fears that retired **Major Akinola Akinyemi**, formerly in the army Signals Corps, had been targeted because of the political activities of his brother. Bolaji Akinyemi, former Minister of Foreign Affairs from 1985 to 1987, is a leading figure in the pro-democracy campaign outside Nigeria of the National Democratic Coalition (NADECO). Major Akinyemi had previously served a five-year prison sentence after conviction in 1987 in a secret trial by court martial in which he was initially charged with planning a coup (no-one else was charged) but subsequently convicted of a lesser, disciplinary offence. Although the government's broadcast purported to show that he had planned a coup, the excerpts were ambiguous; he was reportedly heard apologizing for involving another defendant because he had "suffered a lot of pain", posing obvious questions about coercion. The government ignored an order on 9 March 1995 by the Lagos High Court to produce him in court. On 13 June 1995, in response to another legal action to restrain the Special Military Tribunal from convicting him, the Federal High Court in Lagos said that it was unsure whether it had the authority to effect such an order, Mr Justice Vincent Eigbedion describing the Nigerian judiciary as a "cosmetic vessel under the military".

Some serving armed forces officers appear to have been targeted because of their dissenting views. The prosecution alleged that military lawyers among the accused had plotted a coup while attending a seminar on military law in Enugu on 15 February 1995, including **Colonel R.S.B. Bello-Fadile**, Director of Legal Services in the armed forces, and **Colonel Roland Emokpae**, also in the Legal Department at Defence Headquarters. Colonel Bello-Fadile, known for his open discussion and criticism of government policies, is reported to have incurred disfavour with members of the government and military hierarchy when, in the course of his work, he reviewed and overruled court martial verdicts rendered by senior officers, or criticized military decrees promulgated by government or inaction by government over his investigations into corruption.

Much of the evidence of meetings between the various defendants appears to have been obtained under coercion, and there seems to have been insufficient evidence of a conspiracy being hatched at such meetings.

Evidence against other military defendants was also reported to be weak. **Navy Lieutenant A. Olowokere**, who had served under Colonel Gwadabe, was reported to have initially been acquitted on charges of looting Colonel Gwadabe's house in Abuja, but later convicted of concealment of treason on the basis of an uncorroborated allegation that he knew Colonel Gwadabe was involved in a plot. **Lieutenant-Colonel R.D. Obiki** was apparently convicted of having a subversive conversation with retired Major Akinola Akinyemi on the basis of evidence which may have been made under duress. **Navy Captain M.A. Ibrahim**, a member of the investigatory panel which interrogated the defendants, was convicted of being an accessory to treason for allegedly holding private conversations with detainee Colonel Gwadabe; **Second Lieutenant Richard Emouvhe** and **Staff Sergeant Patrick Usikekpo** for allegedly allowing unauthorised access to Colonel Gwadabe.

*ii Friends, family, journalists and human rights activists*

Nigeria: a travesty of justice - secret treason trials and other concerns

Friends and family of the defendants, as well as journalists and human rights activists, were convicted of concealment of treason or being accessories to treason. They appear to be prisoners of conscience, imprisoned because of their non-violent political activities or their personal association with the defendants in exercise of their rights to freedom of expression and association. The opposition press revealed the initial arrests and has continued to report the lack of evidence of a coup plot found by the military investigation panels, internal divisions over the affair between intelligence organizations and within the military hierarchy, and the paucity of evidence on which the defendants were convicted.

**Alhaji Sanusi Mato**, Colonel Gwadabe's cousin, was apparently convicted of trying to assist Colonel Gwadabe to escape on the grounds that he had contacted friends for assistance after Colonel Gwadabe's arrest, packed a suitcase of clothes and necessities for him and asked Chris Anyanwu to raise support for him in *The Sunday Magazine*. **Quinette Lewis-Allagoa** is said to have been convicted because of her personal relationship with Colonel Gwadabe.

**Rebecca Onyabi Ikpe**, sister-in-law to defendant Colonel Bello-Fadile, and his defence lawyer before the Tribunal, **Navy Commander L.M.O. Fabiyi**, were convicted for allegedly passing Colonel Bello-Fadile's defence submission to others. Rebecca Ikpe's brother, **Benson Ikpe**, has been declared wanted for trial by the authorities.

**Shehu Sani**, Vice-Chairman of the Campaign for Democracy, was charged on 1 July 1995 with managing an unlawful society, an offence under Section 63 of the Criminal Code, and on 14 July convicted and sentenced to seven years' imprisonment, despite the lack of any evidence that the Campaign for Democracy was or ever had been declared unlawful by the authorities. He was subsequently convicted of being an accessory to treason, although the real reason seems to be that he had succeeded in sending out a letter from detention alerting the Campaign for Democracy to his unfair trial and conviction. **Dr Beko Ransome-Kuti**, Chairman of the Campaign for Democracy, was arrested on 27 July 1995. Within a few days he was convicted of being an accessory to treason for distributing Colonel Bello-Fadile's defence submission.

According to the government broadcast, the main evidence against **Chris Anyanwu** was that Colonel Gwadabe was a shareholder in *The Sunday Magazine*. She appears to have been convicted because the magazine published information about the lack of evidence against him. Also according to unofficial reports, **Kunle Ajibade** was convicted because he refused to implicate Dapo Olorunyomi, editor-in-chief of *The News* magazine and a former prisoner of conscience, in exchange for his freedom, and **George Mbah** because he refused to assist in the arrest of the editors of *Tell* magazine and *Dateline* newspaper in exchange for his freedom and a cash payment.

## 5. Other human rights concerns in Nigeria

Amnesty International remains concerned about other political prisoners in Nigeria, many of whom have been imprisoned since 1994, and the return to use of the death penalty on a large scale.

### a) Moshood Abiola

Amnesty International, 26 October 1995 AI Index: AFR 44/23/95

**Bashorun (Chief) Moshood K.O. Abiola**, the 58-year-old businessman widely acknowledged to have won the June 1993 presidential election, has been detained as a prisoner of conscience for more than 16 months while awaiting trial. The military government subsequently annulled the presidential elections and in June 1994 arrested and charged him with treason when he declared himself to be the rightful head of state. Although other supporters of the National Democratic Coalition (NADECO), also arrested and charged with treason and treasonable felony in June 1994, were released to await trial (none of the trials have proceeded) or had the charges withdrawn, he remains imprisoned. Although his alleged offence was committed in Lagos, he is held under the direct control of the Presidency in Abuja, the new federal capital, where a new Federal High Court was especially created to try him, in contravention of international standards for fair trial.

The government defends his continued imprisonment on the grounds that his case is still before the courts, despite its record of contempt for the rule of law and court rulings and the lack of any evidence that Moshood Abiola used or advocated violence. It has repeatedly ignored court orders in his case, notably in November 1994 when the Court of Appeal in Kaduna ordered his release on bail, but also in failing to produce him before the courts or justify his initial detention without charge, in failing to pay him damages awarded against the government for his illegal arrest and detention, and in failing to permit full access to lawyers, family and doctors or to allow him reading materials - all in contravention of international standards. The Kaduna Court of Appeal, in a split decision, later allowed a postponement of its release order while the government appealed against the order to the Supreme Court. However, since eight of the 12 Supreme Court judges are involved in a libel suit against Moshood Abiola's *Concord* newspaper group and have withdrawn from the case, his bail application and consequently his trial are stalled, awaiting the government's appointment of new judges to the Supreme Court.

Many foreign governments have appealed for his release, particularly after reports in April 1995 of the prisoner's severe weight loss, poor conditions and denial of access for months to family and doctor. He has been refused permission to obtain medical investigations and treatment for neurological and musculo-skeletal problems aggravated by an injury to his back caused when a police officer forcibly removed reading materials from him in 1994. Appeals for his release by President Nelson Mandela of South Africa were reiterated on 5 April when his envoy, the Most Reverend Desmond Tutu, Archbishop of Cape Town, met General Sani Abacha and Moshood Abiola. Moshood Abiola's personal physician, **Dr Ore Falomo**, was subsequently summoned to Abuja and on 20 April, arrested and detained without charge for a few days, apparently solely for the purposes of intimidation.

Members of Moshood Abiola's family have been denied access to him and harassed by the authorities. His senior wife, Alhaja Kudirat Abiola, has continued to be denied access to him after publicly campaigning for his release. Other family visitors, such as his wife Dr Doyin Abiola, managing director of the *Concord* newspaper group, have on occasion been refused access to him or allowed only a few minutes with him after travelling 500 kilometres from Lagos to Abuja and waiting several days to obtain permission from the Presidency, even when they have been summoned to Abuja by the Presidency. His business concerns have also been targeted by the government - the most publicized casualty being the *Concord* group but also government contracts and an oil concession - resulting in two-thirds of his 30,000 employees being out of work.



## b)Administrative detention

Several prisoners of conscience remain in administrative detention, held incommunicado and without charge or trial. No reasons are given by the authorities for the arrest and continued detention of these detainees, who can be held indefinitely and incommunicado under the 1984 State Security Decree.

### *i)Detainees held since 1994*

Although two NADECO leaders detained in August 1994 were released uncharged - 71-year-old **Chief Anthony Enahoro** in December 1994 and **Chief Cornelius O. Adebayo** in January 1995 - other pro-democracy leaders remain in detention without charge or trial as prisoners of conscience. They include two of Moshood Abiola's aides held since August 1994, 28-year-old **Fred Eno** and **Prince Ademola Adeniji-Adele**, former Chair of Lagos Island Local Government Council, **Ayo Opadokun**, the Secretary General of NADECO, and **Olu Akerele**, the *Concord* bureau chief in Abuja, both detained since October 1994.

Four trade union leaders, arrested following a two-month oil workers' strike in mid-1994 in protest at the arrest of Moshood Abiola and others, also remain in incommunicado detention without charge or trial: **Wariebi Kojo Agamene**, President of the National Union of Petroleum and Natural Gas Workers' (NUPENG); **Chief Frank Ovie Kokori**, Secretary General of NUPENG; **Francis A. Addo**, Chairman of the Port Harcourt branch of the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN); and **Fidelis Aidelomon**, Chairman of the PENGASSAN branch of the Pipeline and Products Marketing Company. On 1 May 1995 General Sani Abacha announced that trade union leaders had been guilty of embezzling government funds. However, more than a year after their arrest, the detained trade union leaders have still not been charged with any offence and their detention appears to be motivated by political considerations.

### *ii)Detentions in 1995*

Human rights and pro-democracy activists have continued to be harassed and detained as prisoners of conscience on a routine basis. Most of the detentions have been short-term, but **Sylvester Odion-Akhaine**, Secretary General of the Campaign for Democracy, has been in incommunicado detention without charge or trial since his arrest in January 1995. The government ignored orders by the High Court in Ikeja, Lagos, in May 1995 that he be brought before the court and his detention justified, or that he be given access to his lawyers, family and doctor. He is held at Birnin-Kebbi Prison in northern Nigeria, over 800 kilometres from his home in Lagos.

**Dr Beko Ransome-Kuti** and leading human rights lawyer **Femi Falana**, President of the National Association of Democratic Lawyers, were detained without charge for a week after returning from abroad in January 1995. They and scores of others were repeatedly arrested and released in May and June 1995, apparently to prevent any commemoration of the anniversary of the annulled presidential elections of 12 June 1993. Those detained at this time included leading members of human rights and pro-democracy groups: **Olisa Agbakoba**, a prominent human rights lawyer and President of the Civil Liberties Organisation; **Alao Aka-Bashorun**, Chairman of the Democratic Alternative and a former President of the Nigerian Bar Association; **Chief Cornelius Adebayo**, **Dr Wahab Dosunmu** and **Olawole Osun** of the National Democratic Coalition; **Olusegun Maiyegun** and **Josephine Okei** of the Campaign for

Nigeria: A travesty of justice - secret treason trials and other concerns

Democracy; and **Femi Aborisade** of the National Conscience Party.

In June 1995 **Chief Michael Adekunle Ajasin**, the 87-year-old leader of the National Democratic Coalition (NADECO), and about 50 other people were arrested during a private meeting at his home in Ondo State and detained briefly before being released uncharged. Leading human rights lawyer **Chief Gani Fawehinmi**, previously detained for more than three weeks in October 1994 after forming the National Conscience Party, was detained without charge for two weeks in June 1995 after publicly declaring that he would defy any restrictions on freedom of speech and assembly. He had just returned from unauthorized travel abroad; the government had prevented him from seeking urgent medical treatment on several occasions by seizing his passport at the airport in direct contravention of court orders that he should be allowed to travel. In September 1995 he was again arrested, charged with holding an unauthorized political meeting and released on bail.

Dozens of newspaper editors and journalists have been arrested for publishing articles critical of the government, some held briefly but many detained for weeks incommunicado and usually released without charge or trial. In July 1995 **Babafemi Ojudu**, editor of the opposition newspaper *AM News*, was arrested with members of staff, including journalist **Lekan Olufodurin**, and detained incommunicado for 10 days before being released without charge. He said that he was beaten, deprived of medical care and regular food, and held in harsh conditions. **Sesan Ekisola**, General Manager of Ray Power, a new and independent radio station, was also detained without charge for a period in July. **Osa Director**, *Tell* magazine's correspondent in the northern city of Kano, was detained on 31 August 1995 and held incommunicado until 3 October when he was brought before the High Court, chained hand and foot. He was charged with writing an article which could cause public unrest, punishable by 10 years' imprisonment, and released on bail.

### c) Trials and detentions in Ogoniland

Two politically-motivated murder trials are coming to a conclusion before a Civil Disturbances Special Tribunal, a special court which is neither independent nor impartial, in Port Harcourt, Rivers State. At least three of the defendants appear to have been imprisoned solely because of their non-violent political campaign against environmental damage by oil companies and for increased autonomy for the Ogoni ethnic group. They include **Ken Saro-Wiwa** and **Ledum Mitee**, leaders of the Movement for the Survival of the Ogoni People (MOSOP).

The detention without charge or trial has continued of MOSOP supporters. In August 1995 **Clement Tusima**, one of a group of MOSOP detainees held incommunicado and without trial since May 1994, died in detention, apparently after months of serious illness and medical neglect. Amnesty International is urging the establishment of a thorough, prompt and impartial investigation of his death which is consistent with international standards such as the **UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions**.

For further information, see *Nigeria: The Ogoni trials and detentions*, 15 September 1995 (AI Index: AFR 44/20/95).

#### d) Soldiers imprisoned since 1990 coup attempt

At least 11 soldiers and one civilian reportedly remain in administrative detention without charge or trial at Kirikiri Maximum Security Prison in Lagos. They were arrested following an abortive coup attempt in April 1990 in which an armed attack on the then Head of State, General Ibrahim Babangida, in his barracks in Lagos was foiled and one defending officer was killed. Secret and unfair treason trials by Special Military Tribunal resulted in 69 executions in July and September 1990, carried out before the sentences were made public.

**Turner Ochuko Ogboru**, lawyer and businessman, was sentenced to life imprisonment following conviction by the Special Military Tribunal in July 1990. He is the brother of Great Ovedje Ogboru, declared wanted for trial for allegedly giving financial backing to the 1990 coup attempt. Although pardoned in 1993, Turner Ogboru has not been released from prison and the government continues to ignore an order for his release made by the Lagos High Court in April 1994.

Nine of the military detainees appear first to have been acquitted after being tried twice by the Special Military Tribunal and then convicted on 17 October 1991 in a third trial when a different member of the military government was made Chairman of the Tribunal. This was in violation of their right not to be subjected to double jeopardy, as recognized in Article 14 (7) of the ICCPR. Seven were sentenced to death (later commuted to life imprisonment) and two to life imprisonment (later reduced to 10 years' imprisonment); two civilians sentenced to life imprisonment in the same trial were released in March 1992. The names of the nine are:

**Trooper Innocent Ofem Anang**) life imprisonment commuted  
**Lance Corporal (retired) Lucky Iviero**) to 10 years' imprisonment

**Lance Corporal Pullen Blacky**)

**Warrant Officer II Jomo James**)

**Trooper Christopher Miebi**)

**Warrant Officer II (retired) David Mukoro**) death commuted to

**Trooper Adelabu Olajide**) life imprisonment

**Sergeant Gartie Ortoo**)

**Trooper Fakolade Taiwo**)

At least two other soldiers, **Warrant Officer I Samson Ako Elo** and **Warrant Office II Augustine Ogbewe**, are reportedly still detained after being acquitted of involvement in the same coup attempt in a further trial by the Special Military Tribunal in 1991. All eleven are believed to be held incommunicado at the Kirikiri Maximum Security Prison, Lagos. Although the nine convicted prisoners should be entitled to the rights of all convicted prisoners to visits by families and lawyers, they are reportedly held under the 1984 State Security Decree specifically so that they may be kept incommunicado.

#### e) Return to mass public executions

Widespread use of the death penalty has continued. Executions dramatically increased after the

Nigeria: A travesty of justice - secret treason trials and other concerns

November 1993 coup and the replacement of elected civilian State Governors in Nigeria's 30 states by Military Administrators. At least 100 prisoners were executed in 1994 and at least 86 by October 1995, although the numbers may have been higher. All those executed had been convicted of armed robbery by Robbery and Firearms Tribunals, special courts outside the normal judicial system which allow no right of appeal in contravention of international standards for fair trial.

On 22 July 1995, 43 prisoners were executed by firing-squad before a crowd of 1,000 spectators in Lagos. One, Moshood Lawal, was reportedly shot 10 times before he died. Another, Mohammed Saleh, told reporters before he died that he had been held under sentence of death since 1979. In September 1995, 18 prisoners were executed in a sports stadium in Warri, Delta State, as part of a crackdown on armed robbery in the area. Aged between 18 and 30 years, some of the prisoners had been sentenced up to 10 years ago. An official present at the execution, apparently a prison driver, was reportedly killed by a stray bullet from the firing squad. There were further public executions in Adamawa State and Akwa Ibom State.

## 6.Recommendations

Amnesty International has made repeated requests for information and appeals to the Nigerian authorities about its concerns, but with little response. It is calling on the Nigerian government:

- to release immediately and unconditionally all prisoners of conscience imprisoned for the non-violent expression of their political views;
- to release immediately and unconditionally all other political prisoners unless they are to be charged and tried promptly and fairly with full rights of defence and without imposition of the death penalty, or unless their convictions and sentences are to be reviewed by a higher and independent judicial body;
- to establish a thorough, prompt and impartial investigation, consistent with international standards, into Clement Tusima's death in detention, and to introduce safeguards to protect political detainees from all forms of ill-treatment, including medical neglect;
- to allow all political prisoners full and immediate access to their families, lawyers, doctors and necessary medical care, as required by international standards, and ensure they are held in conditions which conform to the Standard Minimum Rules for the Treatment of Prisoners;
- to halt all executions and end the use of the death penalty;
- to publish full transcripts of the secret treason trials before the Special Military Tribunal, as well as information about the fate of all those detained without charge or trial in connection with the alleged coup plot of March 1995;
- to revoke the 1984 State Security (Detention of Persons) Decree, No. 2 of 1984, which allows the arbitrary detention of prisoners of conscience without recourse and removes the power of the courts to safeguard detainees from torture or other ill-treatment.

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