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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1494th MEETING

Held at Headquarters, New York, on Monday, 1 April 1996, at 10 a.m.

Chairman: Mr. AGUILAR

later: Mr. BÁN (Vice-Chairman)

later: Mr. AGUILAR (Chairman)

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Nigeria (CCPR/C/92/Add.1)

1. At the invitation of the Chairman, Mr. Yadudu, Mr. Otuyelu and Mr. Rindap (Nigeria) took places at the Committee table.

2. Mr. YADUDU (Nigeria) said that Nigeria was a responsible member of the international community which respected all international obligations it had entered into. In addition, the Nigerian Government had taken a number of steps to create an enabling environment for the extrajudicial recognition, promotion and enforcement of all rights enshrined in the Nigerian Constitution, and had also provided a forum for public education and dialogue regarding human rights issues.

3. He was glad of the opportunity to be able to highlight factors and difficulties that Nigeria had experienced in implementing measures designed to give effect to the rights recognized under the Covenant. The suggestions and recommendations of the Committee would be given the highest consideration.

4. Before responding to the specific questions posed by Committee members in the list of issues, he said that it would be useful to deal in general terms with the circumstances of the trial and execution of Mr. Ken Saro-Wiwa and others by the Ogoni Civil Disturbances (Special) Tribunal. Mr. Saro-Wiwa had been convicted as a result of the brutal murder of four prominent Ogoni chiefs on 21 May 1994 by rioting members of the youth wing of the Movement for the Survival of the Ogoni People (MOSOP). Under Mr. Saro-Wiwa's leadership, MOSOP had become a radical and violent organization that championed subversion and confrontation. The murdered chiefs had been characterized as paid agents of various oil companies and the Federal Government of Nigeria.

5. Following the civil disturbances of 21 May 1994, the Head of State, exercising powers conferred on him by the Civil Disturbances (Special Tribunal) Act, constituted the Ogoni Civil Disturbances (Special) Tribunal comprising two serving judges and a senior member of the armed forces. Under the Act, the Tribunal was empowered to try any person charged with certain offences and to impose any penalty provided for that offence in the Criminal or Penal Code. The Tribunal had sat for over eight months and had ultimately been satisfied that the prosecution had proved beyond reasonable doubt the charges that had been brought against the accused. Nine defendants, including Mr.
Saro-Wiwa, had been found guilty of murder and sentenced to death; six had been acquitted.

6. He said that the judgements and records of proceedings contained a fair amount of testimony from all witnesses and from the accused persons who gave evidence. Based upon a thorough review and assessment of the prosecution's case read in open court, it was evident that the trial had been fairly conducted in accordance with the provisions of the Act. The accused had been given all the rights and every opportunity recognized by the Act, the 1979 Constitution and other laws of the land to defend themselves in person or by counsel of their choice. While some had availed themselves of such opportunities, others had declined to do so. They had been tried under existing penal legislation, not a retroactive law, and by a duly established judicial tribunal.

7. Regrettably, counsel to some of the accused had chosen to abandon their clients halfway through the trial, and may even have encouraged some of the accused not to offer their own defence or to call witnesses. However, as required by Nigerian law, the Tribunal had appointed defence counsel for the accused following the withdrawal by their lawyers.

8. He pointed out that critics of the Nigerian judicial system had used double standards to judge the authorities. While having no qualms about accepting the jurisdiction of tribunals which tried drug traffickers, armed robbers and those suspected of fraud and other financial malpractice, they had berated a duly constituted tribunal which had tried people accused of civil and communal disturbances resulting in gruesome murder and destruction of property. He stated that the Ogoni Civil Disturbances Tribunal was not a court martial. It had been governed by due process of evidence and procedure. Its proceedings had been open and had been monitored by national and international journalists. Both local and international human rights groups had covered the proceedings. The accused had been granted all rights and privileges recognized under Nigerian laws. Above all, the same type of tribunal had operated in similar circumstances on several previous occasions in Nigeria.

9. The Tribunal was a duly constituted court permitted under the provisions of sections 30 and 33 of the Nigerian Constitution. The Act establishing it did not provide for its determination to be final or conclusive, as its findings and sentences were subject to confirmation and could be varied. Finally, he reminded the Committee that the actions of the accused had posed a serious threat to peace, order and good government both locally and nationally.

Right to life, liberty and security of the person and right to a fair trial (articles 6, 7, 9 and 14 of the Covenant) (section I of the list of issues).
10. The CHAIRMAN read out section I of the list of issues concerning the initial report of Nigeria, namely: (a) the need for detailed information on the trial and execution of Mr. Ken Saro-Wiwa and other members of MOSOP, and how those judicial measures could be reconciled with the requirements of articles 6 and 14 of the Covenant; (b) the need for a description of the constitution, membership and jurisdiction of special and military tribunals and courts and the law and procedure applied by them in criminal matters. The Committee also wished to know under what circumstances, if any, special tribunals had jurisdiction over crimes allegedly committed by citizens or over civil crimes allegedly committed by military officials; (c) the scope of measures to investigate cases of summary executions, disappearances, torture, rape and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of persons by members of the army and security forces, or paramilitary and other armed groups; what measures had been taken to bring those found responsible before the courts, to punish those proven guilty, and to prevent the recurrence of such acts; (d) the extent of measures to ensure a strict separation of the powers and the independence and impartiality of the judiciary, apart from the administrative steps referred to in paragraphs 89 to 95 of the report.

11. Mr. YADUDU (Nigeria) adding to what he had said earlier with regard to the Saro-Wiwa case, stated that the offence for which Mr. Saro-Wiwa and his co-conspirators had been charged was a very grievous one under the Criminal Code and the Civil Disturbances Act. They had been tried by a competent tribunal. They could have sought commutation of their sentences, but had chosen not to do so. In addition, the accused persons had been accorded the right to fair hearing under section 33 of the Nigerian Constitution, which was in every material respect consistent with article 14 of the Covenant.

12. As to the composition, membership and jurisdiction of special and military tribunals, he explained that a court martial was composed purely of military officers and their jurisdiction extended generally to members of the armed forces. However, since 1976, civilians suspected of participation in a coup d'état could be tried by a court martial. Apart from courts martial, the 1979 Constitution recognized a variety of other tribunals, established for different purposes and with divergent composition. Certain courts were entrusted with specialized jurisdiction to deal with some matters which the regular courts were perceived to handle inefficiently. Often such tribunals were headed by one or more serving or retired judges of the regular courts. They were empowered to try, under existing or newly created penal legislation, bank officials or customers accused of fraud or economic sabotage. Although the procedure applicable to them was governed by the Evidence Act or the Criminal Procedure Act, in practice some of the more dilatory legal procedures were often dispensed with.
13. Regarding measures taken to combat cases of summary executions, disappearances and torture, he said that citizens had rights which provided a shield against such abuses, as well as having access to remedies in cases of infringement. In the absence of any specific allegations, he could not comment on what steps may or may not have been taken to bring those responsible for such abuses before the courts.

14. Paragraphs 89 to 95 of the report clearly stated that sufficient safeguards for the independence and impartiality of the judiciary existed, and he saw no need to provide further clarification. The separation of powers stipulated under the 1979 Constitution was rigorously observed.

15. Mr. EL-SHAFEI said it was clear that, by sending such a high-ranking delegation, Nigeria had shown willingness to cooperate with the Committee and with the international community as a whole. Africa could not play a decisive role in world politics without the effective participation of Nigeria. However, he was extremely concerned by recent developments in that country.

16. The Nigerian report was far too general. States of emergency were referred to only in the abstract, without mention of exact dates or a list of the rights which had been derogated from during such periods. The statement in paragraph 32 that "the exercise of one's rights and freedoms shall be inseparable from fulfilment by the citizen of his obligations" appeared meaningless and should be clarified.

17. With regard to special trials which had taken place pursuant to the Civil Disturbances Act of 1987 as amended by the Special Tribunal Act of 1994, he noted that a tribunal's decision was not subject to review by higher courts but only to confirmation by the Provisional Ruling Council. The Nigerian delegation was perfectly well aware that such a state of affairs violated article 14, paragraph 5, of the Covenant, since the Provisional Ruling Council was in no sense a judicial authority.

18. During the trial of Ken Saro-Wiwa and his associates, defence lawyers had been granted access to their clients but had never been allowed to spend any time alone with them. The accused had thus been denied the right to adequate facilities for the preparation of their defence and had not been allowed to communicate freely with their counsel; hence a violation of article 14, paragraph 3 (b), had occurred. The defence had also submitted two affidavits from prosecution witnesses who had claimed that security agents and others had bribed them to sign false statements. The Tribunal had refused to accept those affidavits without giving any reason. It would be useful to know whether any investigation had been conducted into the matter, and if not, why not. It seemed that, by refusing to admit the affidavits as evidence and thereby denying the accused to call prosecution witnesses, the Tribunal had violated article 14, paragraph 3 (e), of the Covenant.
19. He noted that defendants were said to have been physically mistreated, deprived of food and medical care, and denied visits by family members and legal counsel; Ken Saro-Wiwa had reportedly been manacled for a long period and beaten and kicked as well, despite his poor health. Such mistreatment violated articles 7 and 10 of the Covenant. Decree No. 12 of 1995 prohibited the courts from adjudicating cases relating to actions taken under or pursuant to decrees and edicts, which might well constitute interference in the administration of justice in Nigeria.

20. Mr. BHAGWATI expressed concern about two decrees in particular. No. 107 of 1993, the Constitution (Suspension and Modification) Decree, which effectively suspended the 1979 Constitution and gave the President the power to override its provisions, and No. 12 of 1994, the Federal Military Government Supremacy and Enforcement of Power Decree, under which the courts were precluded from inquiring into anything done under that or other decrees. The two decrees in question constituted a denial of the rule of law and violated article 2, paragraph 3, of the Covenant. Decree No. 2 of 1994, the State Security (Detention of Persons) Decree, contained Draconian provisions such as suspension of the right of habeas corpus and, in effect, conferred unlimited powers on the Government; under an October 1994 amendment to that decree, persons could be detained and kept incommunicado without any judicial recourse whatsoever. Under that decree, several persons were currently being held in Rivers State, and several newspaper groups had been banned.

21. Special tribunals were of two kinds, namely, those established under the Treason and Other Offences Decree, No. 1 of 1986, and those established under the Robbery and Firearms Special Provisions Decree, No. 5 of 1984, or the Civil Disturbances Decree, No. 2 of 1992, and it was unclear whether they followed the procedure of the civil courts. Their rulings were subject to approval by the competent authority, but it was not clear whether that meant judicial authority or that of the President of the State. If there was no right of appeal and no review by any judicial authority, the guarantees of the right to a fair trial under articles 9 and 14 of the Covenant were being violated. Persons brought before special tribunals established under Decree No. 1 of 1986 were not allowed to choose their own legal counsel; they were represented by military lawyers provided by the tribunal. Furthermore, trials were not public or held before an independent, impartial tribunal, violating article 14 of the Covenant.

22. Lord COLVILLE said that the text of the judgement issued in the case with which the Committee was concerned extended the law of murder in a way that might be regarded as dubious, as the matter was one which should properly fall within the jurisdiction of an appellate court, and there was no appellate court. The defendants had been put to death without having had any right of appeal, a situation which violated the Covenant.
23. He pointed out that an analogous situation, involving murders in Ogoni lands, had arisen in a neighbouring municipality and was being handled by the ordinary civil courts, with the right of appeal and other rights guaranteed under the Constitution being observed. It was not clear why the one case should have been heard by the regular courts and the other by a special tribunal. It was also pertinent to ask whether the three or four other groups that were to be tried under the special tribunal in due course would also be denied the right of appeal and other rights. At the Port Harcourt hearings, the members of that tribunal had lodged throughout the trial in the same house as members of the prosecution team, a situation that was intolerable.

24. Ms. EVATT said that the report submitted by Nigeria was itself a source of concern, in that it did not adequately depict either the state of law in Nigeria or the de facto situation there, which was characterized by the derogation of rights and a state of emergency, with military decrees apparently undermining the country's Constitution. Under Decree No. 107, the Constitution was subject to suspension and modification; future decrees would be able to override it and eliminate judicial review. The Constitution no longer had primacy; in effect, unchecked legislative and executive power were vested in the Head of State. Under Decree No. 12 of 1994, the Government could exclude the courts' right to review the Government's actions. Constitutional guarantees of human rights were overridden, and habeas corpus had been suspended. It was against that background that the issues included under section I should be seen.

25. The report did not describe in any detail the creation and jurisdiction of the many tribunals. Paragraph 117 referred to them, but took no note of the Committee's comment that military tribunals should judge civilians only exceptionally and subject to the safeguards set forth in article 14, especially the right of appeal.

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