A Mountain Still to Climb

Censorship and democratic transition in Nigeria

ARTICLE 19

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INTRODUCTION AND RECOMMENDATIONS

The handover of power by the Nigerian military to a new civilian government, headed by President Olusegun Obasanjo, on 29 May 1999 marks a potentially pivotal moment in Nigeria's history. Hopes are being expressed in many quarters that the new civilian government will be able to break the stranglehold which the military has had over political power since independence in 1960. Whatever views individual governments may have held privately, the entire international community rushed publicly to endorse the transition to civilian rule initiated by General Abdusalami Abubakar in June 1998, following the death of his predecessor, General Sani Abacha. Many Nigerians, most notably those individuals and organisations which fought hardest for democracy and human rights during the dark days of the Abacha era, were far more cautious. ARTICLE 19 is concerned that the international community has failed sufficiently to recognize that the completion of the transition to civilian rule does not mean that democracy and human rights in Nigeria have been secured.

While the Abubakar transition to civilian rule was undoubtedly an improvement upon that of the late General Sani Abacha, nonetheless it was a flawed, "quick fix" process which leaves much still to be done if Nigeria's latest democratic experiment is not to be short-lived. The terms and parameters of the Abubakar transition were dictated by the Nigerian military. Serious human rights abuses continued. During April-May 1999, there was a wave of renewed official harassment of journalists and trade unionists. In the oil-producing areas of the Niger Delta, there were continued environmental and political protests by aggrieved members of local communities.

The tensions which have lead to conflict in areas such as the Niger Delta will not simply melt away after 29 May 1999. Furthermore, previous civilian governments have had very chequered track-records on democracy and human rights. While it is to be hoped that there will now be greater space within which to build democracy and respect for human rights in Nigeria, it is an unavoidable fact that the nature of the Abubakar transition will shape what follows under an Obasanjo civilian presidency.

This report begins by assessing the democratic credibility of the Abubakar transition (section 1). It then describes the minimum steps necessary, in ARTICLE 19's view, to provide the foundations for a democratic transition and the additional measures which are necessary to safeguard freedom of expression as part of that transition (sections 2 and 3). The report sets out in full the **Ota Platform of Action for Media Law Reform in Nigeria**, which was agreed at a workshop organised jointly by ARTICLE 19, Media Rights Agenda and the Nigerian National Human Rights Commission and held on 16-18 March 1999 in Ota, Ogun State. The workshop brought together for the first time a combination of international and local experts on the media, including representatives of the Nigerian government and the publicly-

funded media. Participants called on the new civilian government to enter into a dialogue on media law reform based on the **Ota Platform of Action** after it takes power on 29 May 1999.

The next section of the report briefly describes cases of harassment and intimidation of journalists and trade unionists during the Abubakar transition – harassment and intimidation which, if anything, intensified as 29 May 1999 drew nearer (section 4).

The report goes on to explore the censorship dimensions of the crisis in the Niger Delta – hitherto a relatively neglected aspect of the deep-rooted three-way conflict in the southern oil-producing areas between local communities, foreign oil companies and government (section 5). The crisis in the Niger Delta illustrates the disastrous consequences of systematically denying peoples' right to have their say and their right to know. Access to means of free expression and to diverse sources of information is undoubtedly part of the broader struggle over resources in the Niger Delta. The report demonstrates how the communities of the Niger Delta are denied their right to freedom of expression and information, notably through government control of the publicly-funded media and through suppression of peaceful protest. Another dimension of the crisis addressed here is the lack of openness and transparency of government and foreign oil companies in their dealings with local communities, which has led to allegations that there is a secretive symbiotic relationship between them in terms of security arrangements. This lack of openness and transparency has also fuelled Nigeria's all-pervasive culture of "contract politics" and corruption.

The report concludes (section 6) by briefly reviewing the role of the international community in helping to build a democratic transition in Nigeria, referring specifically to the United Nations (UN), the Commonwealth, the African Commission on Human and Peoples' Rights, the International Monetary Fund (IMF) and World Bank.

Below are **ARTICLE 19's recommendations for action by the new Nigerian government, the oil companies and the international community.**

A The new civilian government in Nigeria should take the following steps:

i) General

- end all harassment and intimidation of journalists and media organisations;
- institute an independent judicial inquiry, the results of which are made public, into the "disappearances" in 1996 of Bagauda Kaltho of *The News* and Chinedu Offoaro of *The Guardian*;
- urgently review the cases of individuals currently detained without trial in connection with alleged corruption, make public its findings, and either promptly

bring them to trial on recognizably criminal charges or release them without delay;

- repeal all decrees which violate Nigeria's international human rights obligations – for example, the State Security (Detention of Persons) Decree, No 2 of 1984 ;
- declare that any Constitution promulgated by the departing military government has interim status only and agree with all concerned parties an open and inclusive process for debating and promulgating a new final Constitution;
- undertake a comprehensive programme of human rights reform in order to reinforce Nigeria's democratic transition;
- in the above regard, with regard to media law reform, accept as a basis for dialogue with civil society the **Ota Platform of Action on Media Law Reform in Nigeria**, agreed on 18 March 1999 at a workshop organized by ARTICLE 19, Media Rights Agenda and the Nigerian National Human Rights Commission;
- pledge that a statutorily independent federal- and state-owned public broadcast media and a Freedom of Information Act will be in place within two years of coming into office.
- as part of the struggle to combat corruption, the government should ensure that public bodies collect appropriate information on economic matters. Such information should include tax returns filed by companies and disclosure by officials of personal assets. This information should be subject to a Freedom of Information Act and, outside of limited exceptions, available to the public on request.

ii) With regard to the crisis in the Niger Delta

- end official harassment and intimidation of political and environmental activists engaged in peaceful protests against the government and foreign oil companies;
- support measures at state level to ensure that the state-owned broadcast media in the Niger Delta are made statutorily independent at the earliest possible opportunity and that their editorial independence is guaranteed in law. Ideally, this should be part of an identical process across the country, also encompassing all federally-owned broadcast media and the federal regulatory body, the National Broadcasting Commission;
- end the commercialisation of programming airtime on the public broadcast media, which excludes many political and community organisations from obtaining access;
- privatise all government-owned newspapers currently publishing in the Niger Delta;
- publish the full texts of current Memorandums of Understanding and Joint Operations Agreements which exist between the Nigerian government and foreign oil companies operating in the Niger Delta. Where they fail to give due regard to

Nigeria's national and international human rights obligations, revise them on the basis of consultations with both oil companies and local communities;

- establish the Federal Environmental Protection Authority (FEPA) and its state branches as statutorily independent bodies and include credible community representatives on their boards;
- establish an independent judicial commission of inquiry to investigate alleged human rights violations committed by the security forces in the Niger Delta;
- as part of a wider constitutional review process, support the incorporation into the final Constitution of explicit provisions for the protection of minority rights in Nigeria.

B Foreign oil companies operating in Nigeria should:

- support the publication of the full texts of current Memorandums of Understanding and Joint Operations Agreements which exist between them and the Nigerian government;
- publish the full texts of their policies regarding the handling of protests, deployment of security personnel and purchasing arms for the security forces. Where they fail to give due regard to the responsibility of oil companies to uphold human rights, revise them on the basis of consultations with both the government and local communities;
- call upon the government to establish an independent judicial commission of inquiry to investigate alleged human rights violations committed by the security forces in the Niger Delta, and cooperate fully with the inquiry;
- monitor and investigate alleged human rights abuses that occur in the context of their operations, publish their findings and call on the authorities to take action against those responsible for abuses.

C Recommendations to the international community:

- it should develop and make public clear benchmarks against which to measure the progress of Nigeria's democratic transition after 29 May 1999 and base programmes of assistance to Nigeria on these benchmarks;
- it should support any genuine efforts on the part of the new civilian government to undertake a comprehensive programme of human rights reform in Nigeria;
- CMAG should keep Nigeria on its agenda for at least a year after 29 May 1999 and set out publicly at its next meeting the steps which it believes Nigeria should take if it is to achieve compliance with the Harare Principles;

- the UN and the Commonwealth should ensure that Nigerian civil society organisations are fully involved in the process of agreeing the priorities and parameters of technical assistance programmes to Nigeria and in their implementation. The Nigerian government should not have a blanket veto over proposed programmes;
- the African Commission on Human and Peoples' Rights should publish the report of its 1997 fact-finding mission to Nigeria without further delay;
- governments should work together to investigate and make public information regarding the location of public funds misappropriated by officials during the last sixteen years of military rule in Nigeria and cooperate with efforts to return those funds to the Nigerian authorities.

1 ASSESSING THE CREDIBILITY OF THE TRANSITION TO CIVILIAN RULE: A BENCHMARKS APPROACH

In September 1997, in a joint letter to the Commonwealth Ministerial Action Group (CMAG), ARTICLE 19 and Media Rights Agenda, a Nigerian freedom of expression organisation, set out five **minimum benchmarks** which the military government of General Sani Abacha should meet if it wished to trigger a more positive engagement by the international community with its "transition to civilian rule". The **minimum benchmarks** were:

a) An end to arbitrary detentions and the release of all political prisoners;

b) The repeal of key repressive decrees - in particular the **State Security (Detention of Persons) Decree, No. 2 of 1984**, the **Constitution (Suspension and Modification) Decree, No. 107 of 1993** and the **Federal Military Government (Supremacy and Enforcement of Powers) Decree, No. 12 of 1994**;

c) The publication of the 1995 draft Constitution so that it could be openly debated and, if agreed, amended to bring it into line with international human rights standards;

d) The establishment of an agreed basis - for example, a sovereign national conference - for involving all interested parties in deciding how the "transition" should proceed;

e) The creation of an open and fair electoral process, including for the registration of parties, overseen and supervised by a genuinely independent and impartial electoral commission.

Following the death of General Abacha in June 1998, ARTICLE 19 and Media Rights Agenda sought to assess the credibility of the Abubakar transition using the same five benchmarks. How did it measure up against these benchmarks?

There was a dramatic reduction in the number of arbitrary detentions. The vast majority of political prisoners were released. They included serving and former military personnel convicted, after unfair trials before military tribunals, of involvement in alleged coup plots in 1990, 1995 and 1997, as well as civilians such as Niran Malaolu, a journalist unfairly convicted of alleged involvement in the 1997 coup plot. Nigerian officials claim that all political prisoners have now been released. Nigerian human rights organisations disagree, pointing in particular to the large number of people detained for prolonged periods without trial in connection with alleged offences of corruption. They argue that some of those individuals may have been detained on politically-motivated grounds and that all of them have been denied justice because they have not been brought promptly to trial. ARTICLE 19 calls on the new civilian government to review the cases of these individuals, to make public their findings and either bring them promptly to trial on recognizable criminal charges or release them without delay.

The issue of repressive military decrees was barely addressed during the current transition to civilian rule. A barrage of decrees which violate Nigeria's international legal obligations remained in force, including those referred to in the above benchmarks. Other decrees which ARTICLE 19 and Media Rights Agenda argued should have been repealed immediately in order to strengthen the transition to civilian rule included:

- **The Treason and Other Offences (Special Military Tribunal) Decree, No. 1 of 1986**
- **The Treason and Treasonable Offences Decree, No. 29 of 1993**
- **The Transition to Civil Rule (Political Programme) Decree, No. 1 of 1996**
- **The Offensive Publications (Proscription) Decree, No. 35 of 1993**

The 1995 draft Constitution, which the Abacha government intended would supersede the partially-suspended 1979 Constitution, was eventually published, but more than one version of the draft was in circulation. A hasty "consultation process" was undertaken by the authorities to address the constitutional situation in Nigeria. However, the conditions did not exist for a full, open and informed public constitutional debate. A new Constitution was finally promulgated on 5 May 1999 - a mere twenty four days prior to the hand over to civilian rule - and published 12 days later.

Abubakar's transition took place in the absence of a coherent constitutional framework. This can only have serious implications for the democratic legitimacy of the new civilian government. In such circumstances, ARTICLE 19 and Media Rights Agenda argued that the promulgation of a new Constitution with putative "final status" by the Provisional Ruling Council (PRC) before it left power was unacceptable. The

only credible course for the military government was to lift the partial suspension of the 1979 Constitution without delay and then retire from the constitutional fray. Once the new civilian government had taken power, it could then agree with all interested parties a mechanism for reviewing the 1979 Constitution, the 1995 draft and other texts that may exist before promulgating a new Constitution. Given that the Nigerian military have insisted on giving the country this parting gift, the new civilian government should make it clear that the Constitution promulgated on 5 May 1999 has interim status only and agree with all concerned parties an open and inclusive process for debating and promulgating a new final Constitution.

The present constitutional quagmire might be less acute had General Abubakar established a sovereign national conference to agree how the transition to civilian rule should proceed. He did not do so. While the Abubakar transition was clearly far more inclusive than the discredited Abacha "transition", ARTICLE 19 and Media Rights Agenda shared the concerns of many Nigerian human rights and pro-democracy groups that the process was too tightly controlled by the military. For example, describing the electoral commission that was created as the "Independent" National Electoral Commission (INEC) did not in itself guarantee independence. An electoral commission should be seen to be completely impartial, yet at least three members of INEC had played prominent roles on a partisan basis in previous political processes. Further, the military government appointed the chairman of the commission and its state commissioners, further undermining its independence. The provisions for the registration of political parties, while certainly an improvement on previous provisions, imposed unreasonable requirements which prevented many with a positive commitment to Nigeria's future from participating in the transition.

The national and presidential elections held in February 1999 were marred by massive fraud and irregularities by all political parties. It was only the overwhelming desire of the vast majority of domestic and international observers to see the end of military rule which held them back from publicly concluding that the electoral process had been a negation of democracy rather than its affirmation.

Measured in this way, and despite the progress which has been made since the death of General Abacha, Abubakar's transition to civilian rule fell far short of meeting the ARTICLE 19 and Media Rights Agenda’s minimum benchmarks. Some may argue that these benchmarks were unrealistic. We do not believe this was the case. Their significance was that each of them represented a means through which the Abubakar transition might have been qualitatively different from previous transitions to civilian rule in Nigeria, none of which have proven durable. Hence our concern about the fragility of the new civilian dispensation.

There is a further issue which was not addressed during Abubakar's transition to civilian rule. This was the need to ensure that the conditions were established for equal and impartial coverage by the public broadcast media of all political parties and viewpoints. In this regard, ARTICLE 19 and Media Rights Agenda called on the

Nigerian Government to support efforts to agree guidelines for fair coverage during elections by the government-owned media at the state and national levels. These should have covered both the amount of airtime available to the various political viewpoints and the nature of the coverage of them. We also called for the establishment of an independent body to monitor the implementation of such guidelines. As organised, the INEC lacked the genuine independence required for that role.[1] This is an issue which should be returned to by the new civilian government.

2 TOWARDS A POST-TRANSITION AGENDA FOR REFORM

Given that Abubakar's transition to civilian rule failed to meet the above minimum benchmarks, it is vital that the new civilian government takes immediate steps to do so. Once those steps have been taken, it will then be necessary for the new civilian government to initiate a comprehensive programme of human rights reform. One key area will be the protection and strengthening of freedom of expression, including media freedom. Aside from the decrees mentioned above, which should be immediately repealed, there are a range of other military decrees and laws which require repeal or amendment if freedom of expression is to be adequately protected in future in Nigeria. They include[2]:

— The National Broadcasting Commission Decree, No. 38 of 1992
— The Nigerian Press Council Decree, No. 85 of 1992

— The Daily Times of Nigeria Ltd (Transfer of Certain Shares), Decree No. 101 of 1979
— The National Film and Video Censors Board, Decree No. 88 of 1992
— The National Economic Intelligence Committee (Establishment, ETC), Decree No. 17 of 1994
— The Federal Criminal Code, sections 373-81 [criminal defamation]
— The News Agency of Nigeria Act (1976)
— The Seditious Offences Act (1909)
— The Federal Radio Corporation of Nigeria Act (1976)

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[1] Media Rights Agenda carried out its own monitoring of the print and broadcast media between December 1998 and February 1999. For copies of its reports, contact Media Rights Agenda at mra@rcl.nig.com – or consult its website at http://www.internews.org/mra.

[2] ARTICLE 19 and Media Rights Agenda's reasons as to why these decrees and laws require repeal or amendment are set out in detail in section IV of our 1997 report, *Unshackling the Nigerian Media: An Agenda for Reform* (ARTICLE 19 and Media Rights Agenda: London, July 1997)

— The Nigerian Television Authority Act (1976)
— The Official Secrets Act (1962)
— The Defamation Act (1961)
— The Printing Presses (Regulation) Act (1958)
— The Wireless Telegraphy Act (1961)
— The Obscene Publications Act (1962)
— The Defamation Act (1961)

ARTICLE 19 and Media Rights Agenda noted with interest the recommendations of a workshop held on 20 October 1998 in Lagos involving Abubakar's Minister of Information, John Nwodo Jnr, three of his predecessors and other senior figures with positions of responsibility in the media. The workshop called for the early abrogation of the Newspapers Decree, No. 43 of 1993 and removal of the provision in the draft 1995 Constitution for the establishment of a national Mass Media Commission. ARTICLE 19 and Media Rights Agenda support these recommendations. Decree No 43 of 1993, which established a Newspaper Registration Board within the Ministry of Information, is wholly discredited. Decree No 43 of 1993 was finally repealed in early May 1999. The proposed Mass Media Commission represented a grave threat to media freedom. Given that a statutory Press Council and a National Broadcasting Commission already exist, there can be no justification for an additional regulatory body for the media. However, ARTICLE 19 and Media Rights Agenda are wary of the recommendation of the workshop that the Press Council be "strengthened". The organisations believe that the best form of regulation of the private print media is self-regulation. The independence of the present statutory Press Council is compromised by the fact that the President has the power to appoint the chairman on the recommendation of the Minister of Information. Other government appointees currently sit on the board. Finally, the Press Council is entirely government-funded. Strengthening the Press Council without first securing its independence from government would do nothing to protect and promote media freedom. Reports that the Press Council is to take over the responsibilities of the now defunct Newpaper Registration Board with regard to the registration of newspapers are a cause for concern.

3 THE OTA PLATFORM OF ACTION ON MEDIA LAW REFORM IN NIGERIA

With the ushering in of the Abubakar transition in June 1998, the political and human rights climate in Nigeria began to shift sufficiently to raise the possibility of seeking to build a wider constituency of support for media law reform. Taking the agenda

elaborated in *Unshackling the Nigerian Media*[3] as their point of departure, ARTICLE 19 and Media Rights Agenda joined with the Nigerian National Human Rights Commission to organize a media laws workshop in Ota, Ogun State, on 16-18 March 1999. The workshop brought together an unprecedented combination of government representatives, international participants – including Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, Glenys Kinnock, Member of the European Parliament and Judge John Manyarara, Chairman of the Board of Trustees of the Media Institute of Southern Africa - local human rights organisations and lawyers, and representatives of the public and private media in Nigeria. The workshop focused on six key areas with regard to media law reform: constitutional and general issues; the legal and institutional framework regarding the press; the legal and institutional framework regarding broadcasting and the electronic media; freedom of information; content-related offences; and defamation.

Out of the workshop came the **Ota Platform of Action on Media Law Reform in Nigeria** of 18 March 1999. The full text is set out overleaf.

THE OTA PLATFORM OF ACTION ON MEDIA LAW REFORM IN NIGERIA

Preamble

Participants at the Media Law Reform Workshop, held at Ota, Nigeria, from 16-18 March 1999, heard a wide range of representations regarding the need for media law reform in the context of Nigeria's fragile transition to democracy. These included:

- Justice PK Nwokedi (Retd), Chairman of the Nigerian National Human Rights Commission

[3] Ibid.

- Mr Abid Hussain, United Nations Special Rapporteur on Freedom of Opinion and Expression
- Mrs Glenys Kinnock, Member of the European Parliament
- Professor Auwalu Hamisu Yadudu, Special Adviser, Legal Affairs, to the Head of State of the Federal Republic of Nigeria
- Prince Tony Momoh, former Minister of Information, media consultant and legal practitioner

On the basis of these representations and their deliberations, participants at the workshop agreed on the following Platform of Action, which they call upon all levels and branches of government to endorse and implement at the earliest opportunity.

Media law reform is a key dimension of the democratic transition and free opinion and expression. It is in that spirit that participants at the workshop call upon the government to give active consideration to this Platform of Action.

A General and constitutional issues

1. The present military government should repeal repressive decrees before it leaves power on 29 May 1999. However, if it has failed to do so, the new Constitution should oblige the National Assembly to repeal those decrees which are in breach of Nigeria's obligations under international human rights law within one month of assumption of office. Amongst those decrees identified by participants were:
   — The State Security (Detention of Persons) Decree, No 2 of 1984
   — The Constitution (Suspension and Modification) Decree, No 107 of 1993
   — The Federal Military Government (Supremacy and Enforcement of Powers) Decree, No 12 of 1994
   — The Treason and Other Offences (Special Military Tribunal), Decree No 1 of 1986
   — The Treason and Treasonable Offences Decree, No 29 of 1993
   — The Offensive Publications (Proscription) Decree, No 35 of 1993
   — The Newspapers Decree, No 43 of 1993
   — The Guardian and Punch Newspapers (Proscription) Decree, No 48 of 1994

2. The text of the draft Constitution which will form the basis of the 4th Republic should be published immediately and widely circulated.

3. The new Constitution should contain provisions giving specific protection to the media, including its editorial independence, and recognition of the confidentiality of journalistic sources.

4. The new Constitution should also contain a specific guarantee of the right to access to public information as an expression of the right of the people to have an accountable government.

5. There should be independent and impartial investigations of all outstanding cases of alleged human rights abuses, including the death and "disappearance" respectively of the journalists Bagauda Kaltho and Chinedu Offoaro and other similar offences.

6. Criminal sanctions are an inappropriate response to breaches of journalistic ethics. Accordingly, such criminal sanctions should be removed from all legislation, where they exist.

B Specific media and freedom of expression issues

7. Regarding the legal and institutional framework governing the press:

- Participants agreed that the aim should be for the press to be self-regulating. Accordingly, any Press Council should ideally be non-statutory and funded by the stakeholders.
- However, until such time as this is possible, any statutory Press Council should be effectively self-regulating and, as far as possible, fully independent of government.
- To this end, Decree No 85 of 1992 should be substantially amended, including as below.
- The Chair and members of the Press Council should in future be appointed from a list of candidates drawn up by the Nigerian Press Organisation which is then presented to the National Assembly. An appropriate committee of the National Assembly should be responsible for selecting the chair and members of the Press Council from that list.
- Until the Press Council becomes a self-regulating, self-funding body, the government should continue to fund the Press Council.
- All decisions of the Press Council should be published and disseminated widely. The annual report and accounts should also be published.

- Participants rejected any idea of mandatory registration of journalists by the government. These provisions should be removed from the statute.
- There should be no requirement that newspapers be registered. Publishers should be simply required to satisfy company law.
- Journalist's right to freedom of movement should be fully respected at the country's entry and exit ports.
- The 1964 Printing Press Act should be repealed.

8) Regarding the institutional and legal framework governing the broadcast/electronic media:

- Participants agreed that the fundamental principle governing public broadcasting is that it should be fully independent of government in terms of editorial independence, method of funding, appointments processes.
- Accordingly, Decree No 38 of 1992 should be amended to ensure that the National Broadcasting Commission is fully independent of government. All members of the Commission should be appointed by and accountable to the National Assembly in open public hearings.
- The issuing and revocation of licenses by the National Broadcasting Commission should be transparent, non-discriminatory and should encourage diversity (for example, through community broadcasting).
- The National Broadcasting Commission should be the sole issuer and revoker of such licenses. The process should be subject to judicial review.
- To level the playing field as between public broadcaster and private broadcaster, public broadcasters should not engage in commercial broadcasting.
- The National Broadcasting Commission should promote broadcasting which satisfies the social, cultural and religious interests of the public.
- The government should support the broadcasting sector by ensuring that there is adequate public infrastructure (eg electricity, affordable and reliable telecommunications) and economic policy incentives.
- Media monopolies, whether state or private, shall be discouraged by establishing clear limits on media ownership, including cross-ownership between the broadcast and print sectors.

9) Regarding freedom of information:

- In addition to a constitutional guarantee of the right to access to public information, a Freedom of Information Act should be enacted at the earliest possible opportunity, reflecting the principle of maximum disclosure.

- Participants agreed that the draft Access to Public Records and Official Information Act published by Media Rights Agenda, Civil Liberties Organisation and the Nigerian Union of Journalists, should be taken as the basis for discussions on this issue, but that its provisions require further review.
- All legislation which unduly inhibits or restricts the right to freedom of information, such as the Official Secrets Act, should be amended to reflect the principles of the Freedom of Information Act.
- The National Archives Act should be reviewed and the clause which provides for the non-disclosure of state records or documents until after 10 years should be expunged.
- The cost of obtaining public information should be affordable to the majority of citizens.
- The proposed Act should contain a provision which stipulates that the individual requesting the information need not demonstrate any specific interest in the information provided.
- Doctoring of public records before they are released to the person, entity or community requesting them and obstruction of access to public records should be made a criminal offence.
- In the application of any exception, there should be a presumption of access to public information in the proposed Act. Exceptions should be narrowly drawn and subject to a test of actual harm.
- There should be established an independent body to hear appeals from individuals who have been denied access to public information. Such appeals should be held timeously.
- Government should take the lead, in close cooperation with civil society, to provide public education to civil servants and the broader population about the workings and benefits of a freedom of information regime.

10) Regarding content-related offences:

- There should be a comprehensive review of all content-related offences as provided by law. In particular, participants agreed that all existing provisions regarding sedition, “false news” and criminal defamation (including the defamation of foreign princes, as well as the Defamatory and Offensive Publications Act, 1966) be repealed at the earliest opportunity.
- The Obscene Publications Act should be reviewed so as to make it serve a more specifically targeted public interest objective.
- The judiciary should exercise its powers of contempt within the limits of constitutional guarantees.

11) Regarding civil defamation:

- The law of civil defamation requires substantial revision, as below.
- Certain public bodies should be prohibited from suing in libel (eg NEPA, NITEL, local government councils).
- It should be a defense in an action for civil defamation regarding a statement on a matter of public interest for the defendant to show that he or she has not acted unreasonably in all the circumstances even if the statement is false or cannot be shown to be true.
- Factors to be taken into account in establishing reasonableness include: a) the extent to which the author of the statement investigated the matter before publication; b) the credibility of the source of the statement; c) the extent to which alternative sources of information (for example, public authorities) have unjustifiably withheld information; d) the nature of the language in the statement is cast; e) the extent to which the public's right to know in a timely fashion justified publication.
- Courts should adhere strictly to the rules governing the granting of Ex parte interim injunctions (ie where the defendant is not present) where such applications are made to them. In addition, procedural rules should be adapted so as to accommodate this standard.
- There should be a strong presumption against granting interlocutory injunctions (ie before the matter has been heard on the merits) – whether ex parte or inter partes. Such injunctions should not be granted unless: a) the harm alleged by the plaintiff is serious; b) the injunction would be effective to prevent the harm (eg the matter has not already been published); c) the harm cannot be redressed by other means, such as monetary compensation. In addition, there should be a presumption that monetary compensation is normally sufficient to redress the harm done by a defamatory statement.
- Damages should be proportionate to the actual or proved harm.
- Damages should not in any case be so excessive as to produce a chilling effect on freedom of expression.
- Damages should be mitigated where certain factors are present. For example: a) the extent to which the plaintiff is able to counter the negative effect of the statement complained of: b) the reasonableness of the defendants behaviour; or c) any offer of apology or correction.
- No one should be required to prove the truth of an opinion.
- It should be defense to an action for defamation in relation to the publication of any opinion whether or not it relates to a matter of public interest that the opinion is one that a reasonable person could hold in the circumstances.

- Where the opinion relates to a matter of public interest, there should be a greater degree of tolerance.
- Where there is a doubt as to whether a statement is one of fact or opinion, there should be a presumption that it is a statement of opinion.
- Fair and accurate media reports of all statements that are covered by absolute privilege should also be absolutely privileged.

12) Regarding other issues:

- Media practitioners should commit themselves to meeting the highest standards of professionalism in the conduct of their work.
- Media practitioners should allow whoever presents a reasonable claim that they have been wronged to exercise a right of reply. This reply should be given the same prominence as the actual story.
- Readers, viewers and listeners who wish to comment or present alternative views should be afforded every reasonable opportunity to do so.

C Statement of commitment

13) Participants agreed to work actively together and with government, provided there is good faith, in pursuit of this Platform of Action. They agreed to initiate a dialogue with government on these matters as a matter of urgency and call on the government to respond positively.

14) Participants recognised that there were media-related issues which had not been fully addressed by the workshop and some issues which were discussed may require further consideration. Accordingly, they mandated the sponsoring organisations of this workshop – Media Rights Agenda, the Nigerian National Human Rights Commission and ARTICLE 19, the International Centre Against Censorship – and other interested parties to further develop and refine proposals for media law reform and to consult regularly with the other participants as part of this endeavour.

15) At the same time, participants agreed that the sponsoring organisations should undertake to develop appropriate strategies through which the above programme of media law reform can be realized. In addition to dialogue with

the government, broader strategies of advocacy and litigation should also be pursued.

Proposed by Joan O'Dwyer, Minaj Communications
Seconded by Adebisi Adekunle, New Nigerian Newspapers

UNANIMOUSLY AGREED AT OTA, OGUN STATE, NIGERIA ON 18 MARCH 1999.

The full list of participants at the workshop, including their contact details, is given in the Appendix to this report.

Following the workshop, ARTICLE 19 and Media Rights Agenda have begun a programme of domestic and international advocacy work aimed at further strengthening the constituency for media law reform. The primary target of domestic advocacy will be the new civilian government and political representatives at federal and state level. Internationally, the objective is to build financial, technical and political support for the process of change within Nigeria.

4 HARASSMENT OF JOURNALISTS AND TRADE UNIONISTS

While the scale of human rights abuses against the media and government critics was much reduced during the Abubakar transition, instances of harassment and intimidation of journalists and trade unionists continued. Abuses intensified as the date for the handover of power to a civilian government drew nearer. What follows are some examples of the harassment which peaceful critics of the military regime continued to face during its final months.

In August 1998, Okozie Amarube, a journalist working for *News Service* in Enugu State, a magazine that has been forthright in its criticism of officialdom and corruption, was shot by the police when they raided the magazine's printing press and later died in hospital from his wounds. Latest reports suggest that a policeman was arrested and remains in detention in connection with Amarube's death.[4]

In November 1998, Ayodele Akele, a civil servant working for Lagos State, was sacked by the state administration for his trade union activities and criticism of the military government. He remains out of work. The outgoing military governor of Lagos

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[4] Rapporteurs sans frontieres (RSF)/International Freedom of Expression Exchange (IFEX) Alert Update, 26 April 1999

State has stated that he should never be re-employed and should be re-arrested if he tries to enter government premises.

In early February 1999, a team of policemen stormed the editorial offices of *The News* and the premises of the Satellite Press, a printing company, and detained three journalists for several hours before releasing them. They also seized and confiscated copies of *The News. The News* was intending to publish a story on official corruption during the Abacha era.

On 11 February 1999, Lanre Arogundade, Chairman of the Lagos State Council of the Nigeria Union of Journalists (NUJ), was arrested and briefly detained, apparently in connection with his peaceful trade union activities. On 25 April 1999, he was once again arrested. On 4 May 1999, he was formally arraigned before a Magistrates court in Ibadan on charges of conspiracy and murder in connection with the death of Bolade Fasasi, the former treasurer of the Lagos State Council of the NUJ in March. The police acted on the basis of petitions from well-known political opponents of Arogundade who had been expelled from the Lagos State Council of the NUJ. On 14 May 1999, Lanre Arogundade was granted bail by Ibadan High Court on payment of Naira 250,000 (US $2500) and the nomination of two sureties of the same value, one of which should be based on landed property in Ibadan. These bail conditions were met only with great difficulty by supporters of Lanre Arognundade. Several days later, Lanre Arogundade was released on bail. ARTICLE 19 calls for the dropping of all charges against him.

Also in April 1999 ten leaders of the Plateau State Nigerian Labour Congress were arrested in the context of a strike by civil servants. They remain in detention. 24 other trade union activists have been declared wanted by other state governments.

There were also incidents of harassment of journalists working in the publicly-owned media at state level. For example, in late February 1999, two journalists working for the *Nigerian Observer* in Benin City, Edo State, were suspended for having published criticisms of the parliamentary elections by international observers.

There are a number of unresolved cases which need to be addressed urgently. By the new civilian government. One of those is the politically-motivated charges against Lanre Arogundade. But there are also the cases of Bagauda Kaltho, Kaduna correspondent of *The News*, and Chinedu Offoaro, a journalist with *The Guardian*. When the UN Special Rapporteur on Nigeria visited Nigeria in November 1998, ARTICLE 19 and Media Rights Agenda asked him to raise the cases of these journalists, who "disappeared" in 1996. The Nigerian authorities claimed during 1998 that Bagauda Kaltho died while engaging in an act of terrorism. Both men are rumoured to be dead after being detained by security agents. ARTICLE 19 calls on the new civilian government to institute an independent judicial inquiry into these "disappearances". Such a step would represent a blow against the culture of impunity which has reigned in Nigeria for so long and bring hope to the families of both men that the truth about their fate may be finally uncovered. Failure to do so will only strengthen the case made by some within the human rights and pro-democracy movements that an

independent truth and reconciliation commission is required in Nigeria if the country is to honestly reckon with the past. This is, in any case, something which the new civilian government should actively consider. The “disappearances” of Bagauda Kalto and Chinedu Offoaro are specifically referred to in the **Ota Platform of Action**.

5 THE CRISIS IN THE NIGER DELTA

During March 1999, representatives of ARTICLE 19 and Media Rights Agenda visited the Niger Delta to explore the censorship dimensions of the crisis there.

Access to means of expression and to information is part of the struggle over resources in the Niger Delta. A major contributing factor to the crisis in the Niger Delta has been the denial of communities' rights to freedom of expression and information through government control over and interference in the publicly-funded broadcast media – in particular, radio, which remains the predominant medium for receiving information for most Nigerians outside the urban centres. In this the people of the Niger Delta are not alone. It is the case in most of Nigeria. While the number of private broadcasters has increased significantly in recent years, none are yet close to enjoying national coverage and most are centred upon Lagos. There are also observers of the media in Nigeria who feel that large parts of the private broadcast media steers clear of politics in order to protect their broadcast licences.

Each state in the Niger Delta, as in the rest of Nigeria, has its own broadcasting corporation. For example, Rivers State has the Rivers State Broadcasting Corporation, which is responsible for running Rivers State Radio and Rivers State Television. Also broadcasting to the people of the Niger Delta are Radio Nigeria, broadcast by the Federal Radio Corporation of Nigeria (FRCN), and the Nigerian Television Authority (NTA). By contast, private broadcasting in the Niger Delta has been non-existent until very recently. In some parts of the Niger Delta, people can receive private radio or television – for example, Jeremi Radio from Warri, Independent Television from Benin City, and Minaj Television from Onitsha . It is also possible to get Ray Power FM, the private radio station based in Lagos, but only if you can afford a satellite dish. However, the vast majority of the population of the Niger Delta still has little or no access to private broadcasting. The National Broadcasting Commission claims that it has received no applications for licences to establish community broadcasting stations in the Niger Delta. The turbulent political climate and the cost of establishing such stations appear to be the two main reasons for this.

The public broadcast media within the Niger Delta makes no attempt to fulfill an impartial public service role for the people. When the public broadcast media does cover news events, it always does so from an explicitly pro-government perspective.

For example, the Kaiama Declaration of December 1998, adopted by a gathering of Ijaw youths from different communities at which it was agreed to form the Ijaw Youth Council (IYC), was covered by the public media only once a government spokesman had issued a critical view about these developments. Youth and community activists involved in occupying oil platforms are usually referred to perjoratively – for example, as “pirates” or “hooligans” - and news coverage is based on opinion rather than any mission to inform. There is no possibility of a government critic or opponent of the oil companies being interviewed or their views broadcast on the public media in the Niger Delta.

A further disincentive for those who might seek to inject alternative voices into the public broadcast media is the commercialisation of programming airtime which is proceeding apace as the federal and state authorities seek to find ways of making public broadcasting “economically viable”. This commercialisation process has spread into news and current affairs. Organisations such as the Movement for the Survival of the Ogoni People (MOSOP) and the IYC lack the financial resources to buy their way onto the airwaves. Money is not a constraint for the foreign oil companies against whom they are protesting. Their public relations operations can easily afford the commercial cost of buying time in the public media.

The result is that those who are critical of the government or the oil companies in the Niger Delta feel that the public broadcast media is irrelevant. In order to find out what is happening in the Niger Delta and Nigeria as a whole, most people tune into international news broadcasters such as the BBC World Service and Voice of America. Starved of access to the public broadcast media, political and community activists in the Niger Delta target their media work at these international broadcasters and use the Internet. However, there is no service provider based in any of the main towns of the Niger Delta, which means that this cyber-information makes a complex and technologically hazardous journey to the outside world via Lagos-based service providers. In order to communicate directly with their own constituencies within the Niger Delta, political and community activists have to resort to the more traditional modes of communication such as leaflets and public meetings, which are extremely vulnerable to official harassment.

There is one section of the media from which such activists in the Niger Delta can hope for a hearing - the private print media. ARTICLE 19 and Media Rights Agenda met many of the Port Harcourt correspondents for the Lagos-based private print media. Port Harcourt is the capital of Rivers State and the largest oil town in the Niger Delta. The correspondents stated that a chronic lack of resources means that their capacity to undertake investigative journalism across the entire Niger Delta is severely limited, although their presence is sometimes supplemented by colleagues from Lagos in connection with a particular story. Further, stories about the Niger Delta are competing for scarce space within newspapers and magazines with a national agenda. In addition, most of these newspapers and magazines have the

capacity to distribute only a limited number of copies outside Port Harcourt. Even then, the cover price makes them expensive purchases. The correspondents for the Lagos-based private print media stated that the most which the largest selling and most widely distributed private newspapers could hope to sell on a daily basis in Port Harcourt and its rural hinterland was 3000 copies.

Some of the correspondents also stated that political and community activists sometimes presented them with information which was unreliable or could not be verified and then were highly critical when it was either not used or treated with caution. In their turn, some activists clearly felt that journalists were failing to get to the bottom of stories or too often taking government or oil companies' statements at face-value. In addition, there were claims that journalists sometimes asked for financial assistance towards the costs of covering a story – for example, travel, telephone or fax costs – before agreeing to do so.

A degree of tension between activists and sceptical, independently-inclined journalists is perhaps inevitable. But the wider context within which such tension must be understood is that of an absence of diverse sources of information within the Niger Delta. This provides fertile ground for partial information - or, worse, active misinformation - to flourish.

There are a number of locally-based private newspapers within the Niger Delta. However, the vast majority are government newspapers which are subject to the same official oversight and control as the publicly-owned broadcast media and which benefit from government subsidy. For example, the Rivers State News Corporation produces *The Tide* and *The Tide on Sunday*. Their cover price undercuts that of the private print media. Nonetheless, sales are low and eclipsed – as are those of the Lagos-based newspapers – by a new, brash Port Harcourt-based newspaper called *The Independent Monitor*. The Port Harcourt correspondents of the Lagos-based media were critical of its low professional standards. They pointed to recent stories alleging conspiracies to monopolize public service jobs for Igbos at the expense of local people from other ethnic groups as evidence of its sensationalist approach. But *The Independent Monitor* is clearly meeting a need which has been untapped since the demise of an earlier local newspaper, *Sunray*, in 1996. *Sunray* was fiercely independent initially, but official pressure forced it to tone down its political coverage following the execution in November 1995 of Ken Saro-Wiwa and eight other Ogoni activists. It quickly lost its readership.

The lack of access to means of free expression and to diverse sources of information in the Niger Delta is a major obstacle to proper debate between the oil-producing communities, the authorities and the foreign oil companies about how to end the crisis there. Peaceful protest has continued to be met with official repression. In Bayelsa State in January 1999, over 100 Ijaw youths are reported to have been killed by soldiers over the New Year weekend in and around Kaiama – the town after which the Kaiama Declaration had been named only a few weeks earlier. While the

notorious Rivers State Internal Security Task Force has been disbanded, a range of security formations continue to operate across the Niger Delta – for example, the Mobile Police, special anti-crime squads, army units and, offshore, the Nigerian navy.

Lack of access to means of free expression and to diverse sources of information are also an obstacle to debate within the oil-producing communities themselves. The mobilisation of youth in the Niger Delta is part of a wider pattern of mobilisation across the West African sub-region. Not only do they feel that they have no voice within wider society, they sometimes feel estranged within their own communities, where elders often exclude them from discussions, decision-making and equitable access to scarce material resources.[5] The authorities and the foreign oil companies are not above exploiting these internal tensions for their own benefit.

The inability - or, in the case of the publicly-owned media, unwillingness - of the media to discharge its "watchdog" role in the Niger Delta with regard to allegations of human rights abuses by the authorities was demonstrated by the lack of coverage of two recent cases of alleged official harassment of community activists, investigated by ARTICLE 19 and Media Rights Agenda in March 1999.

On 13 January 1999, Kennedy Esi, aged 30, was arrested by police officers in Omoku, Ogba-Egbema, Ndoni Local Government Area in Egiland, Rivers State, in possession of IYC leaflets. He was detained for 22 days before the intervention of the Civil Liberties Organisation helped to secure his release on bail. He came before Omoku Magistrates' Court on 23 March 1999. The charge sheet gave the charge as possession of two leaflets "likely to cause a breach of the peace", citing Section 430(1) of the Criminal Code of Eastern Nigeria. The Civil Liberties Organisation pointed out that this section actually referred to the offence of burglary and called for the case to be struck out by the magistrate on the grounds that it was a political case. The prosecution applied for permission to amend the charge sheet, without specifying how or why. The magistrate adjourned the case.

The leaflets in question were both highly critical of the authorities, oil companies and sections of the community elite, blaming them for rising violence in the Niger Delta, and speaking of the need for a struggle for "self-determination" and referred to the Kaiama Declaration. But none of the statements in them constituted incitement to violence or was likely to incite violence. The detention and trial of Kennedy Esi is politically-motivated. ARTICLE 19 calls for the charges to be dropped immediately. However unpalatable the sentiments expressed may be to the authorities, criminalizing them will do nothing to address the root causes of the crisis in the Niger Delta. No journalist was present at the hearing of the case of Kennedy Esi on 23 March.

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[5] The term "youth" is used not just in relation to young men, but also to anybody who is excluded from the patronage system. As such, it can include individuals who are middle-aged.

Godfrey Okolo, the 49 year-old External Relations Coordinator of the Movement for the Survival of the Ijaw Ethnic Nationality for the Niger Delta (MOSIEND), related to ARTICLE 19 and Media Rights Agenda the circumstances surrounding his recent detention and brush with death at the hands of "Operation Salvage", the Bayelsa State variant of the special anti-crime squads established across large parts of the country established during the Abacha period. These squads, whose equivalent in Lagos is the notorious "Operation Sweep", combine army and police personnel.

Okolo was amongst those who ousted a more "moderate" MOSIEND leadership in 1995. In 1998 he became involved in a dispute between youths and elders within the Peramabiri community, near Diebu Creek flow station over 5 million Naira (about US $50,000) which had allegedly been paid to the elder-dominated Community Development Committee (CDC) by Shell. He supported the youths against the elders, who lost control of the CDC. Some of the youths were later accused of embezzlement and seizing Shell equipment. The elders sought to regain control over the CDC.

On 6 March 1999 Okolo alleges that he was arrested by "Operation Salvage" personnel in Yenagoa, Bayelsa State, at the instigation of one of the elders from the Peramabiri community, who called him a "terrorist" and "subversive". He claims that he was taken to an "Operation Salvage" office for interrogation. While there he was allegedly beaten on the back with a horse-whip and told he was going to be killed. Shots were fired close to where he sat on the ground. He claims that he was rescued by the officer in charge, a Major Oputa, who took him to the main police station, where he was held until 19 March before being released without charge. Okolo showed a representative of ARTICLE 19 the scars on his back from the horse-whipping. The only newspaper to give this case any publicity was the Lagos-based national daily, *Punch*. No official action has been taken against the alleged perpetrators. ARTICLE 19 calls on the Nigerian authorities to initiate an immediate and impartial investigation into the alleged unlawful detention and torture of Godfrey Okolo.

Kennedy Esi is only one of many activists to have experienced official harassment when seeking to distribute IYC leaflets. The conflict between youths and elders within the Peramabiri community also reflects conflicts which are taking place within many other Niger Delta communities. But there are also tensions between local communities within the Delta.

ARTICLE 19 has explored the phenomenon of "informal repression" in Africa in a number of recent reports. [6] "Informal repression" in Africa has been defined by ARTICLE 19 as the secret employment by governments of surrogate agencies, such as

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[6] See *Deadly Marionettes. State-Sponsored Violence in Africa* (ARTICLE 19: London, October 1997) and *Kenya:Post-Election Political Violence* (ARTICLE 19: London, December 1998).

ethnic or religious militias, to attack supporters of opposition parties or government critics. Often this entails stimulating ethnic violence, either favouring one faction against another in long-standing and latent rivalries or inciting new conflict between communities which had previously lived together in harmony. The issue is rarely ethnicity *per se*. Often it is combined with political differences, religion or competition for scarce material resources.

As ARTICLE 19 stated in one report:

> The attraction of "informal repression" for governments is that they can evade direct accountability. If human rights violations can be characterized instead as "violence" or "tribal clashes", this conceals their real nature and implies that everyone bears an equal responsibility for resolving them. By presenting this violence as the consequence of "traditional" rivalries, governments also pander to the common Western caricature of a "dark continent" riven with primordial tribal conflict and unready for democratic governance. This makes Western governments – and even some human rights organizations – reluctant to investigate or campaign against such abuses.[7]

In Nigeria, the trial and execution in 1995 of Ken Saro-Wiwa and other Ogoni minority activists prompted widespread international revulsion. Yet hundreds of Ogoni had already died during 1993-4 in a campaign of informal repression orchestrated by the security forces, who had encouraged rivalry between the Ogoni and the Andoni, Okrika and Ndoki. Elsewhere in Nigeria, the authorities have a long-track record of using religious and ethnic divisions to weaken the opposition and target individuals and communities opposed to military rule – for example, the Zango-Kataf conflict in Kaduna State in the north in the early 1990s.

There is ample evidence to suggest that the phenomenon of informal repression continues to exist in the Niger Delta. But the extent to which the foreign oil companies are accomplices or instigators of informal repression remains hotly disputed. In a recent report, Human Rights Watch analysed the "Warri crisis" of 1997. Warri is the second most important oil town in the Niger Delta. The Warri crisis saw an outbreak of violence between the Itsekiri and Ijaw communities which live in and around Warri. The violence flared up in response to a government decision to move the centre of a newly-created local government authority from an Ijaw to an Itsekiri area. Hundreds died in the violence. During the crisis, Ijaw youths briefly seized seven Shell flow stations and took more than 100 Shell workers hostage. A military

[7] *Deadly Marionettes*, 1.

task force was established to restore order. A judicial inquiry was then set up to investigate the causes of the outbreak of violence. In a clear instance of official suppression of information, its report has not been made public. What emerges from independent efforts to understand the Warri crisis is that there was a combination of circumstances which clearly apply in many other parts of the Niger Delta. The discovery and exploitation of oil has intensified longer-standing disputes over land ownership between Itsekiri and Ijaw. The way in which the foreign oil companies in the Warri area – Shell and Chevron - allocated contracts and resources between communities deepened the conflict. It is claimed that the Itsekiri elite have been favoured by the oil companies. Critics of the foreign oil companies allege that this process has been premeditated and undertaken in collusion with the authorities.

The close relationship between the authorities and the foreign oil companies is illustrated by the fact that the state oil corporation, the Nigerian National Petroleum Corporation (NNPC), has a majority share in all of the joint venture companies through which the foreign oil companies undertake their onshore exploration and production activities. Tension in Warri remains high. There was another major outbreak of violence between Itsekiri and Ijaw in October 1998 and clashes continue to this day.[8]

The relationship between the government and the foreign oil companies is characterised in general by a lack of openness and transparency. This has led to allegations that the oil companies are locked in a secretive symbiotic relationship with the authorities in terms of security arrangements, that processes of gathering environmental information are manipulated and local communities excluded from these processes, and, finally, that, in terms of the economy, lack of transparency helps to perpetuate Nigeria's all-pervasive culture of "contract politics" and corruption. These issues have been dealt with extensively by Human Rights Watch in *The Price of Oil*. With regard to security arrangements, the report states:

> All the oil companies in Nigeria hire "supernumerary police", sometimes known as "spy police", to protect their installations. These police are recruited and trained by the Nigerian police force, but paid for by the oil companies, at rates well above those paid by the Nigerian government. They remain accountable to Nigerian police command structures.[9]

Shell also employs a small number of regular Nigerian police. Many oil companies also employ private security guards.

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[8] Human Rights Watch, *The Price of Oil*, 111-114.
[9] Ibid, 115-120.

There have been many allegations that, on numerous occasions over the past decade, oil companies have called in other security forces for assistance, sometimes leading to violence and brutality against protesters. The most notable case occurred in 1990 when Shell called in the paramilitary Mobile Police at Umuechem in Ogoniland, leading to the killing of eighty unarmed protesters.

While some foreign oil companies have been more forthcoming than others in discussing the basis of their security arrangements with the authorities in response to enquiries from organisations like Human Rights Watch, none of the Memorandums of Understanding or Joint Operations Agreements which exist between the foreign oil companies and the authorities have been made public. Nor have foreign oil companies, with the exception of Shell, made public their internal policies regarding the handling of protests, deployment of security or the purchase of arms for the Nigerian security forces.[10] This secrecy serves only to exacerbate mistrust between the foreign oil companies and many members of local communities in the Niger Delta.

As protests gathered force in the early 1990s against the ecological damage being wrought by the oil industry in the Niger Delta, the Nigerian government responded by promulgating the Environmental Impact Assessment (EIA) Decree, No 86 of 1992. The decree requires that an EIA must be carried out "where the extent, nature or location of a proposed project or activity is such that it is likely to affect the environment". EIAs are supposed to be supervised and monitored by the state-controlled Federal Environmental Protection Agency (FEPA), established in 1988, and by its state branches. However, this counts for little in practice. As Human Rights Watch states:

> As with the rest of the regulatory framework governing protection of the environment in Nigeria, there is in practice little enforcement of the requirements to carry out EIAs, whether by FEPA or by the DPR's [Department of Petroleum Resources] regulatory arm, the Petroleum Inspectorate, and virtually no quality control of the inspections carried out.

Local communities are rarely adequately consulted even when an EIA does take place. All too often, the temptation is to listen to the voices within a community who are saying what the authorities and foreign oil companies want to hear.

Human Rights Watch also states that the oil industry's own evaluations of environmental damage, which are required for the production of EIA's, are of poor quality. The result is that "there is little publicly available hard information on the

[10] Shell has made details of their internal policies in these areas available to Amnesty International.

state of the environment in the delta or the impact that oil production has had." This is a massive indictment of both the oil companies and the Nigerian government.[11]

There has been one attempt by the oil industry to respond to its environmental and community critics. In 1995, the Niger Delta Environmental Survey (NDES) was established. It was established as an independent corporate entity, funded by the foreign oil companies and the authorities. While it made initial efforts to involve local communities, the NDES could not be considered genuinely independent of the interests of those funding it. The project appears to have lost its momentum.[12]

In its recent report, Human Rights Watch describes a Nigerian political economy which

> has come to depend on a spectacular system of corruption, involving systematic kick-backs for the award of contracts, special bank accounts in the control of the presidency, allocation of oil or refined products to the politically loyal to sell for personal profit, and sweeteners for a whole range of political favours. In effect, across all sectors of the economy, this system of corruption is particularly entrenched in the oil sector, its natural home.[13]

It is the misfortune of the people of the Niger Delta to live at the epicentre of this "spectacular system of corruption".

The system of corruption remained fundamentally intact during the rule of General Abdusalami Abubakar between June 1998 and 29 May 1999. In April 1999, reports claimed that eleven oil exploration blocks and eight oil lifting contracts had been awarded to companies controlled by influential military officers, including Chief of Defence Staff Air Marshal Al-Amin Daggash and Chief of Army Staff General Ishaya Bamaiyi, and other business cronies. There was no public competition for these tenders.[14]

If the vast majority of the people of Nigeria - including the people of the Niger Delta, from where the oil comes - are to be able to participate in decisions relating to the management and allocation of oil revenues, openness and transparency must become the governing principles with regard to economic information and decision-making. One of the essential preconditions for such a transformation is a Freedom of Information Act. The Act should contain an explicit commitment to the principle of maximum disclosure of publicly-held information, including in the economic field. To meet the challenges of the Nigerian situation, the Act should clearly define public information as including

[11] Human Rights Watch, *The Price of Oil*, 58-59.
[12] Ibid., 89-90.
[13] Human Rights Watch, *The Price of Oil*, 58-59.
[14] Africa Confidential, 2 April 1999.

economic information such as contracts, tenders and agreements, to which there should also be a presumption of access. All laws which are inconsistent with this principle should be amended or repealed. Exceptions on the grounds of "commercial confidentiality" should be drawn narrowly and subject to a test of actual harm. In addition to providing for access to information, the government should ensure that public bodies collect appropriate information, including on economic matters. Such information would include tax returns filed by companies and disclosure by officials of personal assets as part of an anti-corruption regime. This information would be subject to a Freedom of Information Act, outside of limited exceptions, available to the public on request. Individuals who release information on wrongdoing – whistleblowers – must be afforded protection. Finally, oil companies operating in Nigeria should also commit themselves publicly to openness and transparency, review their business practices to ensure that this commitment is turned into reality, and cooperate fully with any freedom of information regime which is introduced.

Lasting peace cannot come to the region if there is no honest reckoning with the past and if alleged perpetrators of human rights abuses are not brought to justice. An independent commission of inquiry should be mandated to investigate alleged human rights violations committed by security forces in the Niger Delta. A similar commission of inquiry should be established to investigate the situation in Ogoniland. The oil companies should cooperate with these investigations. More generally, the oil companies should ensure that they are doing everything they can to uphold human rights, including freedom of expression, in areas where they operate. For example, they should themselves investigate human rights abuses that occur in the context of their operations, publish their findings and call on the authorities to initiate action against those responsible for abuses.

ARTICLE 19 believes that there can be no solution to the crisis in the Niger Delta unless the voices of its many communities are given proper weight within the Nigerian political system. The Nigerian human rights and pro-democracy movement, alongside a wide range of organisations based in the Niger Delta, are calling for the convening of a sovereign national conference to explore how this can be achieved, although there appear to be unresolved issues amongst its advocates regarding its objectives and how communities should be represented. It may also be the case that explicit constitutional provision for the protection of minority rights in Nigeria is required and should be discussed as part of a constitutional review process.

For all the global applause garnered by General Abubakar for completing the transition to civilian rule, there was no serious effort while he was in power to tackle the fundamental political and human rights issues raised by the crisis in the Niger Delta. Both the authorities and the foreign oil companies still appear to prefer dialogue only with those community representatives who are unlikely to challenge them forcefully. We hope that the new civilian government will break with the past in this and other respects with regard to the Niger Delta.

6 OBSERVATIONS ON THE ROLE OF THE INTERNATIONAL COMMUNITY IN BUILDING A DEMOCRATIC TRANSITION IN NIGERIA

Following the accession to power in June 1998 of General Abubakar, the international community progressively reduced sanctions against Nigeria. The priority was to do nothing which would provide a pretext for the Nigerian military to renege on its promise to leave office. In April 1999, the UN Commission on Human Rights terminated the mandate of the UN Special Rapporteur on Nigeria by passing a resolution substantially drafted by the Nigerian delegation. The self-evaluation of the Nigerian military regarding its human rights record was endorsed by the international community. No formal monitoring capacity has been retained. In May 1999, the Commonwealth announced that Nigeria’s suspension from the Commonwealth would end on 29 May 1999. Nigeria remains on the agenda of the Commonwealth Ministerial Action Group (CMAG), but it has signally failed to set out publicly what steps Nigeria still needs to take if it is to achieve full compliance with the human rights principles contained within the 1991 Harare Declaration.

The emphasis is now shifting within the UN and the Commonwealth towards “technical assistance”. The two bodies have agreed to coordinate their efforts in this regard. A recipient government traditionally holds an informal veto over the parameters and priorities of technical assistance. The result is that technical assistance can be steered away from contentious areas, raising questions about its purpose and value. ARTICLE 19 calls on the UN and Commonwealth to ensure that Nigerian civil society organisations are fully involved in the process of agreeing the parameters and priorities of technical assistance and that the new civilian government should not have a blanket veto over proposed programmes.

The African Commission on Human and Peoples’ Rights has been largely silent on the human rights situation in Nigeria since March 1997, when it sent a fact-finding mission to the country. The mission’s report has still not been published. However, the African Commission has continued to have an occasionally positive impact through its rulings in response to cases brought before it by Nigerian human rights groups. For example, at its 24th ordinary session, held in Banjul, The Gambia, in October 1998, the African Commission held that the Newspapers Decree, No 43 of 1993, “invites censorship and seriously endangers the right of the people to receive information” and called upon the Nigerian government to bring its law into

conformity with the African Charter on Human and Peoples' Rights. It is important to note that the African Charter has been incorporated into Nigerian law.[15]

The international community has an essential role to play in monitoring Nigeria's progress under the new civilian dispensation and in ensuring that the transition to democracy is not aborted before it has barely begun. The international community, spearheaded by the US and the UK, appears to be focusing most of its efforts on combating corruption in Nigeria, holding out in return offers of fresh sources of money and debt relief. Reports suggest that the IMF and World Bank are insisting on audits of the central bank and the state-owned Nigerian National Petroleum Corporation (NNPC) and the building of a strong and impartial legal system as part of a six month IMF programme, during which time a permanent IMF monitoring mission will be based inside the central bank and finance ministry. A letter sent in early May 1999 to the Nigerian finance minister by the British Chancellor of the Exchequer, Gordon Brown, reportedly stated that "a clear commitment to openness, transparency and financial management are essential parts of the reform process".[16]

ARTICLE 19 welcomes the emphasis placed here on the importance of openness and transparency. We call on the international community to further demonstrate its commitment to them by compiling information regarding the location of funds misappropriated by Nigerian officials during the last 16 years of military rule and by cooperating with efforts to return those funds to Nigeria. It should also play an active role in strengthening the media in Nigeria so that it can fulfil its "watchdog" role, not least with regard to corruption. However, ARTICLE 19 is concerned that the "reform process" being promoted may be being conceptualized in excessively narrow economic and technical terms. It is significant that formal international monitoring capacities on Nigeria are to be increased in the economic and technical spheres just as those capacities are being wound-down with regard to human rights. While the international community, including the IMF and World Bank, has been changing its views about the relationship between development and human rights, prompted most recently by the massive economic crisis in Asia in 1997-8, this review clearly has further to go.

CONCLUSION

[15] As stated earlier, Decree No 43 of 1993 was repealed by the military government in early May 1999.

[16] *The Guardian* (UK), 4 May 1999. Other reports indicate that there was a massive outflow of capital from Nigeria during the run up to 29 May. Members and supporters of the outgoing military government were widely believed to be making final "raids" on Nigeria's assets and seeking to safeguard earlier ill-gotten gains by exporting them to foreign bank accounts.

Following former General Obasanjo's reign as military dictator between 1975-9, a sign hung on the gate of his farmstead which read: "No dogs or journalists allowed". His hostility to journalists at the time was fabled. Indeed, his record in power with regard to the media was a chequered one. In recent years, he has himself suffered at the hands of a military regime, leading some to detect a "damascene conversion" to respect for human rights on his part. Others point to his prominent role within Transparency International as further evidence that Obasanjo in *agbada* (civilian clothing) will be a very different man to the Obasanjo who two decades earlier wore *khaki*. But there are those, equally, who cannot help wondering what deals he has had to do with the "militicians" in order to attain power and whether he continues to wear *khaki* beneath his *agbada*. His new government can legitimately expect to be given time before final judgements are made.[17] The tragedy for Nigeria is that time is something which he may find he lacks. Moreover, it would be a mistake to rest hopes for a new Nigeria which respects human rights, builds democracy and vanquishes corruption on any one individual, however important. The Abubakar transition seems to have been geared towards avoiding a genuinely "new beginning for Nigeria" rather than ushering it in.[18] The Peoples Democratic Party, which will be the dominant party within the new civilian government, has come to power with very few clearly defined policies, not least on how to consolidate democracy and on the pivotal question of Nigeria's future "federal character". Unless the extreme fragility of the new civilian dispensation is recognized from the outset by the new government and the international community, the chances are that the "new beginning for Nigeria" will turn out to be another false start.

Nigeria cannot afford another aborted transition to democracy. It could lead to increased conflict not just in the Niger Delta but across the entire country, with disastrous consequences for the entire West African sub-region. Nigeria has so far confounded those who in the past have predicted its violent break-up, but there are no guarantees that this will be indefinitely averted if the human rights of the people of Nigeria continue to be treated with contempt by those who wield power in the country.

[17] It is worrying to note that former General Obasanjo, when meeting representatives of the Africa Fund during a visit to the US in March 1999, claimed that the arrival of democratic government would mean that human rights activism would no longer be relevant. *The Guardian* (Nigeria), 10 May 1999.

[18] A news release by the British Foreign and Commonwealth Office on 4 May 1999 hailed the Abubakar transition and quoted a speech by the Minister of State responsible for Africa, Tony Lloyd MP, in which he looked forward to a "new beginning for Nigeria".

APPENDIX

LIST OF PARTICIPANTS AT THE WORKSHOP ON MEDIA LAW REFORM, OTA, OGUN STATE, NIGERIA, 16-18 MARCH 1999

A. OFFICIAL

1. Professor Auwalu Hamisu Yadudu, Special Adviser to the Head of State on Legal Matters

2. Abimbola Coker, Assistant Director, Nigeria Law Reform Commission

3. Mr Abdul M. Bello, Nigeria Police Force (CID)

4. Mr Godwin Enahoro Omole, Executive Secretary, Nigeria Press Council

5. Mr Ojang Omang, Director of Research, Nigeria Press Council

6. Mr Ogheneovo Macdonald Emakpore, National Broadcasting Commission

7. Justice Paul Kedy Nwokedi, Chairman, Governing Council, National Human Rights Commission

8. Nasiru Mohammadu Mai, Assistant Chief Legal Officer, National Human Rights Commission

9. Dr Muhammad Tawfiq Ladan, Director of Research, National Human Rights Commission

10. Mr Kunle Fadipe, Member, Governing Council, Nigerian Human Rights Commission

11. Mr Garba Shehu, Member, Governing Council, National Human Rights Commission

B. INTERNATIONAL PARTICIPANTS

12. Mr Abid Hussain, United Nations Special Rapporteur on Freedom of Opinion and Expression

13. Mrs Glenys Kinnock, Member, European Parliament

14. Judge John Oliver Manyarara, Chair, Trust Fund Board and Legal Defence Fund, Media Institute

of Southern Africa

15. Mr Kabral Blay-Amihere, President, West African Journalists Association

16. Ms Bettina Peters, Deputy General Secretary, International Federation Of Journalists

17. Mrs Jeanne Seck, Programme Specialist, Unit for Freedom of Expression and Democracy, UNESCO

18. Mr Anselm Chidi Odinkalu, Senior Legal Adviser for Africa and Middle East, International Centre for Legal Protection of Human Rights (INTERIGHTS)

19. Ms Laetitia Ferreira, Reporters Sans Frontieres

20. Mr Eric Johnson, Internews

21. Ms Ann Macro, Third Secretary (Political/Press), British High Commission, Lagos

22. Ms Brigid O'Connor, Regional Information Coordinator, West Africa, The British Council.

23. Dr Iyabo Fagbulu, Programme Officer, UNESCO

24. Mr Emmanuel A. Adebisi, Protocol Officer, UNESCO

25. Dr Jon Lunn, Acting Head of Africa Programme, ARTICLE 19, The International Centre Against Censorship

26. Mr Toby Mendel, Head of Law Programme, ARTICLE 19, The International Centre Against Censorship

27. Ms Ilana Cravitz, Press Officer, ARTICLE 19, The International Centre Against Censorship

C. PUBLIC MEDIA

28. Mr Osaze Iyamu, Chief News Producer, Voice of Nigeria

29. Mr Auwalu Mohammed, Senior Assistant Secretary, Federal Radio Corporation of Nigeria

30. Mr Adebisi Adekunle, Judicial Correspondent, New Nigerian Newspaper

31. Mrs Olayinka Kadiri, Lagos State Television

D. INDEPENDENT MEDIA

32. Mr Bayo Onanuga, Editor- In- Chief, The News/Tempo

33. Mr Saheed Ibikunle Sanyaolu, Special Projects Director, The Guardian Newspapers

34. Mr Niran Malaolu, Former Editor, Sunday Diet

35. Mr Ray Ekpu, Chief Executive Officer, Newswatch

36. Mr John Momoh, Managing Director and Chief Executive Officer, Channels Independent Television

37. Mr Ayodele Akikotu, Senior Editor, Tell

38. Mr Soji Omotunde, Editor, African Concord

39. Mr Kelechi Onyeamobi, Editor, Post Express

40. Ms Joan O'Dwyer, Director, Lagos Operations Directorate, Minaj Systems Limited

41. Mr Benji Ekpeyong, Head of Political Desk, Muhri International Television

42. Mr Lanre Arogundade, Chairman, Lagos State Council, Nigeria Union of Journalists

E. NIGERIAN NGO'S

43. Mr Olisa Agbakoba (Senior Advocate of Nigeria), Principal Counsel, Human Rights Laws Services (HURILAWS)

44. Mr Adewale Adeoye, Chairman, Journalists for Democratic Rights (JODER)

45. Mr Akin Akingbulu, Executive Director, Independent Journalism Centre (IJC)

46. Mr Richard Akinnola, Chairman, Centre for Free Speech (CFS)

47. Mrs Ayodele Atsenuwa, Executive Director, Legal Research and Resources Development Centre

48. Mr Samson Bako, Research and Publications Officer, Constitutional Rights Project

49. Mr Olumide Okelola, Programme Assistant, Women and Law Development Centre

50. Ms Angela Agoawike, National Association of Women Journalists (NAWOJ)

51. Miss Ndidi Okafor, Women Leadership Group

52. Mr Johnson Odion Esezoobo, President, Human Rights Enlightenment Campaign

53. Mr Segun Fatuse, Co-ordinator, Cooperative Action Platform.

54. Mr Edetaen Ojo, Executive Director, Media Rights Agenda (MRA)

55. Mr John Babatunde Fagbohunlu, Legal Director, Media Rights Agenda

56. Ms Morenike Ransome -Kuti, Director of Research, Media rights Agenda

57. Mr Tive Dinedo, Director of Campaigns, Media Rights Agenda

58. Mr Maxwell Kadiri, Legal rights Officer, Media Rights Agenda

F. OTHERS

59. Hon Tokunbo Afikuyomi, Senator Elect, Alliance for Democracy (AD)

60. Professor Ralph Akinfeleye, Head of Department, Department of Mass Communication, University of Lagos

61. Prince Tony Momoh, Media Consultant and Principal Partner, Tony Momoh and Co., Legal Practitioners