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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Nigeria prepared by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers

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Introduction

1. The present report is the final report submitted to the Commission on Human Rights by Mr. Bacre Waly Ndiaye, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, and Mr. Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers, pursuant to resolution 1996/79 of the Commission on Human Rights entitled “the situation of human rights in Nigeria”.

2. Due to the fact that the Special Rapporteurs have been unable to undertake a fact-finding mission to Nigeria, the present report should be read in conjunction with the interim report that the Special Rapporteurs submitted to the fifty-first session of the General Assembly (A/51/538). In the event that the Special Rapporteurs are able to undertake the requested mission prior to the fifty-third session of the Commission on Human Rights, it is their intention to submit a report of their findings, either in written form as an addendum to the present report or orally, to that session of the Commission.

3. The present report is divided into four chapters. Chapter I contains the terms of reference of the respective mandates of the two Special Rapporteurs. Chapter II contains a summary of the communications between the two Special Rapporteurs and the Government of Nigeria between the finalization of the interim report and the date on which the present report was finalized. Chapter III contains replies from the Government of Nigeria to allegations of extrajudicial, summary or arbitrary executions and allegations sent by the Special Rapporteur on the independence of judges and lawyers. Chapter IV contains the preliminary observations of the Special Rapporteurs pending their visit to Nigeria.

I. MANDATE

4. The fifty-second session of the Commission on Human Rights adopted without a vote resolution 1996/79 of 23 April 1996. In this resolution, the Commission expressed its deep concern about violations of human rights and fundamental freedoms in Nigeria and called upon the Government of Nigeria urgently to ensure their observance, in particular by restoring habeas corpus, releasing all political prisoners, trade union leaders, human rights advocates and journalists who are at present detained, guaranteeing freedom of the press and ensuring respect for the rights of all individuals, including persons belonging to minorities. It also called upon the Government of Nigeria to accede to the request of the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers to pay a joint investigative visit to Nigeria. Further, the Commission called upon the Government of Nigeria to cooperate fully with the relevant mechanisms of the Commission on Human Rights. Finally, it requested the two thematic Special Rapporteurs who had requested a joint investigative visit to the country to submit to the Commission at its fifty-third session a joint report on their findings, along with any observations of other relevant mechanisms, in particular the Working Group on Arbitrary Detention, and requested them to submit an interim report to the General Assembly.

5. In resolution 1996/74 the Commission on Human Rights requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to continue to examine situations of extrajudicial, summary or arbitrary executions. In resolution 1994/41 the Commission requested the Special Rapporteur on the independence of judges and lawyers, inter alia, to inquire into any substantial allegations regarding attacks against the independence of judges and lawyers transmitted to him and to report his conclusions thereon.

6. In resolution 51/109, the General Assembly regretted that the Government of Nigeria had not enabled the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country before presentation of their report to the Assembly, and urged the Government of Nigeria to cooperate fully with them during the joint investigative mission to Nigeria mandated by the Commission on Human Rights, and with the relevant mechanisms of the Commission on Human Rights.

II. COMMUNICATIONS BETWEEN THE SPECIAL RAPPORTEURS AND THE GOVERNMENT OF NIGERIA

7. On 4 October 1996, the Permanent Representative of Nigeria to the United Nations Office at Geneva replied to the letters of the Special Rapporteurs, dated 30 July and 6 September 1996, respectively. The Permanent Representative reiterated the Government's commitment to accede to the request of the Special Rapporteurs to carry out a joint investigative visit to Nigeria. He also informed the Special Rapporteurs that since March 1996, the Government of the Federal Republic of Nigeria “has been seized with the management of a number of successive visits to Nigeria, such as the United Nations Fact-Finding Mission, the African Commission on Human and Peoples' Rights, the Commonwealth Ministerial Action Group, the United Nations Goodwill Mission to Nigeria and Cameroon (...) and many others”. In addition, he stated that “the Government and people of Nigeria have committed themselves to the faithful and orderly implementation of our Programme for Transition to Civil Rule (...)”. The Permanent Representative further stated that as a consequence of these visits, it had become difficult to accede to the request of the Special Rapporteurs to carry out a mission to Nigeria in the specified time-frame. Upon instruction of the Government of the Federal Republic of Nigeria, he reiterated Nigeria's willingness and readiness to welcome the Special Rapporteurs and proposed the last week of November 1996 or the second week of December 1996 as possible dates for the visit.

8. On 7 October 1996, the Special Rapporteurs informed the Government of Nigeria that they were pleased to accept the invitation of the Government. In addition, they expressed their preference for the first alternative proposed by the Government, i.e. the last week of November 1996. In view of the fact that the Special Rapporteurs believe that this mission would require a minimum of 10 working days in the country, they suggested that the mission should tentatively take place from 25 November to 5 December 1996. The Special Rapporteurs also enclosed for the information of the Government the standard terms of reference for fact-finding missions by Special Rapporteurs/Representatives of the Commission on Human Rights.

9. On 8 November 1996, the Permanent Representative acknowledged receipt of the letter of 7 October 1996 and informed the Special Rapporteurs that upon receipt of the precise details of the mission, the Government would also be informed. Subsequently, a note verbale, dated 18 October 1996, was received from the Permanent Mission in Geneva requesting further clarification from the Centre for Human Rights regarding a number of issues:

(a) As to the precise mandate of the rapporteurs, it was the understanding of the Government that in accordance with the operative part of resolution 1996/79 the rapporteurs are “thematic” and not “special” rapporteurs; the terms of reference sent by the two rapporteurs did not seem to be meant for thematic rapporteurs;

(b) The Government sought assurances that the thematic rapporteurs would work strictly within their express mandate;

(c) While assuring the rapporteurs unfettered access to persons and places in order to discharge their mandate, the Government requested that matters concerning their itinerary and the places and persons to be visited should be mutually agreed between the rapporteurs and the officials of the Nigerian Government;

(d) “As per the rapporteurs' earlier request to visit Nigeria from 9-17 October 1996 (...) which was accepted in principle, it [was] the Government's view that there [was] no compelling reason to extend the visit any further.” In this regard, the Government of Nigeria expected the rapporteurs “to propose, for discussion, an itinerary for a week's visit”.

10. The Government further stated:

> “Nevertheless, the Government of Nigeria wishes to state that owing to the impending visit of the Commonwealth Ministerial Action Group (CMAG), local government elections on [a] party basis and the ongoing consolidation of newly created states, all scheduled to take place in the month of November 1996, we regret to say that the 25th of November 1996, the first date which the rapporteurs have expressly preferred, is **not** convenient to Nigeria. The Federal Government of Nigeria, therefore, craves the indulgence of the thematic rapporteurs to consider the second alternative (...) for the visit to take place in the second week of December 1996, for one week only.”

11. On 24 October 1996, the United Nations High Commissioner/Centre for Human Rights transmitted to the Permanent Mission of Nigeria a note verbale informing the Permanent Mission that in the discharge of their mandates, all special rapporteurs of the Commission on Human Rights act in their capacity as independent experts. It is thus within their discretion to propose to the Government of any country which they would wish to visit a programme that they considered to be relevant to their mandates. The note verbale also stated that it remained, of course, the prerogative of the Government to approve the proposed dates, programmes and itinerary. As regards the terms of reference,

the Permanent Mission was informed that those attached to the letter of the Special Rapporteurs dated 7 October 1996 were the standard terms of reference which are used for country visits of all special rapporteurs of the Commission on Human Rights, both thematic and country-specific.

12. On 25 October 1996, the Special Rapporteurs, in reply to the note verbale of the Permanent Mission of Nigeria of 18 October 1996, stated that in their view the terms of reference attached to their letter of 7 October 1996 are the standard minimum guarantees required for any mission to be conducted by special rapporteurs of the Commission on Human Rights. The Special Rapporteurs stated that the acceptance of these terms of reference by the Government of Nigeria would therefore be a prerequisite for undertaking the mission. Furthermore, the Special Rapporteurs informed the Government that they would wish to visit several regions of the country, for instance Lagos, Abuja, Kaduna, Kano and Port Harcourt, and that in their view the mission would require a minimum of two weeks. At the time the present report had been finalized, the Special Rapporteurs had received no direct reply to this letter. Finally, the Special Rapporteurs stated that until these two issues were clarified, it would be premature to consider the second alternative proposed by the Government, i.e. the second week of December, or to propose an itinerary for a week's visit.

13. The Government acknowledged receipt of the note verbale on 25 October 1996.

14. The Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva transmitted to the Centre for Human Rights a note verbale dated 6 December 1996, which refers to the letter of the two Special Rapporteurs to the Permanent Mission of 25 October 1996 concerning the proposed joint investigative mission to Nigeria. Due to the seriousness of the allegations contained in this note verbale, the Special Rapporteurs consider it important to reproduce verbatim the substantive portions of the note, which read as follows:

> "In this regard, the Permanent Mission of Nigeria wishes to set out hereunder the following comments of the Federal Government of Nigeria:
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> "a. It will be recalled that, in the Mission's Note No. 262/96 of October 1996, it was made clear that, owing to the impending visit of the Commonwealth Ministerial Action Group (CMAG) to Nigeria - a visit to which the Government of Nigeria had committed itself much earlier - the visit to Nigeria could not begin on 25 November 1996 under the option which the Special Rapporteurs had expressly preferred because it would not be convenient for the Government. The visit by CMAG actually took place from 19 to 22 November 1996. It was certainly not possible for Government to accommodate another important visit around 25 November 1996, having regard to the time and efforts usually expended in the preparation for such meetings. That in fact had informed Government's preference for the second week in December 1996 for the visit to Nigeria by the Special Rapporteurs;

“b. The Thematic Rapporteurs left no one in doubt that they were prepared to consider and accept the Government's 2nd option of mid-December once the issues of the terms of reference and duration of visit were sorted out. In fact, the Government of Nigeria and the Thematic Rapporteurs had opened a communication line to sort out issues concerning the visit. There was no outright rejection of Government's proposal by the Thematic Rapporteurs nor was there any indication that the Government was 'reneging' or had become 'recalcitrant in its attitude' towards the visit. It is a matter of regret that one of the two Rapporteurs has chosen to characterize a sovereign state, Nigeria, which is engaged in consultations, as 'recalcitrant';

“c. While the Federal Government of Nigeria was giving active consideration to the issues relating to the terms of reference and duration of the visit, the Thematic Rapporteurs had at different international meetings conducted themselves in a manner that could undermine the spirit of the dialogue. The statements and utterances credited to the two Thematic Rapporteurs were not only unfortunate, they were also capable of undermining the impartiality and integrity of these independent and neutral experts appointed by sovereign independent states in the Commission of Human Rights in which Nigeria is an active member. We view the statements and utterances of the two Rapporteurs as capable of compromising their independence and neutrality;

“d. Specifically, Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, had, for instance, accused Nigeria of being responsible for the death of Mrs. Kudirat Abiola. He made these remarks at an international seminar organized by Amnesty International in Port Louis, Mauritius, on 25 October 1996. While castigating Nigeria for the deaths in Nigerian prisons, Mr. Ndiaye said that the death of Mrs. Abiola was the result of 'killing by government officials';

“e. The joint introductory statement of the two Thematic Rapporteurs delivered by Mr. Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers, in the Third Committee of the Fifty-first Session of the United Nations General Assembly was, to all intents and purposes, condemnatory of the Government of Nigeria. The report contained conclusions which the two Rapporteurs had reached without hearing the views of the Government of Nigeria. It was based purely on unverified reports. The interim report was not only condemnatory of the Government, it was mischievous in intent, having been issued long before 25 November 1996, the date on which the Thematic Rapporteurs had planned to begin the visit to Nigeria. It contained spurious allegations which the Thematic Rapporteurs had concocted to serve their interests, and perhaps, those of Nigerian detractors. By issuing such a tendentious report, they not only exceeded their mandate but abused the laid-down procedure when they called upon the United Nations General Assembly to 'adopt appropriate stern measures' against Nigeria, even before the world body had the time to consider the so-called interim report;

“f. While Government reaffirms its commitment to cooperate with the United Nations Commission on Human Rights and all its mechanisms, it has

serious reservations on the integrity and impartiality of these two Thematic Rapporteurs. As independent and neutral experts appointed by states, they have jointly and severally shown very little or no regard for patience, details and circumspection. Their actions betray their zealousness to condemn the Government of Nigeria before 'trial';

"g. In the circumstances, the Government of Nigeria seriously doubts the competence and relevance of these Thematic Rapporteurs to conduct an impartial, fact-finding mission to Nigeria and to faithfully report their finding without bias;

"h. Be that as it may, the invitation extended by the Government still stands."

15. In a meeting with the High Commissioner for Human Rights on 10 December 1996, the Permanent Representative of the Federal Republic of Nigeria to the United Nations Office at Geneva conveyed the concerns of his Government regarding the two Rapporteurs, but reiterated the Government's wish to continue to cooperate with the Commission on Human Rights and, to this end, the invitation to the two Special Rapporteurs still stood. However, the Permanent Representative indicated that the Government of Nigeria still sought clarification on the terms of reference of the visit and the duration of the visit. The Permanent Representative expressed the desire of his Government to send representatives from Nigeria to Geneva to negotiate these outstanding issues with the High Commissioner.

16. The High Commissioner informed the Permanent Representative that he lacked the authority to negotiate on behalf of the Special Rapporteurs because they were independent experts. However, he did assure the Permanent Representative that the note verbale of 6 December and the desire of the Government to resolve the outstanding issues would immediately be transmitted to the two Special Rapporteurs.

17. In a letter dated 18 December 1996, the Special Rapporteurs welcomed the fact that the invitation of the Government for them to visit still stood. With regard to specific dates for a visit, they proposed to travel to Nigeria in the latter half of February following the end of Ramadan. The Special Rapporteurs, however, also reiterated their position that the standard terms of reference that they had transmitted to the Government, which they viewed as general principles, should be accepted by the Government before they undertook the mission. They noted that the specific details of the mission, such as the locations and officials to be visited, were matters which must be mutually agreed upon. Nevertheless, they emphasized that Special Rapporteurs usually reserve only half of their time for official meetings and were free to organize for themselves informal meetings with non-governmental organizations and private individuals as appropriate. With regard to the duration of the mission, they still considered that a mission that envisaged travelling to several cities in Nigeria would require more than one week, but they expressed their willingness to discuss this issue and to take the views of the Government into consideration.

18. Regarding the proposal of the Government to hold meetings in Geneva to discuss these issues, the Special Rapporteurs informed the Permanent Representative that pre-existing commitments in their respective countries prevented them from travelling to Geneva. As an alternative, they had requested the Centre for Human Rights (Activities and Programmes Branch) to provide to the Government any clarification that it might seek and to explain their intentions to the representatives of the Government.

19. Pursuant to this proposal, a meeting was held between representatives of the Federal Republic of Nigeria and the Secretariat on 14 January 1997. The Nigerian delegation was led by Dr. A.H. Yadudu, Special Adviser (Legal Matters) to the head of State, Commander-in-Chief of the Armed Forces. Also in attendance at the meeting on behalf of the Federal Republic of Nigeria were Ambassador Ejoh Abuah, Permanent Representative of Nigeria to the United Nations Office at Geneva; Mr. A.B. Rimdap, Minister, International Organizations Directorate, Ministry of Foreign Affairs; Dr. Orobola Faschun, Minister, Permanent Mission of Nigeria to the United Nations Office at Geneva, and Mr. C.U. Gwam, Senior Counsellor, Permanent Mission of Nigeria to the United Nations Office at Geneva.

20. At the meeting, the Secretariat presented an aide-mémoire to the Nigerian delegation providing clarification on some of the issues raised in the note verbale of 6 December 1996. The main points addressed were as follows:

(a) Concerning the standard terms of reference, the Special Rapporteurs stated that these should remain the basic framework for the mission;

(b) Concerning the dates and duration of the visit, the Special Rapporteurs indicated that they would be available to undertake the mission between 15 and 28 February 1997. They further noted that a minimum of 10 working days was required in order to be able to travel to different parts of the country. They also proposed that one staff member of the Centre would travel several days earlier in order to prepare meetings for the Special Rapporteurs;

(c) Concerning the regions to be visited in Nigeria, the Special Rapporteurs expressed the wish to travel to the following towns: Lagos, Abuja, Port Harcourt, Kaduna and Kano;

(d) Concerning the authorities to be met in Nigeria, the Special Rapporteurs provided a detailed list of the authorities they wish to meet;

(e) Concerning the issue of detained persons, the Special Rapporteurs noted that they wished to meet with a number of detained persons and thus requested free access to prisons and places of detention;

(f) Concerning the issue of reports, the Special Rapporteurs noted that an interim report would be submitted by them to the fifty-third session of the Commission on Human Rights and, if the mission took place, a separate joint report on the mission would be issued.

21. At the meeting of 14 January, the representatives of the Government of Nigeria sought clarification and assurances on the following four issues:

(a) Concerning the duration of the visit, the representatives questioned why the Special Rapporteurs had initially requested a visit of eight days, but had more recently requested a visit of longer duration;

(b) Concerning the programme and terms of reference, the Government asked for clarification of the terms “unfettered access” and “restricted areas”, which were contained in the standard terms of reference, and the reasons for the requested access to such areas;

(c) The Government sought assurances that the Special Rapporteurs would conduct themselves specifically and exclusively within the scope of the mandate;

(d) The Government expressed the view that the Special Rapporteurs had compromised their impartiality and, therefore, there were serious concerns on the part of the Government concerning the integrity and impartiality of the Special Rapporteurs. They requested that these concerns be conveyed to the Special Rapporteurs and that the reactions of the Special Rapporteurs to these concerns be communicated to the Government.

22. In a note verbale dated 20 January 1997, the Permanent Mission of Nigeria provided a preliminary reaction to the aide-mémoire given to the representatives of Nigeria during the meeting of 14 January. The observations are as follows:

(a) Concerning the terms of reference, the Permanent Mission stated that it was awaiting clarification of the term “restricted areas”, and considered that it was not advisable for the Special Rapporteurs to visit these areas from the point of view of Nigeria's national security;

(b) Concerning the dates and duration of the proposed mission, the Permanent Mission noted that the Government was still of the opinion that the Special Rapporteurs could complete their visit within one week. It also stated that the issue of the duration of the visit would first need to be clarified before the Government could decide on the issue of the arrival of a United Nations staff member before the arrival of the Special Rapporteurs;

(c) Concerning the regions to be visited, the Permanent Mission stated that the Government had no objection to the proposed visit to the five towns mentioned in the aide-mémoire;

(d) Concerning the authorities to be met, the Permanent Mission pointed out that enough time was needed to book appointments with the persons mentioned in the list annexed to the aide-mémoire. The Permanent Mission also requested the names and positions of the regional and local officials with whom the Special Rapporteurs had expressed an interest in meeting;

(e) Concerning the issue of detained persons, it noted that the Government had no objection to these meetings; however, information on the dates and times of the visits was requested in order to facilitate interviews;

(f) In addition, it repeated that the Government needed to be assured of the impartiality and independence of the two Special Rapporteurs.

23. The following note containing the reactions of the Special Rapporteurs to the concerns of the Government about their integrity and impartiality was attached to a letter dated 20 January 1997 to the Permanent Representative of the Federal Republic of Nigeria to the United Nations Office at Geneva.

> "(1) With regard to the concern expressed by the Government of Nigeria that the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, is reported on the occasion of the Amnesty International meeting in Port Louis, Mauritius, in October 1996 to have stated that the Government of Nigeria killed Mrs. Kudirat Abiola, the Special Rapporteur wishes to communicate to the Government of Nigeria that the attributed statement appears to have been mistakenly reported. Rather than having stated any conclusions about the responsibility of the Government of Nigeria, the Special Rapporteur wishes to clarify that he stated only that he had 'received allegations that government officials were responsible for the death of Mrs. Abiola'. For Mr. Ndiaye, this acknowledgement is a statement of fact and is not in any way a determination on his part. Consequently, Mr. Ndiaye trusts that, in communicating this clarification to the Government of Nigeria, there remains no reason to doubt his impartiality.
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> "(2) With regard to the Government of Nigeria's concern that the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, expressed definitive conclusions in his statement of 18 November 1996 before the fifty-first session of the General Assembly, the Special Rapporteur wishes to convey to the Government of Nigeria the following:
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> > 'The Special Rapporteur on the independence of judges and lawyers, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, was required by Commission resolution 1996/79 to report to the fifty-first session of the General Assembly. This requirement was known to the Government of Nigeria. In possession of considerable information relating to alleged serious violations of human rights in Nigeria, and in the absence either of a substantive response from the Government concerning specific allegations transmitted during the year or of the opportunity to visit the country, the Special Rapporteurs were thus required at least to inform the General Assembly about the substance of allegations received and to draw such preliminary conclusions as may be possible by reference to, e.g., declared laws and acknowledged practices. From this perspective, the Special Rapporteur on the independence of judges and lawyers fails to see that any of his statements, including conclusions preliminarily drawn, could be viewed as bringing into question his impartiality'."

24. In a letter dated 22 January 1997 to the Permanent Representative, the following note was transmitted on behalf of the Special Rapporteurs in response to the note verbale 18/97 dated 20 January 1997:

> "(1) In response to the request of the Permanent Mission of the Federal Republic of Nigeria to the United Nations Office at Geneva seeking clarification of the term 'restricted areas' contained in paragraph 1 of the standard terms of reference, the Special Rapporteurs are not aware that any of the cities that they have requested to visit is in a restricted area or that any part of the cities is demarcated as restricted.
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> "(2) As to why the proposed visit has been extended by 8 days to 14 days, the Special Rapporteurs reiterate their view that visits to Lagos, Abuja, Port Harcourt, Kaduna and Kano, all of which would entail several meetings with government and non-governmental officials, require a minimum 10 to 14 days. Further, they would note that the duration of this visit is comparable to the duration of missions they have undertaken to other countries. The proposal that a visit for a period of 8 days be made in October 1996 was based upon the overriding wish of the Special Rapporteurs to visit Nigeria prior to submitting their report to the General Assembly **and** in view of the limited time available to them owing to prior commitments and owing to the deadline for submission of reports.
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> "(3) With respect to the issue of an advance party of a United Nations staff member to Nigeria, the Special Rapporteurs would propose that one member of the Secretariat travel to Nigeria three days in advance of their arrival, i.e. arrive in Nigeria on 12 February.
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> "(4) With respect to the issue of authorities to be met, the Special Rapporteurs note that they are not in a position to provide the names and positions of representatives of local and state administration of the different states. However, in general, the Special Rapporteurs wish to meet local and state authorities in the cities to be visited who are responsible for the administration of justice, including those in charge of police/security, courts, prisons and other places of detention such as remand centres."

25. Although the Special Rapporteurs do not wish to address all of the points raised in the note verbale of 6 December 1996, they would note the following facts. First, and foremost, it should be recalled that the two Special Rapporteurs first requested permission from the Government of Nigeria to undertake a fact-finding mission in November 1995. In the interim, three concrete dates had been proposed for the mission: 7-20 July 1996, 9-17 October 1996 and 25 November to 5 December 1996. On each occasion the Government of Nigeria found the dates to be inconvenient.

26. Second, contrary to what was implied in the note verbale of 6 December 1996, the latter dates were proposed by the Government and not the Special Rapporteurs. In its letter of 4 October 1996, the

Government of Nigeria informed the Special Rapporteurs that it would be willing to receive the Special Rapporteurs in the last week of November 1996 or the second week of December; the Special Rapporteurs chose the first alternative. If the Government had committed itself to the end of November to the CMAG much earlier, then why did it suggest the last week of November to the Special Rapporteurs? Further, in their letter of 25 October 1996, after the Government had informed them that the dates were inconvenient and had raised questions concerning the terms of reference, the Special Rapporteurs clearly expressed their view that it would be premature to consider the second alternative before the issues concerning the terms of reference and the duration of the visit were resolved.

27. Third, in his letter of 6 September 1996, the Special Rapporteur on the independence of judges and lawyers had reminded the Government that the Commission on Human Rights had requested the two Thematic Rapporteurs to submit an interim report to the General Assembly. The Government was further informed that if the Rapporteurs had not received a reply by 23 September to their request to have the mission take place from 9 to 17 October, dates which had been proposed on 18 June, that they would be compelled to prepare the interim report solely on the basis of information that had been received from non-governmental and intergovernmental organizations. In the view of the Special Rapporteurs, they were mandated to submit an interim report irrespective of the fact that they had not been able to undertake the fact-finding mission.

28. In this regard, it should also be noted that the deadline for the submission of reports to the General Assembly was 30 September 1996. This deadline is based upon the fact that the General Assembly requires all United Nations documents to be circulated simultaneously in the six official languages; the Secretariat requires a minimum of six weeks to translate and print documents in the six languages. On an exceptional basis, the Special Rapporteurs were granted an extension to allow them an opportunity to undertake the mission prior to drafting the interim report.

29. Fourth, the allegations contained in the interim report are based upon information received from reliable non-governmental organizations, the report of the Secretary-General on his mission to Nigeria and the observations of the Human Rights Committee. Further, it should be emphasized that all allegations contained in the interim report had been transmitted to the Government during the course of 1996 by special rapporteurs and working groups of the Commission on Human Rights, including the Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the question of torture and on the independence of judges and lawyers and the Working Group on Arbitrary Detention. Despite the fact that the Government had been requested by each of these mechanisms to provide a response to the allegations, none of the mechanisms had received a substantive reply from the Government during the course of 1996. The Government finally provided a reply to allegations transmitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers in the second half of December 1996.

III. REPLIES FROM THE GOVERNMENT TO ALLEGATIONS OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS AND TO ALLEGATIONS SENT BY THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

30. On 17 December 1996, the Government provided a reply to the urgent appeal of the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 6 May 1996, containing allegations of acts of harassment and intimidation by members of the Nigerian delegation during the fifty-second session of the Commission on Human Rights in Geneva against Mr. Innocent Chukwuma (see A/51/538, para. 38). The Government stated that this person, who was well known in Nigeria, had never been threatened or harassed by the delegation, nor had he previously been threatened by security forces in Nigeria. In addition, the Government provided the Special Rapporteur with replies to the cases containing allegations of extrajudicial, summary or arbitrary executions which had been sent to the Government by the Special Rapporteur on 4 June 1996 (see A/51/538, paras. 39-40).

31. The Government forwarded a report from the Inspector-General of the Nigerian Police Force, and stated that from this document it appeared that the deaths were not cases of extrajudicial, summary or arbitrary executions by those in authority but "a clear case of murder caused by accidental discharge of firearms".

32. Information was also provided on the following cases:

(a) Concerning the case of Prince A. Ayamolowo, the Government informed the Special Rapporteur that the police investigation so far was inconclusive since the suspect, an ex-sergeant of police, was on the run. He had, however, been dismissed from the police force and has been declared wanted for further investigation;

(b) Concerning the case of the alleged killing of three minors named Gabriel M. Lucky, aged 12, Kpannem Nicodimus, aged 13, and Barisi Deemus, aged 14, the Government informed the Special Rapporteur that "the alleged murder did not occur at any time and besides, no report of any such incident whatsoever was made in any of the police stations in Ogoniland or elsewhere. Inquiries conducted at the government and privately owned hospitals in Port Harcourt revealed that no such or similar incident was reported or handled.";

(c) Concerning the killing of Istaku Ibrahim, the suspect, a member of the police force, was found guilty and dismissed from the police force before he was charged before the Chief Magistrate Court;

(d) Concerning the killing of Taiwo Akinola, the suspect, an ex-corporal, was tried and dismissed from the force. After criminal investigation, the case was forwarded to the Lagos State Director of Public Prosecutions for vetting, advice and prosecution;

(e) Concerning the killing of Attah Felicia, upon completing the preliminary investigation by the police, a corporal was tried and found guilty

and dismissed from the force. A case of murder has been filed against him and he was formally arraigned in Nsukka High Court. A hearing was to be held at 18 September 1996;

(f) Concerning the alleged execution of 43 persons convicted by the Armed Robbery and Firearms Tribunal in Lagos, the Government could not yet provide any information to the Special Rapporteur.

33. On 20 November 1996, the Government provided the Special Rapporteur with a reply to the allegations he had transmitted on 6 August 1996 concerning the alleged detention of lawyers Robert Azibola and Uche Okwukwu, the defence lawyers of the 19 Ogoni members of the Movement for the Survival of the Ogoni People (MOSOP) (see A/51/538, para. 87). The Government informed the Special Rapporteurs that they were never detained. Concerning the trial of the 19 Ogoni, the Government furthermore stated that their trial had been stalled due to the reconstitution of the Civil Disturbances Tribunal which would now have no military member on it and whose verdict would be subject to appeal to a higher judicial tribunal. As soon as the tribunal had been reconstituted in accordance with the new and amended decree, the trial will resume.

34. Concerning the detention of Mr. Olisa Agbakoba, the Government informed the Special Rapporteur that he had not been detained (see A/51/538, para. 88). Moreover, the Special Rapporteur was informed in the same communication that lawyers Gani Fawehinmi and Femi Falana had been released (see A/51/538, para. 88).

IV. PRELIMINARY OBSERVATIONS

35. The Special Rapporteurs welcome the fact that attorneys Gani Fawehinmi and Femi Falana were released from prison on 18 November 1996 prior to the visit of the Commonwealth Ministerial Action Group.

36. The Special Rapporteurs reiterate their observations, conclusions and recommendations made in the interim report to the General Assembly subject to their observations on events subsequent thereto and set out in this report. Nevertheless, the Special Rapporteurs would like to postpone final conclusions until they have been able to undertake the fact-finding mission to Nigeria. However, they would like to make the following preliminary observations:

(a) While welcoming the fact that the invitation was extended by the Government, the Special Rapporteurs deeply regret that no agreement has been reached on the dates of the visit and that the Government, to date, has not accepted the standard terms of reference;

(b) The Special Rapporteurs also regret that the Government of Nigeria invoked the preparation for missions of other organizations or organs, as well as activities in the framework of the implementation of the Programme of the Transition to Civil Rule, as reasons for not receiving the two Special Rapporteurs at a time which had previously been proposed by the Government. They wish to emphasize that they welcome and encourage the implementation of the Programme of Transition to Civil Rule;

(c) The Special Rapporteurs wish to reiterate that the acceptance of the terms of reference by the Government of Nigeria is, in their opinion, a conditio sine qua non before further negotiations can take place with regard to the time-frame, programme or itinerary of the visit;

(d) If the Special Rapporteurs are unable to undertake a visit to the country prior to the fifty-third session of the Commission on Human Rights, they will be left with no alternative but to report to the Commission that the Government has failed to comply with resolution 1996/79.
