

OPENING ADDRESSES

Introductory Speech

by

**The Hon Justice Mohammed Bello, C.O.N.,
Chief Justice of Nigeria**

at the Opening Ceremony of the International Judicial Colloquium
held at the Sheraton Hotel, Abuja, Nigeria, from 9 - 13 December 1991

I deem it a great privilege to have the honour to introduce this Colloquium to so distinguished an audience. When in February this year, we decided to explore the possibility of hosting this Colloquium, I did not foresee that it would attract such a keen and widespread interest. As I look round this hall and note the presence of distinguished Judges and Jurists from different parts of the Commonwealth and beyond, I cannot but pleasantly pat ourselves at the back. I welcome you all to Nigeria.

Our distinguished visitors have come to the country at the very critical stage of our transition programmes for the return to civil rule and constitutionalism. Local Government Councils elections had already been conducted throughout the Federation at which the Chairmen and the Councillors for the 600 Local Government Councils had been democratically elected by their peoples.

Only nine days ago, on 30th November, 1991, our National Census Commission completed the enumeration for the 1991 National Census. Nigerians have been anxiously looking forward to the result because we have not had an acceptable census result since 1963.

Our visitors are going to be eye-witness to the transfer of the seat of the Federation from Lagos to here, Abuja, during this Colloquium. The President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, General Ibrahim Badamasi Babangida, C.F.R., fss, mni, will on 12th December, 1991 bring the official seat and inaugurate Abuja as the Federal Capital of Nigeria. Thereafter, on the 14th of December, 1991, there will be elections throughout the country when the Governors and Members of the Houses of Assembly of the 30 States of the Federation will be democratically elected by the people. On the 2nd of January, 1992, the executive and legislative powers of the States will be formally handed over to the civilians. The Military will finally withdraw from the Government of the Federation by the end of the said year and hand over power to the elected representatives of the people.

I have summarised the transition programmes of the Federal Military Government for the return to civil rule because I consider them relevant to the topic for deliberation at the Colloquium, to wit: the Domestic Application of International Human Rights Norms.

This Colloquium is the fourth in a series which commenced in Bangalore, India, in 1988. There eminent Judges and Jurists from nine countries of the Commonwealth and the United States gathered at a Judicial Colloquium to deliberate on different aspects of

the Domestic Application of International Human Rights Norms. In the end, they not only identified the international character of human rights norms but also reached far-reaching decisions embodied in what have since then been known as the "Bangalore Principles". A second Colloquium in Harare in 1989 produced the "Harare Declaration of Human Rights". The third, which was the first in this sub-region was held in Banjul, The Gambia, in 1990 and produced the "Banjul Affirmation". Without trying to pre-empt this Colloquium, it is my hope therefore that, at the conclusion of this fourth Colloquium, we shall be able to produce the Abuja Confirmation.

I do hope that it will be a confirmation because Nigeria was the first country in Africa to entrench the internationally recognised human rights norms in its 1960 Constitution based mainly on the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. It is pertinent to state that the Nigerian model was adopted for all the Constitutions of all the African Commonwealth countries including Botswana, The Gambia, Kenya, Madagascar, Mauritius, Sierra Leone, Zambia, Uganda, Malawi, Lesotho and Zimbabwe. It may be confidently asserted that the constitutional seeds of internationally recognised human rights norms were first sown in Nigeria and their shoots spread all over Africa.

Furthermore, our Constitution has not been static. We have been changing it frequently. In the course of those changes, our Constitution makers have been incorporating therein most of the principal human rights norms formulated during the years by international fora. The sources include Universal Declaration of Human Rights, African Charter on Human Rights and the major international covenants and conventions relating thereto.

The internationally recognised substantive human rights norms entrenched in the 1989 Nigerian Constitution may be summarised in three categories.

Firstly, the rights which are exclusively reserved for the Nigerian citizens for the protection of the privacy of themselves, their homes, correspondence, telephone conversation and telegraphic communication; for their freedom of movement in and residence in any part of Nigeria and of entry therein; right to freedom from discrimination on ground of ethnic grouping, sex, religion or political opinion or by reason of the circumstances of their births.

Secondly, the right of dignity to human person, which includes citizens and aliens as well, which relates to the prohibition of torture, inhuman or degrading treatment, slavery or servitude and forced or compulsory labour.

Thirdly, the rights of every person, whether human or corporate or unincorporate, citizen or alien, to life; to personal liberty; to compensation and public apology from the appropriate authority or person for unlawful arrest; to freedom of thought, conscience and religion; to freedom of expression including to hold opinions, receive and impart ideas and information and to own, establish and operate any medium other than television and radio broadcasting for the dissemination of information, ideas and

opinions; to peaceful assembly and association and particularly to form or to belong to political party, trade union or any other association for the protection of his interest.

With regard to the entrenched procedural rights, every person accused of criminal offence is accorded the rights to remain silent, to be informed of the reason for his arrest within 24 hours; to be taken to court within reasonable time; to fair hearing in civil cases and fair trial in criminal cases in public within a reasonable time by an independent and impartial court or tribunal; to presumption of innocence; to be informed of the offence with which he is charged; to be given adequate time and facilities to defend himself; to have a counsel of his choice; to cross-examine prosecution witnesses and to examine his witnesses and to have a free interpreter.

Every person also enjoys the immunity against retrospective legislation and against double jeopardy; and the right of noncompellability as a witness if accused of a criminal offence.

It must be emphasised, however, that the aforesaid rights are not absolute because in addition to the several provisions to the relevant section relating to a particular right, qualifying and limiting the right, the Constitution enjoins that any law that is reasonably justifiable in a democratic society in the interest of peace, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedoms of other persons or for measures taken during periods of emergency shall not be invalidated by reasons of the provisions of the fundamental rights.

Moreover, the Constitution of the Federal Republic of Nigeria is the fundamental law of the land which has binding force on all authorities and persons and any other law which is inconsistent with its provisions shall to the extent of the inconsistency be null and void. Consequently except in accordance with the provisions of the Constitution, a Nigerian civil government or authority cannot deprive any persons from the enjoyment or exercise of his constitutional human rights.

One of the most important aspects of the Nigerian Constitution worth noting for the purpose of this Colloquium is that the incorporation of the fundamental human rights therein has not been a mere declaration of intention. Those rights have been concretised by the Constitution itself by providing that any person who alleges that any of his constitutional human rights has been, is being or likely to be contravened in any State in the Federation may apply to a High Court in that State for redress.

The procedure for obtaining redress for contravention or likely contravention of the said rights is spelt out by the Fundamental Rights (Enforcement Procedure) Rules 1979 made by the Chief Justice of Nigeria under the authority of the Constitution. The procedure provides easy and speedy access to courts. The aggrieved person may apply ex parte in any court in the State, whether Federal or State court, where the infringement occurs or is likely to occur, for leave to apply for the order being asked for and, if leave is granted, the application for such order is

required to be made by motion on notice or by originating summons. The court must enter the motion or summons within 14 days after leave has been granted. Upon grant of leave, the court may stay all actions or matters relating to or connected with the complaint until the court otherwise orders. Indeed, since their entrenchment in 1960, the Nigerian courts have made far reaching decisions regarding the observance, protection and enforcement of fundamental human rights.

The human rights stance of the present Nigerian Military Government is material to the issue. On taking over the Government, it declared that except in special circumstances, it would not interfere with the fundamental rights provisions of the Constitution. To its credit, its first act was the repeal of the Decree enacted by its predecessor which gagged the press and also released from detention political office holders and businessmen who had been detained by the former Military Regime.

It is to the credit of the present Military Regime that it has not suspended the fundamental rights except in relation to the State Security (Detention of Persons) Decree 1984 which permits detention of persons without trial in a court of law on security grounds. The Regime has also ousted the jurisdiction of the courts of law to try armed robbery cases, economic crimes and political offences. The jurisdiction for the trial of cases on all these matters has been conferred on Military Tribunals established for the purpose. The tribunals are chairmanned by serving or retired High Courts Judges. It is a notorious fact that security detention and ouster of jurisdiction of the courts have been the scud missiles with which the Human Rights Activists and the Critics of the Regime have been making onslaught on the Federal Military Government. However, on the whole, the humane human rights stance of the Regime has been universally recognised.

As I see it, the success or failure in the advancement and enforcement of human rights norms in any country depends squarely on two institutions, namely: the courts of law and the courts of public opinion. The former adjudicate on human rights cases. The latter sensitise citizens about their rights, educate them about their violations and inform them that they can get appropriate remedy in the courts of law. Those courts of public opinion are under the control of the press and the media. As these are outside the scope of this Colloquium, it is enough to say that in a country in which the press is supine, timid, ignorant or not resourceful or constructive enough, human rights aspirations are as good as dead.

It is, however, with the other institution, the courts of law, that we are concerned in this Colloquium. It is very good indeed that many countries in their several constitutions and other laws have set out different human rights norms. But these abstract statements of principle will be useless unless their violations are brought before the court, adjudicated upon and enforced by the appropriate and efficient machinery for administration of justice. It is of course a truism that the types of judgments to be expected of Judges in such cases will invariably depend upon the quality of legal and judicial education of the Judges, their character of courage and discipline as well as their exposure to such cases.

It has been said that human rights norms ante-date human society itself. The American Declaration of Independence 1786 in Philadelphia proclaimed it as self-evident truth that:

"... all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness; "

That proclamation has found broad expressions in the several modern international statements of principles, declarations, covenants and conventions on human rights. A plethora of internationally recognised human rights norms has been comprehensively documented. All that a country, which wishes to entrench in its Constitution or domestic law any of such rights, has to do is to select from such plethora.

For this Colloquium we have assembled the representatives of all the thirty-four Judiciaries in Nigeria and of each of the Judiciaries in Anglophone West Africa except Liberia, to listen to the eminent and distinguished resource persons and other participants and to make their contributions at the Colloquium. I have the hope that it will in the end be seen as a useful and worthwhile exercise.

Finally, the recent collapse of communist totalitarian regimes in Eastern Europe and the violent overthrow of dictatorial presidencies in some African countries provide a bitter lesson and inducement to all developing countries to embrace true constitutional democracies in order to ensure peace, stability and enjoyment of human rights for their peoples. Judges and jurists, I believe, have an important role to perform in this great endeavour.

I thank you all for listening.

Human Rights Posture of the Present Regime

Address by

The Hon Prince Bola Ajibola, SNA, KBE

Attorney-General and Minister of Justice of the Federation

The Vice-President of the Federal Republic of Nigeria, Admiral Augustus Aikhomu,

The Chief Justice of Nigeria, Hon Justice Mohammed Bello, CON,

The President, European Court of Human Rights,

The Chief Justices of Other Countries here present,

The Chairman, African Commission on Human and People's Rights,

Representatives of Interight, Ford Foundation and the Commonwealth Secretariat,

Distinguished Ladies and Gentlemen.

INTRODUCTION

First of all I wish to thank the organisers of this Colloquium and in particular, the Chief Justice of Nigeria, Hon Justice Mohammed Bello, CON for very kindly extending to me an invitation to attend and participate in it. This is the second judicial colloquium in the series organised by the Commonwealth Secretariat to be attended by me, having had the privilege and pleasure of participating in the 3rd Colloquium held in Banjul, The Gambia in 1990. It is with immense delight that I join all well meaning Nigerians in welcoming the delegates to this 4th Colloquium which is being held here in 'this' new Federal Capital of Nigeria - Abuja.

In the letter of invitation which was addressed to me I was requested to speak very briefly on the topic "Human Rights Posture of the Present Regime".

I make bold to say that the general issue of human rights is particularly appropriate for a forum of this nature and at this time having regard to its prominent currency on the international plane. Almost at every nook and corner of the world today people talk of or react in one way or the other on the issue of fundamental human rights or its sister topic - democracy. We all are living witnesses to the recent wave of popular agitation for either the one or the other or even both in South Africa, in Eastern Europe, in the Middle East, in East Africa, in the far East and in several other places on the globe.

JUSTIFICATION FOR MILITARY INTERVENTION IN CIVIL ADMINISTRATION IN NIGERIA

My Lords, allow me to preface my thoughts on the posture of the present Administration on human rights with a few words about what I consider to be the justification for the intervention of the Armed Forces in civil administration in Nigeria, a phenomenon which, as you may recall, came on the scene for the first time in this country in 1966. The political upheavals of the years which immediately followed our year of Independence from colonial rule are still fresh in the memories of some of us today. Those years were perhaps the politically stormiest years in Nigeria's history. There were three main political parties at the time - the Northern Peoples Congress, the National Council of Nigerian Citizens and the Action Group, each of which derived its strength from the loyalty and patronage of one of the three dominant tribes. Tribalism and ethnicity featured prominently and played a decisive role in the politics of the time. Political elections which formed the vehicle to political power at every level of government were fought to the bitterest end and indeed, towards the end of the first Republic they were a matter of do or die. In the late 1965 early 1966 period party politics degenerated into actual physical encounters as between supporters or sympathisers of one political party and those of another. The situation then is better described in the words of President Babangida. In one of his recent addresses to the nation he said in part as follows:

"Our history shows that independence transformed our nationalist leaders into professional politicians who have always sought not only to run for and hold office democratically but to monopolise the opportunities for running for office. It is this monopolistic interest of our civilian leadership that transformed political parties into war machines of the electoral processes. It is our view that, constitutionally, electoral democracy could not be instituted in such a situation of factional and combative contests; neither can it thrive in an atmosphere of such contests. Our experience has also indicated that all that was promised in finely written constitutional documents, manifestos and popular expectations were destroyed in the struggles by politicians over control of access to the powers of office. Thus, the purposes of constitutional government became relegated to the background. As I put it once, the lack of adequate and guided political culture had led to the politics of intolerance and indiscipline among politicians. A political failure in one election meant failure for all time. The incumbent political actors closed all re-entry channels. The crisis of political succession which we experienced are linked to this political attitude".

Things came to a head in the mid 1966 so much so that human lives and limbs were constantly in danger. This was the time of the so called operation "wet e" - a slogan that inspired the pouring of petrol on a political opponent or his property and setting him or it ablaze. And that was in fact the order of the day. The situation got so bad that the law enforcement agencies could no longer cope and it was clear that unless the military intervened the corporate existence of Nigeria as one political entity was in grave danger. This was why the military for the first time ever, came on the scene to arrest the trend and restore sanity and order. Unfortunately, the intervention was itself mismanaged and subsequent events ultimately led to the Nigerian Civil War which lasted for some 30 months.

The ravages and disruption which the war brought with it and another coup d'etat which was staged in 1976 while the military were still in power necessitated the stay of the military in government up to the end of September, 1979.

As we all may also recall, the military quit the political scene on the 1st of October, 1979 and handed over power to a democratically elected government both at the State and the Federal levels and we all looked forward with hope for a successful second civilian administration. But before long our hope started to fade away, for the civilian rulers of the 2nd Republic appeared to have learnt very little from the mistakes of the 1st Republic. Indeed, not only was there very little and insignificant difference between the party political power pattern of the 1st and 2nd Republics, it would be right to say that the three political parties that dominated the scenes in the two Republics were the same in everything but names and so their power bases, memberships and followerships were in essence largely the same. Little wonder therefore, that the same problems which rocked the boat of the 1st Republic reared their heads again in the 2nd Republic and prepared a predisposition for yet another and popular military intervention. The President, Commander-in-Chief of the Armed Forces epitomised the situation graphically in the following few words:

"When in December 1983, the former military leadership headed by Major-General Muhammadu Buhari assumed the reins of government, its accession was heralded in the history of the country. With the nation then at the mercy of political misdirection and on the brink of economic collapse, a new sense of hope was created in the mind of every Nigerian."

It will be seen from this brief background account that military interventions in the administration of this country have always been called for by the circumstances created by civilian rulers. The military recognise their professional, basic, and primary role in the scheme of things as that of the protector of the nation's territorial integrity and the protection of the nation from external aggression. It was only when the ship of state was in grave danger as a result of the mismanagement of the affairs of State by the civilians and there is no feasible alternative

solution to the national problem thus created by the situation that they had intervened in Nigeria. This so far has been our experience. The military's role in government has, therefore, always been equivalent to a rescue mission, a mission which demands that everything possible must be done to preserve the corporate existence and unity of Nigeria, to protect the nation's territorial integrity and save the national economy from collapse.

HOW ARE HUMAN RIGHTS FARING UNDER THE PRESENT MILITARY ADMINISTRATION?

In attempting to answer this question I should like to start by submitting that a military government, though not a formally and democratically elected government, does not necessarily lack the will and the disposition for the observance of human rights. Indeed, speaking from experience as a keen observer of Nigeria's political and constitutional development I would submit, without any fear of contradiction, that paradoxically, there is always a greater scope and pre-disposition for the observance of human rights during military interregnums in Nigeria than there is during civilian administration. The observance of human rights is eminently possible only in an atmosphere devoid of rancour, violence and social unrest and upheavals. Human rights cannot thrive in an environment constantly inundated with acrimonious ranglings and bitter contests for political offices, ills that unfortunately characterised the practice of politics during Nigeria's first two Republics. This is why it is not difficult to find court cases decided during the first and second Republics on the issue of human rights in our law reports. Let me illustrate the point by referring to one or two of them. The first one is *Alhaji Adegbenro v Attorney-General of the Federation*: In the wake of political crises which engulfed the Western Region of Nigeria in the period 1961 - 1962 so serious was the situation that the Federal Government of the time thought it necessary to invoke and use emergency powers vested in it by the 1960 Constitution of Nigeria. The Government accordingly declared a state of emergency in the Region and appointed an Administrator whom it gave wide powers, including the power to restrict the movement of people who were either involved or were likely to be involved in the crises. The plaintiff - Alhaji Adegbenro, who claimed to be the Premier of the Region, was confined to a particular section of the Region by an order issued by the Administrator. He challenged the constitutional validity of both the principal law, that is, the Emergency Powers Act 1961 and the regulations made under it. In the ultimate judgment delivered in the matter the Supreme Court held that the steps taken by the Federal Parliament were reasonably justifiable preventive measures taken for the purpose of obtaining peace and order in the Western Region and avoiding bloodshed.

The second case is that of the *Minister of Internal Affairs v Shugaba Darman*. It is a Second Republic case. On the ticket of one of the political parties of the Second Republic, Shugaba successfully contested an election for a seat in the Borno State House of Assembly in which he also later became the leader of the

majority party in the House. The minority party in the House was the National Party of Nigeria which was also the majority party at the centre and formed the Federal Government. After some time the Minister of Internal Affairs (a Federal Government functionary) issued an order purportedly deporting Shugaba from Nigeria on the pretext that he was not a Nigerian citizen and was a Chadian national. Shugaba's passport was also impounded by the Minister. All this, do doubt, must have been inspired by the bitterness of the politics of the time. In deciding the case, the trial court held inter alia, that Shugaba's right to freedom of movement as a Nigerian citizen had been infringed and it consequently awarded him aggravated and exemplary damages and ordered that his passport be returned to him.

One relative advantage which military regimes have is the absence of politics and politicking. As a result of this, while such regimes last the country enjoys a period of relative social tranquility and peace, a condition that is conducive to the observance and enjoyment of human rights.

How then have human rights been fearing since the inception of this particular military Administration? In answering this question let me first of all mention that one of the grounds on which the present rulers based their action of wresting power from the hands of their military predecessors in office is the issue of human rights. Let us listen again to a part of the maiden speech which President Babangida delivered to the nation on his assumption of office. In referring to methods used by the Government of his immediate predecessor in office to correct the ills of the past and bring the wrong doers to book, the President said (and I quote)

"While this government recognises the bitterness created by the irresponsible excesses of the politicians, we consider it unfortunate that methods of such nature as to cause more bitterness were applied to deal with past misdeeds. We must never allow ourselves to lose our sense of natural justice. The innocent cannot suffer for the crimes of the guilty. The guilty should be punished only as a lesson for the future. In line with this government's intention to uphold fundamental human rights, the issue of detainees will be looked into with dispatch."

The President thus declared the policy of his government as far as human rights were concerned right from the time of his assumption of office, a policy which, as will be seen, had since been faithfully executed. In order to have a balanced and honest picture let me first of all make some remarks about some acts or omissions which seem to adversely affect human rights or impede their full enjoyment but which can be justified on the grounds of expediency and national interest. Let me for instance refer to the Constitution (Suspension and Modification) Decree No.1 of 1984 which, among other things, circumscribe some of the rights guaranteed by the Constitution of the Federal Republic of Nigeria, 1979. For example the right to personal liberty of the

individual is contained by removing the time limit within which a person suspected of having committed a crime must be charged to court. But in considering this kind of action on the part of government it is necessary to remember that in some cases the extent to which certain rights are protected varies from jurisdiction to jurisdiction and depends on the prevailing circumstances. As the case of Alhaji Adegbenro to which reference was made earlier in this paper shows even during periods of democratic rule it is possible to pass laws and make regulations that would adversely affect the rights of the citizenry. Anthony Lester, QC has had occasion to concede that the free speech doctrine as preached and practised in the United States has received "hostility" from the courts of England.

I therefore make bold to say that inspite of the circumscription of a few of the rights guaranteed by the 1979 Constitution of Nigeria by Decree No.1 of 1984 none of Nigeria's military regimes, including the present one, can really be described as totalitarian in the sense in which that term can be used to characterise the regimes in some other third world countries. Several Constitutionalists in Nigeria concede this point. For instance, Professor Abiola Ojo is of the view that "on no occasion has there been a military regime that had done away completely with the legal system and introduced martial law, the varying severity notwithstanding. Nigeria has never laboured under a dictatorship." Chief Rotimi Williams, a Senior Advocate of Nigeria who is one of the foremost legal practitioners this country has ever had, unequivocally expressed a similar view when he said:

"Military government in Nigeria, as we have come to know it since the coup in January 1966, is not a system of government in which a despot or a military oligarchy operating above the law exercises absolute power. It is rather a system of government which after coming into existence by overthrowing the existing legal order, replaces it by a new legal order. No military government in Nigeria has ever wiped out the entire provisions of the Constitution which it overthrew."

Therefore, from a Constitutional point of view, the various military regimes do recognise the need to govern within the framework of a written Constitution as modified. Making this point with regard to the saving of judicial powers provided for in the Constitution, Hon Justice Kayode Eso, a retired and respected Justice of the Supreme Court of Nigeria had this to say very recently:

"By virtue of the Constitution (Suspension and Modification) Decree No.1 of 1984 a good number of the provisions of the Constitution were suspended. Indeed, what was left was what had been permitted by the Federal Military Government to exist. All the provisions relating to the Judiciary were saved. Section 6 of the Constitution,

the most important provision, in so far as the Institution known as the judiciary is concerned which vests in Courts the judicial powers of the Federation was left extant. The military government had the power and still has to put an end to the existence of that provision. It has not done so, and that must have been advisedly. For it does intend that the Rule of Law should prevail".

Justice Eso was right when he concluded that this regime had the intention to preserve the Rule of Law because it truly does. Significantly, when this Administration came to power against the background of the prevailing condition, the nation was assured that this regime would be gentle, open and humane and that its policies would be anchored on human rights. One of the first steps taken by this Administration in demonstrating its stand on human rights was the repeal of the obnoxious provisions of the Public Officers (Protection Against False Accusation) Decree which made it an offence to publish any matter considered embarrassing to a public officer. It did not matter that what was published was true in any material particular as truth of the publication was no defence under the Decree. This regime considered the existence of such a law inimical to the pursuit of open government and freedom of the Press and therefore repealed it. The Press has since then, despite occasional wrangles with Government, remained free to discharge its functions to the best of its ability.

It is my view that the response of the present Administration to the enforcement of human rights may also be viewed from an economic perspective, for a school of thought considers human rights to encompass economic rights. Economic rights, which include the right to work and the right to own property, can be expanded to include the right of the citizens to better their lot economically to the limit of their capabilities without hindrance. Since our economy is modelled on the laissez-faire principles, this regime has continued to encourage Nigerians to develop themselves to the limit of their abilities.

This Administration has taken extraordinary and very far reaching measures that are designed to promote the economic rights of Nigerians. It must be mentioned that the adoption of such measures is aimed at restructuring the depressed Nigerian economy, hence the dogged implementation of the Government Structural Adjustment Programme (SAP). This Programme provides citizens and foreigners alike with a favourable investment climate which ultimately will lead to the creation and stimulation of more job opportunities. Under its well thought out scheme for the privatisation of certain business concerns, including corporations, formerly wholly owned by it, the Federal Military Government gave all Nigerians an opportunity to purchase and own shares in such corporations without discrimination. All in all, the Government can be said to have so far lived up to its avowed human rights posture on economic matters.

Another area in which this regime has faithfully demonstrated its commitment to the upliftment of human rights is in connection

with the mass arrest and detention of the leaders of the political class after the collapse of the second Republic. When this Administration came into office in August 1985, approximately 2,000 politicians were serving jail terms in different parts of the country. This Administration bowed to public opinion and immediately constituted three judicial panels which reviewed the cases of approximately 1,700 persons then under detention. All those who were found not guilty after due process of the law were released from detention. Most of those politicians were initially held under the provisions of the State Security (Detention of Persons) Decree which, as it was then framed, empowered the Chief of Staff, Supreme Headquarters to detain without trial, any person who he had reason to believe had engaged in or was planning to engage in committing acts prejudicial to the security of the nation or had contributed to the nation's economic adversity. The period of detention was three months and was subject to renewal. A few years ago in answer to popular demand, this Administration set up a Review Panel which meets from time to time to look into the cases of all those detained under the Decree. If the Panel is satisfied that the continued detention of a detainee is no longer justifiable under the Decree, it advises the Vice-President accordingly.

May I observe in parenthesis that it is not uncommon to have preventive detention in one form or another in various jurisdictions of the world during periods of civil unrest or emergency dictated by political or economic considerations. However under Nigeria's State Security (Detention of Persons) Decree, a person can now be detained only for a period of 6 weeks.

A permanent feature of this and other military administrations which has constantly drawn criticism is the obvious preference of tribunals to regular courts for the adjudication of certain matters. Each of such tribunals is usually imbued with jurisdiction over such matters. The usual argument of the antagonists of the tribunals is that there is nothing preventing the regular courts from trying or exercising jurisdiction over such causes or matters that are reserved for the tribunals, that the creation of new tribunals is tantamount to an erosion of the duties and functions of regular courts and, therefore constitutes an infringement of the rule of law. In that regard, it is often conveniently forgotten that the Constitution of 1979 confers power on the Federal Government to create any court or tribunal as it may deem necessary. Furthermore, it is often forgotten that it is in fact in the overall interest of the judiciary as a whole that some of the matters which go to the tribunals should be treated to finality at that level in view of the already heavy work load of the regular courts.

Besides, there is also the problem of technicalities and formalities which often impede the progress of proceedings in regular courts. My Lords, allow me to digress a little by illustrating the point being made here with the story of the case *Ariori & Others v Elemo & Others*. The case was filed in court on the 15th of October 1960 and after innumerable adjournments, the trial began on the 18th of November, 1964 and hearing was concluded on the 18th July, 1974 - fourteen years after the action commenced.

Judgment in the case was delivered on the 3rd day of October, 1975 after a period of fifteen years. The appeal to the Supreme Court was disposed of on the 21st day of January, 1983 - roughly twenty-two years after the case began. One question which Hon Justice C A Oputa, another retired and respected Justice of the Supreme Court of Nigeria, recently posed with respect to this kind of experience is this (and I quote)

"How far; how just, is a trial conducted five or six years after the event - say a road accident that was all over in twenty or thirty seconds? The most honest witness cannot remember accurately what happened during twenty seconds, five years ago. But a liar's memory is always fresh. Something has to be done."

My Lords, one of the principal objectives underlying the establishment of tribunals is the speedy and uninhibited disposal of the matters that go before them, consistent, of course, with a standard of justice that is in no sense lower than that obtainable in the ordinary courts of the land. One must concede that there were a few features of these tribunals that warranted criticism at the time they were set up, that is, before the present Administration assumed office. During the period January 1984 to August 1985, tribunals existing at the time were allowed to sit in camera. The tribunals were also presided over by non-judicial personnel who were usually senior military officers. Furthermore, no right of appeal was conferred on any Court or other tribunal to hear appeals from any person wishing to appeal against the decisions of any of the tribunals. It is important to emphasise that upon assuming office, this regime, in consonance with its human rights posture, corrected these anomalies. Today, all tribunals are presided over by serving or retired Judges. Trials are held in public and appeals lie from the decision of a tribunal to an Appeal tribunal manned by three Judges. It is significant to also mention that only the accused has a right of appeal, the prosecution has none. Furthermore, Military and Police Personnel no longer sit in the tribunals. It may therefore be said that no Tribunal at the moment can be correctly characterised as 'military' in any real sense. My Lords, Military Governments in Nigeria have always recognised and emphasised the temporary nature of their tenure. In recognition of this fact, General Ibrahim Babangida has since 1986 initiated a process of disengagement that will ultimately culminate in the handing over of power to a civilian government on October 1, 1992. To this end, government has initiated its disengagement agenda by drawing up a transition programme. The programme so far has seen the inauguration of the Political Bureau, the Constitution Review Committee, the Constituent Assembly, the National Electoral Commission, a Centre for Democratic Studies and MAMSER. In addition, a new Constitution which will come into force in 1992 has been promulgated.

Furthermore, we have witnessed the enthronement of democracy at Local Government Council level under the umbrella of two grass root Political Parties set up by the Federal Government - the National Republican Convention and the Social Democratic Party.

We have also undertaken the national census and the Political Parties have concluded election at the primaries aimed at selecting candidates for the office of governor. It is a fitting tribute to this government's position on human rights to mention that the Directorate for Mass Mobilisation was set up in order to educate the people and to ensure that each citizen exercises his voting right wisely. In addition, the Centre for Democratic Studies was set up to ensure that aspiring leaders in the new dispensation fully appreciate the nuances of the democratic process. With the creation of nine additional states on the 27th of August, 1991, government can clearly be seen to have added fresh impetus to the demand by Nigerians for a right to determine their destiny within the heterogeneous context of this country.

My Lords, one particular trait which characterises the style of government of the present Administration and enhances its human rights posture is its respect for public feelings and popular opinion. It is a listening government. At least on one major national issue it called for public debate and discussion before taking a final decision. The issue was whether or not Nigeria should take a loan from the International Monetary Fund (IMF) with a view to revamping its ailing economy. Nigeria had applied to the IMF in 1983 for a balance of payment support loan as a result of the serious economic conditions in which it found itself. The proposal to obtain the loan triggered off a controversy and this Administration referred the issue to the people for debate. In the end after weeks of spirited arguments and discussions the consensus emerged that the loan should not be taken and Government bowed to the wish of the people. In the words of the President (and I quote)

"After due consideration of all the opinions expressed by Nigerians and other residents as embodied in the Interim Report on the IMF loan, government has come to the conclusion that for now the path of honour and the essence of democratic patriotism lies in discontinuing the negotiations with the IMF for a support loan. This is clearly the will of the majority of our people on the issue. We have therefore decided to face the challenge of restructuring our economy not through an IMF loan, but a determination of our own people to make all the sacrifices necessary to put the economy on the path of sustained growth, doing so at our own pace and on our own volition."

Similarly on the issue of creation of more States this Administration gave due consideration to the wishes and aspirations of the people. The issue had for long been agitating the minds of many a community in the Nigerian society and all efforts made by the people to get the former Civilian Administration to meet their demands met with no success. The present Administration, after due considerations of all the issues involved carved out 9 new States out of the extant 19 States Structure of Nigeria and thus gave fruition to a long-standing yearning of the people.

Finally, I must not end this discourse without making mention of the respect and concern which this Administration has for the Judiciary. As stated earlier in this paper, in 1984 after the Military had taken over the reins of office from the erstwhile Civilian Administration they promulgated a Decree called Constitution (Suspension and Modification) Decree, No.1 of 1984 as a result of which certain provisions of the 1979 Constitution of Nigeria were either suspended from operation or modified. However, those provisions which relate to the judicial powers of the nation were not affected. When the present Administration assumed office in August, 1985 it maintained that position even though it itself promulgated one other such Decree in that year. I make bold to say that this gesture was borne out of the recognition of the crucial role which the Judiciary plays in the affairs of state. It was also borne out of a realisation of the fact that the Judiciary is truly the last hope of the common man and that the rule of law and fundamental human rights would have very little meaning unless the Judiciary is not only independent and fearless, but also respected and assisted so that it may be able to function conveniently. Its personnel must also be happy and contented.

The Federal Military Government has expressed its avowed concern for the Judiciary in concrete terms by taking necessary measures through legislation to ameliorate the conditions of service of judicial officers throughout the length and breadth of Nigeria. The first Decree that was promulgated in this regard was the Pension Rights of Judges Decree of 1985. Later Government went further to give a special attention to the conditions of incapacitated judicial officers by promulgating the Pension Rights of Judges (Amendment) Decree of 1991. A second amendment designed to further better the welfare of judicial officers even after their retirement from service is at present in the pipeline and is likely to become law before long. Furthermore, a few years ago this Administration took the necessary action as a result of which for the first time ever the Judiciary became a self-accounting institution.

CONCLUSION

My Lords, the foregoing represents an attempt to treat the subject - human rights posture of the present Nigerian regime in outline only. Of course, it is not for me to suggest the mark that should be awarded having regard to all that has been said. It is history that awards marks in respect of the performance of public administrators on any issue. However, I believe that when the time comes for marks to be awarded this Government will receive its rightful due from history which sees and knows all, including those which we cannot understand.

I wish this august colloquium stimulating and fruitful deliberations.

Thank you.

Address

by

CHIEF EMEKA ANYAOKU
Commonwealth Secretary-General

The demands of office will detain me elsewhere and, sadly, I am unable to be in Abuja on the occasion of this most important judicial colloquium. But I want to seize the opportunity to extend to your Lordships my warm support for the special judicial endeavour you have embarked on in broadening the reach of human rights.

In Bangalore in 1988, you took the first step to pioneer the development of a human rights jurisprudence. You sought, in particular, to examine ways in which the law permitted recourse to international human rights norms in shaping your domestic jurisprudence. In doing so, you have drawn on the richness of the common law, one of the Commonwealth's prized possessions.

You will know that there was a special focus on human rights at the recent Commonwealth summit in Harare when Heads of Government reaffirmed their strong collective commitment to the principles of justice and human rights, including the rule of law, the independence of the judiciary, equality for women and accountable administrations. It is my own belief that human rights, including civil and political rights as well as economic, social and cultural rights, must be central to any development process. In all this, you, the Judges, and the judicial administrations over which you preside have a precious and vital role. It is a matter of the greatest importance to me, and to the Commonwealth we all serve, to know that by your endeavours in this series of colloquia you demonstrate not simply commitment but a resolve to put principle into practice.

I am particularly delighted to know that several of your Lordships who inaugurated this movement in Bangalore will be present in Abuja. I extend to you all warmest good wishes for the success of your meeting.

PAPERS

