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NIGERIA
@The Ogoni trials and detentions

1. Introduction

The murder trials of Ken Saro-Wiwa and other members of the Ogoni community are continuing in Port Harcourt, capital of Rivers State in southeast Nigeria. The prosecutions appear to be politically motivated and the proceedings and decisions of the special tribunal set up specifically to try the cases do not satisfy international standards for fair trial.

In addition to those on trial, at least 17 Ogoni detainees are reported to remain imprisoned at Port Harcourt Prison without trial. Held incommunicado and without charge in military and police custody since their detention in mid-1994, 18 detainees were transferred to prison in June 1995, apparently after being arraigned before a Magistrate's Court on a "holding charge", believed to be for murder in connection with the same case. One of these detainees, **Clement Tusima**, a 40-year-old mechanic who had been held without charge since 26 May 1995, died on or around 14 August 1995, apparently after severe medical neglect. He became ill with diabetes in November 1994 and was reported to have been denied any medical treatment until after his transfer to prison custody in June 1995. Eventually transferred to hospital, where he was apparently chained to his bed, he was subsequently returned to prison on security grounds. He again became seriously ill and was taken unconscious to hospital where he died.

In the trials of Ken Saro-Wiwa and others, the tribunal, appointed by Nigeria's military government, is neither independent nor impartial. It has shown itself biased in favour of the prosecution at key stages, and the defence team, headed by Nigeria's leading civil rights lawyers, has withdrawn from the trials in protest.

Amnesty International believes that at least three of the defendants - **Ken Saro-Wiwa**, **Ledum Mitee** and **Dr Barinem Kiobel** - are prisoners of conscience, imprisoned because of the non-violent expression of their political views, and is calling for their immediate and unconditional release. They are leading members of the Movement for the Survival of the Ogoni People (MOSOP), a non-governmental organization which has been targeted by the Nigerian authorities in recent years because of its political campaign against environmental damage in Ogoniland by oil companies and for increased autonomy for the Ogoni ethnic group. The Ogoni community remains impoverished despite decades of oil production in Ogoniland, an area of Rivers State southeast of Port Harcourt.

Amnesty International considers that others among the defendants, and among those detained on a holding charge, may also be prisoners of conscience, and is urging their release if they are not to be promptly and fairly tried by a properly-constituted court. Amnesty International is particularly concerned about the unfairness of these trials since, if convicted, the defendants face a mandatory death penalty without right of appeal to a higher or independent court.

The trials contravene standards for fair trial to which Nigeria is committed by its own Constitution and by international human rights treaties such as the African Charter on Human and Peoples' Rights and the United Nations' International Covenant on Civil and Political Rights. Such standards require that courts are established and judges appointed under procedures which ensure their independence and impartiality, and that their verdicts and sentences are subject to review by a higher court. Defendants should be allowed full rights of defence, including confidential and unhindered consultation with their lawyers, and should be safeguarded from ill-treatment, life-threatening prison conditions and restrictions on medical care and family visits. Amnesty International's analysis and conclusions about the trial, as set out in this report, accord with the main findings of a senior British lawyer, Michael Birnbaum QC, who attended the trial as an observer in March 1995¹.

2. The detentions

On 21 May 1994 four leading members of the Ogoni community were murdered when a mob attacked them as they took part in a meeting in Giokoo in Ogoniland. The victims were Chief Edward N. Kobani, ousted as MOSOP Vice-President in 1993, Albert T. Badey and Chief Samuel N. Orage, all senior officials in previous Rivers State administrations, and Chief Theophilus B. Orage.

a) The arrests

Early on 22 May 1994 the leaders of MOSOP were detained: its President, internationally-acclaimed writer Ken Saro-Wiwa, and Deputy President, lawyer Ledum Mitee. MOSOP had been increasingly targeted by the authorities. Soldiers had reportedly been responsible for extrajudicial executions in Ogoniland in 1993 and for instigating and encouraging attacks on the Ogoni by neighbouring ethnic groups in 1993 and 1994 in which scores of people died, villages were destroyed and thousands forced to flee their homes. MOSOP leaders had been detained without charge or trial as prisoners of conscience on several occasions in 1993 and 1994.

In a televised press conference held later on 22 May, the Military Administrator of Rivers State, Lieutenant-Colonel Dauda Musa Komo, attributed responsibility for the killings to the MOSOP

¹*Nigeria: Fundamental Rights Denied*, by Michael Birnbaum QC, published June 1995 by Article 19, the International Centre Against Censorship, Lancaster House, 33 Islington High Street, London N1 9LH (tel +44 171 278 9292, fax +44 171 713 1356). Michael Birnbaum, Queen's Counsel (a senior barrister), attended part of the proceedings on behalf of the Law Society of England and Wales and the Bar Human Rights Committee of England and Wales.

leadership. An alleged witness to the killings reported being told that Ken Saro-Wiwa had incited his followers to "deal with" his political rivals at the meeting in Giokoo after he was stopped from political campaigning in Ogoniland by soldiers. Lieutenant-Colonel Komo said that all the villagers and MOSOP leaders involved would be arrested. He also said that it had not as yet been decided whether to try the case before a Rivers State special tribunal, adding that, as an ordinary criminal case, it could be dealt with in the normal High Court system.

Despite the accusations publicly levelled against Ken Saro-Wiwa and other MOSOP leaders at this press conference, in the next eight months no charges were brought against any of those arrested. Ken Saro-Wiwa was reported to be chained hand and foot in detention. In late May and June 1994 a joint force of military and paramilitary police officers, the Internal Security Task Force, carried out widespread arrests of suspected MOSOP supporters in raids on Ogoni villages in which as many as 50 civilians are reported to have been extrajudicially executed. The authorities have said such reports are exaggerated but have not published names or figures themselves or allowed independent investigation.

The Commander of the force, Major Paul Okuntimo (made Lieutenant-Colonel in December 1994 and replaced by Major Obi Umahi in July 1995) told an Amnesty International delegation in December 1994 about one task force operation of 27 to 30 May 1994 aimed at "harassment and intimidation" of the villagers in Giokoo and the neighbouring villages of Nweol, Barako, Biara, Bera and Lewe. The task force apparently surrounded the villages and carried out arrests at night, firing guns into the air, driving the occupants into the bush and not allowing them to return until they agreed to accept peace terms and identify trouble-makers. Lieutenant-Colonel Okuntimo said that the task force had not been responsible for deaths which occurred in Nweol. He was unable to provide details of the many people he said had been killed by MOSOP's youth wing, the National Youth Council of Ogoni People (NYCOP), prior to the four murders on 21 May 1994, cases which it had not been possible to investigate. Although he urged the delegation to talk to the people of Ogoniland, it was not allowed to carry out investigations in Ogoniland unless accompanied by government officials, conditions unacceptable to Amnesty International in the prevailing atmosphere of tension and controversy surrounding the case.

b) Continued detention without charge or trial

Scores of MOSOP supporters, many of them young men, were detained without charge for months, beaten severely, locked up 24 hours a day in overcrowded and insanitary cells, denied medical treatment or any access to lawyers or families. They were moved around between Bori military camp in Port Harcourt, a military detention centre in a school building in Kpor in Ogoniland, a military barracks in Afam and police cells in Port Harcourt.

Some 29 detainees were still held incommunicado and without charge or trial in military and police custody in early 1995. They had no recourse to challenge the validity of their arrest and detention in the courts or to seek protection from ill-treatment and medical neglect. In June 1995, 18 of them were transferred from police cells in Port Harcourt to Port Harcourt prison, apparently after being arraigned before a Magistrate's Court on a "holding charge". **Clement Tusima**, a 40-year-old mechanic from Biara who had been held without charge since 26 May 1994, died on or around 14 August 1995. He became ill with diabetes in November 1994 and was reported to have been denied any medical treatment until after his transfer to prison in June 1995. Eventually transferred to hospital, where he was apparently chained to his bed, he was subsequently returned to prison on security grounds. There he again became seriously ill and was taken unconscious to hospital where he died.

Two civil rights lawyers and a British environmentalist were detained and flogged in June 1994 after trying to visit detainees in military custody in Ogoniland. Investigative journalists have continued to be detained and deported, and human rights organizations - including Amnesty International in December 1994, Human Rights Watch/Africa in February/March 1995 and the Commonwealth Human Rights Initiative in July 1995 - have been refused permission to visit prisoners or to investigate in Ogoniland unless accompanied by security officials. Trial observer Michael Birnbaum QC was refused permission to meet Ken Saro-Wiwa and his co-defendants even though he made it clear that he would not discuss the merits of their cases but wished simply to satisfy himself that they were being properly treated.

Relatives of the defendants in the trial and MOSOP supporters have been frequently harassed and detained for short periods without charge or trial. In November 1994 **Dick Nwiku**, an employee of Ken Saro-Wiwa, was arrested at his home, where MOSOP files were seized, and detained for several weeks without charge. A further 40 members of the Ogoni community, reported to have been arrested in February 1995, were believed to have been released uncharged after several weeks' detention at Kpor. On 29 July 1995 the security police reportedly broke into the offices of MOSOP and Ken Saro-Wiwa's publishing business in Port Harcourt, injuring a security guard, destroying and seizing documentation, and sealing the offices to prevent their further use. Women supporters of MOSOP were apparently arrested for talking to foreign human rights investigators in July 1995. On 4 August 1995 **Lekue Lah-Loolo**, an Ogoni elder and Assistant General Secretary of MOSOP, **Batom Mitee**, brother of defendant Ledum Mitee, **Meshack Karanwi**, a university lecturer recently returned to Nigeria, and **Ebenezer Kweku**, a Ghanaian student employed by Ken Saro-Wiwa's company, were arrested and detained incommunicado; they had been released without charge by early September.

3. The trials

The Rivers State military authorities had promulgated an edict in April 1994 to establish a state Civil Disturbances Special Tribunal which might have tried the case; there were several concerns about this tribunal, including its apparent power to impose the death penalty for a previously non-capital offence, and it was reportedly challenged in the courts by MOSOP. However, the Federal Military Government took over jurisdiction of the case. In November 1994 the head of state, General Sani Abacha, appointed the members of a federal Civil Disturbances Special Tribunal.

This federal tribunal was established under the Civil Disturbances (Special Tribunal) Decree, No. 2 of 1987, which gives the head of state the power to constitute a special tribunal, outside the normal judicial system, to try cases involving civil riots and disturbances. The tribunal must be chaired by a judge and must include a serving armed forces officer. Its convictions and sentences must be confirmed or disallowed by the military government, and there is no right of judicial appeal to a higher or independent jurisdiction. Previous political trials before Civil Disturbances Special Tribunals have been unfair: in early 1993 **Major-General Zamani Lekwot** and at least 16 others were sentenced to death for culpable homicide on the basis of inadequate evidence after trial by Civil Disturbances Special Tribunals in Kaduna State, northern Nigeria, set up following ethnic and religious riots there in May 1992.

On 26 December 1994 the Chairman of the federal Civil Disturbances Special Tribunal established to try the Ogoni cases in Port Harcourt, Mr Justice Ibrahim Ndahi Auta, said that the trial would begin shortly. On 10 January 1995 Nigeria's Attorney-General, Michael Agbamuche, announced that it would start on 16 January. The defence team, headed by leading civil rights lawyers from Lagos, attended the tribunal in Port Harcourt on 16 January, but the prosecution did not appear, although some detainees had been brought to the courtroom.

On 6 February 1995 five defendants were brought before the tribunal to face charges of murder, which carries a mandatory death penalty. **Ken Saro-Wiwa, Ledum Mitee** and **Dr Barinem Kiobel** were charged with murder for allegedly encouraging ("counselled and procured") John Kpuinen, Baribor Bera and others to inflict grievous harm on the participants of the Council of Chiefs meeting in Giokoo which led to the death of the four victims. **John Kpuinen**, a student, and **Baribor Bera**, a farmer, both NYCOP members, were charged with being counselled and procured by the first three accused to inflict grievous harm. The tribunal ruled that the trial of one of the five defendants, Ledum Mitee, should proceed despite the fact that no evidence whatsoever had been revealed against him by the prosecution in the summary of its evidence against the accused.

On 21 February 1995 the defence submitted two sworn statements by key prosecution witnesses that they and other prosecution witnesses had been induced with threats and bribery to sign false statements incriminating Ken Saro-Wiwa. The tribunal apparently refused to admit one of the affidavits because the witness had gone into hiding and could not therefore be cross-examined. On 13 March 1995 the tribunal rejected the defendants' applications for bail on the grounds that they might abscond.

On 17 March 1995, 10 other detainees were brought before the tribunal and charged with murder in that they were allegedly counselled and procured by Ken Saro-Wiwa to carry out the killings; their charge sheets were dated 28 February 1995:

Pogbara Afa
Saturday Dabee
Monday Donwin
Nordu Eawo
David Gbokoo

Albert Kagbara
Joseph Kpante
Paul Levura
Felix Nuate
Michael Vizer

Again, the tribunal allowed their trial to proceed although the summaries of prosecution evidence, which were almost identical to those in the first trial, contained no mention of any of them or of any evidence against them. Despite defence objections, the tribunal ruled that the second trial should be heard simultaneously with the first trial and by the same panel of judges. On 18 May the 10 accused were transferred to Port Harcourt prison at the request of the prosecution on the grounds that their police cells were not sufficiently secure.

On 22 June 1995 the defence lawyers withdrew from the first trial of Ken Saro-Wiwa and four others on the grounds of continued bias by the tribunal in favour of the authorities. The tribunal had ruled that a videotape recording of the 22 May 1994 televised press conference was inadmissible as evidence; Rivers State officials told the tribunal either that no tape of the broadcast existed or that it had been erased. The defence were seeking to challenge the reliability of a key prosecution witness whose testimony to the tribunal apparently differed materially from both the statement he had made to the police and his statement at the press conference.

On 13 July 1995 the defence team also withdrew from the second trial of 10 accused, after the tribunal rejected an application for a stay of proceedings while the defence challenged the jurisdiction of the tribunal in the High Court.

The trials resumed on 14 August 1995 with defence lawyers appointed by the court. The first lawyers appointed to defend Ken Saro-Wiwa reportedly resigned after being denied access to the defendant in military custody; Ken Saro-Wiwa is reported to have refused to cooperate with subsequent court-appointed lawyers. The prosecution case proceeded quickly in both trials, with many witnesses apparently not being cross-examined by the new defence counsel, and in early September the defence argued, in "no case" submissions, that the defendants should be released because the prosecution had failed to prove their case. On 5 September the prosecution concluded its case in the second trial; on 6 September, the tribunal ordered the release of **Monday Donwin**, one of the 10 defendants, because the prosecution had not shown that he had a case to answer.

On 13 September 1995, in response to "no case" submissions, the tribunal ruled that Ken Saro-Wiwa, Ledum Mitee and John Kpuinen had a case to answer and that their trial should proceed. In his "no case" submission, Ken Saro-Wiwa's lawyer had reportedly argued that, even if the prosecution's evidence was true - that Ken Saro-Wiwa had told his supporters on 21 May that his rivals at the Giokoo meeting were to blame for his being removed from Ogoniland by the security forces - this did not amount to incitement to kill. However, the lawyer apparently went on to argue that this evidence was not true and that the police officer who had escorted Ken Saro-Wiwa back to Port Harcourt, in his testimony as a prosecution witness, had told the tribunal that Ken Saro-Wiwa had only asked the officer why he had not been informed earlier that he would not be allowed to address a political rally before he obeyed the order to return to Port Harcourt.

4. Torture and ill-treatment

Following the arrests in 1994, there were reports that detainees had been severely and routinely beaten. During the trial, defendants have told the tribunal that they were tortured and ill-treated at the time of their arrest or under interrogation. Two key prosecution witnesses have alleged that they and other prosecution witnesses were threatened and bribed to give false evidence to the police.

On 23 February 1995 one defendant, **Baribor Bera**, showed the tribunal scars from beatings at the Kpor detention centre: he said that he was stripped naked, tied to a pillar, flogged with a horsewhip ("koboko") and made to swallow teeth knocked out as a result of being beaten. Initially listed in the summary of evidence as a prosecution witness, he is reported to have been charged with murder only after refusing to give false evidence.

In late March, when the 10 defendants in the second trial were first brought to court, **David Gbokoo** had to be carried into the tribunal and supported by co-defendants because he was ill. On 4 April 1995, after defence counsel had been allowed access to the defendants, they complained to

the court about their lack of medical treatment and food: David Gbokoo was in pain and unable to walk, reportedly as a result of being beaten with gunbutts at the time of his arrest; **Saturday Dobe** and **Paul Levura** had serious skin complaints from lack of medical care in insanitary conditions of detention. Prosecution counsel apparently told the court on 4 April that he had drugs to deliver to the defendants, including skin creams and analgesics, and the court did not make any further inquiries about their state of health or make an order that they should be examined by qualified medical practitioners.

Despite a report by a military doctor shortly after Ken Saro-Wiwa's arrest that he should receive hospital treatment for a heart problem, he was denied all medical treatment for 11 months until 25 April 1995 when the tribunal, in response to an application by the defence, ordered his admission to military hospital. He was there from 3 to 15 May when a medical team at the hospital declared that he was fit to stand trial. He alleged that he was harassed and kept awake at night by his guards at the hospital.

On 27 June 1995 **Paul Levura** reportedly told the tribunal that he had been strung up by his hands for a long period on two occasions by the police in Port Harcourt following his arrest. On 7 July 1995 **Nordu Eawo** is reported to have told the tribunal that he had been arrested by a leading prosecution witness and taken to his house, where he was beaten and cut on the genitals and head with a sharp stick by other key prosecution witnesses. He said that a tape made at the time of this assault was later used by the police to prepare a statement, which he was forced to mark with his thumbprint. He is reported to have been seriously ill in detention as a result of his wounds, which became infected, and was denied proper medical care apart from that provided by a police officer who brought him antibiotic drugs.

5. Amnesty International's concerns about the trials

The government has attempted to use this case to silence Ken Saro-Wiwa and its critics in MOSOP. Justice has not been served, either for the murder victims' families or the accused, by the authorities' failure to make independent and impartial efforts to prosecute those responsible for the killings. The trials contravene several key international standards for fair trial to which the Nigerian government is committed by its own Constitution and by international human rights treaties. These standards include the right to fair trial by an independent court and the right of appeal to a higher and independent jurisdiction.

Such standards are of particular importance in cases where the accused face the death penalty, which Amnesty International opposes in all cases. Under the UN Economic and Social

Council's safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN General Assembly in 1984, capital punishment should only be imposed "...when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts" and "...pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial...". The safeguards also stipulate that "[a]nyone sentenced to death shall have the right to appeal to a court of higher jurisdiction".

a) The detentions and trials were politically-motivated

i Illegal detention without charge

The defendants appear to have been detained illegally for at least eight months before the first five were brought to court on 6 February 1995 and notified of the charges against them. Constitutionally, they should have been informed of the charges against them within 24 hours of arrest.

Officials said in December 1994 that the uncharged suspects were detained under the terms of the 1987 Civil Disturbances Decree; however, this decree gives no power to the authorities to detain suspects without charge. The only powers of indefinite, incommunicado detention without charge or trial available to the authorities are for the detention of political prisoners, those considered a threat to the security or the economy of the state, who have usually been detained under the State Security (Detention of Persons) Decree, No. 2 of 1984.

In this case, the authorities have not had to justify publicly to a court the legal basis of the pre-trial detentions, since the legal action taken in an attempt to obtain the release of Ken Saro-Wiwa and others in 1994 is awaiting hearing by the Court of Appeal in Port Harcourt. This government has removed, by various military decrees, any right to challenge administrative detention through the courts.

ii Incommunicado detention

Criminal suspects are allowed to arrange for their defence or release by seeking legal advice and release on bail. However, the suspects in this case were held incommunicado for at least eight months, denied access to lawyers and their own doctors. Even after the start of their trial, and despite orders from the tribunal that the defendants be allowed full access to their lawyers to prepare their defence, the Commander of the Internal Security Task Force reportedly allowed consultations between defendants and their lawyers only by prior arrangement with him and usually only in his presence. The new, court-appointed lawyers have reportedly also suffered problems of access under the new Commander.

The defendants have sometimes been allowed to speak, always under supervision, to relatives when they brought food, but even this access has often been denied. Relatives have reportedly on occasion been assaulted and briefly detained when they tried to visit defendants held at Bori military camp in Port Harcourt, including Ken Saro-Wiwa's mother on 23 February 1995. Since late July 1995, families have apparently been denied any opportunity to speak to them when delivering food.

iii Ill-treatment of detainees and witnesses

The detainees are reported to have been ill-treated in detention, some severely beaten, all held in harsh and insanitary conditions and denied adequate food, water and medical care.

The fairness of a trial cannot be judged by looking at the trial proceedings alone. A key aspect of many political trials is the manner in which statements are obtained from defendants and prosecution witnesses. When a government carries out mass arrests, declares some people guilty and then fails to bring charges months after investigations are completed, there is obvious cause for concern that a case may be fabricated by obtaining false statements under duress or by improper inducement.

iv Detention in military custody

The defendants have been in the custody of the Internal Security Task Force, where they are alleged to have been subjected to torture, ill-treatment, life-threatening detention conditions and medical neglect, as well as the denial of their rights of access to lawyers and families.

The tribunal refused on security grounds the request by the defence that Ken Saro-Wiwa and the four other defendants in the first trial be removed to prison, where prisoners on trial would normally be held. They have no legal recourse against this ruling by the tribunal, since the normal courts have no power to challenge its decisions.

v *Government inaction over other killings*

These trials should be seen in the context of other killings. These have included extrajudicial executions committed by the security forces and inter-ethnic killings between the Ogoni and rival ethnic groups apparently instigated and assisted by the security forces in 1993 and 1994. The authorities' failure to bring to justice those responsible for other recent killings in Rivers State or the killings of other members of the Ogoni community provides further evidence of the way in which they have ignored the principles of justice in dealing with perceived opponents.

The authorities have not prosecuted named officers of the paramilitary Mobile Police unit found responsible in January 1991 by a judicial commission of inquiry for some 80 extrajudicial executions in October 1990 in Umuechem, Rivers State, where the Etche community was protesting against environmental damage by the oil industry. The unpublished commission of inquiry's report was leaked to the press in late 1992.

Nor has action been taken to bring to justice those responsible for some 50 killings which reportedly occurred when members of the Okrika ethnic group attacked Ogoni homes on the Port Harcourt waterfront on 12 and 13 December 1993. The Rivers State Military Administrator, appointed a commission of inquiry under Major Paul Taiwo which reported in March 1994. Those recommended for prosecution by the inquiry are not known to have been prosecuted nor those responsible for the killings brought to justice. Leaked excerpts from the unpublished report suggest that the commission of inquiry found no evidence that MOSOP or the Ogoni had started the violence, despite the authorities' accusations, and that it was critical of the lack of investigation by the police.

b) *The tribunal is not independent of government control*

The military government has controlled every aspect of the case in the hope of determining its outcome without challenge by an independent court: the arrests and continued detention of the defendants, the investigations and prosecution of the case, the appointment of the tribunal and the progress of the trial itself. The tribunal appears, effectively, to be more an arm of government than a court of law, its verdicts having no effect until confirmed or amended by the government.

i *Prejudgment by the authorities*

The Nigerian authorities have from the start made public their view that Ken Saro-Wiwa and the leadership of MOSOP were responsible for the four murders in May 1994, including at a press conference the day after the killings and in press statements distributed by government officials. It would take a strong and independent court to withstand such blatant pressure from a government

which has repeatedly shown its contempt for judges in the normal courts who challenge its arbitrary rule.

ii Government-appointed tribunal

The military government appointed the members of the tribunal to try this case who cannot therefore be considered independent, in particular the serving armed forces officer on the tribunal who is dependent on the military for employment, promotion and pension. The judges on the tribunal were not selected according to established norms and procedures for appointment or dismissal of judges aimed at ensuring their independence from government influence or control.

In November 1994 the Chief Judge of the Federal High Court, Lagos State, told the defence lawyers, who were trying to find out when the trial would start, that the tribunal was the responsibility of the Presidency and that they should address their inquiries to the Secretary to the Government of the Federation.

iii Jurisdiction determined by the Government

The Federal Military Government removed jurisdiction in the case from the state level, as it has done in other political trials, although constitutionally, the case should have remained in the state where the crimes were committed.

In August 1994, when lawyers tried to obtain the release on bail of Ken Saro-Wiwa and Ledum Mitee in the Federal High Court in Port Harcourt, the Rivers State authorities argued that the offences took place in Rivers State and therefore fell within the jurisdiction of the Rivers State High Court. Later in the same month the State Military Administrator said that police investigations were almost completed and that a decision was awaited from the federal government. In November the Federal Military Government appointed a federal Civil Disturbances Special Tribunal to try the case.

Nigerian officials told Michael Birnbaum QC that these cases are being tried by special tribunal and not in the High Court because of the risk of public unrest surrounding the case, the slowness of the ordinary legal system, the lack of equipment for transcription of evidence in the High Court and the need for a firm judge in such a controversial case, but did not explain why the necessary resources and security could not have been provided to the Rivers State High Court.

Special courts have sometimes also been defended by those who claim that convictions can be hampered by legal technicalities and lengthy appeals. The Chairman of this Civil Disturbances Special Tribunal urged the lawyers at the start of the trial to avoid such delays. However, freedom

from the constraints of formal procedures has usually failed to serve the cause of justice, as has already been shown in these and other recent trials before special tribunals in Nigeria.

iv Government initiative to go to trial

The federal government, not the tribunal, decided who should be tried and when. Both the Chairman of the Tribunal and the Attorney-General, a member of the federal government, announced that the trial would begin before any suspect had been charged and before the prosecution had brought any evidence before the tribunal to indicate that any suspect had a case to answer. A decision to go to trial had been made before the prosecution applied to commence the first trial on 28 January 1995.

v Government can determine verdict and sentence

The tribunal does not have to give any reasons for its verdicts. And its verdicts and sentences have no legal status until confirmed or disallowed by the government, which can accept or reject the tribunal's findings in secrecy, outside any public judicial or legal process, without hearing any legal argument and without giving any reasons. This is by definition neither a judicial nor a legal decision-making process but a political one: it does not involve any serious review of the facts of the case or of the trial proceedings.

vi No right of appeal

The 1987 Civil Disturbances Decree specifically removes the defendants' constitutional right to challenge any ruling made by the tribunal during the trial in any other court, for example over its decision to deny bail or its apparent bias in favour of the prosecution. The defendants are also denied any right of judicial appeal against the tribunal's rulings, verdicts or sentences to a higher or independent court, even though this is a case in which death penalties may well be imposed.

In a previous case, the African Commission on Human and Peoples' Rights decided on 3 November 1994 that the Nigerian government should free **Major-General Zamani Lekwot** and others, who had been sentenced to death by a Civil Disturbances Special Tribunal in Kaduna in February 1993, because they had been denied the right of appeal to a higher court. The Nigerian authorities have sometimes defended the denial of this fundamental right by referring to the defendant's "right" to petition the Head of State for clemency. However, the African Commission on Human and Peoples' Rights said in November 1994:

"This provision [to petition the Head of State] is a discretionary, extraordinary remedy of a non-judicial nature. The object of the remedy is to obtain a favour and not to vindicate a right. It would be improper [for the Commission] to insist that the complainant [Zamani Lekwot and others] seek remedies from a source which does not operate impartially and has

no obligation to decide according to legal principles. The remedy is neither adequate nor effective."

vii Military control of the courtroom

The military authorities have reportedly wielded an improper influence over the tribunal's proceedings. There is a heavy military presence inside the courtroom and access has been restricted, with journalists, the defendants' families and, initially, even defence lawyers unable to enter without accreditation from, and under the escort of, military or police. On 21 February 1995 two of the principal defence lawyers, **Chief Gani Fawehinmi** and **Femi Falana**, were assaulted by soldiers when they asserted their right to enter the courtroom without first obtaining military or police authority; Ken Saro-Wiwa's relatives, including his wife and mother, were also reported to have been struck by soldiers. Later the same day, the defence lawyers were briefly detained at the court when they refused to be transported away from the tribunal in a police or military bus rather than their own car.

International observers have attended some sessions of the proceedings. However, the general public has been denied access throughout, with roadblocks set up in Ogoniland to prevent people travelling to Port Harcourt on days when the tribunal has been sitting.

c) The tribunal is not impartial

Trial observer Michael Birnbaum QC expressed particular concern about key rulings by the tribunal which showed bias in favour of the prosecution and a predisposition towards conviction.

The tribunal is also reported to have consulted prosecution lawyers on several occasions outside the presence of defence lawyers.

i Insufficient evidence to start trials

The tribunal rejected defence protests and started the trials despite the prosecution having disclosed no evidence at all against 11 of the accused: **Ledum Mitee** in the first trial and all the 10 defendants in the second trial. The 10 accused in the second trial were not even mentioned in the summaries of evidence and yet the tribunal did not request the prosecution to provide any further evidence in these cases before deciding whether to go to trial.

The tribunal therefore did not satisfy itself that each defendant appeared to have committed an offence, as required by the 1987 Civil Disturbances Decree. Instead, it apparently accepted the

government's allegations that the suspects had a case to answer despite the fact that, after eight months, the prosecution did not produce a single justification for the arrest of some of the accused.

ii Refusal of bail

Despite this complete lack of evidence in some cases and the fact that the defendants had been detained without charge and incommunicado for months, the tribunal rejected applications for release on bail on the grounds that the defendants might abscond, even in the cases of the 11 against whom no evidence had been produced.

The tribunal also rejected on security grounds the request of Ken Saro-Wiwa and the other defendants in the first trial to be transferred out of military or police custody to prison, apparently repeatedly ignoring reports from defence lawyers that defendants had been ill-treated and subjected to medical neglect and that the military continued to disobey the tribunal's orders with regard to access to the defendants. The tribunal, although advised that its rulings had been disobeyed, apparently made little attempt to enforce them.

iii Simultaneous trials before the same tribunal

Despite protests from the defence, the tribunal is conducting the two trials simultaneously, on the basis of almost identical indictments and prosecution statements. This is prejudicial to the defendants.

While witnesses may give evidence twice, defendants can challenge that evidence and cross-examine the witnesses only once. This has already occurred, with witnesses giving evidence in one trial against a defendant in the other trial, who is unable to challenge that evidence or cross-examine that witness. Prosecution witnesses may change their testimony or be withdrawn from the second trial if they prove unsatisfactory in the first.

The same panel of judges will be judging the credibility of the same witnesses twice. Given the vagaries of oral testimony and cross-examination, a witness's evidence against a defendant could be disbelieved by the tribunal in one trial but found to be credible in the second trial, even though the first trial had not yet concluded. There are inevitable fears that evidence given in one trial may affect the judgement of the tribunal in the other.

In the normal courts - and even as in previous cases before Civil Disturbances Special Tribunals - the defendants would all have been tried in one case, or two different tribunals would have tried the two cases separately, to avoid this obvious unfairness. However, the tribunal rejected the defence's objections, saying it was the head of state's decision how many tribunals were

appointed, thereby underlining the Head of State's control over the tribunal, who would be tried by it and how many trials there would be.

6. Recommendations

Amnesty International is calling on the Nigerian government to:

- C release Ken Saro-Wiwa, Ledum Mitee, Dr Barinem Kiobel and other prisoners of conscience immediately and unconditionally;
- C release all the other defendants in the trials, and others imprisoned on "holding charges" related to the same case, immediately and unconditionally unless they are to be promptly and fairly tried;
- C commute any death sentences passed by the tribunal in these cases;
- C establish an independent, judicial inquiry into the death in detention of Clement Tusima, the results of which should be made public, with a view to determining the cause of his death and bringing to justice any person found to be responsible for his alleged medical neglect while in detention;
- C for so long as the defendants and detainees remain in prison, give them full and immediate access to their families, lawyers, doctors and necessary medical care;
- C set up an independent, judicial inquiry to investigate the reports both of extrajudicial executions by government forces and inter-ethnic killings in Ogoniland in 1993 and 1994, and of the illegal and incommunicado detention, torture, ill-treatment and medical neglect of Ogoni detainees, with a view to bringing to justice those responsible.
