

DECISION No. 38/1996 (NIGERIA)

Communication addressed to the Nigerian Government on
20 February 1996.

Concerning: George Mbah and Mohammed Sule, on the one hand and
the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 37/1996.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Nigerian Government. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) George Mbah, an assistant editor with the weekly magazine "Tell", was reportedly arrested on 5 May 1995. In July 1995 he was reportedly tried in secret by a special military tribunal and sentenced to life imprisonment for "publishing materials which could obstruct the work of the coup plotters tribunal" and for "misleading the public". On 10 October 1995 it was announced that the sentence was reduced to 15 years in prison. It was alleged that the trial of Mr. Mbah, and of other journalists tried with him, violated several of the internationally accepted norms regarding the right to a fair trial. In particular, it was alleged that they had no right to see the details of the charges against them, to be defended by the lawyer of their choice, to be able to prepare their trial properly, to be tried in an open court, and to appeal against their sentences;

(b) Mohammed Sule, an author, aged 39, was arrested on 9 February 1995 and held since that date without charge or trial. It was believed that he was held under the State Security (Detention of Persons) Decree, No. 2, of 1984 which allows for the incommunicado detention without charge or trial for an indefinite period of time. He was believed to be held in Kaduna prison. It was alleged that Mr. Sule was subjected to torture at the initial stage of his detention, at Aso Villa, the official residence of President Sani Abacha. It

was thought that he may be held in connection with a documentary film he was planning to make reviewing the Nigerian cultural, economic and political life since the 1980s, for which he reportedly received a verbal agreement from the President's Press Office in November 1994.

6. The facts as described above are not new to the Working Group as regards Nigeria. In several decisions concerning that country the Working Group noted the resorting to various emergency procedures against journalists, authors, political leaders, human rights defenders, etc. who are often sentenced to heavy prison terms (and sometimes even to the capital punishment) for merely having peacefully exercised their right to freedom of opinion and expression. Convictions are pronounced after a trial by a secret military tribunal, where defendants have neither the right to be informed in detail of the charges brought against them, nor the right to be defended by a counsel of their own choice, nor the right to dispose of sufficient time to prepare their defence, nor the right to appeal against their conviction and sentence. This is what happened in the case of George Mbah. As regards the case of Mohammed Sule, the Working Group has taken note of the fact that Decree No. 2 of 1984 on State Security was resorted to, and of the fact that this Decree allowed for the incommunicado detention for an unlimited period of time, without charge or trial.

7. It follows from the above that the detention of the above-mentioned persons is arbitrary since, on the one hand, it is in violation of all or part of the international provisions relating to the right to a fair trial of such gravity that it confers on this detention an arbitrary character (article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and category III of the principles applicable in the consideration of the cases submitted to the Working Group); and, on the other hand, since this detention was imposed in violation of these persons' right to freedom of opinion and expression (article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and category II of the principles applicable in the consideration of the cases submitted to the Working Group).

8. In the light of the above the Working Group decides:

The detention of George Mbah and Mohammed Sule is declared to be arbitrary being in contravention of articles 10 and 19 of the Universal Declaration of Human Rights and articles 14 and 19 of the International Covenant on Civil and Political Rights to which the Federal Republic of Nigeria is a party, and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of George Mbah and Mohammed Sule to be arbitrary, the Working Group requests the Nigerian Government to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 1996.