

OPINION No. 6/1999 (NIGERIA)

Communication addressed to the Government on 2 June 1998

Concerning Niran Malaolu

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (i) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. The communication, of which a summary was transmitted to the Government concerned, relates to the situation of Mr. Niran Malaolu, the editor of an independent Nigerian daily newspaper ("The Diet"), who was arrested at the editorial offices of the newspaper on 28 December 1997, allegedly by armed soldiers of the Military Intelligence Directorate (DMI). Three other staff members of the newspaper (Mr. Wale Adele, Mr. Emeka Egerue, Ms. Emma Avwara) were also arrested.

6. While Mr. Malaolu's colleagues were released after some hours in custody, Mr. Malaolu was held without charges until 14 February 1998, when he was brought before a Special Military Tribunal constituted under the Treason and Other Offences (Special Military Tribunal) Decree No. 1 of 1986, on secret charges. Prior to his arraignment before the tribunal, Mr. Malaolu was denied access to a lawyer, a doctor and members of his family, and remanded at a military detention facility in Lagos, until he was moved to the northern city of Jos, where the trial took place. After a secret trial, the tribunal's president announced on 28 April 1998 that Mr. Malaolu had been found guilty of concealment of treason and sentenced him to life imprisonment.

7. According to the source, Mr. Malaolu was punished by the Nigerian military authorities for news stories published by his paper, concerning an alleged coup plot involving Lt. Gen. Oladipo Diya, as well as other military officers and civilians who also were convicted by the tribunal and given sentences ranging from prison terms to death by firing squad.

8. According to the source, the following violations of the right to a fair trial occurred in Mr. Malaolu's case:

(a) The agents who arrested him on 28 December 1997 did not inform him of the reasons for his arrest (in violation of article 33 (6) of the Nigerian Constitution);

(b) Niran Malaolu was tried in camera. In the light of the intense pre-trial publicity to persuade the public that a coup attempt had occurred and that the senior military officers arrested were guilty of treason, possible claims of threats to national security in excluding the public and the press from the trial cannot be upheld;

(c) It is said that Mr. Malaolu was denied the right to be defended by a lawyer of his choice and instead assigned a military lawyer (in violation of article 33 (6) (c) of the Nigerian Constitution);

(d) The Special Military Tribunal which tried Mr. Malaolu was neither independent nor impartial, in that its members were handpicked by the head of State and the Provisional Ruling Council (PRC), against whom the alleged offence was committed. The president of the tribunal himself is also a member of the PRC, which in turn is empowered to confirm the sentences passed by the tribunal (in violation of article 33 (1) of the Nigerian Constitution);

(e) Mr. Malaolu, a civilian, was tried before a military tribunal using special procedures.

9. According to the source, Mr. Malaolu was denied adequate time and facilities to prepare his defence, in clear violation of article 33 (6) (b) of the Nigerian Constitution. Finally, under the provisions of the Treason and Other Offences (Special Military Tribunal) Decree No. 1 of 1996, the right to appeal to a higher judicial body is eliminated, and convicts may only appeal to the PRC, an executive body, which constituted the tribunal in the first place, ordered the trial of the suspects and had a clear interest in their conviction.

10. The Working Group notes again that the Government has not replied to the allegations, although an opportunity to do so had been given to it. The Group has examined the allegations submitted by the source and considers them to be sufficiently substantiated. In the absence of a Government reply, due weight must be given to them.

11. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Niran Malaolu is arbitrary, as being in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

12. Further to the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 20 May 1999