VOLUME ONE

CHAPTER ONE

By the CHAIRMAN

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"Ill fares the land, to hast'ning ill a prey,
where wealth accumulates, and men decay…
Oliver Goldsmith *[The Deserted Village]*

1.1 This was the lament of Oliver Goldsmith about "the deserted villages". In a sense, this Report is also a lament. However, unlike Oliver Goldsmith's **The Deserted Village,** this particular lament is a lament, not about the disappearance of village life but about the aftermath of military rule in Nigeria and the consequential disappearance and violations of the human rights and essential freedoms of Nigerians. Like Oliver Goldsmith, I can then say:

Ill fares the land, to hast,ning ill aprey,
Where might tramples over right,
And essential freedoms Decay.

1.2 For much the greater part of the period covered by this Report, Nigeria was under military rule. During this period, most of

our rulers' principal motivation and pre-occupation were not service to country but the accumulation of wealth and personal gratification.

1.3 This personal accumulation of wealth led to the decay of our society. Public and private morality reached its nadir; and the casualties included human dignity, human rights and our basic freedoms. We also experienced institutional and structural decay.

1.4 This Report has attempted to provide an over-view of the extent of our moral, physical and institutional decay under military rule. The proscription and circumscription of our human rights and freedoms under military rule were symptomatic of a much serious malaise, the departure from constitutional or limited government and with it the absence of accountability and transparency in public life. This was the ultimate decay involving the personalization of the governmental process around the military ruler.

1.5 The return to democratic civilian rule on 29 May 1999 provided the opportunity for us to rise above this decay, to break the silence of the past and to forge ahead, determined to lay to rest the ghost of this dark and painful period in our national history.

1.6 But we must be prepared to confront this history, if we are to forge ahead. We need to understand it, even if it means asking unpleasant questions and offering blunt answers. Where did we make the wrong turn? Who was responsible for what? What opportunities did we miss and why? What are the major lessons to be learnt? What do we now need to do to put the past behind us and to look to the

future with renewed hope and patriotic zeal? What are the basic conditions for us to effect national catharsis?

1.7 This is what we have attempted to do in this Report. We have tried to be faithful to our terms of reference and to our mandate, both of which imposed on us the obligation "to review the past;" and to map out or indicate pathways to enable us as a people "redress the injustices of the past; [and] to prevent and forestall future violations…"

1.8 But it was not an easy task. We had to overcome serious obstacles and constraints—some institutional, some organizational, some legal, some cultural, some political, some logistical and financial and some inevitably arising from the very nature of a truth commission like ours. Nonetheless, undaunted and unfazed, we were determined to succeed as we trudged on, albeit indefatigably, in the knowledge that ours was a historic mission.

1.9 We have to confront and resolve a basic paradox in looking at the past: to forget, we have to remember. But remembering the past is one thing and living in the past is another thing. To live in the past is to be a slave to revenge, to retributive recrimination. We must rise above and beyond the pettiness and the social and political paralysis that revenge breeds.

1.10 We have to remember in order to forget, to learn lessons and to forge ahead. In other words, we must know our *terminus a quo* in order to arrive at our *terminus ad quem*. We must build on our bitter and sad past.

1.11 This has been the *raison d'etre* as well as the *leitmotif* of our work at the Commission. If this Report contributes, even in the smallest way, to a national *risorgimento,* then our work will not have been in vain.

1.12 We, therefore, hope that the Report will offer a credible perspective on our past, while also serving as a road map for our future. We do not claim that we have said all there is to be said about our past and our future. Much, perhaps, remains to be said, and will be said by present and future chroniclers. This is as it should be, if only because history is forever unfolding itself, as new evidence arises, as new interpretations confront old ones and as the ineluctable march of science brings forth new tools for unscrambling the past.

1.13 The following apt observation by the Most Revd. D.M. Tutu, Chairperson of the *Truth and Reconciliation Commission of South Africa* in the *Foreword* to his Commission's Report, at paragraphs 17-19 of Volume 1of the Report, underscores this point so well that I quote it *in extenso*:

> *"The past…is another country. The way its stories are told and the way they are heard change as the years go by. The spotlight gyrates, exposing old lies and illuminating new truths. As a fuller picture emerges, a new piece of the jigsaw of our past settles into place.*
>
> *Inevitably, evidence and information about our past will continue to emerge, as indeed they must. The Report of this Commission will now take its place in the historical landscape of which future generations will try to make sense-searching for clues that lead, endlessly, to a truth*

that will, in the very nature of things, never be fully revealed."

It has been the privilege of this Commission to explore a part of that landscape and to represent the truths that emerged in the process. And we have tried, in whatever way we could, to weave into this truth about our past some essential lessons for the people of this country. Because the future, too, is another country. And we can do no more than lay at its feet the small wisdoms we have been able to garner out of our present experience.

1.14 A word on our approach to our mandate is pertinent here. In searching for the truth about our past, we tried to adhere scrupulously to the requirements of due process and fair hearing and to the canons of historical and cultural scholarship.

1.15 We provided the platform, through our Public Hearings and Special Sessions, held across the various geo-political zones of the country, for alleged victims and alleged perpetrators of human rights abuses and violations to bare their minds in public. But we were careful not to take their accounts at their face value. We had to devise means of corroborating them.

1.16 We wish to underscore this point, if only to disabuse the minds of critics who accused the Commission of re-opening old wounds by providing this platform. We realize that this is partly a matter of methodology and perspective, regarding how we should unscramble and come to terms with the past.

1.17 We firmly reject the view that we should simply forget the past. As I have already observed in this Foreword, we need to talk about the past, no matter how painful, in order to move ahead and because of the cathartic or cleansing and purifying possibilities it offers, at the individual pyscho-cultural level and at the wider community and national levels.

1.18 This is not to deny that public hearings are inherently problematic. For example, during our public hearings in Abuja, Lagos and Port Harcourt, alleged perpetrators of human rights abuses and violations blatantly denied the human rights abuses and violations alleged against them by their victims and families.

1.19 To this extent, it was not possible or easy to extract from some alleged perpetrators the measure of remorse and plea for forgiveness so vital for forgiveness and reconciliation to take place.

1.20 Yet, all is not lost. Public Hearings still have their redeeming aspects. Thus, there are denials, which make no difference to the facts. When so many witnesses from different ethnic and geographical backgrounds allege unlawful arrests, illegal detentions and torture against the same set of persons or security agencies, such witnesses cannot all be lying and the alleged perpetrators cannot all be witnesses of truth. In such situations, the Commission had to read between the lines.

1.21 And, as one witness pointed out, it takes more than human courage to admit one's wrong- doing. And so the Commission found out!

1.22 In trying to discover the truth, we commissioned research teams of lawyers, historians and social scientists to write background papers for the Commission on various aspects of our mandate and terms of reference. The research reports submitted to us have been useful in the preparation of this Report.

Let me now turn briefly to some of the important issues raised and discussed at length in the Report.

TRUTH: RECONCILIATION & JUSTICE

1.23 Public perceptions and expectations about the work and mandate of the Commission varied enormously. But a common denominator was the concern with Justice. In some cases, justice was equated with revenge.

1.24 This is understandable and is not unique to Nigeria. Indeed as is clear from our comparative analyses of the work of truth commissions in Argentina, Chile, Guatemala, South Africa and Uganda in Volume 2 and Volume 5 of this Report, any society that has gone through the trauma of unbridled human rights violations and abuses is invariably confronted with a choice among two options: (a) Revenge and/or Nuremberg-type trials; and (b) Forgiveness and Reconciliation.

1.25 Which option is chosen will depend on what each truth commission is set up to accomplish. Indeed, of the five truth commissions referred to above and analyzed in Volume 2 and Volume 5 of this Report, it was only in the case of Argentina that there were criminal prosecutions of members of the military junta and their collaborators for gross human rights abuses. In the other four cases, Chile, Guatemala, South Africa and Uganda, the aim was for people to know what happened in their respective countries during the dark days of military rule.

1.26 Which option should Nigeria choose? The answer is clear from the Commission's mandate, its terms of reference and the President's Address at the inauguration of the Commission*: Forgiveness and Reconciliation. Reconciliation was the key word in the President's Address. Our quo warranto is the search for this reconciliation.*

1.27 To forgive and to reconcile is not necessarily to deny justice. We should not confuse or conflate justice with prosecution and with criminal or retributive justice. Viewed in the broader perspective of legal theory or jurisprudence as well as moral and political philosophy, reconciliation represents not the antithesis but the triumph of justice.

1.28 Nigeria now has a nascent and fledgling democracy, with all its imperfections and teething problems. Managing the transition from military to democratic civilian rule requires deft and dexterous navigational skill to avoid land mines and treacherous waters. To manage the transition successfully and to consolidate it may require

that we sacrifice criminal justice for the higher moral imperative of reconciliation and to avoid the trauma, anguish and pain criminal prosecution will give rise to.

1.29 In short, Recrimination and Revenge are, have always been and will forever be, poor chisels with which to hue out of stones of reconciliation, unity and peace.

1.30 If we try, we can achieve reconciliation and the onus is on all of us to try and do so. We are encouraged in this respect by our own experience on the field during the Public Hearings in reconciling warring communities. One or two examples will suffice.

1.31 During our sessions in Lagos, Lagos State, we reconciled the quarrelling communities of Maroko Village. We also recorded our first major break-through when the warring Ife and Modakeke communities in Osun State signed a Memorandum of Understanding and a Joint Declaration (see appendix to the report pledging to live in peace and harmony and to adopt only peaceful means in pursuing their respective rights and entitlements. It was unfortunate that the media did not give the Ife/Modakeke reconciliation the prominence it deserved.

1.32 During our session in Port Harcourt, Rivers State, the Commission succeeded in brokering a Peace Accord among the warring factions and groups in Ogoniland. In particular, we managed to unite and amalgamate the **Ogoni Four** and the **Ogoni Nine** into the **Ogoni Thirteen**. As the New Nigerian Editorial of Friday, 16th February 2001 observed,

"The Peace Accord signed by the warring factions in Ogoniland...will go down in the sociopolitical development of this country as one of the landmark achievements of the Human Rights Violations Investigation Commission."

1.33 While I do not wish to over-dramatize or generalize from these examples, what needs emphasis is that unless we try, and try, we cannot even start the long journey to national reconciliation, and maintain its momentum. The flashpoints of communal unrests in our country constitute albatrosses around our necks. Let us with the crossbow of the Commission shoot down each albatross in the interest of the peace and unity of our country and for the sake of the survival of our nascent democracy. Let us all adhere to the message of our1960 national anthem:
"...Though tribes and tongues may differ, in brotherhood we stand... Nigerians all"

1.34 The President's Address at the inauguration of the Commission made repeated references to *Our Nation; Our Land; and Our Country. These references presuppose a common citizenship and the existential reality of an historical as opposed to a geographical entity called Nigeria.*

1.35 Yet Petition No. 1648 submitted to the Commission by Oha-na-eze Ndigbo and the responses to it by the Arewa Consultative Forum, the Joint Action Committee on the Middle Belt, the Afenifere, the South-South and the Government of Rivers State, Ogbakor-Ikwere Convention provide telling illustration of how divided we are as a country and of how suspicious and afraid we are of one another.

1.36 What is also clear from this is that the various ethno-communal groups in the country, including the major ones, complain of marginalization in the scheme of things.

1.37 I cannot address the issue of citizenship and marginalization in this Foreword other than to observe that they are central to the consideration of human rights as group, ethno-cultural, ethno-religious or collective rights as well as to the foundations of federalism in the country, going as far back as the mid-1940s and the fears of domination expressed by minority ethnic groups in the penultimate years of the decolonization process in our country.

1.38 As one of our research teams pointed out, quite correctly, our national experience with federalism shows that the problem of marginalization is at the bottom of minority ethnic group fears of the curtailment or violation of substantive human rights—the right to self-determination, the right to the promotion of their cultural rights, and their citizenship rights, especially the right to equitable participation in the cultural, economic and political life of the country.

1.39 Under simple majoritarian, first-past-the-post competitive democratic electoral processes, and much more so under authoritarian regimes ethnic minorities all too easily find themselves excluded by the structure of power and the rules of the electoral process, making them less competitive and denying them access to the State and its enormous patronage.

1.40 A refreshing and confidence-building fall-out from the work of our Commission is the raising of the issue of minority rights as a core dimension of gross human rights violations and bringing it on the agenda of national debate. In this way, such public consciousness may engender well-thought out remedial public policies and constitutional guarantee of minority rights, thereby facilitating national reconciliation.

1.41 These interrelated citizenship aspects of our constitutional and political history—their origins and trajectories, and how best to confront them at the constitutional and policy levels are extensively covered in Chapters Two and Three of Volume One, and in Volumes Three and Seven.

1.42 I only wish to observe here that we need to distinguish between marginality, which is a self-imposed constraint to full citizenship participation, and marginalization, which is imposed from the outside by wielders of political and economic power and is therefore historically deep-rooted and structurally-determined.

1.43 While marginality can be redressed by affirmative-type action, consistent with the federal character clauses of the 1999 Constitution of the Federal Republic of Nigeria, the problem of marginalization is best solved by the political restructuring of our federal system of government, underlined by equitable and fair resource allocation and distribution.

PROFESSIONALISM, LOYALTY AND THE CULT OF THE HEAD OF STATE

1.44 The military is a great and ancient profession, which requires appropriate demeanor and exemplary standard of conduct, encapsulated in the expression professionalism. Yet professionalism in the military, as was clear in various testimonies before us, even by senior military officers, and as established in some of the Volumes of this Report, particularly Volumes Four and Five, has been a casualty of military rule in the country, further evidence of the institutional decay I referred to earlier in this Foreword to the Report.

1.45 One unfortunate dimension of this decay is what I refer to as the cult of the Head of State. If and when the Head of State is elevated to the State and made coterminous with the State, then the cult of the Head of State is created. The personal ambitions of the Head of State, his or her fears and apprehensions; his or her enemies, real or imagined, become matters of State interest and concern, deserving State intervention and state protection, and as borne out by the evidence before us necessitating State-sponsored assassinations, murders and "disappearances."

1.46 Some examples in testimonies before us of this conflation of the State with the persona of the Head of State are pertinent.

1.47 In his evidence before the Commission, Major Al-Mustapha emphasized that he had subscribed to an oath "to protect the Head of State and his family as well as the Seat of Government, even if this calls for my making the supreme sacrifice." General Sabo also said in his evidence that the Head of State is but an extension of the State.

1.48 These are troublingly menacing views, which if concretized and carried to their logical conclusion may create practical difficulties. There must be a difference between the State and the Head of State. The Head of State is but a functionary of the State, and not the State itself. This is made clear in the Presidential Oath in the Seventh Schedule and in the impeachment provisions of the 1999 Constitution of the Federal Republic of Nigeria.

1.49 Unfortunately, our various military rulers, like all dictators, were unable to draw this distinction between themselves and the State. Their intelligence outfits danced to their tune and their agents also saw themselves as beyond and above the law. This led to the hounding of journalists and those who criticized their administrations and policies. Intellectuals and human rights activists, among other critics of military rule, were arrested and jailed, without recourse to due process, in the so-called interest of State security.

1.50 This attitude was also reflected in the protection given to oil companies, which supplied the much of the needed oil revenue to various military administrations. Their interests became "State interests," which must be protected. This logically led to the systematic and generalized violations and abuses, which occurred in the Niger-Delta during the dark period of military rule in the country, as detailed in Volumes One, Three and Five of this Report.

1.51 I find it instructive to say a further word about the cult of the Head of State, in the context of our experience with military rule

and the institutional and moral decay I referred to at the beginning of this Foreword.

1.52 Military rule is absolute rule. It subverts and undermines the institutions of the State, imperceptibly initially but surely and gradually. It leads inevitably to moral and political corruption, alongside the decay of time-honoured loyalties and values as well as institutional decay. In due course and as a manifestation of this deepening decay, cruelty and murder become norms of governance. Good faith and truthfulness become childish scruples while force and craft become the keys to success. Selfishness, naked and unadorned, need only succeed to supply its own justification.

1.53 This sums up the character and odious dimension of military rule in the country, as elsewhere. The fall-out, in our case, was the gross violations of the human rights of Nigerians, which are enumerated and elaborated upon in this Report, particularly in Volumes Two, Four, Five and Six.

THE NON-APPEARANCE OF 3 FORMER HEADS OF STATE AND OTHER TOP GOVERNMENT FUNCTIONARIES

1.54 The non-appearance of three former Heads of State and a number of former top government functionaries, when summoned by the Commission, put to test the theory that in a democracy all men are equal before the law, that the rule of law and not the rule of man should prevail. In addition to not appearing, these former Heads of State filed civil actions challenging the Commission.

1.55 The former Heads of State are: Generals Muhammadu Buhari, Ibrahim B. Babangida, and Abdulsalami Abubakar. The former top functionaries are: Colonel Halilu Akilu and Lt-Colonel A.K. Togun.

1.56 Many in Nigeria and, indeed, in the international community, wondered why these highly placed Nigerians, who had held high public office, refused to appear and testify in person before the Commission.

1.57 Although the Commission had the power to issue warrants for their arrest, it refused to do so, in the over-all interest of national reconciliation.

1.58 The spirit of the Commission's mandate and terms of reference are implicitly both against impunity. For impunity makes social reintegration, rehabilitation and reconciliation difficult. It represents the triumph of might over right.

APPRECIATION

1.59 I must express my delight at the *esprit* des corps with which we worked together as members of the Commission. It shows that, when all is said and done, there are innumerable Nigerians who apply themselves to work conscientiously and with dedication.

1.60 We thank the President, Chief Olusegun Obasanjo (GCFR) for the opportunity given to us to serve this country and the confidence reposed in the members of the Commission.

1.61 Our gratitude also goes to the Honourable Ministers of Justice and Attorney-General of the Federation, first Hon. Mr. Kanu Agabi(SAN), then the late Hon. Bola Ige(SAN) and, then again Hon. Kanu Agabi, for the keen interest they showed in our work and, more specifically, for their support. We regret and are saddened by the assassination of Chief Bola Ige(SAN) and wish his equally eminent wife and family the continued guidance and Grace of God.

1.62 We thank the Secretary to the Government of the Federation, Obong Uffot Ekaete for his understanding and support.

1.63 In the same vein, we thank all the government departments and their staff at federal, state and local government council levels for facilitating our work, whenever we needed their assistance.

1.64 No less important and encouraging has been the keen interest shown in our work by a number of foreign missions and international governmental organizations. We particularly thank the Ford Foundation for their immense financial support throughout the duration of the Commission's assignment. Our gratitude also goes to CDD, IDEA, British Council and German Embassy for their support.

1.65 We thank the various national and international non-governmental organizations that worked closely with us, providing useful insights into the nature of human rights abuses in the country.

1.66 Our work would have been much more difficult and tedious but for the cooperation we received from all those who submitted

memoranda and petitions and all those who testified before us. We thank them all.

1.67 We owe special gratitude to the electronic and print media for highlighting our work and bringing our deliberations, especially the public hearings to the attention of millions of our people.

1.68 We were fortunate to have had a good team of researchers and resource persons, who worked with us. To them, we say a big thank you.

CHAPTER TWO

ORIGIN OF THE COMMISSION

HISTORICAL AND POLITICAL CONTEXT

2.1 Many factors, both remote and immediate, contributed to the establishment of the Commission, initially as ***The Human Rights Investigation Panel*** but later as ***The Judicial Commission for the Investigation of Human Rights Violations (***in Nigeria).

2.2 Formally inaugurated on 14 June 1999 by the President of the Federation, its establishment should not be seen in isolation from critical trends and developments, and the social forces impelling them, in Nigeria and in international society over the past several years.

2.3 The significance of the Commission, as an episode in Nigeria's political and constitutional history, lies in the fact that, against the background of historically deep-rooted contradictions generated by the dialectics of conflict and cooperation among the various peoples and social movements in the country, dating back to pre-colonial times, its establishment was an attempt to lay the groundwork for an enduring and sustainable peace and development in the country, founded on the concepts and principles of human rights, equality, justice and reconciliation.

2.4 It is this consideration that informed the methodology of the Commission in approaching its mandate. This is because it is

necessary to go beyond the more immediate reason for the establishment of the Commission, which is primarily to investigate various dimensions of cases of gross human rights violations in the country between 15 January 1966 and 28 May 1999 in order to determine their nature and extent, and their perpetrators and the victims.

2.5 This task is best undertaken through perspectives that seek the root causes of human rights violations and abuses in the country in more historically deep-rooted cultural, political and socio-economic sources than the country's recent or postcolonial political and constitutional history would unravel. This is why it is important to distinguish between the remote or *predisposing* causes and the immediate or *precipitating* causes of human rights violations or abuses in the country, and, therefore, of the reasons for the establishment of the Commission.

REMOTE CAUSES

2.6 As the various research reports and other documents (petitions etc) submitted to the Commission show, while there were indications of cooperation and integration among the various peoples and communities in pre-colonial and colonial Nigeria, as well as political institutions that set premium on accountability, participation and responsibility in governance, there were also cultural and political norms, practices and institutions as well as economic institutions which entailed human rights violations and abuses, aggravating and deepening latent animosities and conflicts between the various communities and alienating individuals from the political system.

2.7 Colonial rule, itself manifestly authoritarian and exploitative, was founded as much on an underlying policy of *divide and rule,* which created fissures and encouraged animosities and unhealthy rivalry among the various communities in the country, as on a policy of arbitrary rule which, by its inherent nature, substantially and *substantively* denied the human rights, particularly the civil, economic and political rights, of Nigerians.

2.8 To this must be added the pattern and form the decolonization process in the country assumed, the social character of the inheritance political elite to whom political power was transferred by the colonial power, and the structural imbalance created by the contrived federal system inherited at independence.

2.9 In short, the long-term effect of the decolonization process in the country was to aggravate and ignite the latent but combustible centrifugal forces and tendencies in the country.

2.10 This is so for two fundamental reasons. First, the decolonization process did not provide a lasting solution to the fears of minority ethnic groups and their demand for self-determination and self-government. The on-going political crisis in the Niger-Delta, characterized by raging protest by social movements and the unleashing of state-sponsored violence and repression in reprisal, finds its deep-roots in the country's colonial politics.

2.11 Secondly, and more significantly, the character of the decolonization process in the country gave rise to a political party system, which placed premium on the crass mobilization of ethnicity for competitive electoral politics by the three major ethnic-based

political parties in the country, the *Northern Peoples' Congress (NPC), the National Council of Nigerian Citizens (NCNC) and the Action Group (AG*), ineluctably leading to the demise of the First Republic and the imposition of military rule on the country.

2.12 It cannot be overemphasized that military rule, as a form of *usurpation and arbitrary rule, maintained and sustained by violence,* is a fundamental breach of the political and civil rights of Nigerians to determine their rulers through the competitive electoral process, on the basis of *constitutional government and the rule of law,* as enshrined in the 1960, 1963 and 1979 Nigerian Constitutions.

2.13 *To sum up the remote causes: the establishment of the Commission must be seen in the broader historical compass of social forces and cultural and political practices that run historically deep in the social fabric of the country, providing an underlying stream from which flowed current practices that continue to pose a threat to good governance and sustainable development in the country and to the promotion and protection of the fundamental human rights of Nigerians.*

IMMEDIATE CAUSES

2.14 The immediate causes of the events leading to the establishment of the Commission are complex and multifaceted, and can be dated to the collapse of the First Republic on January 15, 1966, although they are also intricately bound up with the remote causes. These immediate causes do not exist or arise *in vacuo.*

2.15 The onset of military rule, the prosecution of the Nigerian Civil War (6 July 1967 to 12 January 1970) and the partisan use of the state, especially the civil service, by various civilian and military

administrations in the country, to pursue and implement public policies, which favour some ethnic groups at the expense of other ethnic groups, spawned a political climate of marginalization, intolerance, intimidation and repression. This contributed in no small measure to political instability and the recurrent incidence or manifestation of human rights abuses and violations in the country.

2.16 This much is evident in the research reports, in other documents like petitions submitted to the Commission, and in oral submissions and evidence at the Commission's public hearings.

2.17 The incidence of human rights abuses and intimidation reached its apogee under the three different military administrations of General Muhammadu Buhari, General Ibrahim Babangida and General Sani Abacha, which ruled the country between January 1984 and June 1998.

2.18 The annulment of the June 12, 1993 presidential elections represented the high watermark in the arbitrariness and human rights violations that characterized military rule during this period.

2.19 So also were the torture, political assassinations, attempted political assassinations, judicial murder and other forms of state-sponsored violence, which were allegedly designed as instruments of state policy to create a siege mentality among the citizenry, but more particularly to silence pro-democracy activists and other opponents of the military regime, under the administration of General Sani Abacha.

2.20 *If military rule was arbitrary, involving gross human rights violations, it also gave rise to determined opposition from pro-democracy activists and the civil society, generally, in the country, especially during the twilight of General Abacha's administration.*

2.21 *It is in the struggle against military rule that the more immediate origin of the Commission is to be sought, for the democratic struggle kept the issue of arbitrary rule and state-sponsored violence, exemplified in many cases by gross violations and abuses of human rights, on the agenda of political discourse in the country and as a recurring and festering problematic aspect of military rule that must be confronted and for which, it is demanded, the military leadership and culpable state functionaries must ultimately be held accountable.*

2.22 The transition to constitutional government, under democratic civilian rule, and from the repressive and authoritarian rule of the military was, therefore, problematic in one significant respect: the transition would be incomplete, traversing rough and difficult terrain, if the past was not confronted, if *alleged perpetrators* and their *alleged victims were not given an opportunity to provide their own testimonies, with a view to achieving national reconciliation and a sense of justice, without revenge. In this way, "confronting the past [is] building the future," to paraphrase an expression used to characterize the mandate of South Africa's Truth and Reconciliation Commission.*

2.23 It is in this desire to confront the past, arising out of the opportunity provided by the 29 May 1999 democratic transition, so as to lay the foundations for building the future, that the immediate origin of the establishment of the Commission is to be found.

2.24 Indeed, one of the earliest calls for a Nigerian equivalent of a truth commission was voiced by Professor Sam Egite Oyovbaire, former Federal Minister of Information and Culture, under the administration of General Ibrahim Babangida, at the maiden annual *Champion Newspaper Better Society Lecture Series* on July 17, 1997.

2.25 Professor Oyovbaire had argued in that lecture that,

"I believe that sooner rather than later, the nation will need a purgative response to the June 12 [1993] quandary. My thoughtful suggestion is for a future establishment of a body akin to the South African Truth and Reconciliation Commission...a very serious judicial commission preferably called the National Commission for Truth, Justice and Reconciliation, and to which all actors-individuals and groups-can be compelled to confess or testify to their various roles in the annulment of the June 12, 19993 presidential election...I believe that if [such a commission is] properly, openly and transparently conducted, the cause of democracy and of national integration and economic development will be highly served for the benefit of nation-building and constitutional governance."

THE EXTERNAL DIMENSIONS

2.26 It is trite but not trivial to observe that the world is now a global village and that domestic politics is so much bounded and affected by external forces and influences.

2.27 Therefore, in locating the sources of the origin of the Commission, it is instructive to refer, in a generalized way, to recent trends and developments in international law and international politics that provide the justification and the model for the establishment and the *modus operandi* of the Commission.

2.28 At the philosophical-legal and theoretical levels, these trends and developments pertain to changes in the concepts of *the state and of rights, which derogate from national sovereignty, subjecting it to a new concept of supranational sovereignty and accountability to humanity.*

2.29 What this also indicates, at the philosophical level, is the need to revise the emphasis in *philosophical liberalism, and its political form, liberal democracy, and its economic correlate, the market, on the discreet individual, on possessive individualism, to take account of other than individual rights, by conferring justiciable status and recognition to collective group rights, like ethno-religious rights, children's rights, workers' rights, rights of refugees and other displaced persons, and women's rights, among others.*

2.30 These trends and developments in political philosophy, international law and jurisprudence, as well as in international politics, as well as the experience of such counties as *Argentina, Chile, El Salvador and South Africa* in constituting analogous commissions, had an indirect bearing on the form the establishment of the Commission assumed and in the Commission's perspective towards, and understanding of its terms of reference and mandate.

2.31 *To sum up the immediate causes: the establishment of the Commission was an attempt to come to grips with developments in Nigeria's recent political history— its colonial inheritance; the collapse of the First Republic; the descent into and prosecution of the country's civil war; the inherent violent and arbitrary logic of military rule, especially between January 1984 and May 1999, involving the use of public policy*

to favour particular ethnic groups and to disempower other ethnic groups; the annulment of the June 12, 1993 presidential elections; the use of political assassinations, torture and judicial murder as allegedly deliberate instruments of state policy to eliminate and harass regime opponents and pro-democracy activists; the democratic struggle against military rule in the country; the need to confront the past in order to build the future on a durable, non-vengeful basis; and trends and developments in international society which, while prescriptively universalizing human rights, also criminalize their gross violations, making rulers and perpetrators of such violations accountable to international society.

ESTABLISHMENT, INAUGURATION AND MANDATE OF THE COMMISSION

2.32 Initially titled ***The Human Rights Investigation Panel***, the establishment and composition of the re-named panel as ***The Judicial Commission of Inquiry for the Investigation of Human Rights Violations*** (in Nigeria), immediately after the new democratically-elected civilian administration of President Olusegun Obasanjo assumed office, underscored the administration's principled conviction and, indeed, the general feeling in the country that it was imperative as a matter of urgent and pressing public policy to investigate, in the words of President Obasanjo at the inauguration of the panel on 14 June 1999,

> *"the wounds of the past and quickly put the ugly past behind so as to continue to stretch our hands of fellowship and friendship to all Nigerians for complete reconciliation based on truth and knowledge of the truth in our land."*

2.33 If the aim of establishing the Commission was to restore confidence in government, it was also to achieve the utilitarian purpose of helping the country, in the words of President Obasanjo,

> *"to scale over an unprecedented wicked and oppressive era in our history and [to] propose measures for such an era not to repeat itself."*

2.34 *Instrument No. 8 of 1999,* which constituted and appointed the Commission and its members under powers conferred on the President by Section 1 of the Tribunals of Inquiry Act was amended effective 4 October 1999, to reflect changes in the membership and Terms of Reference of the Commission.

COMPOSITION OF COMMISSION

2.35 The membership of the Commission was made up of the following distinguished and eminent Nigerians, with rich experience in public affairs:

Hon. Justice Chukwudifu Oputa (rtd)	.....	Chairman
Dr. Mudiaga Odje, SAN, OFR	.....	Member
Rev. Mathew H. Kukah	.....	Member
Barr. Bala Ngilari	.....	Member
Mrs Elizabeth Pam	.....	Member
Mrs Modupe Areola	.....	Member
Alhaji Lawal Bamali	.....	Member
Mr. N.B. Dambatta mni	.....	Secretary

TERMS OF REFERENCE

2.36 The Terms of Reference of the Commission were to:

"(a) ascertain or establish the causes, nature and extent of all gross violations of human rights committed in Nigeria between the 15th day of January 1966 and the 28th day of May 1999;

(b) identify the person or persons, authorities, institutions or organisations which may be held accountable for such gross violations of human rights and determine the motives for the violations or abuses, the victims and circumstances thereof and the effect on such victims and the society generally of the atrocities;

(c) determine whether such abuses or violations were the product of deliberate State policy or the policy of any of its organs or institutions or whether they arose from abuses by State officials of their office or whether they were acts of any political organisations, liberation movements or other groups or individuals;

(d) recommend measures which may be taken whether judicial, administrative, legislative or institutional to redress injustices of the past and prevent or forestall future violations or abuses of human rights;

(e) make any other recommendations which are, in the opinion of the Judicial Commission, in the public interest and are necessitated by the evidence;

(f) to receive any legitimate financial or other assistance from whatever source which may aid and facilitate the realisation of its objectives."

2.37 The Commission was statutorily required:

"*to submit its interim reports to [the President] from time to time but shall, in any case, submit its final report not later than one year from the date of its first public sitting or within such extended period as may be authorised by [the President] in writing.*"

AMENDMENTS IN COMPOSITION AND TERMS OF REFERENCE

2.38 Four members who were initially appointed to serve on the Commission were replaced for various reasons. The members replaced were Abubakar Ali Kura Michika (Member), Mallam Mamman Daura (Member), Dr. Tunji Abayomi (Member), and Mr. T.D. Oyelade (Secretary). They were replaced by Dr. Mudiaga Odje, SAN, OFR (Member), Barrister. Bala Ngilari (Member), Alhaji Lawal Bamali (Member) and Mr. N. B. Dambatta, mni (Secretary)

2.39 The amended instrument re-named the Panel as ***The Judicial Commission of Inquiry for the Investigation of Human Rights Violations.*** It also contained amendments to the initial *Terms of Reference* of the panel. The amendment was at the instance of the Panel, which had asked the President to consider upgrading the Panel into a *Human Rights Abuses and Reconciliation Commission*, with powers to command and enforce the attendance of witnesses.

2.40 The more significant of such amendments are:

(i) the reference in terms of reference (a) and (b) in the amended instrument to "gross violations of human rights…," as opposed to the more specific reference to "…all known or suspected cases of mysterious deaths and assassinations or attempted assassinations…" in terms of reference (i) and (ii) in the original terms of reference;

(ii) the stipulation, in term of reference (a) of the amended instrument, of the period to be covered by the Panel (later) Commission to be "between the 15th day of January 1966 and the 28th day of May 1999," as against the stipulation in term of reference (i) in the original terms of reference to the period "since the last democratic dispensation in the country";

(iii) the addition of terms of reference (e) and (f), which were not in the original terms of reference, to the amended instrument;

(iv) the absence in the original terms of reference of the requirement, contained in the amended instrument, for the Panel/Commission to submit interim reports and to submit its final report "not later than one year from its first public sitting or within such extended period as may be authorized by [the President] in writing."

COMMISSION'S POWERS AND MANDATE

2.41 The Panel's/Commission's Terms of Reference define the scope and extent of its powers, functions and responsibilities, in the broader and limiting context of the instrument, *The Tribunals of Inquiry Act,* used in establishing it.

2.42 The address by the President, Commander-in-Chief of the Armed Forces and the Opening Remarks of the Chairman, both given at the formal inauguration of the Panel on 14 June 1999, provide amplification of the powers and mandate, as well as the expectations that informed the establishment of the Panel, and the direction it would take in approaching its mandate and objectives, and in exercising its powers and functions.

2.43 The address of the President emphasized his administration's determination to:

- pursue "a policy of openness and transparency in the conduct of Government business";
- heal "the wounds of the past, …to put the ugly past behind…";
- "…achieve complete reconciliation based on truth and knowledge of the truth in our land," and
- reconcile "the injured and seemingly injured with their oppressors or seeming oppressors."

2.44 The mandate of the Panel/ Commission was primarily a *fact-finding one*, namely to investigate the causes, nature and extent of gross violations of human rights in the country between 15th January, 1966 and 28th May 1999, to determine the persons, authorities and institutions to be held culpable of such violations and their motives in doing so, as well as the effect of such violations on their victims, and to determine whether such violations were part of deliberate State policy or the policy of any of its organs.

2.45 To enable it pursue this mandate, the Panel/Commission was given "full powers and authority to hold public hearing but without prejudice to the exercise of powers conferred under proviso to section 1(2)(d)" of the *Tribunals of Inquiry Act.*

THE COMMISSION'S ELABORATION OF ITS MANDATE

2.46 The Opening Remarks of the Chairman at the formal inauguration of the Panel outlined the Commission's own perspective towards and understanding of its mandate and powers. The remarks indicated that the Panel's/Commission's mandate would be related to relevant provisions in the 1999 Constitution of the Federal Republic of

Nigeria and that the Panel/Commission would take a flexible and broad, as opposed to a narrow construction of its mandate and powers. It would see its assignment as using the instrumentality of the law to effect social change in the country.

2.47 To this end, the remarks interpreted the Panel's/Commission's mandate and powers in three significant ways.

(a) Taking up the President's assignment of a central role to the work of the Panel/Commission in the process of national rebirth and reconciliation the administration had embarked upon, the Chairman directed attention to the need to consider the interrelated issues of possible *reparations (compensation) for victims, and of forgiveness (amnesty) for perpetrators of gross human rights violations,* when he referred to the need not only "…to make reparations where possible…" but also "…for forgiveness of offenders in the overall interest of the future of this great country."

(b) The Chairman's Opening Remarks, in relating the terms of reference of the Panel/Commission to the Constitution of the Federal Republic of Nigeria, also underlined the universal dimensions of the mandate of the Panel/Commission. This was evident in his reference to the relevance of such international documents as the *United Nations Universal Declaration of Human Rights and the OAU African Charter on Human and Peoples' Rights*, to which Nigeria has subscribed, and of the work of the South Africa's *Truth and Reconciliation Commission* to the Panel's/Commission's assignment.

(c) The Chairman related the concept of [human] *rights* to kindred and *contested* philosophical concepts like *justice, liberty, equality, fairness, democracy and freedom in the broader context*

of their relationship to law, peace, security and sustainable development (what he calls, "prosperity and plenty"), as the core foundational building blocks of "the new dawn in Nigeria."

2.48 The Chairman saw in *South Africa's Truth and Reconciliation Commission* a model, in requesting, as we have indicated in an earlier paragraph of this chapter, that the panel be upgraded into a

> *"Human Rights Abuses and Reconciliation Commission [which] will allow for genuine confessions of guilt; and for forgiveness of offenders in the overall interest of the future of this great country."*

2.49 The assumption in the request, informed by the South African experience, was that, in appearing before the Commission, alleged perpetrators and alleged victims of gross human rights abuses would both have the opportunity to "unburden their hearts," and that their testimonies would expectedly have a psychologically therapeutic and re-integrative impact (in an individualistic as well as a collective sense) not only on them but also on the nation, thereby facilitating the national healing and reconciliation process, by allowing *"the truth"* to be told and disclosed in public.

CONCEPTS AND PHILOSOPHICAL FOUNDATIONS

2.50 The mandate of the Commission derives its force and relevance not only as a matter of practical, instrumentalist public policy (nation-building) concern but also, and equally important, from the connection between philosophy, especially moral and political philosophy, on the one hand, and governance and public policy, on the other hand.

2.51 This connection between philosophy and governance (i.e. public policy) arises out of the fact that philosophy provides the ethical values and organizing ideas or principles, *the conceptual maps,* deriving from explicit assumptions about human nature and the conditions for the good life, on which governance as a form of *hypothesized social contract or covenant* is consummated to bind or weld the *covenantal parties.*

2.52 Philosophy, therefore, provides an ethical yardstick or standard by which to judge, compare and express preferences among forms of government and political systems, on the basis of how they define and construct the substantive rights and duties of citizens, and how they prescribe the relationship of the governors to the governed, and of the citizens to one another.

2.53 The promotion and protection of human rights becomes a public policy imperative under political systems and legal institutions built upon the foundation of such ideas and principles as *citizenship, tolerance, accountability and limited government or limits on the authority of the state,* which derive basically from *philosophical liberalism and its various modifications.*

2.54 *However, philosophical liberalism* also provides the *ethical justification* for resistance to authoritarian, tyrannical or oppressive rule by utilizing the idea of *rights abd its correlative obligations* to mediate possible conflict between the authority of the state and the autonomy of the individual.

2.55 This mediation flows from the nature of the presumed or hypothesized social contract which philosophical liberalism postulates between the governed and their governors.

2.56 The contract rests on a reciprocal obligation between the state and citizens, based on the duty to respect the law and the authority of the state by the citizens on the one hand, and the duty or obligation not only of government but also of the citizens, in respect of one another, to act in accordance with the principles of fairness and respect.

2.57 The intellectual development and the core assumptions of philosophical liberalism are much more complex than have been summarized above. What needs emphasis here is that concern with the promotion and protection of *rights as such* assumes particular significance in the context of a world-view or philosophical outlook based on *philosophical liberalism* and its radicalized contending variants or modifications, such as are to be found in *social democracy and socialism.*

2.58 In short, *philosophical liberalism* provides the basic concepts around which the mandate as well as the work of the Commission is best understood, namely *human rights, justice, responsibility and accountability, truth, equality, reparations and reconciliation.*

2.59 In what follows, we provide a capsule account of the core meaning of the concept of human rights and its relevance to the mandate and work of the Commission.

HUMAN RIGHTS

2.60 The intellectual development of the notion of *human rights* is a clear testimony to the impact of philosophy on public policy and political behaviour, bound up as it is with the time-honoured struggle against tyrannical rule and social and cultural intolerance. This is reflected in its emphasis on *human solidarity, social justice* and *the amelioration of human suffering.* Its shifting meaning, practical elaboration in political institutions and in constitutional law and jurisprudence, as well as the controversies it has elicited over the years, point to its strong connection with the *rule of law* and with the pursuit of human freedom and political toleration.

2.61 The legal and political framework of human rights derives, historically, from what has been described as *"the language of rights,"* which emerged out of the *United States Declaration of Independence* (1776) but more especially from the *French Declaration on the Rights of Man and the Citizen (1789*) which asserted the claims that

> *"men are born and remain free and equal in rights,"*

and that,

> *"…the natural and imprescriptible rights of man…are Liberty, Property, Safety and Resistance to Oppression."*

2.62 Human Rights, then, as postulated in this language of rights, belong to human beings as such. They are "natural," in the sense that they are not rights granted by the state or government, which can withdraw them or abuse them, at will. Historically, they have emanated as claims and entitlements, which are asserted against the state, as part of the struggle for political emancipation and political inclusiveness or broadened political participation.

2.63 These rights are now expressed and embodied in legal documents, although such rights as originally conceived and interpreted excluded children, women and blacks and other non-whites, like Indians, mulattos and coloureds, who are viewed as minors or non-human beings, undeserving of the rights extended to human beings.

2.64 It was not until the end of the Second World War and the establishment of the United Nations, as successor to the League of Nations, that *human rights as a new type of rights, came into use to denote fundamental rights which are universal rights, to which all peoples, human being as such, are entitled by virtue of their humanity.*

2.65 This concept of human rights has been variously elaborated, expanded and incorporated into national legal systems and constitutions by international agreements, which, among others, include *the United Nations Universal Declaration of Human Rights, the United Nations Charter, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol, the European Convention on Human Rights, the African Charter of Human and Peoples' Rights, the Arab Charter on Human Rights, and the various United Nations conventions and treaties on Racial Discrimination, Torture, the Rights of the Child, Discrimination Against Women, and the Rights of Migrant Workers.*

2.66 Three features of this elaboration are noteworthy, with respect to the mandate of the Commission "to address all issues that tend to bring our country into dispute, or perpetuate injustice, conflict and the violation of human rights."

2.67 Firstly and typically, these international agreements underscore not only the philosophical foundations of rights, their universality and their equality of application but also the growing view or near consensus that cultural, social and economic rights, like the right of ethnic minorities, the right to education, the right to work and the right to participate in the cultural life of one's society are as important as such civil and political rights as freedom of assembly, freedom of thought and freedom of assembly.

2.68 Secondly, the acceptance of the universality, promotion and protection of human rights by the international community has made it practically difficult for states and regimes to claim a *domaine reserve,* which excludes the investigation of their domestic human rights practices and violations by the international community. Governments and political leaders are now accountable to the international community as well as to their own citizens for gross violations of human rights and crimes against humanity like war crimes, genocide, ethnic cleansing and the deliberate starvation of segments of a country's population for political ends.

2.69 Thirdly, human rights are now construed flexibly not simply as an end in themselves but as a central and critical dimension of peace, security, development within both national and international society, and offering the yardstick for determining the legitimacy and performance of governments.

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS? GENERAL

2.70 The Commission is empowered by its terms of reference to "ascertain or establish the causes, nature and extent of all gross

violations of human rights committed in Nigeria between the 15th day of January 1966 and the 28th May 1999."

2.71 The term *'gross violations of human rights"* is neither defined nor described in the enabling instrument establishing the Commission. In attempting to formulate a working definition or at least an objective description of the term, gross violations," we considered the following factors:

(a) The nature of the petitions received by the Commission.

(b) The definition of "gross violations" by the South African Truth and Reconciliation Act of 1995.

(c) Nigerian domestic legislation and International Conventions.

2.72 On the basis of our consideration of these factors, we decided to categorize as possibly falling under gross violations of human rights the following cases: (a) murder/assassination cases; (b) severe physical/mental torture cases; and (c) cases of sustained or continued denial of the rights of ethno-communal groups people, like the Ogonis.

2.73 These various cases involve claims to *the three basic human rights to life, to personal liberty and to human dignity.*

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS?

NATURE OF PETITIONS RECEIVED

2.74 The Commission received more than ten thousand petitions from the public, most of which fell under one or more of the following broad categories*:*

(i) Murder/Assassination.

(ii) Abduction.

(c) Torture.
(d) Harassment and Intimidation.
(e) Prolonged Detention (with or without trial).
(f) Employment related cases.
(g) Contractual and business related cases.
(h) Attempted Assassinations.

2.75 The criteria for selecting cases to be heard in public were arrived at after consideration of *(a) the nature of the right involved; (b) the extent or degree of the infringement or violation.*

2.76 With respect to the nature of the rights involved, it emerged from a cursory examination of the petitions that they involved claims to or assertions of three basic rights, which are entrenched in municipal and international law, namely: *(a) the right to life; (b) the right to personal liberty; and (c) the right to dignity of the person or human dignity.*

2.77 Where the examination of a petition reveals an allegation of the infringement or violation of any of these three basic rights, the petition was further examined to see if the term "gross," which connotes the extent or degree of the violation or infringement, is appropriate to describe the infringement or violation.

2.78 In this way, the denial of the right to life, torture, brutality and other forms of degrading treatment, such as prolonged detention without trial, which derogate from *the basic rights to life, personal liberty and human dignity, are accepted as "gross violations of human rights,"* after being subjected to the "gross" or "extent" test.

2.79 Some other instances are not so obvious and critical examination is required to identify gross violations, as in cases of detention after trial under Decree No. 18 of 1994 (the Failed Banks Decree), or of those detained under Decree 2 of 1984.

2.80 In a number of cases, it is obvious that the petitioner is prima facie victim of the manipulation and abuse of the judicial process, which process is allegedly the tool of the gross violations of his human rights.

2.81 It is possible that the judicial and legal process can in fact be used as the tool for oppression. Therefore, the mere fact that there has been some form of trial should not be allowed to operate as a bar to the petitioner being heard by the Commission. In fact, it should not detract from the fact that there has been a possible abuse of a human right, as alleged in the petition.

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS?

THE SOUTH AFRICAN FORMULATION

2.82 We also found the following definition of "gross violations" in Section 1 of the *South African Truth and Reconciliation Commission Act [The Promotion of National Unity and Reconciliation Act 34 of 1995 (as amended)]* helpful:

"*The killing, abduction, torture or severe ill-treatment of any person or any attempt, conspiracy, incitement, instigation command or procurement to commit an act referred to in paragraph (a).*"

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS?
MUNICIPAL AND INTERNATIONAL LAW

2.83 *The right to life, the right to personal liberty and the right to the dignity of the person* are enshrined in the 1999 Constitution of the Federal Republic of Nigeria, as in previous constitutions (1960, 1963, 1979, 1989) since the country's independence.

2.84 They are also enshrined, as is illustrated in Volume 11 of this Report, in several International Conventions and Charters. For example, Article 4 of the International Covenant on Civil and Political Rights states that, *"...no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment."* Article 6 of the same covenant asserts that, *"...every human being has the inherent right to life. This right shall be protected by law..."*

CRITICAL PROCEDURAL AND ORGANIZATIONAL ISSUES

PROCEDURE AND MODUS OPERANDI

2.85 Right from its inception, the Panel/Commission was faced with the issue of procedure. The issue was one of finding the best strategy to realize the spirit and intent of the Panel's/Commission's Terms of Reference. For example, how were we to address the issues of finding the Truth in the mass of allegations contained in petitions forwarded to us?

2.86 If the Panel/Commission were to establish accountability, it would necessarily have to hear as many sides as were possible of the various allegations it was expecting to receive. A central problem in this respect would be how to use Public Hearings judiciously and fairly

not only to establish the Truth but also to help the petitioners come to terms with their situation.

2.87 In confronting this problem, we sought answers to the following questions, among others:

(a) How does the Panel/Commission ensure that Public Hearings do not degenerate into theatre?

(b) How does the Panel/Commission ensure that the Public Hearings bring the nation closer to the Truth?

(c) How does the Panel/Commission ensure that victims experience more healing than pain from the Public Hearings?

(d) Hoe does the Panel/Commission address the matter of the appearances of witnesses?

(e) How does the Panel/Commission ensure that the Public Hearings do not end up tying too many legal knots around the necks of witnesses?

2.88 Arising from these questions and from the shift in the period to be covered by the Commission to 15 January 1966, we also had to resolve a number of important procedural and methodological problems.

2.89 First of all, we realized that by calling for Memoranda, we would run the risk of excluding a substantial amount of vital evidence from those who were not literate. We therefore had to look for a more inclusive methodology of evidence gathering and data-collection.

2.90 Secondly, we felt that much had gone on unrecorded in our past, especially as they affect communities which, being remote, do not attract the focus or searchlight of national and international

media. To fill this lacuna or gap in our national history, we decided to commission researchers to address this problem.

2.91 Thirdly, we realized that there were a number of controversial or "sticky" points in our immediate past that need to be confronted. Although many of these "sticky" points became prominent during the military administration of General Abacha, it was our belief that military rule by its very nature, had its own inner logic, with injustice, arbitrariness and human rights violations its hallmark. To address this problem, we commissioned researchers to look into it and to provide us with as much research-based data as possible. In this way, we were able to look at such vexed issues as the Abandoned Properties issue, the Niger-Delta conflict area and the Ogoni case.

IS THE COMMISSION COURT OF LAW?

2.92 *The Panel/Commission is not a court of law.* It is a fact-finding body, which is not empowered by its Terms of Reference and by the Tribunal of Inquiry Act to pass final judgement, regarding guilt or liability.

2.93 In our view, the Commission's task is more like a preliminary investigation into the facts, with a view to recommending further actions, as are dictated by the evidence gathered. In this respect, the Commission is different from the South African Truth and Reconciliation Commission, appointed under the Promotion of National Unity and Reconciliation Act of 1995.

SCOPE OF EVIDENCE

2.94 In considering the scope of evidence we needed to gather and consider, we addressed our minds to the need to establish: (a) the

causes of gross human rights violations; (b) the nature of the violations; (c) the extent of the violations; (d) the identity of the person or persons, authorities and the organizations that are accountable and responsible for the violations; (e) the motives for the violations; (f) the motives for the violations; and (g) the circumstances of the violations.

OTHER SCOPE OF EVIDENCE-RELATED QUESTIONS

2.95 In addition to clarifying issues pertaining to the scope of evidence, we also took the following questions into consideration as we set about our work plan:

(a) What exactly did the government want to achieve? Was the instrument creating us sufficiently clear in this respect?

(b) Was there harmony between what the government wanted to achieve and what Nigerians really wanted? If there areas of disharmony or disagreement, how could they be harmonized?

(c) Has government provided all that was necessary and essential to enable us achieve government's objectives in constituting us as a Commission?

(d) Was the instrument creating the Commission a sufficient mechanism for dealing with its terms of reference and mandate?

(e) Considering what the country had gone through, was reconciliation possible, and at what cost?

(f) What role could the Commission play in consolidating and enhancing democracy in the country?

(g) How could the Commission impact on the international community and its expectations?

SPECIAL RETREAT

2.96 In a bid to ensure the maximum participation of all stakeholders in its work, the Commission organized a retreat at the

Nicon Noga Hilton Hotel, Abuja from 27-29 September 1999, on the theme "*Investigating the Past: Sharing Experiences and Learning Lessons*," to which relevant civil society groups were invited and with the collaboration of the London-based Centre for Democracy and Development (CDD) and the Stockholm-based International Institute of Democracy and Electoral Assistance (International-IDEA).

2.97 The main purpose of the retreat was to initiate discussion on the comparative experiences of truth commissions in other parts of the world, especially in Argentina, Chile, Guatemala and South Africa, with a view to enhancing the Commission's work.

2.98 The Commission took advantage of the presence of five international resource persons, each with different national experiences of the work of truth commissions, as well as background research on the Nigerian situation to isolate critical success factors that must be taken into account in the design and implementation of truth, justice, reconciliation, forgiveness and reparation commissions.

2.99 The retreat identified the following important areas the Commission should explore as it pursued its work.

(a) Clarification of the nature and character of its mandate.

(b) Creation of appropriate structures to meet the challenges of its work.

(c) Conceptual clarification of related terms like survivors, victims, abuse, violations, gross violation, and compensation, to name a few.

(d) Gathering of evidence (including retrieval of information from security agencies, the government, multinational corporations operating in the country and embassies in the country),

corroboration, witness protection and general security of all parties involved in the process of truth-seeking.

(e) Need for maximum publicity of the Commission's work for the benefit of all Nigerians.

(f) Need to involve all stakeholders and the civil society in the country.

(g) Ensuring the credibility of the Commission, emphasizing fidelity to the truth and fairness to all parties as a key project in the healing and reconciliation process.

(h) Amnesty: to whom and in what context? Conditional or blanket?

(i) Need for members of the Commission to pay visits to other truth commissions.

(j) Preparation of a comprehensive budget for the Commission.

COMMISSION'S VISIT TO SOUTH AFRICA

2.100 The Commission visited South Africa from 16 October 1999 to 22 November 1999.

2.101 Organized by the International Institute for Democracy and Electoral Assistance (International IDEA) and the Ford Foundation, the visit took the Commission to the headquarters and secretariat of the South African Truth Commission in Cape Town, where it inspected the Truth Commission's facilities and held useful discussions with the Chairman of the Truth Commission's Reparations Committee.

2.102 In addition to the visit to the Truth Commission's headquarters and secretary, members of the Commission visited and held useful discussion with the South African Minister of Justice and visited Robben Island.

2.103 The Commission's visit to South Africa impressed on the Commission the imperative need for the Federal Government to fund the Commission fully and to provide it with secretariat and logistic assistance to ensure the success of the Commission's assignment.

INTERACTIVE SESSION WITH CIVIL SOCIETY AND STAKEHOLDERS

2.104 As part of its public confidence-building strategy, the Commission held interactive public meetings in Lagos and Abuja from 24 November 1999 to 1 December 1999 with a number of civil society and professional groups and other stakeholders in the Commission's work. (e.g. organized private sector, media group, security agencies, embassies and donor agencies, inter-religious groups, etc.)

2.105 The meetings generated exciting and useful debate and gave the Commission a simulated preview of the public sittings the Commission had planned to hold.

THE NEED FOR COMMISSIONED RESEARCH WORK

2.106 The Commission, as we have indicated earlier in this chapter, decided to commission research into the country's history of human rights violations before and during the period covered by the Commission's mandate.

2.107 The Commission expected that the analyses of the origins, causes and nature of human rights abuse and violations in the research reports would provide a rich vein of background information and data, which would enable the Commission to contextualize and

categorize the history and pattern of human rights violations in the country.

2.108 The Commission, in pursuit of this objective, divided the country into six geo-political zones and farmed out the research to key research institutions in each of the six zones, as follows:

(a)	NortH East Zone	.....	Ceddert
(b)	North West Zone	.....	Ceddert
(c)	North Central Zone	.....	African Centre for Democratic Governance
(d)	South East Zone	.....	Arthur Nwankwo
(e)	South West Zone	.....	Development Policy Centre
(f)	South South Zone	.....	Centre for Advanced Social Science

2.109 The reports of the commissioned research are summarized in ***Volume 3*** of this Report.

ADMINISTRATIVE PROBLEMS

2.110 The Commission has had to contend with enormous administrative and logistic problems in carrying out its assignment. These problems, which revolved around setting up a well-staffed, well-remunerated and functional secretariat, with ample human and logistics support services and facilities, adequate funding, provision of housing and office accommodation for the members of the Commission, slowed down the take-off of the work of the Commission.

2.111 The retreat held with civil society and professional groups and other stakeholders in the work of the Commission deliberated on

these problems and recommended the appointment of more commissioners to enable it cope more effectively with its proposed expanded mandate.

2.112 It also recommended the decentralization of the organizational structure of the Commission, with the opening up of a zonal office in six geopolitical zones of the country, headed by a commissioner, and the establishment within the Commission of a Legal Department, Research and Investigations Unit, Media Liaison Unit, and Logistics and Human Resources Unit.

2.113 These recommendations were not implemented. This partly explains why the interrelated problem of inadequate funding and lean secretariat staff was a recurrent one, which faced the Commission. It was aggravated by bureaucratic red-tape within the civil service and the fact that the Commission's Secretary who was appointed a Permanent Secretary, while still on deployment to the Commission, more or less effectively combined his new appointment and subsequent posting with that of the Commission's Secretary, since government did not appoint a new Secretary to replace him.

PUBLIC HEARINGS

2.114 The combined effect of Sections 1 (2) d and 4 (1) of the Tribunal of Inquiry Act and of the instrument establishing the Commission gives the Commission the powers to regulate its proceedings, including the authority to hold public hearings, if it so chooses.

2.115 In view of the sheer volume and of the variety of the cases/petitions before the Commission, we had to separate cases,

which must necessarily be disposed of through public hearings from cases, which could be disposed of by other means. ***Volume 4*** of this Report offers full and detailed account of the public hearings.

LEGAL CHALLENGES TO THE COMMISSION

2.116 The Commission was the subject of a number of legal suits challenging its constitutionality and its powers to summon witnesses.

COMMISSION'S LIAISON WITH THE MEDIA

2.117 Right from its inception, the Commission saw the mass (electronic and print) media as a critical bridge between it and the generality of Nigerians. The nature and the mandate of the Commission's work and the expectations thereby generated made this bridge-building enterprise on its part imperative. To this end, the Commission committed itself to brief the mass media about its activities regularly through its Media Co-ordination Unit, which was established early in its life.

2.118 The Commission placed advertisements in the major national newspapers in June 1999, inviting the submission of memoranda on complaints of human rights violations during its mandate period. Thereafter, the Commission continued to advertise its activities, especially its public hearings and the cases slated for the hearings, in the print and electronic media and through press releases.

2.119 The Commission faced four major media or public relations challenges early in its life, namely to (a) change the negate image or public perception that it was comatose; (b) transform media apathy and criticisms into support and sympathy for its work; (c) make the

Commission media friendly; and (d) make the Commission credible and accessible to the generality of Nigerians.

2.120 As part of its strategy to be mass media friendly and to ensure fair and accurate coverage of its work, including its challenges, difficulties and its successes, the Commission visited and consulted, through interactive sessions, a number of media executives, editors and journalists. The Commission also accredited journalists assigned to cover its public hearings and other important functions of the Commission.

MEDIA COVERAGE OF COMMISSION'S ACTIVITIES

2.121 The mass (print and electronic) media generally gave extensive coverage to the activities of the Commission. This was particularly so in the case of the coverage of the public hearings in different zones of the country.

2.122 This was not always the case. For the mass coverage of the Commission's activities has gone through a lot of transformation since the formal inauguration of the Commission. The mass media was in the forefront of the campaign for the establishment of something analogous to a truth commission in the country. When the Commission was eventually established, the media welcomed the development and declared its full support for the Commission's assignment. However, the mass media were critical of the initial slow pace of the Commission. In due course, this negative appraisal changed dramatically and the Commission was hailed in editorials "as the best thing that ever happened" to Nigeria.

2.123 The critical threshold in the media coverage of the Commission occurred during the public hearings held by the Commission. In the five centers, where public hearings were held, the electronic media offered adequate and extensive coverage of the hearings. Notably, the Commission's efforts in getting the Lagos Directorate of the Nigerian Television Authority (NTA) to give comprehensive coverage of the Commission's public hearings in Lagos transformed the entire media coverage of the Commission's work.

2.124 The NTA coverage and telecast late in the evenings on its network and the following afternoon on Channel 5, Lagos generated countrywide public interest. Because of the wide acclaim of this particular coverage, the NTA began live coverage of the public hearings in Lagos, extending it to the second Abuja public hearings.

2.125 The NTA's live coverage of the Lagos and Abuja public hearings led the private television stations, MINAJ, CHANNELS, MITV, DBN and GALAXY, to follow the NTA's example by offering live coverage of the public proceedings to their viewers. AIT television station joined the competition for the live coverage at the second public hearings in Abuja. AIT introduced discussion groups on various aspects and issues of each day's public hearings.

2.126 As for radio coverage, the Federal Radio Corporation of Nigeria (FRCN) and the Voice of Nigeria (VOA) devoted about 5 minutes on the average everyday on their national network news to reports from the Commission's public hearings. Reporters from the two radio stations were assigned on a permanent basis to cover each of the five centers where public hearings were held. In addition, local radio and television stations were encouraged to make summaries of the public

hearings in the local languages to ensure a wider knowledgeable audience, which is well informed about the work and relevance of the Commission to national development.

2.127 The combined effect of the live coverage of the public hearings in the electronic media as well as the coverage in the print media, more than anything else, gave the Commission a high profile in the country and showed quite clearly the sordid dimensions and corruption of our public life.

CHAPTER THREE

INTRODUCTION

3.1 In this chapter, we attempt to provide an overview of the political and social history of Nigeria, since the amalgamation of northern and southern Nigeria in 1914. In doing so, we hope to highlight a number of salient and recurring issues, trends and perspectives which provide the broader historical canvass for contextualizing and understanding recent political developments, including gross violations of human rights in the country.

3.2 We do this, because historical understanding is not only a mirror on the past but also, if the right lessons are drawn from it, a guide to the future.

THE BEGINNINGS

3.3 Although Nigeria as a political and economic entity was brought together by the British colonial administration under a dual administrative structure, through the amalgamation of the two Protectorates of Northern and Southern Nigeria in 1914, it would be wrong to assume that its peoples had no history of cultural, economic, political or social history before country's boundaries were negotiated by Britain, France and Germany at the turn of the twentieth century. Indeed, there was much more cultural, economic and political contact and interaction among the various and diverse peoples of pre-colonial Africa than has been admitted by colonial apologists and historians who tend to argue, with respect to Africa generally that, the continent had no history prior to colonization.

3.4 The physical profile of Nigeria, which is located in West Africa between latitudes 4N and 14N and longitudes 3E and 15E meridian, is made up of a coastline intersected by a series of rivers and creeks, among which are the rivers Anambra, Benue, Cross River, Gongola, Kaduna, Niger, Ogun, and Sokoto, and by the Niger Delta and a vegetation, classified into *the high forest zone*, with its sub-division into the *mangrove and rain forest*, and *the savannah*, sub-divided into the *grassland and scrub forest.*

3.5 This physical profile historically influenced population movements in pre-colonial Nigeria, while also providing the basis for and impelling complementary economic and cultural activities and interaction between and among the various peoples of the country before the advent of colonial rule.

3.6 In effect, there were in pre-colonial Nigeria migrations from one part of the country to the other. These migrations led to the development of vibrant embryonic cultural, economic and political networks, marked as much by cooperation as by competition and conflict among the various peoples and communities in the country.

3.7 This is why it is sometimes argued that the concept of "Nigeria" or of a "Nigerian" was not the creation of colonial rulers, although colonial rule created its own inner dynamics, which later shaped the historical and political development of the country.

3.8 What we wish to emphasize here, however, is that the physical structure of the country facilitated in pre-colonial Nigeria the embryonic emergence of networks of internal economic exchanges in various crops and commodities, on the basis of comparative

advantage. Out of these economic networks emerged cultural and political networks and the economic, political and socio-cultural institutions they spawned, which, though not without contradictions, as in wars and raids among the various peoples and communities in pre-colonial Nigeria, and their attendant violations of human rights had the long run potential of being integrative.

3.9 Colonial rule interrupted and *"arrested"* the logic of the auto-centered historical development of this internal economic exchange and of its supporting cultural, legal, political and social systems. In effect, colonial rule presaged the beginnings of a new historical phase, which led to the incorporation of Nigeria into the wider world economic and political system. What was in pre-colonial Nigeria an autonomous internal market, dependent primarily on endogenous forces, became, in due course, and under the mercantilist logic of colonial rule, *a trading post economy* dependent on foreign trade.

3.10 The historical trajectories which the country had gone through since colonial rule, especially the sometimes bloody and murderous forms which competition and conflict among the various peoples and communities assumed, resulting in gross violations of human rights, were shaped by the internal logic and the further elaboration and development of this *trading post economy*.

3.11 Prior to colonization and the amalgamation of the Northern and Southern Protectorates in 1914, there were, in what is now Nigeria, great kingdoms with complex systems of culture and government. The following examples of pre-colonial kingdoms and political systems in the country are illustrative our thesis that colonial

rule *"arrested"* the auto-centered development of Nigerian legal, political and social institutions.

3.12 These kingdoms included, among others the following: the kingdom of *Kanem-Borno,* with a known history of more than a thousand years; the *Sokoto Caliphate,* which for nearly a hundred years before its conquest by Britain had ruled most of the savannah of northern Nigeria*; the kingdoms of Ife and Benin,* whose works of art had become recognized as amongst the most accomplished in the world; the Yoruba *Empire of Oyo,* which had once been the most powerful of the states of the Guinea Coast; and the *city states of the Niger Delta,* which had grown partly in response to European demands for slaves and later palm-oil; and the largely politically decentralized and acephalous political systems of the Igbo-speaking peoples of southeastern Nigeria. We wish to emphasize the point made earlier that these kingdoms and the political structures and the socio-cultural and legal institutions that sustained them had their own internal contradictions, had undemocratic features and, from the perspective of modern concern with human rights, institutionalized practices and customary laws, some of which are still subsisting, that fundamentally derogated from human rights.

3.13 The point we wish to note is, therefore, not that pre-colonial political structures and their supporting socio-legal institutions were flawless and unblemished by violations of human rights. Our point, rather, is that on the eve of colonial rule, the various Nigerian communities had socio-legal and political institutions based on their unique historical and cultural circumstances, reflected in their chieftaincy institutions.

3.14 Thus, in the Northern parts of the country, these institutions in most of the communities were based on a combination of the cultural values of the Fulani *Jihadists*, the basic principles of *the Quran* and the cultural values of the Hausa *Sarauta system*. Among the Yorubas, the institutions were based on indigenous socio-cultural values, while among the so-called decentralized political communities of the Igbos and Tiv, there legal and political institutions were similarly the product of their cultures and history.

3.15 Colonial rule prevented endogenous development of these communities by creating "new rules of the game," and new dynamics of interaction among the various peoples and communities in the country, subverting and weakening their traditional political and legal institutions.

3.16 In short, colonial rule arrested the auto-development of these pre-colonial political systems by imposing on the peoples of Nigeria and their communities a new political and economic order sustained by violence and by creating a new basis for loyalty and citizenship.

3.17 The expansion and consolidation of British colonial rule in Nigeria must be seen in the context of the rivalry and competition among the European powers over the acquisition of colonial territories in Africa.

3.18 In the case of Nigeria, and arising out of the initial encouragement of missionary and commercial activities by English missions and companies like the Church Missionary Society (CMS) and the Royal Niger Company, British colonial rule in Nigeria was

formally regularized with the establishment on January 1, 1900 of two separate administrative entities, the Protectorate of Northern Nigeria and the Protectorate of Southern Nigeria.

3.19 This was done to forestall the increasingly aggressive competition from France, whose activities posed serious strategic—military, security, commercial and political—threat to the Royal Niger Company, which had been given the mandate, through a Royal Charter, granted on July 10, 1886 to administer and rule Nigeria, as a proxy for the British government.

3.20 The creation of the two administrative entities of northern and southern protectorates in the country had been preceded as part of this consolidation process by the following constitutional measures: the colony and protectorate of Lagos, annexed as a colony in 1862, was in 1906 merged with the protectorate of southern Nigeria to form the colony and protectorate of southern Nigeria; and the amalgamation, already referred to, of the colony and protectorate of southern Nigeria with the protectorate of northern Nigeria on January 1, 1914 to constitute the new colony and protectorate of Nigeria.

3.21 What followed after 1914 was, however, not *nation-building* in Nigeria, in the strictest sense. British rule in Nigeria was less an attempt to forge a Nigeria nation than to " *conquer and pacify*" the country, under a regime of law and order, by bringing the various ethnic groups and communities under imperial authority through a policy of *divide et impera*.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS: 1914-1960

3.22 In spite of the amalgamation of 1914, the British did not rule the country as a political unit. The northern and southern protectorates were ruled separately, although the system of *Indirect Rule*, introduced by Lord Lugard in the north, was gradually extended to the south with modifications.

3.23 Constitutional reforms were introduced in stages as pragmatic responses by the colonial government to nascent nationalist agitation.

3.24 Critical constitutional landmarks in colonial Nigeria were the following:

(a) the *1922 Clifford Constitution*, which established a legislative council for the colony of Lagos and the southern protectorate, with 46 members, 10 of whom were to be Nigerians (4 of whom were to be elected on the basis of adult franchise);

(b) *the Richards Constitution of 1946,* which established a central legislature for the entire country, with 50% of the legislative seats reserved for the northern region, and a regional legislature in each of the 3 newly-created regions—*east (unicameral), north (bi-cameral) and west (bi-cameral);*

(c) the Macpherson Constitution of 1950, providing for cabinet government at the central and regional levels;

(d*) the Lyttleton Constitution of 1954,* which introduced *a quasi-federal system of government* into the country; and

(e) *the 1960 Independence Constitution*, bringing colonial rule to an end and transferring political power to democratically elected Nigerians at the state and federal levels, under a system of parliamentary government, based on the Westminster model. Earlier

the eastern and western regions had each been granted self-government in 1957 and the northern region in 1959.

3.25 The accelerated pace of constitutional reforms in Nigeria after the second world war was due to many factors, chief among which were (a) the terminal phase of the decolonization process in the Indian sub-continent and in Burma, particularly the demonstration effect the process had on Nigerian nationalist leaders and the Nigerian ex-servicemen who fought in Asia; (b) the pressures of international opinion in favour of independence to colonized peoples, as reflected in the new multilateralism, championed by the United Nations Organization; and (c) the accession to power of the Labour government of Clement Atlee.

3.26 The period between 1945 and 1955 was crucial in laying the foundations of the country's emergent party system and of the constitutional and political structure of independent Nigeria.

3.27 With respect to the party system, from early beginnings in 1922, when the Nigerian National Democratic Party (NNDP) was founded, and in 1934 when the Lagos Youth Movement (LYM), later to metamorphose into the Nigerian Youth Movement (NYM) was formed, the country's nascent party began to take firm shape in the dying years of the Second World War.

3.28 In 1944, the National Council of Nigeria and the Cameroons, later to become the National Council of Nigerian Citizens (NCNC) was formed. In 1948, the Jami'yar Mutanen Arewa (Union of the People of the North), formed as a politico-cultural organization, was transformed into a political party in 1950, under the new name

the Northern Peoples' Congress (NPC), with the immediate objective of contesting legislative elections under the Macpherson Constitution. In 1951, the Action Group (AG), which grew out of the Egbe Omo Oduduwa, a pan-Yoruba cultural organization, was launched with the immediate aim of fielding candidates for the legislative elections under the Macpherson Constitution.

3.29 With respect to the emergent constitutional and political structure of independent Nigeria, the following developments in the 1945-1960 period were critical.

3.30 First, there is the fact that Nigeria's federalism emerged, deriving from the dual administrative structure of amalgamation in 1914, through a process of disaggregation from preexisting regional units. Secondly, the new party system, reflected in the unfolding power base of each of the three major political parties, viz. NCNC, NPC and AG, assumed by and large an ethno-regionalist character, by which is meant that each of the three parties drew its electoral strength and support base from the region where the majority ethnic group was constituted by the ethnic group to which its leader belonged.

3.31 Thirdly, ethnicity began to be manipulated and politicized as a central variable in party political and electoral competition. It was in this context of ethnicised party electoral competition that minority ethnic groups began to assume increasingly important political roles not only in mediating inter-ethnic electoral competition among the three major political parties (NCNC, NPN and AG) but also in the demand for a restructuring of the structural imbalance of the three-

region Nigerian federation, which favoured the three major ethnic groups, Hausa/Fulani, Igbo and Yoruba.

3.32 An unsettled political question before independence was, therefore, the fear of domination expressed by minority ethnic groups in the eastern, northern and western regions and their demand for separate regions of their own to be created out of the then existing three regions.

3.33 While admitting that the fear of domination expressed by the minority ethnic groups in each of the then existing regions were well-founded, the *Willink Commission*, appointed on September 25, 1957 by the colonial government to look into their fears, rejected their demand for the creation of new states out of the existing ones.

3.34 We shall have more to say about the minorities' question later on in this chapter, but what we wish to emphasize here is that the fear of domination of one ethnic group or combination of ethnic groups over other ethnic groups and the broader issue of a structurally balanced or symmetrical federal system to remove or contain this fear remain major issues of contention in Nigerian federalism.

3.35 For example, each of the three regions contained majority and minority ethnic groups. Their composition was, therefore, criticized on this ground.

3.36 The emergent federal structure, whose foundations were laid by the 19456 Richards Constitution, the 1950 Macpherson Constitution, and the 1954 Lyttleton Constitution, was criticized for

its structural imbalance. This was because the Northern Region was much bigger in population and geographical size than the two other regions put together.

3.37 With a territorial size of 729,815 sq.km, by 1954 figures, the Northern Region occupied almost 76% of the country's territorial size, compared to the Eastern Region's 119,308 sq.km. (about 12.3%), and the Western Region's 117,524 sq.km. (about 12.1%).

3.38 The population of the Northern Region, by 1954 figures, was about 17 million (or 54% of the country's population), while the population of the Eastern Region was estimated at approximately 8 million (or 26% of the country's) and that of the Western Region was put at about 6 million (or 20% of the country's).

3.39 The problem posed by the multi-ethnic composition of the original three regions and the structural imbalance of the three-region federation finds continued and contemporaneous expression in current demands for restructuring of the country's federal system and for the convocation of a sovereign constitutional conference in the country.

3.40 These demands go to the heart of what needs to be done to effect *reconciliation* in the country and what it means to be a Nigerian, and under what citizenship rights and obligations.

3.41 Since an understanding of what brought us to where we are now is indispensable to our forward march on the basis of reconciliation and coming to terms with our past, we now turn to an examination of some of the problematic aspects of our constitutional

and political history during this period, 1914-1960 and an assessment of their impact on our checkered attempts at national integration.

3.42 ***Indirect Rule:*** The greatest impact of Lord Lugard's governorship of Nigeria lay in his development of the native administration system in the country, under a system of *Indirect Rule,* which, in its application to Northern Nigeria, Lugard defined in the following way, in his *Amalgamation Report:*

"*The system of Native Administration in the separate government of Northern Nigeria had been based on the authority of the Native Chiefs. The policy of the Government was that these chiefs should govern their people...as independent rulers. The orders of Government are not conveyed to the people through them, but emanate from them in accordance, where necessary with instructions received through the Resident. While they...are controlled by Government in matters of policy and of importance, their people are controlled in accordance with that policy by themselves.*"

3.43 Whatever local variation there may have been in the administrative system, there was one ultimate factor: there had been a diversion of power from the traditional authorities to the incoming colonial administration. Even in the Northern region where the principles of indirect rule were applied most intensively, the Emir was no longer sovereign and held power by grace of the colonial government. His authority was reduced by the knowledge that, if he stepped over the uncertain boundary of rules for good government, as stipulated by the British, he could be deposed.

3.44 In the South West, the Yoruba Oba and his courts were similarly subjected to the concepts of what good government

constituted and a certain a diminution of the Oba's authority inevitably ensued. On the other hand, the focusing of attention by the British on the executive role of the Oba gave him authority that he never possessed in the traditional context. In the South-Eastern Nigeria, the British, in the absence of chieftaincy institutions, appointed warrant chiefs, a "revolutionary" innovation in political communities, which had conceived political organisation at the village level on a largely democratic basis, where no one man/woman or group had exclusive power.

3.45 Furthermore, the introduction of the British system of taxation and justice for a large number of matters in the south naturally detracted from the authority of traditional chiefs and broke down many of the sanctions of traditional society. It only left a legacy of protests, revolts and bitterness against the system.

3.46 Of the over-all impact of the *Indirect Rule* system on political and constitutional development in Nigeria, we quote Professor Bolanle Awe's assessment in extenso:

"*In the light of the apparent success of the system in Northern Nigeria, administrative issues came to be tackled in the light of ideas and systems formulated for the Northern Emirates and very little cognizance was taken of the different cultures and governments among the different ethnic groups that make up the Nigerian nation. With the institution of the system of sole Native authority, the conciliar system of government among the Yoruba was jettisoned and most of the traditional chiefs' advisers to the traditional ruler lost their authority. The subtle and complex decentralized administration of the Igbo people was ignored; in an attempt to reproduce the Northern Nigerian model,*

warrant chiefs were created instead of finding the real seat of authority....

The system of native courts instituted along with this form of government perverted the traditional judicial system and deprived many chiefs of their judicial functions. In an attempt to increase further the power of the traditional ruler, the colonial administration gave him more judicial power than traditionally belonged to him. For instance, in Oyo Province...an appeals court was created in Oyo under the Alaafin Ladigbolu contrary to judicial practice in that part of the country. Indeed, in general, the British system of justice which was also being applied alongside the traditional system detracted from the traditional authority of the chiefs and broke down many of the traditional sanctions that helped to maintain law and order.

It is not surprising that Indirect Rule provoked serious reaction among Nigerians; the most notable was the Aba Women's War of 1929 when women in South-Eastern Nigeria rose up against the Warrant Chief System and defied the attempt to tax women without trying to understand the economic relations between the male and female in Igbo society." [Bolanle Awe, "Nation-Building and Cultural Identity," in Peter P. Ekeh and Garba Asiwaju (eds), Nigeria Since Independence: The First 25 Years: Volume V11 –Culture, p.20, Ibadan: Heinemann Educational Books, 1989].

3.47 The policy of Indirect Rule impacted negatively on the development of a pan-Nigerian identity, by emphasizing the differences between the north and the south. For example, southerners working or living in the northern towns were segregated into *sabongaris or settlers'/strangers' quarters.* The idea of *sabongaris* was replicated in due course in southern towns.

In short, the legacy of Indirect Rule underscored a paradox: while colonial rule brought Nigerians together in new ways and for new purposes, indirect rule emphasized and institutionalized differences among the various communities in the country.

3.48 *The impact of amalgamation*: The amalgamation of northern and southern Nigeria was effected in two phases, as recommended by the Selbourne Committee. The first phase, carried out in 1906, was the amalgamation of the protectorate of southern Nigeria with the Colony of Lagos. The second phase was the amalgamation of the northern and southern protectorates in 1914.

3.49 The decision to amalgamate as well as its implementation, both of which did not involve the participation of Nigerians, rested more on economic than on political considerations. Apart from the fact that it seemed economically prudent to amalgamate the two territories, the one land-locked and the other with a long seaboard, it was felt that the more prosperous Southern Protectorate would subsidize its northern neighbour until such a time as it would become self-supporting.

3.50 Although the two territories were amalgamated, Lugard chose to maintain the distinction between north and south. He also rejected the case made by others like his Lieutenant-Governor, Temple, and E. D. Morel, the Editor of the *African Mail,* for the division of the country into four or more provinces, which would have involved splitting the north into more than one big administrative unit.

3.51 By maintaining the dual administrative structure of northern and southern protectorates, Lugard laid the foundations of

the structural imbalance, which was later to constitute an ever-simmering sore point in the emergent federal system of government in the country.

3.52 In short, the dual administrative structure created by amalgamation in 1914 laid the foundations of the structural imbalance, to which we have made reference earlier on in this chapter, and by means of which the future Northern Region had continuously held sway politically over the South.

3.53 It gave rise to the fear, among southerners, of northern domination, based on the bigger population and geographical size and, deriving from this fact, the superior competitive electoral advantage of the north.

3.54 Within the north, the arrangement also presented serious problems. The ethnic minorities in the Middle Belt and in the North East among the Kanuris were later to protest against domination, marginalisation and religious discrimination by the Hausa-Fulani majority ethnic group. Similarly, the ethnic minority groups in the south expressed fears of domination by the two major ethnic groups in the south (the Igbo and the Yoruba).

3.55 It seems, therefore, that the long-term historical impact of the *1914 Amalgamation* has been the political asymmetry, including the fear of domination arising from it, that has come to shape not only inter-ethnic and intra-ethnic relations as well as other aspects of political behaviour and political development in the country but also the evolution of the country's federalism.

3.56 We now turn to highlight briefly constitutional and political trends in the country since 1960, divided into the following periods*:*

(a) 1 October 1960-15 January 1966);

(b) January 15, 1966-July 29, 1966;

(c) July 1966-July 1975; (d) July 1975-October 1979;

(e) October 1979-December 1983);

(f) December 1983-August 1985;

(g) August 1985-August 1993;

(h) August 1993-November 1993;

*(i) November 1993-*June *1998; and*

(j) June 1998-May 1999.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:

1 OCTOBER 1960-JANUARY 15, 1966

3.57 The 1960-1966 period started on a halcyon note of excitement and rising expectations, which were dashed as a result of the violent explosion of the uncontrollable political tinderbox of centrifugal or separatist ethnic and ethno-regional politics, resulting in political violence, ethno-communal riots and gross violations of human rights, in which the state (federal and regional) often participated as an active protagonist, the use of federal troops to quell civil unrest, in the face of the helplessness of the police force, the brazen corruption of the electoral process, myopic political leadership, political corruption, political brinkmanship and constitutional crises.

3.58 The chorus of hope and the refrain of unity of the early days of independence, captured by the stanzas of the country's national anthem, had, by January 1966, when the Nigerian military took over power for the first time, given way to a revolution of rising

expectations, to despair and to public cynicism about politics, public affairs and politicians.

3.59 Why was this the case? Briefly, the explanation is partly to be found in a combination of institutional weaknesses in the practice of democracy in the country and in a political culture, which tended to view politics as a zero-sum game, in which winners win all, and losers lose all, with premium placed on political violence, political intolerance, subversion of constitutional government, the annihilation of one's political opponents and the rigging or subversion of the electoral process.

3.60 We wish to identify two such institutional weaknesses, which undermined the stability of the country during this period.

3.61 The first source of institutional weakness is the constitutional ambiguity or problem posed by the separation between the Governor-General (later the President after the adoption of the 1963 Republican Constitution) as an un-elected, ceremonial head of state and the Prime Minister, as an elected head of government, with executive powers.

3.62 The potential political crisis the separation could generate matured after the 1964 Federal Elections, the first to be held after independence. At issue was the exercise of the discretionary powers of the President to (a) appoint the Prime Minister [an issue, which had been raised after the 1959 Federal Elections, when the Governor-General invited Sir Abubakar Tafawa Balewa to become Prime Minister, although the final results were still uncertain and the political parties, especially the AG and the NCNC, were still actively

engaged in bargaining among themselves on the formation of a coalition government]; (b) the operational meaning of the President's position as Commander-in-Chief of the Armed Forces of the Federation; (c) and the President's powers over the Federal Electoral Commission.

3.63 The second source of institutional weakness we wish to identify is related to the administration and conduct of federal and regional elections, during this period. They were marked by a deadly violence and vicious earnestness that effectively served to flagrantly abuse, thwart and subvert the electoral process, by creating conditions under which the conduct of free and fair elections was impossible. This was true of the October 1964, which were boycotted effectively in the Eastern Region and partly in the Western Region; the March 1965 General Elections, held in constituencies where the boycott was total; and the Western Regional Elections of October 1965.

3.64 The controversy over these elections deepened the North/South cleavage dating back to the 1914 amalgamation and the structural imbalance between the North and South created by the preponderant geographical and population size of the North.

3.65 But it was also the high point of a number of deep divisions and gaping cracks in the federal structure and in federal and regional politics, which, reaching a crescendo between 1962 and 1964, just before these controversial elections, stretched the Nigerian federation to a breaking point, giving renewed force to the southern perceptions or fears of the consolidation of the hegemonic intentions and strategies of the Hausa/Fulani majority in the North, in spite of political

realignments, which threatened and which ultimately scuttled the NPC/NCNC coalition at the federal level.

3.66 The following events, which we mention only in passing, reflected these divisions and cracks in the federal structure and competitive party electoral process in the country between 1962 and 1965:

(a) the 19662/1963 population censuses, originally conducted in 1962 but cancelled on the objection of the government of the Eastern Region, and re-conducted in 1963, again rejected by the government of the Eastern Region;

(b) the Declaration of a State of Emergency in the Western Region in 1962 by the Federal Parliament, involving the removal of the Premier of the Region and the suspension of the legislature and the appointment of a Sole Administrator for the region;

(c) the Treasonable Felony Trials of 1962/1963, in which Chief Obafemi Awolowo and some of his colleagues, including Joseph Tarka and S.G. Ikoku were sentenced to serve term in prison for planning and attempting to overthrow the government of the country; and

(d) the constitutional crisis, already referred to, arising from the 1964/1965 federal elections.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:
JANUARY 15, 1966 - JULY 29, 1966

3.67 The period 15 January 1966 to 29 July 1966 coincided with the first military coup d'etat in the country on 15 January 1966 and the counter-coup of 29 July 1966.

3.68 The immediate or precipitating cause of the coup is to be found in the catalogue of the constitutional and political developments narrated in the preceding paragraphs:

(a) the corrupt and parochial excesses of the political leadership;

(b) the upsurge in anomic acts of civil disobedience and in violent ethno-communal riots, owing to the politicization of ethnicity in different parts of the country and the use of federal troops to quell them;

(c) the controversies surrounding the population censuses of 1962/1963;

(d) the electoral malpractices that surrounded federal elections of 1964/1965 and the October 1965 regional elections in the Western Region, and

(e) the constitutional crisis created by the 1964/1965 federal elections.

3.69 It was not unlikely that the successful execution of military coups d'etat in other parts of Africa (e.g. in Egypt in 1952, in 1958 in the Sudan, in Togo in 1963, in June 1965 in Algeria) had a demonstration effect on the military officers who planned the January 15, 1966 coup d'etat in Nigeria.

3.70 Indeed, it has now come to light that, as far back as 1964, during the controversial federal elections, the idea of a coup was being discussed at "political meetings" by military officers, like Ademoyega, Adewale, Anuforo, Banjo, Chukwuka Ifeajuna, Nwobozi, Nzeogwu, Obienu, Okafor, and Onwuategwu.

3.71 For example, General Gowon has recounted how Banjo and Ojukwu had approached him during the 1964 federal elections with a

plan for a coup [see, West Africa, 13 January, 1968, p. 53]. A Special Branch Report issued in 1967 also claimed that sometime in August 1965, a small group of army officers, dissatisfied with political developments within the Federation, began to plot in collaboration with some civilians, the overthrow of what was then the Government of the Federation.

3.72 We do not wish to record the details of the coup d'etat here other than to observe that the fact that virtually all of the politicians killed in the coup (Sir Abubakar Tafawa Balewa, Prime Minister of the Federation, Sir Ahmadu Bello, the Sardauna of Sokoto and Premier of the Northern Region, Chief S.L. Akintola, Premier of the Western Region, and Chief Festus Okotie-Eboh, Federal Minister of Finance) as well the senior military officers who were also killed, with the exception of Colonel Unegbu, were non-Ibos.

3.73 Although the inner circle of the coup plotters was predominantly made up of Igbo officers, Major Nzegwu, one of the leaders of the coup accused the "Ibo majors in charge of the coup in Lagos…of tribalism in the one-sided way in which they carried out the coup." [Martin Dent, ""The Military and Politics: A Study of the Relation between the Army and Political Process in Nigeria," p. 125, in K.Kirkwood (ed), St Anthony's Papers, Number 21, African Affairs Number , London: Oxford University Press, 1969].

3.74 The rump of the federal government surrendered power to Major-General Aguiyi-Ironsi, as Head of State and Commander-in-Chief of the Armed Forces of the Federation, whose role in the coup remains unclear.

3.75 The Ironsi administration constituted a Constitutional Study Group in February 1966, with Chief F.R.A. Williams as chairman to review the 1960 Indepedence Constitution and the 1963 Republican Constitution and to propose a new constitutional structure or framework for the country. But the Study Group had hardly settled down to work than the Ironsi administration enacted Decree No. 34 of 24 May 1966, abolishing the federal structure of government in the country and declaring Nigeria a unitary state. This action alienated ethnic minority groups who had been clamouring for state creation since the administration assumed office.

3.76 The perception, rightly or wrongly of the ethnic pattern or "bias" of the execution of the 15 January 1966 coup d'etat was effectively underscored by the following:

(a) the Ironsi administration's choice such Igbo intellectuals like Dr Pius Okigbo, Christopher Okigbo, Dr Okechukwu Ikejiani, Francis Nwokedi and Gabriel Onyiuke as principal advisers;

(b) the coincidence that 18 out of 21 officers promoted from the rank of Major to Lt Colonel in April 1966 were Igbos, at a time when the Supreme Military Council had imposed a moratorium on army promotions;

(c) the dismissal, at the same time (in April 1966) of some air force officers of Northern Region origin, on "educational grounds";

(d) the administration's prevarication in bringing the coup planners, seven of whom were allegedly promoted while in prison, to trial;

(e) the administration's dithering in publishing the names of army officers killed in the coup, so that they could be given due ceremonial honours and funeral; and

(f) the administration's unification Decree No. 34 of May 1966.

3.77 It was this perception that ignited reprisals against the Igbos later in the year (1966).

3.78 The reprisals, in the form of ethnic killings and pogroms in May and July 1966, mainly affecting the Igbos, preceded, indeed precipitated the counter-coup of July 29, 1966 in which General Ironsi, the Head of State and Colonel Fajuyi, the military governor of the Western Region and other military officers were killed.

3.79 The counter-coup saw the emergence of Lt-Colonel Yakubu Gowon, as the new Head of State and Commander-in-Chief of the Armed Forces.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:
29 JULY 1966 - 29 JULY 1975

3.80 The perception of the ethnic bias of the January 15 coup and the similarly ethnic coloration given to the chain of events leading to the counter-coup of July 29, 1966 began a long process of the erosion of professionalism in the Nigerian military.

3.81 In the words of Martin Dent, " ...the officers of a certain tribal group become the armed wing of a tribal group, fighting against a similar combination of tribal group politicians and officers of the opposing tribe." [Dent, "The Military and Politics," op.cit. p.114].

3.82 Ethnic fears are self-reinforcing and self-fulfilling. They create a sullied atmosphere of mutual distrust and acrimony. They undermine national unity and run counter to the nationalist tone of the country's national anthem.

3.83 The ethnic character of the coup of July 1966 and the massacres of Igbos that preceded and followed it renewed Igbo fears of Hausa/Fulani domination, even as there were rumours of reprisal massacres of Hausa/Fulani in the Eastern Region.

3.84 The exodus of Igbo-speaking peoples to the Igbo heartland in the Eastern Region from the North and other parts of the country began in the aftermath of the July 1966 coup.

3.85 In a broadcast on August 29, 1966, Lt-Col. Odumegwu Ojukwu, referring to the massacres of May 1966 and the coup of July 1966, and claiming that there was no longer any basis for unity in the country, set up a body for the resettlement of the Igbo returnees.

3.86 In his Budget Speech in April 1967, Ojukwu returned to the same separatist theme, when he made reference for the need for the country and for Nigerians "to drift apart a little bit."

3.87 A similar statement about the fragility of the country's unity and the desirability of dissolving the federation, which was allegedly included in Gowon's inaugural address in July 1966 to the nation, was, according to some sources, expunged on the advice of some federal permanent secretaries.

3.88 Xenophobia became commonplace. The implications of what was happening was not lost on the Yorubas who, renewing calls for an autonomous Yoruba State, resolved at a meeting of Yoruba Leaders of Thought in October 1966, to request the federal government to remove "Northern" troops, viewed as an "army of occupation," from Yorubaland.

3.89 Thus began the long descent into secession by the Eastern Region and the civil war fought to prevent it.

3.90 Efforts to resolve the impasse failed. There were two such notable attempts. The first was the Ad Hoc Conference on Constitutional Proposals for Nigeria, during which political leaders from the four regions (East, Mid-West, North and West) met from September 2, 1966 to consider a new constitutional structure, in place of the unitary one, which had been abolished on 1 September 1966. The second was the meeting of the country's Supreme Military Council held, under the auspices of government of Ghana, in January 1967 in Aburi, Ghana, to discuss a number of constitutional issues facing the country.

3.91 The Gowon administration, in a move to bolster its support, and preempt any secessionist move by the Eastern Regional government, created twelve states out of the existing four regions on 27 May 1967 as follows:

(a) six from the Northern Region;
(b) three from the Eastern Region;
(c) one from the Colony Province of the Western Region and Lagos;
(d) the rump of the Western Region;
(e) the Mid-West Region to remain as it then was.

3.92 This deft political move was too late to stop the inevitable drift to secession, which was announced on 30 May 1967. The move was the last straw that pushed the Igbo leadership into secession, with the proclamation of the *Republic of Biafra.*

3.93 The division of the Eastern Region into three new states, with the oil rich areas of the region in the *Calabar-Ogoja-Rivers* minority ethnic areas being constituted into two new states, the *South-Eastern State* and the *Rivers State* and under non-Igbo control, was seen by the Igbo leadership as a further indication of a conspiracy to weaken the Igbo economically and politically in the federal structure.

3.94 With secession declared, the federal government viewed it as "an act of rebellion" which must be crushed by federal forces in what was initially characterized as a "police action."

3.95 Threats of secession from Nigeria had been used or deployed as a strategic bargaining ploy at various times by ethno-regional leaders, on behalf of their ethnic groups or regions since the amalgamation of the country in 1914.

3.96 In the context of the national crises generated by the 1964/1965 federal and regional elections, the January and July 1966 coups d'etats and the failure of leadership and the bloodbath that ensued, it was perhaps inevitable that the country would go over the brink and the threat of secession carried out.

3.97 The Nigeria/Biafra War eventually broke out on 6 July 1967 and ended on 15 January 1970, covering almost two-and-a-half years.

3.98 As we will illustrate in another volume of this Report, the civil war involved gross violations of human rights on both sides.

3.99 The war itself was internationalized not only because of these violations but also because of a number of other important considerations, such as

(a) control of and access to the oil rich Niger-Delta;

(b) the competition of the great powers, Great Britain, France, Germany, USA and USA for influence in Nigeria; and

(c) the conflict between self-determination, citizenship rights, equality and social justice on the one hand, and the inviolability of the national sovereignty inherited by African countries at independence in a multi-ethnic or multinational state, on the other hand.

3.100 With the end of the civil war in January 1970, the federal government put in place a programme of reconciliation, reconstruction and rehabilitation, under the slogan, *"No Victor, No Vanquished."*

3.101 The success or failure of this programme is still a matter of controversy in Nigeria, as is reflected in the unresolved abandoned property issue, the vexed issue of amnesty or pardon for Biafran soldiers and of their reabsorption into the Nigerian army, the issue of pensions for Biafran soldiers and the problem of the ecological devastation caused by the war in the old Eastern Region.

3.102 There is no clearer illustration of the unsettled issues arising out of the civil war than the case for reparations for damages done to the Igbos during the civil war made before our Commission by Ohaneze, the pan-Igbo cultural organization.

3.103 The ambitious post-war economic reconstruction was given a fillip by the boom in the world price of crude petroleum.
However, as various critics of economic policy during the period between 1970 and 1975 have pointed out, policy in this area was characterized by mismanagement and corruption because of "easy oil money."

3.104 The "oil boom" became an albatross, a national curse, becoming in due course "the oil doom." The economy experienced neglect of agriculture and other sectors of the economy, indiscriminate, even reckless importation of consumer goods, huge import bill, production and service bottlenecks, scarcity and inflation, which was fuelled by the simplistic implementation of the Udoji salary awards in late 1974.

3.105 Little wonder that the penultimate years of the Gowon administration witnessed industrial unrest and strike action by labour unions and professional groups like medical doctors.

3.106 The problem on the economic front was compounded by the failure of the administration to put in place a political programme of transition to democratic civilian rule.

3.107 Shortly after the end of the civil war in 1970, General Gowon promised a return to democratic rule by 1972. This was later

shifted to 1976, with the administration's announcement of a six-year, nine-point programme, which included

(a) "preparation and adoption of a new constitution";

(b) "organization of 'genuinely national' political parties";

(c) conduct of a national population census; and

(d) "organization of elections of popularly elected government officials in the States and at the centre."

3.108 In 1974, the administration announced was amounted to an indefinite shift in the 1976 date, when it said that the 1976 date was "unrealistic," and that no hand-over would take place until *all* the economic, political and social problems of the country had been solved.

3.109 Other signals from regime apologists, such as talk of a one-party state and of diarchy, were interpreted to mean that the administration wanted to perpetuate itself in office.

3.110 The crisis of confidence generated by this prevarication on the administration's political programme as well as the general dissatisfaction with the economic health of the country, and with the corrupt and intransigent behaviour of many of the military governors, whose removal was openly demanded, even within the military, contributed to the overthrow of the Gowon administration in a "palace" coup on 25 July 1975, with Brigadier Murtala Muhammed emerging as the new Head of State and Commander-in-Chief of the Armed Forces of the Federation.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:
29TH JULY 1975 – 1ST OCTOBER 1979

3.111 Within a few months of its assumption of office, the Murtala Muhammed administration came out with a

five-stage, four-year transition programme. State-creation and constitution review panels were created, reform of the local government system was set in motion and a Federal Electoral Commission established.

3.112 The problem of corruption and general indiscipline in the country was tackled in earnest, with the controversial purge of the federal and state public services, the setting up panels to probe and audit public sector institutions, with emphasis on ethics and accountability in public life and on the prudent management of public funds.

3.113 In fact, in his inaugural address to the Constitution Drafting Committee (CDC), General Muhammed advised the CDC to consider including clauses stipulating the establishment of corrective or ombudsman institutions like the Corrupt Practices Tribunal and Public Complaints Bureau terms in the draft constitution.

3.114 The assassination of General Murtala Mohammed on 13 February 1976 threw the nation into shock and turned him into a national hero, since canonized as a yardstick for assessing administrations in the country.

3.115 General Olusegun Obasanjo succeeded General Mohammed as Head of State and Commander-in-Chief of the Armed Forces. The new Obasanjo administration faithfully stuck to and implemented the transition programme of what has come to be known as the Murtala Muhammed/Obasanjo regime.

3.116 A major constitutional and political development undertaken by the Murtala Mohammed/Obasanjo regime was the further creation of more states in February 1976, on the recommendation of the Justice Ayo Irikefe Panel on the Creation of More States and Boundary Adjustments in Nigeria.

3.117 This new exercise was intended to meet the incessant demand for the creation of new states after the 1967 exercise. The criticism of the 1967 exercise was based on the following grounds:

(a) that the Western State and North-Eastern State were unduly large and that both of them should, therefore, be split into more states;

(b) that some of the states contained ethnic groups who would rather not coexist in the same states, as in the case of the people of southern Zaria in the North-Central State, who wanted to be separated from the dominant Hausa/Fulani; and

(c) that some ethnic groups were unnecessarily split between different states, as is the case with the Ijaw who were split between the Mid-Western State and Rivers State;

3.118 The 19 states created in February 1976 were Anambra, Bauchi, Bendel, Benue, Bornu, Cross River, Gongola, Imo, Kaduna, Kano, Kwara, Lagos, Niger, Ogun, Ondo, Oyo, Plateau, Rivers and Sokoto.

3.119 Another important constitutional and political development under the Murtala Mohammed/Obasanjo regime was the promulgation of the 1979 Constitution, based on the draft constitution submitted by the Constitution Drafting Committee, as amended by the Constituent Assembly and by the Supreme Military Council. Four features or provisions of the constitution are particularly noteworthy.

3.120 The first was the adoption of presidential government *to obviate the constitutional ambiguity, about the relative powers and functions of a head of state and head of government, which created the constitutional crisis of 1965, under a parliamentary system of government. The choice of a single [presidential] executive was also justified on the ground that, unlike the division of powers between the head off state and the head of government under the 1960 and 1963 Constitutions, it would make for "more energy and dispatch than the disunity of many wills…[and for] effective leadership." [Federal Republic of Nigeria, Report of the Constitution Drafting Committee, containing the Draft Constitution, Vol 1, p. xxx, Lagos: Federal Ministry of Information, Printing Division, 1976].*

3.121 The adoption of presidential government also introduced a more thorough-going doctrine of separation of powers and a system of checks and balances than was the case under previous constitutions in the country.

3.122 The second constitutional innovation, following upon the Local Government Reforms of 1976/1977 introduced by the administration, was the constitutional provision guaranteeing the local government as a third tier of government, thereby extending the home-rule principle to the

constitutional relationship between state governments and local government councils.

3.123 The third notable provision of the 1979 Constitution was the spread or double plurality requirement for the election of the President and the Governor, to ensure a broad-based mandate, cutting across regional or ethnic boundaries.

3.124 It was expected that this requirement would also prevent the emergence of purely ethnic-based political parties, in addition to the constitutional requirement that political associations seeking recognition and registration as political parties should have a membership and organizational structure indicating substantial presence in most states (i.e. in two-thirds of the nineteen states) of the federation.

3.125 The fourth notable provision was the constitutional elaboration, under the fundamental objectives and directive principles of state policy *clauses, of human rights to include* economic, cultural *and* social rights*, in addition to the customary civil and political rights.*

The ban on partisan politics, in place since January 15 1966, was lifted on 21 September 1978. By the deadline of 18 December 1978 set by the Federal Electoral Commission (FEDECO) for political associations to file papers for recognition and registration as political parties, about 53 such associations had been formed, although only 19 of them actually filed their papers.

3.126 The following 5 of the 19 political associations that applied to FEDECO were certified as having met the constitutional requirements for registration:

(a) Great Nigerian People's Party (GNPP);
(b) National Party of Nigeria (NPN);
(c) Nigerian People's Party (NPP);
(d) People's Redemption Party (PRP); and
(e) Unity Party of Nigeria (UPN).

3.127 For the first time since the controversial elections of 1964/1965, elections were conducted between 7 July 1979 and 11 August 1979, under the new 1979 Constitution, for President and members of the National

Assembly (at the federal level) and for Governor and members of House of Assembly (at the state level).

3.128 The presidential elections were not without controversy, however, especially with respect to the declaration of Alhaji Shehu Shagari, the NPN's presidential flag-bearer as the winner, having satisfied according to FEDECO, the spread or double plurality requirement for the election of the President. The Presidential candidate of the UPN, Chief Obafemi Awolowo appealed against the declaration of Shagari by FEDECO as the winner of the presidential elections.

3.129 The controversy persisted, despite the ruling, first by the Special Presidential Election Tribunal and later confirmed on appeal by the country's Supreme Court that the candidate declared the winner, Alhaji Shehu Shagari, had met the spread requirement and that there was, therefore, no need for a run-off between the two leading candidates.

3.130 The strength of the parties in the federal legislature was as follows: (a) Senate*: NPN (36 seats); UPN (28); NPP (16); GNPP (8); PRP (7).* House of Representatives*: NPN (138 seats); UPN (111); NPP (78); PRP (49); GNPP (43).*

3.131 On October 1, 1979 the Obasanjo military administration handed over power to democratically elected civilian administrations and legislatures at the state and federal levels, bringing to an end almost fourteen years of military rule in the country.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:
1ST OCTOBER 1979 – 31ST DECEMBER 1983

3.132 The return to democratic civilian rule on 1 October 1979 began against the backdrop of the controversy that trailed the Supreme Court decision on the presidential election.

3.133 It coloured attempts at forming national or coalition government at the federal level. It also influenced political realignments among the five political parties within the federal legislature, especially since the NPN, the President's party, would need

the support of other parties to carry through its legislative programme and for Senate confirmation of a number of executive branch appointments, like ministerial and ambassadorial ones.

3.134 It was not at the federal level alone that the party of the chief executive did not have an absolute majority in the legislature. A similar situation prevailed in Gongola State and in Kaduna State.

3.135 In Gongola State, the gubernatorial election was won by the GNPP. But each party's share of the seats in the state legislature was as follows: GNPP (25 seats); UPN (18); NPN (15); NPP (4); and PRP (1).

3.136 In Kaduna State, the PRP won the gubernatorial election but did not control the state legislature, as the following distribution of seats in the state legislature shows: NPN (64 seats); PRP (16); GNPP (10); NPP (6); and UPN (3).

3.137 In the case of the National Assembly, there was a working arrangement or "accord" between the NPN and NPP. The two parties held 52 of the 95 seats in the Senate, and 216 of the 449 seats in the House of Representatives.

3.138 While between them, the two parties had an absolute majority in the Senate, they still fell short of such a majority in the House of Representatives, necessitating further cross alignments with some of the three other parties to secure an absolute majority in the house for the President's legislative programmes. This situation gave room for political horse-trading and wheeling and dealing. The

NPN/NPP working arrangement broke down and was terminated in July 1981.

3.139 In Gongola State, the Governor's party, the GNPP enjoyed the support of the UPN in the state legislature, giving both of them combined a control of 43 of the 63 seats in the state legislature.

3.140 It was a different situation in Kaduna State where, with a comfortable control of 64 out of the 99 seats in the state legislature, the NPN legislators did not cooperate with the PRP Governor of the state, leading to legislative impasse and the eventual impeachment of the Governor.

3.141 By 1981, mid-way into the four-year tenure of the chief executive and the legislature at the federal and state levels, there were strong indications of disquiet and concern about the practice of federalism and presidential government in the country.

3.142 Factionalism had had its debilitating effect on the political parties, especially the GNPP and the PRP, with defections from both parties to the NPN, NPP and UPN. There were also defections from the NPP to the NPN.

3.143 The 9 UPN, GNPP and PRP Governors constituted themselves, through their regular meetings to forge a common opposition to the NPN-controlled federal government, into the Progressive Party Alliance (PPA) and refusing to recognize or work with President Liaison Officers (PLOs) sent to their states to represent federal interests.

3.144 In December 1981, after the termination of the NPN/NPP accord at the federal level, the 3 NPP governors joined the PPA. The expectation that the PPA would present a common front against the NPN at the 1983 federal and state elections was, however, dashed when it was announced in March 1983 that the alliance would field 2 presidential candidates.

3.145 The dismal performance of the economy was another source of disquiet. The N8 billion reserve and the budget surplus of N1461.6 million inherited from the Obasanjo regime in 1979, as well as the huge foreign exchange earnings from the sale of crude petroleum had been frittered away on the importation of food and luxurious goods or had been diverted to the corrupt enrichment of individuals.

3.146 For the 1983 elections, FEDECO recognized and registered one more party, the Nigerian Advance Party (NAP), in addition to the five it recognized and registered in 1979, GNPP, NPP, NPN, PRP and UPN.

3.147 The conduct of the 1983 elections at the state and federal levels was followed by serious allegations of widespread electoral fraud and political violence, and the use of the incumbency power in many cases to prevent a level playing field for a free and fair and competitive electoral process. In particular, the Nigeria Police Force played a partisan pro-NPN role, especially in states like Anambra, Bendel, and Ondo States, during the elections.

3.148 Like the 1964/1965 elections, the 1983 elections precipitated the military take-over of government from a civilian

administration on 31 December 1983, with General Muhammadu Buhari emerging as the new Head of State and Commander-in-Chief of the Armed Forces.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:

31ST DECEMBER 1983 – 27TH AUGUST 1986

> *3.149 The new Buhari administration emphasized law and order and the revival and diversification of the Nigerian economy, through fiscal responsibility, prudent management of resources and emphasis on ethics and accountability in public life.*

3.150 The style of the administration was intolerant and puritanical, reflecting its preoccupation with law and order. To this end, the administration used the National Security Organization (NSO) as an instrument of repression.

3.151 Less concerned with a political programme of transition to democratic civilian rule, the administration enacted a series of draconian laws like Decree No.4 of 1984, some of which were given retroactive effect. Many of those caught in the web of these laws were detained, tried and imprisoned, without recourse to due process or without due regard to their inconsistencies with existing domestic laws or the country's obligation to comply with international law.

3.152 The Buhari administration was overthrown in a military coup, led by Major-General Ibrahim Babangida, on 27 August 1985.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:

27TH AUGUST, 1985 – 26TH AUGUST 1993

3.153 The direction or sketch of the Babangida administration's economic and political blueprint was set out in General Babangida's

Budget Speech of 31st December 1985. It included the framework of an economic recovery programme and of the political disengagement of the military from politics.

3.153 The administration inaugurated the 17-member *Political Bureau* on 13 January 1986 *"to gather, collate and synthesize the contributions of Nigerians to the search for a new political programmme…and to evaluate the various contributions and make proposals to government."*

3.154 The Report and Recommendations of *The Political Bureau*, submitted in March 1987 and the Government White Paper on it, provided the basis for the Transition Programme of the Administration, which was in July 1987 given legal backing through the promulgation of The Transition to Civil Rule (Political Programme) Decree 1987, otherwise known as Decree 19 of 1987.

3.155 *Decree No 26 of 1989, the Transition to Civil Rule (Political Programme) (Amendment) Decree 1989,* promulgated in December 1989, amended *Decree 19 of 1987.*

3.156 The Transition Programme was made up of the following components.

3.157 The first component was the establishment or reorganization and revitalization of a number of economic, legal, political and social institutions and agencies with vital role to play in the planned return to democratic civilian rule. For example, the following agencies were created or constituted between July 1987 and May 1988:

(a) the Directorate of Social Mobilization in July 1987;

(b) the National Electoral Commission, in August 1987;

(c) the Constitution Review Committee, in September 1987;

(d) the Constituent Assembly in May 1988; and

(e) the National Population Commission.

3.158 As part of the revitalization programme, civil service reforms were undertaken in 1987/1988, and new states, two in 1987 and an additional 9 in 1991, were created.

3.159 The second component was the introduction of remedial or reconstructive policies and measures to address a number of persistent institutional or structural and process problems in the country's political economy and political culture. Highlights of this component included

(a) the adoption and implementation of controversial structural adjustment policies;

(b) the controversial banning and disqualification of certain categories of Nigerians from holding elective public offices during the transition, under *the Participation in Politics and Elections (Prohibition) Decree 1987 and the Participation in Politics and Elections (Prohibition) (Amendment) Decree of 1989;*

(c) the formation of allegedly grassroots- based two political parties, "one a little-to-the left," and the other, "a little-to-the right"; and

(d) political education.

3.160 The third component was the supervisory role of the Armed Forces Ruling Council in the transition programme, and the gradual disengagement of the Armed Forces from governance, in what can be described as *limited diarchy* during the transition period.

3.161 For all the elaborateness of the Transition Programme, there was much cynicism and skepticism about it, based on the assumption or suspicion that it was all a ruse. It was alleged that the various shifts in and amendments to the original Transition Programme were indicative of "a hidden agenda" by President Babangida to perpetuate himself in office, despite the promulgation of the 1989 Constitution, the successful conduct of elections not only to the local government councils in 1987 and 1989 but also of governors and legislators at the state level in 1991 and the National Assembly at the federal level in 1992.

3.161 The annulment of the hugely successful Presidential Elections of 12 June 1993 was a national embarrassment and catastrophe, which many Nigerians saw as a vindication of their long-held suspicion of President Babangida's "hidden agenda."

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS: 26TH AUGUST 1993 – 17TH NOVEMBER 1993

3.162 President Babangida "stepped aside [from office] for national peace," in the aftermath of the political crisis engendered by the annulment of the June 12 1993 presidential elections, handing over power on 26 August 1993 to Chief Ernest E. A. Shonekan, as civilian Head of the Interim National Government (ING).

3.163 The ING was unable to contain the festering and lingering political crisis. It prevaricated on a new political programme of transition, while also refusing to return to Chief M.K.O. Abiola, apparent winner of the 12 June 1993 presidential elections, his mandate.

3.164 A high Court judgment declared the ING illegal, creating a constitutional and political stalemate, which was complicated by the overthrow of the ING in a military coup led by the Minister of Defence, General Sani Abacha in November 1993.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:
17TH NOVEMBER, 1993 – 8TH JUNE, 1998

3.165 General Abacha assumed office at a time when the country's pro-democracy groups had mobilized popular public opinion for a restoration of the electoral mandate of 12 June 1993, which had been annulled by President Babangida. It was assumed, wrongly and naively as it turned out in retrospect that his assumption of power was to prepare the way for such a restoration.

3.166 As soon as he assumed power, General Abacha abolished or proscribed all democratic structures and institutions, like the two political parties, elected local government councils, federal and state legislatures and governors established or elected under the Babangida Transition Programme.

3.167 The electoral body, the Independent National Electoral Commission (INEC) was reconstituted, a constitution review panel was constituted, elections, boycotted in some parts of the country, were conducted to choose delegates or members to a Constitutional Conference to discuss a new constitution for the country, new political parties were recognized and registered by INEC, and new states were created.

3.168 Amidst all of these activities, pressures for decompression or political liberalization in the country went on unabated. The Constitutional Conference passed a resolution for the return to democratic civilian rule in 1996. Pro-democracy groups, principally the National Democratic Coalition, NADECO, stepped up campaign for the restoration of the June 12 1993 mandate, while there was

heightened radicalization of ethnic minorities, particularly in the Niger Delta, pressing for self-determination and resource control.

3.169 The reaction of the Abacha administration was to clamp down on the pro-democracy forces and other perceived enemies of the administration. Political assassinations, like those of Alfred Rewane and Alhaja Kudirat Abiola, among others, were allegedly state-sponsored, as was the death in prison of General Musa Yar'Adua.

3.170 Coup trials were conducted to try those, like General Obasanjo, General Yar'Adua, General Diya, among others, who were accused of and sentenced for conspiracy to overthrow the administration. The high-point of this state-sponsored violence was what many saw as the judicial murder of Ken Saro-Wiwa, turning the country into a pariah nation and precipitating the expulsion of Nigeria from the Commonwealth of Nations.

3.171 The more pressure for political liberalization, the more determined was the administration to push ahead with its transition programme, which was designed to ensure the self-succession of General Abacha as a civilianized head of state. The registered political parties apparently endorsed this self-succession plan, in that they appeared to have agreed, perhaps under pressure from the administration, to nominate General Abacha as their common or joint candidate for the presidential elections.

3.172 As part of the self-succession plan, prospective contenders for the presidency were harassed and physically attacked by regime apologists and functionaries, while state-contrived political rallies were

organized to mobilize public support for a planned Abacha candidacy for the presidency.

3.173 The Abacha administration was abruptly terminated by the mysterious death of General Abacha on 8 June 1998 and the emergence of General Abdulsalami Abubakar as the new Head of State and Commander-in-Chief of the Armed Forces of the Federation.

CONSTITUTIONAL AND POLITICAL DEVELOPMENTS:

8TH JUNE, 1998 – 29TH MAY, 1999

3.174 The administration of General Abdulsalami Abubakar released most political detainees and political prisoners immediately upon its assumption of office, the notable exception being Chief M.K.O. Abiola, the apparent winner of the annulled presidential elections of 12 June 1993, who died under mysterious circumstances in July 1998, during a meeting with a United States delegation sent to broker conditions for his release from detention. Among those released was General Olusegun Obasanjo

3.175 The administration set up a panel to review the draft of the new constitution produced under the late General Sani Abacha. In preparation for the transition to democratic civilian rule, the administration reconstituted the Independent National Electoral Commission, new political parties were recognized and registered and elections were conducted to local government councils and to elective public offices at the state (gubernatorial and legislative) and federal (presidential and legislative) levels early in 1999.

3.176 As was the case during the 1979 presidential elections, the outcome of the 1999 presidential elections was determined by the

Supreme Court, which upheld the declaration of Chief Obasanjo as the winner of the elections by the INEC.

3.178 General Abubakar handed over power to Chief Obasanjo on 29 May 1999, bringing to an end over 15 years of uninterrupted military rule in the country from 31December 1983 to 29 May 1999.

RESIDUAL POLITICAL ISSUES:
HUMAN RIGHTS & MINORITY ETHNIC GROUPS

3.179 Ethnic diversity is a fundamental feature of the Nigerian state. The ethnic profile of the country has been estimated to consist of between 56 and 400 ethnic groups, depending on the definition of an ethnic group and the classificatory schema (religion, language, culture, kinship) used in identifying an ethnic group.

3.180 This ethnic diversity has provided one of the major structuring principles of Nigerian federalism, as it has evolved over the years. What is meant by this is that the development of Nigerian federalism is best understood in terms of the assertion by ethnic groups of their collective (group) rights for home rule or self-government within the Nigerian federation, through the creation of their own autonomous states.

3.181 It was, indeed, in response to the insistent demand of minority ethnic groups for the creation of their own regions, before the country was granted independence, that the British government in 1957 set up *the Willink Commission to enquire into the fears of Minorities and the means of allaying them [Cmd.505/1957].*

3.182 This demand was grounded on the fears of the minority ethnic groups that, unless their own autonomous regions were created before the departure of the British, they would continue to suffer

under the weight of the domination of the three major ethnic groups, in the sense that that their cultural values and heritage would be neglected, their areas would remain under-developed, and they would be denied access to the state, because the regional bureaucracy and the patronage networks flowing from it, were controlled by the majority ethnic groups.

3.183 These fears of the minority ethnic groups in each of the three regions in pre-independence Nigeria and their demand for self-government, through state creation, must be set against the ethno-cultural composition of each of the three regions. There was a dominant ethnic group, constituting more than 50% of the population in each of the three regions.

3.184 In the North, the Hausa/Fulani numbered about 55% of the population of the region; the Igbo about 65% of the population of the Eastern Region and the Yoruba about 76% of the population of the Western Region.

3.185 However, each of the three regions also contained other (i.e. minority) ethnic groups. For example, in the Northern Region, there were the Idoma, Igbirra, Kanuri, Tiv and Yoruba; in the Eastern Region, the Annang, Efik, Ibibio, Ijaw and Kalabari; and in the Western Region, the Edo, Igbo, Ishan, Ijaw, Itsekiri and Urhobo.

3.186 The demand by these minority ethnic groups for the creation of new states before independence included the following:

(a) in the Northern Region, the minority ethnic groups in the Middle Belt had, as far back as 1945, demanded the creation of a 'Middle Belt State,' while the Yorubas of Ilorin and Kabba

Division of the region wanted to be transferred to the Western Region;

(b) in the Eastern Region, the minority ethnic groups demanded the creation of a Calabar-Ogoja-Rivers Region; and

(c) in the Western Region, the minority ethnic groups asked for the creation of a Mid-West Region.

3.187 *The Willink Commission* [Cmd.505/1957] rejected the demand of these minority ethnic groups for the creation of new regions out of each of the then existing three regions [East, North and West], arguing that,

"[in each Region]—on its own merits—a separate state would not provide the remedy for the fears expressed; we were clear all the same that, even when allowance had been made for some exaggeration, there remained a body of genuine fears and that the future was regarded with real apprehension....In considering the problem within each region, we were impressed by the fact that it is seldom possible to draw a clean boundary which does not create a fresh minority....Some years ago, before the relations between the Federation and the Regions had crystallized, it was possible to conceive a large number of states with smaller powers, but a new state today would have to compete with the existing regions and the cost in overheads, not only financial but in resources, particularly of trained minds, would be high. This consideration, when combined with the difficulty of finding a clean boundary, was in each particular case to our minds decisive."

3.188 *The Willink Commission Report* did not put an end to the demand of the minority ethnic groups for their own regions. In fact, it did not stem the rising crescendo of pressures for the creation of new regions in the ethnic minority heartlands of the existing ones.

3.189 In some of the existing regions, the demand of the ethnic minority groups for state creation was politicized and intensified, fuelled by the majority ethnic groups for partisan party electoral advantage in other than their own regional heartlands.

3.190 For example, each of the major political parties (AG, NCNC and NPC), as part of their electoral strategy to make inroads into the regional strongholds of the other parties and to win the 1959 General Elections, promised, after the release of the *Willink Report,* to create new states in the regions where they were not in control of the regional governments.

3.191 Thus the AG promised to create states in the minority ethnic areas of the Northern Region (in the Middle Belt) and of the Eastern Region (the Calabar-Ogoja-Rivers area), while the NCNC supported the creation of more states out of the Northern Region and the Western Region.

3.192 On its part, the NPC realizing its vulnerability, owing to the potentially substantial erosion of its electoral strength in the minority ethnic areas of the North, particularly in the Middle Belt, launched its own counter-offensive to seek electoral inroads in the Eastern and Western Regions, by seeking alliance with the leadership of minority ethnic groups in both regions and by taking advantage of leadership fissures and intra-ethnic cleavages among the Yorubas in the Western Region, which enabled it, in cohort with the NCNC, its partner in the federal coalition government, to deploy federal patronage and federal constitutional powers to deepen the fissures and cleavages to its advantage, culminating in the declaration by the federal parliament of

a state of emergency in the region in mid-1962 and the creation of a Mid-West Region out of the region in 1963.

3.193 In short, the continued agitation for state creation in the first three years or so of independence, together with the conduct of controversial regional and federal elections between 1961 and 1965 escalated into a vicious cycle of political violence, political unrest and riots, carnage, political repression and victimization, especially in the Middle Belt in the Northern Region and in the Western Region, where the creation of the Mid-West Region in 1963 was seen as part of an orchestrated attempt by the NPC/NCNC federal coalition government to undermine the AG in its political heartland and as a reprisal for its strong support of the creation of new states in the minority ethnic areas of the Eastern and Northern Regions.

3.194 More regions/states have been created out of existing ones, since *Willink.* The country has moved from a federation of 3 regions to the present federation of 36 states and a federal capital territory. Indeed, state-creation has fragmented the country's majority ethnic groups (the Hausa/Fulani, Igbo and Yoruba) as well as the minority ethnic groups into competing sub-ethnic groups, as the *Willink Report* had predicted.

3.195 With 36 states, the Nigerian Federation has the third largest number of constituent units in modern federations, coming after the United States, which has 50 units, and the Russian Federation, with 80 units.

3.196 Other than the Mid-West Region, created in 1963, out of the Western Region, the other state creation exercises were carried out

under military rule in 1967, 1976, 1987, 1991, and 1996, under circumstances in which military, with the relevant constitutional provisions suspended, did not have to contend with tedious and complex constitutional requirements and procedures, which were designed more to discourage than to encourage state creation after independence.

3.197 While not recommending the creation of more states to assuage the fears of domination by the majority ethnic groups expressed by the minority ethnic groups, *Willink* had also asserted that those fears were well-founded—"...there remained a body of genuine fears and ...the future was regarded with apprehension [by the minority ethnic groups]."

3.198 To allay these fears, *Willink* recommended the establishment of *Minority Areas* and *Special Areas* as *development areas or growth points* for some of the minority ethnic groups, particularly those in the Niger/Delta.

3.199 *Willink* also recommended the entrenchment of a *Bill of Rights* in the 1960 Independence Constitution to protect the rights of ethnic minorities, although such rights were also to apply to all Nigerians.

3.200 The 1960 Independence Constitution contained provisions for what were essentially affirmative action-type policies like proportionality, quota or reverse discrimination, in favour of historically-disadvantaged ethnic groups and in the public interest, to redress inequalities and injustices arising out of deliberate state policies in the past.

3.201 For example, Section 27 of the 1960 Independence Constitution and later Section 28 of the 1963 Republican Constitution made provision for the fair representation of ethnic minorities in the public services of the then existing 3 regions. Moreover, during the First Republic (1960-1966), there was a convention regarding proportionality in cabinet appointments at the federal and regional levels, with ministers chosen to reflect the majority/minority ethnic mosaic in each region.

3.202 During the First Republic, practical policy effect was given to the recommendation of *Willink* for the establishment of *development areas* or *growth points* in minority ethnic group areas.

3.203 Thus compensatory measures like the establishment of the *Niger-Delta Development Board and the Niger-Delta [and other] Special Areas Scholarship Award* were introduced and implemented to promote the socioeconomic and cultural development of minority ethnic groups in the Niger-Delta and other minority areas of the country.

3.204 In a sense, the *Niger-Delta Development Board* was the precursor of later institutional efforts, like *OMPADEC and NNDC* to address the grievances of minority ethnic groups in the area.

3.205 However, *the 1979 Constitution, the 1989 Constitution and the 1999 Constitution* contained what have been referred to as *"the federal character clauses."*

3.206 These clauses, intended to engineer ethnic accommodation of a c*onsociational* nature, were extended to apply to ethnic groups *as such* and not specifically to minority ethnic groups.

3.207 Thus *Section 14, sub-section 3 of the 1979 Constitution* stipulates, typically of relevant sections of the *1989 Constitution and 1999 Constitution* that

"the composition of the Government of the Federation or any of agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or a few ethnic or other sectional groups in that government or any of its agencies."

3.208 Similar clauses, with appropriate modifications, were included as provisions in the *1979 Constitution, 1989 Constitution and 1999 Constitution,* dealing with the executive and legislative powers and functions of state governments.

3.209 Section 277, sub-section 1 of *the 1979 Constitution* defines *"federal character"* as *"the distinctive desire of the peoples of Nigeria to promote national unity foster national unity and give every Nigerian citizen a sense of belonging to the nation as expressed in section 14(3) and (4) of this Constitution."*

3.210 Whereas the *"federal character"* clauses assume equal treatment for all ethnic groups, as opposed to special group preference for some "*disadvantaged"* or "*special" ethnic groups*, this has not been the case in practice.

3.211 This is because the proportionality principle, for example, has been converted through administrative action into special group preference, especially in admission to federal secondary schools, for some *"disadvantaged" ethnic groups.*

3.212 In effect, the implementation of the federal character clauses of the 1979 Constitution has fuelled and deepened the ethnic animosities they were designed to prevent, generating national controversy about how best they can be utilized as strategic policy measures to achieve the broader objective of "diversity in unity." Those who support the clauses argue that they will promote even development and facilitate national integration, by compensating for and preventing the recurrence of the domination of federal and state governments by a few ethnic groups.

3.213 But those who oppose the clauses argue that they are unfair, will reward mediocrity and are inconsistent with the entrenched fundamental human rights provisions of Nigerian constitutions. They also argue that a person's worth and the respect due to him/her as a person should not be defined in terms of his/her ethnic origins.

3.214 The misapplication of the federal character clauses and the fracture it has created in the design of Nigerian unity constituted a source of concern for the *Committee on Fundamental Rights and Directive Principles of State Policy and Press Freedom* of the 1994/95 Constitutional Conference.

3.215 Arising out of its examination of the application of the federal character clauses, the Committee advised that, *"Government should ensure that the Federal Character Principle is evenly applied..."*

3.216 In an attempt to prevent the abuse and flawed implementation of the federal character clauses, the 1999 Constitution established in Section 153 *the Federal Character Commission,* as a federal executive agency, whose membership, functions and powers are spelt out in the *Third Schedule, Part 1* of the Constitution. Section 8(1) of the Third Schedule empowers the Commission to:

"(a) work out an equitable formula subject to the approval of the National Assembly for the distribution of posts in the public service of the Federation and of the States, the armed forces of the Federation, the Nigeria Police Force and other security agencies, government-owned companies and parastatals of the States;

(b) promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government;

(c) take such legal measures, including prosecution of the head or staff of any Ministry or government body or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission."

ETHNICITY AND RECURRENT ISSUES IN NIGERIAN POLITICS

3.217 We now turn to two vexing issues, which, arising out of the assertion of minority ethnic rights and the general structural design of Nigerian federalism to reflect ethnic diversity, have been recurrent features of the country's constitutional and political development.

3.218 These recurrent issues are (a) *political asymmetry and (b) the conflict between citizenship and indigeneship.*

3.219 These issues, whose seeds were sown, as we have tried to show, during colonial rule in the form in which amalgamation and indirect rule assumed, have been central to the form and outcomes of political conflict in the country.

3.220 Recent demand for the restructuring of the Nigerian federation and for the convocation of a (national) constitutional conference is a manifestation of the salience of these unsettled issues.

POLITICAL ASYMMETRY

3.221 By *political asymmetry,* we mean *the unequal power relations (a) within and among the states; and (b) between the states and the federal government.*

3.222 With respect to power relations within the states, the political inequality is due to the character of majority/minority ethnic group relations, as well as intra-majority ethnic group relations.
The problem of political inequality or asymmetry, in this case, is due to the persistent demand of minority or marginalized ethnic groups within existing states for their own states within their own sub-national territories.

3.223 The demand itself, as we have had cause to explain earlier on in this chapter, is necessitated by the fear, entertained by minority ethnic groups, of domination by majority ethnic groups in the states.

3.224 Yet it is paradoxical that state creation exercises to satisfy the demand for home rule by minority ethnic groups has deepened political inequalities or asymmetries *within* some of the states, and between the states, since, in the latter case, some states are more endowed than others, which are more or less glorified local governments.

3.225 Nowhere is this more the case than in the oil-rich Niger Delta where, as we have pointed out earlier on, the demand for state creation, arising out of perceived marginalization and discriminatory practices against the indigenous peoples, goes back to the mid-1950s. 45 years after *Willink*, and in spite of the creation of six states in the Niger Delta area [*Akwa-Ibom, Bayelsa, Cross River, Delta, Edo and Rivers*], development has not filtered down.

3.226 Ecological devastation, poverty and neglect by successive federal and state governments and the oil companies have combined to create a typical situation of internal colonialism, as the case of the Ogonis, which we have examined in another Volume of this Report, typically illustrates.

3.227 *This is the background to the recurrent incendiary political violence and anomic political behaviour in the Niger-Delta area, expressed in:*

(a) separatist agitation and popular democratic struggles against state violence and the violations of the human rights of the peoples of the Niger-Delta by functionaries and agents of federal and state governments and the oil companies;

(b) ethno-communal conflicts, fuelled by intra-Niger-Delta (inter-ethnic and intra-ethnic) historically-derived rivalries, animosities and

antagonisms, like the inter-ethnic ones between Ijaw and Itsekiri, Ogoni and Okrika, Ikwere and Ijaw, Itsekiri and Urhobo, and Andoni and Ogoni, and the intra-ethnic ones, like those between Nembe and Kalabari, Bassambiri and Ogbolomabiri, and Okpoma and Brass; and

(c) *the demand for the fundamental restructuring of the federation, including the adoption of new federal fiscal arrangements to give more autonomy to the states and to ensure that each constituent ethnic group receives a far greater share of the federal revenue derived from its sub-national territory.*

3.228 With respect to relations between the states and the federal government, political asymmetry has two dimensions.

The first dimension is a residual manifestation of the North/South divide created by amalgamation and the non-uniform application of indirect rule, as it has impacted on electoral politics at the federal level, based on the electoral advantage of the North, conferred on it [the North], presumably on the basis of contested population figures, by the constitutional arrangement under the *Macpherson Constitution of 1951*, which gave the North 50% of the seats in the central legislature, as opposed to the equal representation of each of the three regions, which was demanded by the Eastern and Western Region.

3.229 Political asymmetry in this case persists because of the southern fear of domination by the north in the context of party electoral competition for control of political power and, therefore, of the enormous fiscal resources and patronage deriving from it at the federal level.

3.230 Related to this is the persistent controversy over accurate population censuses in the country, on the basis of which constituency delimitation and allocation of federal legislative seats are allocated. In view of the first-past-the-post electoral system, inherited from the British, population counts, especially on the assumption of ethnic or regional bloc voting.

3.231 Current debate within the country on the necessity as well as the desirability of *"power shift"* at the federal level from the North to the South underscores the political salience of this aspect of political asymmetry in the federal structure of the country.

3.232 This is even more so, given the fact that, historically, of the eleven heads of government at the federal level between 1954 and the present time (March 2002), 8 were from the North. Of these eleven, two out of the three democratically elected heads of the federal government were from the North.

3.233 The controversy over the annulment of the June 12, 1993 presidential election, which was won by a southern, Chief M.K.O. Abiola must be seen in the perspective of this political asymmetry, as yet an indication of the desire of the leadership core of the Northern Hausa/Fulani ethnic group to retain control of the federal government at all costs.

3.234 It is remarkable that this fixation with the North/South political configuration in the country has survived several state creation exercises intended to diffuse power among the various ethnic groups. It is interesting also that it has persisted, despite the

recognition over time that neither the North, in particular, nor the south is a homogeneous entity.

3.235 It has also persisted, in spite of the attempts to engineer *national or coalition governments* at the federal level in 1959, 1964, 1979,1983, and 1999; and in spite of the attempt to federalize or de-ethnicize the party system and competitive electoral politics.

3.236 The second dimension of the political asymmetry that exists between the states and the federal government is the shift in the balance of power from the states to the federal government.

3.237 The trend, over several years of military rule, towards *organic (centralized) federalism* in the country has generated deep concern; so much so that *statism* is now waxing strong, as in demand for a return to the so-called *true federalism* and for *resource control (fiscal federalism*) by the constituent states.

CONFRONTING THE CITIZENSHIP/INDIGENESHIP CONFLICT?

3.238 The second enduring issue, which we wish to refer to, is the conflict between *citizenship rights and indigeneship rights*. The one is about individual rights, while the other is about collective group rights, the assertion of which may infringe on individual rights of the citizen. In other words, to what extent can the country accommodate ethnic diversity without undermining national loyalty and the sense of solidarity and unity among its citizens?

3.239 What price "diversity in unity"? What are the implications of the divided citizenship created by the coexistence within the country

of two levels of government, each of which has direct and apparently co-equal legislative and juristic impact on the country's citizens?

3.240 The conflict arises at the state level where, on the basis of the assertion and claim of collective ethnic group rights, public policy accords preferential treatment to indigenes of each state over non-indigenes resident in the state in appointments and promotions in the state public service, in admission to state educational institutions, in public contract and procurement awards and in real estate.

3.231 *Section 147(3) of the 1999 Constitution* recognizes indigeneship rights when it stipulates that, in appointing his/her cabinet *"the president shall appoint at least one Minister from each state, who shall be an indigene of such a state."* Similar provisions apply to a number of executive branch appointments like permanent secretaries and Nigerian ambassadors to foreign countries.

3.232 While not defining or establishing criteria for asserting an indigeneship right, the nearest the 1999 Constitution comes to doing so is at Section 318(1), where it is stipulated that, *"belong to or its grammatical expression when used with reference to a person in a state refers to a person either of whose parents or any of whose grandparents was a member of a community indigenous to that State."*

3.233 The assertion of indigeneship rights and the preferential treatment given to indigenes of a state over other Nigerians resident in the state is at variance with, for example, the following political objectives which the 1999 Constitution, at Sections 15(2)(3) and (4) directs the State to pursue:

"[Section] 15(2)…national integration shall be actively encouraged whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited. (3) For the purpose of promoting national integration, it shall be the duty of the State to

(a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation;

(b) secure full residence rights for every citizen in all parts of the federation.

(4) The State shall foster a feeling of belonging and of involvement among the various peoples of the federation, to the end that loyalty to the nation shall override sectional loyalties."

WHICH WAY FORWARD?

3.234 Since the mid-1990's, there have been persistent calls for a new political order in the country, with emphasis on re-structuring the Nigerian federation on a scale that would tilt the balance of power in favour of the constituent units and under an arrangement which some describe as true federalism but which is really a euphemism for either peripheralized (i.e. highly) decentralized federalism or confederation.

3.235 Our experience under military rule, particularly between 1984 and 1999 was a traumatic one for our practice of federalism; so much so that many ethnic groups were forced to express strong reservations about the price of federalism, about whether they were not paying too high a cost to remain in the federation, in a way that indicated that secession could not be ruled out.

3.236 This is why, in a multiethnic or multinational country like ours, we need to sit down to debate and decide the future of federalism in the country, after several years of centralizing and totalizing military rule. This is necessary if we are to avoid what happened to the former Soviet Union, Yugoslavia and Czechoslovakia.

3.237 The Soviet Union survived for 70 years until the wind of disintegration blew the different ethnic nationalities apart, only to regroup in their various ethnic enclaves. Yugoslavia disintegrated into separate units after staying together for 45 years. In Africa, separatist forces have led to the disintegration of Somalia and Ethiopia, while in the Democratic Republic of the Congo and the Sudan, the state is fragile and national unity a mirage.

3.238 In Nigeria, there are disturbingly ominous signals already pointing towards disintegration, unless we begin to emphasize what bind and strengthen us as one, indivisible country, in a show of visionary statesmanship by our political leaders.

3.239 We need to begin to a process of moral reorientation and national re-birth, a process of national healing and reconciliation, anchored firmly on a common ground, where we accommodate and respect our ethno-cultural and regional diversities, without undermining our unity and solidarity as Nigerians.

3.240 The way forward for the country, therefore, is for the state to provide the facilitative and conducive environment for the faithful pursuit of the fundamental objectives and directive principles of state policy, of the citizenship rights and of the fundamental rights, which

are respectively entrenched in Chapters 11, 111 and 1V of the 1999 Constitution of the Federal Republic of Nigeria.

3.241 This requires coordinated and determinedly committed policy programmatic action along the following interrelated lines.

3.242 First, we must take advantage of the recent transition from military to democratic civil rule to strengthen democracy itself. In other words, we must anchor democracy and its institutions on a solid foundation of economic reform, poverty eradication, accountability, a responsible party system, an "efficient," not "dignified" or complacently rubber-stamping legislature, a strong judiciary and an effective oversight of the three branches of government by quasi-judicial bodies and a robust and active civil society.

3.243 Secondly, we must restructure our federal system, so as to strengthen and make it a "more perfect union." We can achieve this objective by building durable bridges, through constructively visionary leadership, across the yawning gap between citizenship rights and indigeneship rights in our practice of federalism.

3.244 Thirdly, we must address the problem of political asymmetry in our practice of federalism. More powers and functions, with the corresponding revenue base, must be given to state governments and local government councils, without weakening or immobilizing the national government. This can be achieved by revising the revenue allocation formula in such a way as to match the fiscal resources at the disposal of the state governments with their enhanced powers and functions.