rsonnel Files of the Sec.-gen. : U Thant

Amachree, G.K.J.

10/01/1964 - 17/02/1966

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Press Services
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United Nations, N.Y.

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Press Release SG/1689
17 February 1966

TEXT OF LETTERS EXCHANGED BETWEEN SECRETARY-GENERAL U THANT AND GODFREY K.J. AMACHREE, UNDER-SECRETARY FOR TRUSTEESHIP AND NON-SELF-GOVERNING TERRITORIES

The following is the text of a letter, dated 30 December 1965, from Godfrey K.J. Amachree, Under-Secretary for Trusteeship and Non-Self-Governing Territories, to the Secretary-General, U Thant:

"As I indicated to you yesterday, I have, after very careful reflection, decided to resign my appointment and return to Nigeria to practise law. Much as I would have liked to serve out the remaining period of my contract, I regret that circumstances beyond my control prevent me from doing so.

"I am required, under the terms of my contract, to give three months notice of my intention to resign. This requirement will be met if my resignation becomes effective on 31 March 1966. However, since I shall be entitled to at least a month's leave, I hope that you will find it convenient to allow me to proceed on leave on 1 March 1966. This, in effect, means that I shall relinquish my post on Monday, 28 February 1966.

"I would like to take this opportunity to thank you for affording me the singular and rewarding opportunity to serve the United Nations. I assure you that I shall always carry with me the most pleasant memories of our association. From the bottom of my heart I wish you every success and sincerely pray that you will find it possible to continue your distinguished service to the Organization.

"With all good wishes."

(more)

The text of U Thant's reply, dated 31 December 1965, follows:

"Thank you for your letter of 30 December 1965 in which you inform me of your decision to resign your appointment and return to Nigeria to practise law. Since you had already spoken to me in these terms, the formal submission of your resignation comes as no surprise; but my regret that circumstances beyond your control have led you to this decision is none the less profound, and I accept your resignation only with the greatest reluctance.

"I deeply appreciate your kind words about your association with me and with the United Nations as a whole. Let me say, for my part, that you have served the Organization with devotion and distinction and that my colleagues and I will miss you greatly. On their behalf and in my own name I wish you and your wife and family every success and happiness in the future.

"May I also express my gratitude for your courtesy in giving the full period of notice. In accordance with Staff Rule 109.8, however, in order to avoid administrative difficulties and to assure you full freedom of action after your actual departure from the United Nations, I propose to accept your resignation with effect from 28 February 1966. You will thus have the benefit of commutation of the annual leave which you would otherwise have taken."

* *** *

CVN/nt (incoming)

10 February 1966

Mr. Godfrey K. J. Ammchree, Under-Secretary
Department of Trusteeship and Non-Self-Governing
Territories

The Secretary-General

CONFIDENTIAL

I have seen your memorandum dated 8 February and the enclosed translation of an article by a "Special Correspondent" which appeared in the 6 February issue of JEUNE AFRIQUE.

You have suggested in this context that the text of your letter of resignation and of my reply may be released for public information. If you so wish I shall, of course, do so. However, you may perhaps feel that this question has been dealt with adequately by the query which was posed at the daily press briefing yesterday and the reply given by my Press Officer, Mr. Ramses Nassif.

CVN/pbg

Le 7 février 1966

Monsieur l'Ambassadeur,

J'ai l'honneur d'accuser réception de votre lettre No 040/MPN du 2 février m'informant que votre gouvernement vous a demandé de déposer votre candidature au poste de Sous-Secrétaire à la tutelle actuellement occupé par M. Amachree, dont la démission prendra effet à la fin du mois.

Il va sans dire que je suis très heureux que vous vous intéressiez à un poste au Secrétariat et que votre gouvernement partage cet intérêt. Pour le moment, je n'ai pas arrêté ma décision sur la façon de pourvoir ce poste vacant. L'un des éléments dont je dois tenir compte est que, étant donné la date d'expiration du mandat des sous-secrétaires, la nomination à laquelle je procéderai sera nécessairement d'assez courte durée.

Dès que j'aurai pris une décision en la matière, je ne manquerai pas de vous la faire connaître.

Veuillez agréer, Monsieur l'Ambassadeur, les assurances de ma très haute considération.

U Thant

Son Excellence
Monsieur Issoufou Djermakoye
Ambassadeur extraordinaire et plénipotentiaire
Représentant permanent du Niger auprès de
l'Organisation des Nations Unies
205 East 42nd Street
New York, New York 10017

cc: Sir A. MacFarquhar
Mr. Lemieux

DRAFT CVN/mpd

5 February 1966

Sir,

I have the honour to acknowledge receipt of your letter No. O40/MFN dated 2 February informing me that your Government has asked you to announce your candidacy for the post of Under-Secretary to the United Nations in place of Mr. Amachree, who is resigning at the end of this month.

I am naturally deeply gratified by your interest and that of your Government in your working in the Secretariat. At the present time I have not reached a firm conclusion as to how the vacant post of Under-Secretary in the Department of Trusteeship should be filled. One element which I have to keep in mind is the fact that, in line with the term of office of other Under-Secretaries, this will have do be an extremely short term appointment.

As soon as I have reached a decision in the matter I shall not fail to let you know.

Meanwhile, I request you to accept the assurances of my highest consideration.

U Thant

MISSION PERMANENTE DU NIGER
AUPRES DES NATIONS UNIES
205 EAST 42ND STREET, SUITE 1222
NEW YORK, N. Y. 10017
MU 6-7720-1

N°040/MPN

New York, le 2 Février 1966

Monsieur le Secrétaire Général,

J'ai l'honneur de vous faire connaître que mon Gouvernement m'a demandé de déposer auprès de vous ma candidature pour le poste de Sous-Secrétaire aux Nations Unies rendu vacant par la démission récente de Monsieur Godfrey AMACHREE.

Je n'ignore pas les responsabilités immenses que comporte une titularisation à ce haut-poste qui nécessite beaucoup de qualités et de connaissances. Qu'il me soit cependant permis de vous assurer, Monsieur le Secrétaire Général, que si, votre confiance m'appelait à vous assister en assumant ces fonctions, dans l'oeuvre de construction de la paix à laquelle vous apportez chaque jour le meilleur de vous-même, je mettrai au service d'une volonté constante à vous aider, tous les moyens dont je dispose ou pourrai disposer pour que l'humaine condition se sente, chaque jour davantage, sur la voie de la paix dans laquelle vous vous êtes engagé avec une si persévérante et ferme conviction.

Espérant que mon apport personnel, celui de mon pays, de tous les pays amis qui souhaitent me voir travailler à vos côtés, pourraient vous être de quelque utilité, je vous

.../

prie, Monsieur le Secrétaire Général, d'accepter les assurances de ma très haute considération et de mes sentiments bien sincèrement dévoués.

Issoufou DJERMAKOYE

Ambassadeur du Niger.

MISSION PERMANENTE DU NIGER A L'ONU
FRATERNITÉ - TRAVAIL - PROGRÈS
NEW YORK

Mr. Linnell

RTM/pw

31 December 1965

My dear Mr. Amachree,

Thank you for your letter of 30 December 1965 in which you inform me of your decision to resign your appointment and return to Nigeria to practice law. Since you had already spoken to me in these terms, the formal submission of your resignation comes as no surprise; but my regret that circumstances beyond your control have led you to this decision is none the less profound, and I accept your resignation only with the greatest reluctance.

I deeply appreciate your kind words about your association with me and with the United Nations as a whole. Let me say, for my part, that you have served the Organization with devotion and distinction and that my colleagues and I will miss you greatly. On their behalf and in my own name I wish you and your wife and family every success and happiness in the future.

May I also express my gratitude for your courtesy in giving the full period of notice. In accordance with Staff Rule 109.8, however, in order to avoid administrative difficulties and to assure you full freedom of action after your actual departure from the United Nations, I propose to accept your resignation with effect from 28 February 1966. You will thus have the benefit of commutation of the annual leave which you would otherwise have taken.

Yours sincerely,

U Thant

Mr. Godfrey K. J. Amachree
Under-Secretary for Trusteeship and
Non-Self-Governing Territories
Room 3327
United Nations
New York

UNITED NATIONS NATIONS UNIES

NEW YORK

CABLE ADDRESS · UNATIONS NEWYORK · ADRESSE TELEGRAPHIQUE

REFERENCE:

30 December 1965

PERSONAL AND CONFIDENTIAL

Dear U Thant,

As I indicated to you yesterday, I have, after very careful reflection, decided to resign my appointment and return to Nigeria to practice law. Much as I would have liked to serve out the remaining period of my contract, I regret that circumstances beyond my control prevent me from doing so.

I am required, under the terms of my contract, to give three months notice of my intention to resign. This requirement will be met if my resignation becomes effective on 31 March 1966. However, since I shall be entitled to at least a month's leave, I hope that you will find it convenient to allow me to proceed on leave on 1 March 1966. This, in effect, means that I shall relinquish my post on Monday, 28 February 1966.

I would like to take this opportunity to thank you for affording me the singular and rewarding opportunity to serve the United Nations. I assure you that I shall always carry with me the most pleasant memories of our association. From the bottom of my heart I wish you every success and sincerely pray that you will find it possible to continue your distinguished service to the Organization.

With all good wishes,

Sincerely yours,

Godfrey K.J. Amachree

Godfrey K.J. Amachree
Under-Secretary for
Trusteeship and Non-Self-
Governing Territories

H.E.
U Thant
Secretary-General
United Nations
New York, N.Y.

UNITED NATIONS NATIONS UNIES

INTEROFFICE MEMORANDUM

TO: The Secretary-General

DATE: 10 December 1965

THROUGH:

FILE NO.:

CONFIDENTIAL

FROM: Godfrey K.J. Amachree,
Under-Secretary,
Department of Trusteeship & Non-Self-Governing Territories

SUBJECT: Mr. George Ivan Smith

... I attach, for your information, an article entitled "U.N. rush man in", which appeared on the front page of the Sunday Observer of 5 December.

It is a pity that Mr. George Ivan Smith has given publicity to his mission and I very much regret suggesting to you that he should be invited to make the trip.

U.N. rus man in

MR GEORGE IVAN SMITH, the Australian-born United Nations official who was U Thant's special representative in East and Central Africa for several years and is familiar with the problems and personalities of the area, spent two days in London before flying out to Zambia this weekend.

During that time he had talks with Mr George Thomson, Minister of State at the Foreign Office, Mr Cledwyn Hughes, Minister of State at the Commonwealth Relations Office, and Mr Arnold Smith, Secretary-General of the Commonwealth Secretariat.

According to United Nations sources, Mr Ivan Smith was asked by United Nations headquarters to make a short visit to Zambia and to U.N. technical assistance offices in East Africa. The purpose of the visit is to discuss the disposition of U.N. staff there and the possibility of an expanded technical assistance staff in the light of the Rhodesian crisis and new economic needs that it might create.

Mr Ivan Smith was recalled from Princeton where during a year's sabbatical leave he is occupying one of the chairs of politics at the Woodrow Wilson Institute. By chance the two senior U.N. officials in the area are about to leave for other posts. The U.N. regional director of technical assistance in Lusaka, Mr Richard Simon, is returning to England next week to take up a post at the University of Sussex.

In addition to Zambia, Mr Ivan Smith will be visiting Tanzania and Kenya.

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CONFIDENTIAL

UNITED NATIONS NATIONS UNIES

INTEROFFICE MEMORANDUM

TO: The Secretary-General

Date: 10 May 1965

FILE NO.:

THROUGH:

FROM: Godfrey K. J. Amachree, Under-Secretary
Department of Trusteeship and Non-Self-Governing Territories

SUBJECT:

You will recall that in my letter to you from Sydney, I said that on my return to New York I would raise with you the question of appointing a U. N. Representative in Port Moresby.

The Territory of Papua and the Trust Territory of New Guinea, together form the largest and most populous territory in the Pacific area. The United Nations has important responsibilities with respect to both Territories, Papua being a non-self-governing territory under Chapter XI of the Charter, and New Guinea being a Trust Territory. Yet, as I pointed out to you in my letter, there exists in both Territories a serious misunderstanding of the aims and objects of the United Nations which has led to an unconcealed hostility to the Organization. This is a state of affairs which I am sure you will agree we should do our utmost to correct. It is also a matter in regard to which I, as Under-Secretary in charge of Trust and Non-Self-Governing Territories, feel a special responsibility.

Having had the opportunity of visiting the territories and observing the present arrangements for United Nations representation there, it is my firm belief that the existing United Nations establishment is totally inadequate for the tasks ahead. At present there is an Information Centre at Port Moresby headed by an Information Officer at the P-3 level. It is my considered opinion that because of the special responsibilities of the United Nations in the Territory and, indeed, in the Pacific area, the whole basis of United Nations representation there should be changed. The situation calls for representation of the United Nations in Papua and New Guinea by an officer with the functions, rank, status and personal capacity that will command the respect and confidence not only of the highest officials of the Administration, but also of the emerging New Guinean leaders and of the settler community.

...../2

For these reasons, I strongly recommend the appointment of a United Nations Representative in Port Moresby at the D-2 level. The functions of this officer would be to direct and co-ordinate all United Nations activities in Papua and New Guinea, and in the whole South-Western Pacific area, including Australia, New Zealand, Western Samoa, as well as the non-self-governing territories in the area. In detail, these functions could be set out as follows:

(1) to represent the United Nations (or the Secretary-General) in the South-Western Pacific area, and, in particular, in Papua and New Guinea.

(2) To report, through the Under-Secretary for Trusteeship and Non-Self-Governing Territories, to the Secretary-General on political developments in the area, with particular reference to the implementation of the recommendations of the Trusteeship Council and the resolutions of the Committee of 24.

(3) To assist in the co-ordination of the technical assistance programmes carried out by the United Nations and the Specialized agencies in the area.

(4) To direct and co-ordinate United Nations Public Information activities in the area.

(5) To undertake such other representational functions as may from time to time be determined by the Secretary-General.

The Australian authorities welcome the suggestion and it may be necessary to obtain the agreement of the United States authorities as regards the Territory of American Samoa.

The staff that would be required at Port Moresby and a very rough estimate of the salary costs involved would be as follows:

	Level	Salary
1 United Nations Representative	D-2	$18,300
1 Representative of the Technical Assistance Board and the Special Fund	P-5	$15,200
1 Information Officer	P-4	$12,400
1 Administrative Officer	P-3	$11,400
1 Internationally recruited Secretary	G-4	$6,400
3 Information Assistants (locally recruited)		$14,600
3 Secretaries (locally recruited)		
		$78,300

...../3

These estimates take no account of travel or administrative expense that would be connected with the Representative's office.

Should this suggestion meet with your approval in principle, I feel that whatever discussions are necessary with other Under-Secretaries whose Departments and offices are involved should begin without delay.

SYMPOSIUM ON
THE INTERNATIONAL LAW OF HUMAN RIGHTS

FUNDAMENTAL RIGHTS IN NIGERIA

by Godfrey K. J. Amachree

The fundamental rights provisions in the Nigerian Constitution have, as is to be expected, afforded jurists an opportunity to produce learned legal articles and commentaries. The majority of the writers and commentators have, however, dealt more with the legal interpretation of the provisions than with the historical background. One writer[1/], in an otherwise very informative article, had no more to say on the history of the provisions than that "the Commission ascertained that fears were entertained by the minorities in Nigeria and perhaps the inclusion in the Constitution of fundamental rights was one means of allaying those fears". Other writers have tended to explain the background by very brief references to minority fears without giving any details as to what those fears were.

In this paper, an attempt will be made to relate as fully as possible the events which led to the incorporation in the Constitution of Nigeria of the provisions on fundamental rights. It is felt that an appraisal of the provisions will be incomplete without some knowledge of the happenings in Nigeria before 1960.

The Influence of English Law

During the 100 years or so in which Nigeria was under the British Crown, the expression "Fundamental or Human Rights" was hardly ever heard in every day conversation or even in the Courts. This must not be taken to mean that

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1/ Mr. M. G. de Winton - Fundamental Rights in Nigeria, p. 43, "Constitutional Problems of Federalism in Nigeria".

the rights of the individual were not protected in Nigeria. On the contrary, British rule brought with it not only British concepts of government, but also British justice and law. With some modifications, English law was applied in Nigeria. This meant that both the English Common Law and the English Statutes of general application were in force in Nigeria along with the locally enacted ordinances and the customary laws of the country. The English Common Law was not codified, and it was not easy to determine with exactitude whether or not an English Statute was one of "general application". Nigeria still has this "mixed grill" of laws. Indeed, the "mixture" has been such that even lawyers sometimes tend to lose sight of the fact that the fundamental rights provisions in the Nigerian Constitution are not novel. The provisions are nothing more than a consolidation of accepted concepts of justice and in some cases adaptations of provisions already contained in Nigerian statutes. Where a provision relating to fundamental rights is not directly traceable to any provision in the Nigerian Statutes, then one can invariably trace its origin to the unwritten concepts of the English Common Law.

British Administration

If, as stated, the concept of fundamental rights is not new to Nigerians why was there the desire for their incorporation in the Nigerian Constitution? The reasons are many:

With the introduction of what was popularly described as the Richards Constitution[1/] in 1946, the former Northern Provinces (now the Northern Region), the Colony (the Federal Territory of Lagos) and the Southern Provinces

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1/ Named after Sir Arthur Richards (Lord Milverton) who, as Governor of Nigeria, was responsible for the introduction of the Constitution.

(the Western, Eastern and Midwestern Regions) had one legislature. Until 1946 the Legislative Council legislated only for the Colony and the Southern Provinces while in the Northern Provinces legislation was by proclamation of the Governor of Nigeria. What we now know as the Northern Region was administered separately from the other parts of Nigeria. This separation of the North from the rest of the country has been mainly responsible for the suspicions which exist today between Northerners and Southerners. The separation is also the cause of the slower rate of development of the North especially in the field of education.

The isolation of the North was a deliberate move on the part of British administrators. They justified their action with the excuse that they found organized political and social systems in Northern Nigeria which it was to their interest to perpetuate rather than modify. The truth is that the North was under the grip of powerful Muslim potentates who were adept practitioners of a form of feudalism which was unknown in the other parts of Nigeria. British administrators saw in these feudal lords agents through whom they could maintain law and order and through whom also the taxes were collected.

Ethnically and culturally the Northerners are different from the Southerners. Perhaps more important is the fact that the Muslim religion aggravated the differences which were subtly exploited by British administrators and afforded them the opportunity to create a political barrier between North and South.

The isolation of the North, as subsequent events have proved, has done neither the North nor the South any good. In terms of political, social and economic advancement, the North has lagged behind the South, although strenuous efforts are now being made by the North to catch up with the South.

In the South too, there were ethnic and cultural differences among the peoples and this fact did not make the administration of the country easy. The diversifications amongst the peoples was a real problem.

Sir Arthur Richards, as he then was, described the situation in these words[1/]:

> "The problem of Nigeria today is how to create a political system which is itself a present advance and contains the living possibility of further orderly advance... The present system of government in Nigeria has many inconsistencies and by its nature is unsuited for expansion on a Nigerian basis."

The "inconsistencies" referred to by Sir Arthur were especially apparent in the Northern Provinces, and it was hoped, by the introduction of the 1946 Constitution, to eliminate them gradually. For this purpose, the Constitution set out to:

(a) promote the future unity of the country;

(b) express its present diversity; and

(c) afford increasing opportunities to Nigerians to discuss and manage their own affairs.

The future unity of the country was "promoted" by the establishment of a Legislative Council for the whole of Nigeria. For the first time the North and the South were brought together for purposes of legislation.

The expression of the country's diversity was manifested by the creation of the Northern, Eastern and Western Regions. The argument of the advocates of regionalism was that the Regions "comprised the three main natural divisions into which the country falls, geographically, ethnically and in custom and outlook". This argument is not entirely accurate. Perhaps it would be truer to say that

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1/ Despatch dated 6 December 1944 to the Secretary of State for Colonies.

the Regions were an administrative convenience. The boundaries of the Regions were artificially determined and do not represent any natural geographical divisions; neither do they truly represent the main ethnic groupings nor portray the custom and outlook of the peoples concerned.

It is true, though, that in each Region there is a preponderant or dominant tribe; but there are also in the Regions the less preponderant tribes who constitute the minorities.

Regionalism was the chief characteristic of the Richards Constitution, and subsequent Constitutions adopted Regionalism as the pattern for Nigeria.

Regionalism certainly had its advantages, but it also exacerbated tribal feelings in Nigeria.

Until the Regions were created, the administration of the country had been directed from Lagos. Although there were Lieutenant Governors located in Ibadan for the Western Provinces, Enugu for the Eastern Provinces and Kaduna for the Northern Provinces, their powers were limited and they were subordinate to the Governor of Nigeria in Lagos. For a country the size of Nigeria, it was administratively very unsatisfactory to govern from Lagos, and the idea of directives emanating from Lagos from government officials who were far removed from the provinces was resented. With Regionalism, Regional Legislatures were created and the peoples of the three Regions participated more in the conduct of their own affairs than was previously the case. Regional governments were free to plan for the economic and social development of the Regions and indeed there evolved a rivalry of the Regions - a rivalry which has on occasions led to political tensions.

With these developments, however, party political strife became more pronounced and with it emerged the bane of African politics, tribalism. Each

of the three Regions became identified with one of the three political parties and became the stronghold of the parties.

Regionalism and Party Politics

With the possible exception of the Northern Peoples Congress (N.P.C.) which was founded as a party for Northerners only, the other main parties, the Action Group (A.G.) and the National Council of Nigerian Citizens (N.C.N.C.) from their inception sought membership from all over Nigeria and to a certain extent they succeeded.

Unfortunately, the leaders of the political parties came from different tribes and it soon became obvious that political leanings were influenced by one's tribe. The N.P.C. had as its leader the Sardauna of Sokoto, a devout Moslem of Fulani extraction. His aim has always been to ensure the all-round development of the Northern Region so that it can catch up with the South. The N.P.C. was accordingly organized so as to achieve this ambition. The membership of the party was almost entirely Northern. The Sardauna was for a slow and orderly political advancement as opposed to his colleagues in the South who sought independence in the quickest time possible. This desire of the Southern leaders was regarded by the N.P.C, as aimed at perpetuating the advantages of the South over the North and thus keep the more thickly populated and larger North in an inferior position. The N.P.C., apart from being a party of Hausas, Fulanis, Nupes and Kanuris had, as an important binding force, the Muslim religion which was the accepted religion of the four tribes just mentioned.

Likewise, the Action Group with Awolowo as its leader, although claiming an all-Nigeria membership, was a party which was formed: (1) "to encourage and strengthen most sedulously all the ethnic organizations in the Western

Region"; and (2) "to explore all possibilities for and to co-operate wholeheartedly with other nationalists in the formation of a Nigeria-wide organization which shall work as a united team towards the realization of immediate self-government for Nigeria".

The Action Group was formed mainly as an opposition party to the N.C.N.C. and is Yoruba-dominated.

The N.C.N.C., although country-wide, is Ibo-dominated. Its leader, Dr. Azikiwe[1/], is Ibo and was at one time the Premier of the Eastern Region. Dr. Azikiwe was one of the earliest political agitators in Nigeria. The fact that he comes from the Ibo tribe did not make him popular with Awolowo, a Yoruba, who saw in Dr. Azikiwe a formidable rival for political leadership in Nigeria. The Sardauna, Azikiwe and Awolowo were each of them concerned with consolidating the gains of their parties in their respective Regions.

The strength of the parties lay in the Regions and each party controlled the government of the Region. Minority groups in the Regions complained of Ibo, Yoruba or Hausa domination. The politicians exploited tribal differences only to find that the more they did so the more they alienated such little support as they may have had from the minorities. Tribalism became a weapon for political manoeuvres.

The fears of the minorities ultimately culminated in the appointment of a Commission of Enquiry into those fears.

Who are Minorities?

As we have seen, the population of the three Regions[2/] of Nigeria is

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1/ Now President of Nigeria.

2/ A fourth Region, the Midwest Region, was created in 1963. This paper deals mainly with events subsequent to the creation of the Midwest Region.

dominated in each Region by a major tribe. In the Western Region, the Yorubas constitute the majority. In two of the six provinces of the Region, Benin and Delta provinces, are to be found over a million people of the Edo, Urhobo, Ibo, Ijaw, Ishan and Jeriki tribes. In the Eastern Region, the Ibos constitute the majority, and the Ibibios, Efiks, Ijaws, Annangs and Ogonis constitute the minority. In the Northern Region, the Fulanis, Hausas, Kanuris and Nupes who form a religious bloc constitute the majority. The minorities are the Yorubas in the Kabba and Ilorin provinces, and the Tivs in the Middle Belt area.

It is significant that even the major tribes may constitute a minority outside of their Regions. This proves how artificial regional boundaries are and disproves the contention of the advocates of Regionalism that the Regions comprise "the three main natural divisions into which the country falls, geographically, ethnically and in custom and outlook". The Yorubas in Kabba and Ilorin Provinces are as different "ethnically and in custom and outlook" from the Hausas and Fulanis as are the minorities in the Eastern and Western Regions from the Ibos and Yorubas respectively.

What were the fears of the Minorities?

At the 1954 Resumed Conference on the Nigerian Constitution, minority groups had expressed fears about their future, but as the matter was not on the agenda it was decided that it should be taken up at the 1957 Conference.

At the 1957 Conference minority groups presented their claims and the Conference decided to invite the British Secretary of State for the Colonies to appoint a Commission of Enquiry into the fears of the minorities with the following terms of reference:

"(1) To ascertain the facts about the fears of minorities in any part of Nigeria and to propose means of allaying those fears, whether well or ill founded.

"(2) To advise what safeguards should be included for this purpose in the Constitution of Nigeria.

"(3) If, but only if, no other solution seems to the Commission to meet the case, then as a last resort to make detailed recommendations for the creation of one or more new States, and in that case:

(a) To specify the precise area to be included in such State or States;

(b) to recommend the governmental and administrative structure most appropriate for it;

(c) to assess whether any new State recommended would be viable from an economic and administrative point of view and what the effect of its creation would be on the Region or Regions from which it would be created and on the Federation.

"(4) To report its findings and recommendations to the Secretary of State for the Colonies."

The Minorities Commission found that the fears expressed by the minority groups were ethnic and religious. The ethnic fears stemmed from fears of domination by the numerically predominant tribes. Thus, the minority groups in Western Nigeria were afraid of Yoruba domination as were similar groups in the East and the North of Ibo and Hausa domination respectively. Fears of religious domination prevailed mainly in the Northern Region where there were more Muslims than animists and Christians combined.

The Commission found the fears of the minority groups to be as follows:

(a) fear of domination by the numerically preponderant tribe, especially as regards:

(i) cultural domination of the minority tribe;

(ii) inequitable appointments to posts in the public service and to various government boards;

(iii) inequitable award of scholarships;

(iv) discrimination in the economic field, such as in the establishment of research facilities, location of industries and granting of loans to farmers and businessmen;

(v) discrimination in the provision of public services, such as roads, light and water;

(vi) discrimination in the allocation of parliamentary seats and in the drawing-up of boundaries of constituencies and in the determination of the number of members of parliament to be returned to parliament;

(vii) discrimination in the conduct of elections;

(viii) fears regarding the future of Local Government Councils and the position of Chiefs.

The governments in power were accused of a tendency to centralise power in their own hands and it was feared that this practice may be accentuated after independence and may lead ultimately to the assumption by the governments of all the powers of the local government councils. There was also fear that by favouring those local government councils that supported the governments, there may come a time when the councils will do no more than carry out the wishes of the government. This may not be in the best interests of the people. Where a local government council was opposed to the government the fear was expressed that members of the council were enticed to join the party in power, or where that was not possible, the government sought to obstruct the work of the council or even dissolved the council on the slightest pretext.

It was also felt that the position of chiefs in the government of the country, which position had been enhanced by British rule,

would be weakened because of a possible antagonism by the Government in power. The Commission noted that before 1952 Chiefs had played a very vital role in local government but that since that date their position had been minimised because local government councils were elected and not nominated. It is important to point out that the institution of Chieftancy is vitally important to the social, economic and political systems throughout the Federation.

In the Northern Region there were fears and grievances regarding the traditional rulers. These fears were expressed in the main by the pagans and christians of the Region who, as has been stated above, form the minority in a predominantly Muslim country. The autocratic powers of the Northern rulers was seen as a danger to the minorities.

(ix) Social fears and grievances

The minority groups resented the use of certain contemptuous expressions and social practices. They alleged that the strict followers of Islam would not eat with non-Muslims. They also felt that the observance of purdah and the prohibition of the sale and consumption of alcohol would be extended to non-Muslims and made compulsory. There were allegations that the teaching of the language of the majority tribe in the schools had been made compulsory.

(x) Fears regarding foreign policy

It is perhaps best to quote[1/] the Commission on this since the matter is fraught with politics:

1/ Paragraphs 17, 18 and 19 at pages 61 and 62 of the Commission's Report.

"From a number of witnesses we heard allegations that the Government of the Northern People's Congress had exhibited a sympathy with nations of the Middle East - particularly with nations of the United Arab Republic - which resulted from a common allegiance to Islam and which after independence might cause a grave divergence on foreign policy between different elements in Nigeria. It may be that this evidence was put forward in part to sow distrust of the Northern People's Congress in the minds of the Commission; on the whole, a more natural alignment for the Northern People's Congress would be with the Sudan rather than with Egypt, where laxity in Muslim observances is shocking to visitors from Northern Nigeria. Nor do we believe that this is a widely held fear among the pagan minorities of the Middle Belt area.

"But in spite of these considerations, differences of outlook on foreign policy may well be a dividing factor in the new Federation, and we believe that this real danger is one to which thinking people among the minorities are alive. Foreign policy will be a matter for the Federation; if it were true, after independence, that the Northern People's Congress held views on foreign affairs quite different from the rest of Nigeria's, they would need control of the Federal Government to put them into effect, and they can hardly control the Federal Government without the support of their own minorities. If the NPC could compel the minorities to vote for their candidates, and give them control of foreign policy, then the minorities might have cause for fear. It is surely more likely that they would have to modify their policy to win the votes of non-Muslims.

"This is a point with wider implications, affecting policy not only on Federal matters but on those domestic to the Region. At present the NPC has an overwhelming majority in the North and from a purely Northern point of view need not perhaps concern itself much about minority votes. But when the importance of the Federal Government increases, as is likely after independence, the NPC will wish to win votes at the centre. It can only hope to provide a federal government not based on a coalition in one of two cases; either it must secure a substantial footing in other Regions, which does not at present seem likely, or it must win almost all the seats from the Northern Region. If it is to do this it will be necessary to conciliate the pagan and Christian areas."

(xi) Fears of the Law

The allegation was that the Government of the Region may use its powers to pass arbitrary laws against the interests of the minority. In the case of the North, non-Muslims were particularly frightened of the rigours of Muslim law. In this connexion the Commission noted[1/]:

1/ See Chapter 10 of the Commission's Report, paragraphs 4, 5 and 6 at pages 67-68.

"It is in procedural rather than substantive law that the distinction between Muslims and non-Muslims is most clearly made. In theory - though as we have said, courts do not always insist on this - the evidence of a male Muslim is of greater value than that of a woman, a Christian or a pagan; indeed, in some traditions the only evidence that is admissible in any degree is that of an adult male Muslim who is regular in his observance of religious duties. Some courts, we understand, do observe this distinction at present and, since there is no doubt that it does form part of the legal tradition, it is understandable that minorities should be afraid that its observance may spread. Secondly, it is open to the court to give a Muslim accused the option of swearing on the Koran that he is innocent; if he accepts this challenge he is discharged, being left, if he is really guilty, to the vengeance of Heaven. This alternative, however, is not in theory open to a Christian or a pagan, although there are, we understand, some courts which admit a similar oath on the Bible or on a fetish. But this is irregular and is frowned on by the orthodox.

"There is a further distinction. If homicide is proved or admitted, the court normally asks the nearest relative of the deceased whether he wishes a life to be exacted for a life; if the relative decides to waive the right of exacting a life, the punishment may be as little as one year's imprisonment, 100 'symbolic' lashes, and the payment of compensation to the relative. This compensation varies from Emirate to Emirate and although it has recently been increased, is widely regarded as in any case too low, even if the deceased is a Muslim. But if the deceased is a Christian, the texts of the Maliki school prescribe that the compensation shall be half as much as for a Muslim, while if the deceased is a pagan, the amount is one-fifteenth.

"There is another class of anomaly which arises not from the distinction made by Muslim Law between persons but from the operation of two systems of law in the same country. The Muslim law of homicide takes no account of intention or provocation, while, under the Common Law and under the Statute Law of Nigeria, provocation may reduce the offence from murder to manslaughter and intention is an essential part of the offence. As to intention, medical evidence of the health of the deceased or the nature of the injury may provide valuable evidence and may even indicate that no offence was committed. If A strikes B and B dies, that in Muslim Law is homicide, for which the penalty will be death if the relatives wish it. Thus an act committed with no intention to kill, or even with no criminal intention at all, but followed by death and appearing to cause death, might lead to a man's execution if committed in the jurisdiction of an Emir whose court is "Grade A Unlimited", while if it had been committed two miles away in the jurisdiction of a court with lesser powers, it would have been sent for trial direct to the High Court and would have fallen under the Nigerian Code, where it might be found to be no offence at all. A ruling of the Supreme Court of Nigeria that no offence may be punished with a more severe punishment than might have been inflicted under the Nigerian Criminal Code has in theory reduced the likelihood

of this anomaly resulting in injustice, but in practice has created an additional confusion, because it means that Muslim Courts must take into account two systems of law, in one of which they have no training; indeed, the resulting situation has been described to us as 'unworkable'. And if a mistake is made, it does not follow that there will be an appeal, as would be probable in more sophisticated communities."

The minorities criticized certain changes proposed by the Eastern Regional Government in the system for the administration of justice. As an instance of the change were the provisions in the Customary Courts Law, 1956, which empowered the Minister to appoint, dismiss or suspend members of County and District Courts. This, to the minorities, meant the control of the Courts by the Government.

Some of the enactments of the Government of the Western Region, notably the Chiefs Law, were similarly criticized. This Law vested the Minister with powers to appoint and remove chiefs. It was felt that by arrogating to himself these powers, the Minister was usurping the powers of the "King makers", a traditional body common throughout Western Nigeria.

(xii) Public Order

Fears were expressed that the Regional Governments may take over the police force and use it for intimidating their opponents. These fears were the result of the existence of "strong-arm" groups in the three Regions. These groups who were variously described to the Commission as "hooligans" and "thugs" were very active during elections. Their main function was to intimidate opponents of the party in power. There was no justification whatsoever for fears relating to the use of the police force as the control of the police is a responsibility of the Federal Government.

It can be said, and indeed the Commission so found, that many of the fears of

the minorities were either unjustified or ill founded. In many instances the genuine mistakes of the Regional Governments had been interpreted as deliberate actions directed against minorities and the Commission accordingly ignored accusations based on such mistakes.

In regard to the fears expressed by minorities on the rigours of Muslim law, the courts in Nigeria have always applied the principle that no laws, be they Muslim or Customary, will be enforced if such laws are "repugnant to natural justice, equity or good conscience". Nigerian case law abounds with decisions of the higher courts upsetting those of the Muslim and Customary courts.

Chiefs and traditional rulers in regard to whose future fears were expressed have ever since the introduction of the 1951 Constitution been accorded an important role in the government of the country. The Regional Constitutions provide for Houses of Chiefs which act as a second chamber to the legislatures of the Regions.

Local Government Councils continue to play the major role which they played under the British. If anything, efforts have been made to modernize the Councils and to give them more powers within their areas of jurisdiction, for it is realized that it is on their efficiency that ultimately depends the peace and good government of the Regions.

Foreign policy, which also gave cause for fear, is a federal responsibility and to date there has been no cause to suggest that the Federal Government has been influenced by any Region in the formulation of its foreign policy.

Religious intolerance has not manifested itself in a manner to attract attention. The few Christians and animists who reside in the North are allowed to practise their religions and beliefs, as are the Muslims in Western and Eastern Nigeria. Perhaps one of the outstanding achievements of the Nigerian

Federation is the fact that religious differences have not in any way affected the relationships of the various peoples.

Proposals for New States

In spite of the many allegations by minorities, they did not ask for the entrenchment of fundamental rights provisions in the Constitution, what they asked for was the creation of new States. This is significant.

A plausible explanation of the attitude of the minorities is that they were advised not to ask for guarantees by their legal advisers. Many Nigerian lawyers participated at the various Constitutional Conferences and in spite of their political differences, they were in agreement on one fact: that the rule of law prevails in Nigeria and that minorities, if aggrieved, could seek redress in the courts.

The Government, also, was aware that there were restraints in the law which made it impossible for it to resort to any arbitrary measures. The courts have been fearless in the adjudication of matters, be they between individuals or between the individual and the Government.

The minorities wanted new States, they got instead what they did not request: fundamental rights. The Commission found no justification for the creation of new States or the alteration of existing Regional boundaries.

It was the Church groups who testified before the Commission who asked for guarantees for the rights of individuals.

British Attitude to Fundamental Rights

Generally speaking, English constitutional lawyers have never been in favour of the inclusion in constitutional instruments of guarantees pertaining to the rights of the individual. The British Government, on the other hand, has

given its former African and Asian dependent territories written constitutions, each containing a chapter on fundamental rights. This is an interesting situation, for Britain herself has no written constitution.

Professor de Smith has, in an article[1/], referred to the views of some English jurists on the subject of fundamental rights. In this connection, Bentham's comments on the "Declaration of the Rights of Man" by the French revolutionaries is of some interest:

> "Look to the letter, you find nonsense - look beyond the letter, you find nothing... Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, — nonsense upon stilts. But this rhetorical nonsense ends in the old strain of mischievous nonsense: for immediately a list of the pretended natural rights is given, and those are so expressed as to present to view legal rights."

Again, when the Simon[2/] Commission on the Indian Constitution was considering the inclusion of guarantees for the rights of individuals in the Indian Constitution they had this to say:

> "Many of those who came before us have urged that the Indian Constitution should contain definite guarantees for the rights of individuals in respect of the exercise of their religion and a declaration of the equal rights of all citizens. We are aware that such provisions have been inserted in many constitutions, notably in those of the European States formed after the War. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exists the will and the means to make them effective."

As a further example of the attitude of British lawyers, the views of Sir Ivor Jennings and Professor Wheare are of interest. According to Sir Ivor:

> "... the English constitutional lawyer ... has never tried to express, and does not think of expressing the fundamental ideas which are implicit in his Constitution" ... "an English lawyer ...

1/ "Fundamental Rights in the New Commonwealth - II", (1961) 10 International and Comparative Law Quarterly.

2/ Lord Simon who was Chairman of the Commission was a former Lord Chancellor of England and was perhaps one of the greatest English lawyers of this century.

is apt to shy away from a general proposition like a horse from a ghost." ... "On the whole the politician of tomorrow is more like to be right than the constitutional lawyer of today." ... "the presumption is that the constitutional guarantee of principles of civil and political liberty is unnecessary." ... "The conclusion to be drawn from the experience of India, Pakistan and Ceylon is ... that one should not attempt to deal with the problems of minorities by constitutional guarantees in Bills of Rights." 1/

In Professor Wheare's words:

"The ideal Constitution ... would contain few or no declarations of rights, though the ideal system of law would define and guarantee many rights. Rights cannot be declared in a Constitution except in absolute and unqualified terms, unless indeed they are so qualified as to be meaningless." 2/

The Minorities Commission whose Chairman, Sir Henry Willink, is a distinguished English lawyer, was no doubt aware of the doubts which had been expressed by various English jurists. It nevertheless proceeded to carry out its mandate.

The Commission and Fundamental Rights

At the 1957 Constitutional Conference held in London in May and June 1957, it was agreed that provision should be made in the Independence Constitution for fundamental rights and that the Secretary of State's legal advisers should prepare, in the light of the memoranda submitted to the 1957 Conference and the discussion on them, draft clauses for insertion in the constitutional instruments. These clauses were to be submitted to the governments of the different Regions of Nigeria and were to be considered at the resumed Conference held in London in September and October of 1958 3/.

1/ Jennings: Some Characteristics of the Indian Constitution (1953), pp. 3-4, 48, 54; The Approach to Self-Government (1956), pp. 100, 110.

2/ Wheare: Modern Constitutions (1951), p. 71.

3/ Conference on the Nigerian Constitution held in London in May and June 1957 - Conference Report (Cmnd. 207 para. 67).

The wishes of the Conference were duly carried out; and the Commission in recommending the inclusion of guarantees in the Constitution had this to say:

> "Provisions of this kind in the Constitution are difficult to enforce and sometimes difficult to interpret. Nevertheless, we think they should be inserted. Their presence defines beliefs widespread among democratic countries and provides a standard to which appeal may be made by those whose rights are infringed. A Government determined to abandon democratic courses will find ways of violating them but they are of great value in preventing a steady deterioration in standards of freedom and the unobtrusive encroachment of a Government on individual rights. We have therefore considered what provisions might suitably be inserted in the Constitution and have given particular attention to the Convention on Human Rights to which, we understand, Her Majesty's Government has adhered on behalf of the Nigerian Government. Where the matter which we think needs expression has already been provided for in the Convention on Human Rights, we simply place below the relevant provision in that Convention, but we do not necessarily recommend the exact wording of the Convention and it may be that constitutional lawyers will wish to draft in different terms." 1/

It is felt that but for the wide terms of reference of the Commission they may have been averse to the inclusion of any fundamental rights in the Nigerian Constitution. One is forced to this conclusion when it is recalled that the Commission was enjoined "to ascertain the facts about the fears of minorities in any part of Nigeria and to propose means of allaying those fears whether well or ill founded". The evidence heard by the Commission and considered by them would appear to indicate that many of the fears of minorities were ill founded. The minorities, we have seen, were not interested in fundamental rights as such, they were interested in the creation of separate states of their own. This the Commission found unnecessary; but as it was part of their duty to propose means of allaying the fears of minorities and to make recommendations as to the safeguards to be included in the Constitution, the Commission accepted the proposal by the Church groups.

1/ Paragraph 38 of the Commission Report at page 97.

Fundamental Rights

The Commission divided into five groups the fundamental rights which they recommended should be included in the Constitution. These were:

Group A - Life and Liberty

(i) The right to life;

(ii) inhuman treatment;

(iii) slavery or forced labour;

(iv) liberty;

(v) private and family life.

Group B - Administration of Justice

(i) Judicial procedure;

(ii) retrospective effect of acts that were not criminal when they were committed.

Group C - Social Freedom

(i) Freedom of expression;

(ii) freedom of peaceful assembly;

(iii) freedom of movement;

(iv) the right to marry.

Group D - Rights concerning Religion

(i) Freedom of religion;

(ii) religious education.

Group E - Discrimination

(i) The enjoyment of fundamental rights without discrimination;

(ii) protection against discrimination;

(iii) the enforcement of fundamental rights.

These recommendations are based on Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the European Convention on Human Rights and on Article 9(2) of the Malaya Constitution which deals with freedom of movement, and Article 13(1) and (2) of the Pakistan Constitution from which the provisions pertaining to religious education were obtained.

The recommendations were adapted and incorporated in the Constitution as Chapter III[1]. It was decided to include in this Chapter the provision relating to "Compulsory Acquisition of Property"[2]. This provision had already been included in the 1954 Constitution, not as a fundamental right but as an assurance to would-be foreign investors that no property will be arbitrarily nationalized or seized. Derogations from fundamental rights are contained in section 29.

The Enforcement of Fundamental Rights

The Commission recommended that any person may apply to the High Courts[3] for protection or for the enforcement of any of the provisions pertaining to fundamental rights and the High Courts should be empowered to make all such orders as may be necessary and appropriate to enable the applicant to enjoy any of the rights. This recommendation is incorporated in section 32 of the Constitution and reads as follows:

> "32.-(1) Any person who alleges that any of the provisions of this Chapter has been contravened in any territory in relation to him may apply to the High Court of that territory for redress.
>
> (2) Subject to the provisions of section 115 of this Constitution, the High Court of a territory shall have original jurisdiction

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1/ See Appendix "A" to this paper.

2/ Section 31.

3/ Each Region has a High Court.

to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, within that territory of any rights to which the person who makes the application may be entitled under this Chapter.

(3) Parliament may make provision with respect to the practice and procedure of the High Courts of the territories for the purpose of this section and may confer upon those courts such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling those courts more effectively to exercise the jurisdiction conferred upon them by this section."

Section 115 of the Constitution referred to above provides for the interpretation of the Federal and Regional Constitutions. If a question of interpretation arises in any of the Courts of the Federation other than the Supreme Court, the High Court of a Region, or a Courts-Martial and the court is of the opinion that the question involves a substantial question of law, the court may, on the application of any party to the proceedings, refer the question to the High Court having jurisdiction in the particular area and the High Court shall refer the question to the Supreme Court if it involves a substantial question of law; or the High Court may otherwise remit the question to the court that made the reference to be disposed of in accordance with such directions as the High Court may see fit to give.

It is needless to state that the Courts have been seized with cases on fundamental rights. A digest of some of the decisions forms Appendix "B" to this paper.

Conclusions

To anyone familiar with the law and the system of the administration of justice in Nigeria the fundamental rights provisions in the Constitution have in no way altered the basic concepts of law or justice as known to Nigerians. The

entrenchment of the provisions, however, will ensure that they cannot be easily repealed; for to do so successfully an Act of Parliament drafted for this purpose will not come into operation unless each legislative house of at least three Regions has passed a resolution signifying consent to its having effect. Moreover, a bill for an Act to alter the provisions shall not be passed in either House of Parliament unless it has been supported on second and third readings by the votes of not less than two-thirds of all the members of that House.

Fundamental rights are thus safely entrenched in the Constitution and, what is more, the citizens of the country are aware of their constitutional rights and have never hesitated to defend these rights in the courts. The recent crisis in Nigeria is a good illustration of the desire of Nigerians to defend their democratic rights. The crisis arose because many people felt that they were denied the right to campaign freely in certain Regions during the last Federal Elections. Although the crisis is over, there are pending in the courts election petitions against some of those who successfully contested the elections.

Instances of the determination of Nigerians to uphold the principles of democracy can be given, but perhaps one significant illustration will suffice. About a year ago, an attempt was made to introduce legislation dealing with preventive detention. The entire country opposed the proposed legislation, and the government was forced to abandon it.

What is the Nigerian concept of democracy? Perhaps this question can best be answered in terms of the following quotation from Sir Winston Churchill's "Second World War"[1/]:

> "... It has been said that the price of freedom is eternal vigilance. The question arises, What is freedom? There are one or two quite

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1/ Volume VI, page 111.

simple, practical tests by which it can be known in the modern world in peace conditions, namely:

"Is there the right to free expression of opinion and of opposition and criticism of the Government of the day?

"Have the people the right to turn out a Government of which they disapprove, and are constitutional means provided by which they can make their will apparent?

"Are their courts of justice free from violence by the Executive and from threats of mob violence, and free of all association with particular political parties?

"Will these courts administer open and well-established laws which are associated in the human mind with the broad principles of decency and justice?

"Will there be fair play for poor as well as for rich, for private persons as well as for Government officials?

"Will the rights of the individual, subject to his duties to the State, be maintained and asserted and exalted?

"Is the ordinary peasant or workman who is earning a living by daily toil and striving to bring up a family, free from the fear that some grim police organisation under the control of a single party ... will tap him on the shoulder and pack him off without fair or open trial to bondage or ill-treatment?"

Any Nigerian will answer all of Sir Winston's seven questions with an emphatic "YES"!

Nigerians consider as sacred their independence and cherish their freedom. In the words of the President of the Federal Republic of Nigeria, Dr. Nnamdi Azikiwe:

"... if independence means the substitution of indigenous tyranny for alien rule, then those who struggled for the independence of former colonial territories have not only desecrated the cause of freedom, they have betrayed their peoples."

These are the words of one of the foremost nationalists on the African Continent. They are words which portray the determination of the people of Nigeria to uphold the principles of democracy.

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Appendix A

FUNDAMENTAL RIGHTS

Deprivation of life.

18. (1) No person shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -

(a) for the defence of any person from violence or for the defence of property;

(b) in order to effect an arrest or to prevent the escape of a person detained;

(c) for the purpose of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission by that person of a criminal offence.

(3) The use of force in any part of Nigeria in circumstances in which and to the extent to which it would have been authorized in that part on the first day of November 1959, by the Code of Criminal Law established by the Criminal Code Ordinance (a), as amended, shall be regarded as reasonably justifiable for the purposes of this section.

Inhuman treatment

19. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing in this section shall invalidate any law by reason only that it authorizes the infliction in any part of Nigeria of any punishment that was lawful and customary in that part on the first day of November, 1959.

Slavery and forced labour.

20. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section "forced labour" does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation in pursuance of their duties as such or, in the case of persons who have conscientious objections to service in the armed forces, any labour required instead of such service;

(c) any labour required in the event of any emergency or calamity threatening the life or well-being of the community; or

(d) any labour that forms part of normal communal or other civil obligations.

Deprivation of personal liberty.

21. (1) No person shall be deprived of his personal liberty save in the following cases and in accordance with a procedure permitted by law -

(a) in consequence of his unfitness to plead to a criminal charge, in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty or in the execution of the order of a court of record punishing him for contempt of itself;

(a) Law of Nigeria, Rev. 1948, Chapter 42.

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease persons of unsound mind, persons addicted to drugs or alcohol or vagrants for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or for the purpose of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be promptly informed, in language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained in accordance with paragraph (c) of subsection (1) of this section shall be brought before a court without undue delay and if he is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(4) Any person who is unlawfully arrested or detained shall be entitled to compensation.

(5) Nothing in this section shall invalidate any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of a police force in execution of a sentence imposed by an officer of the armed forces of the Federation or a police force, as the case may be, in respect of an offence punishable by such detention of which he has been found guilty.

Determination of rights.

22. (1) In the determination of his civil rights and obligations a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality:

Provided that nothing in this subsection shall invalidate any law by reason only that it confers on any person or authority power to determine -

(a) questions arising in the administration of a law that affect or may affect the civil rights and obligations of any person; or

(b) chieftaincy questions.

(2) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing within a reasonable time by a court.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto in the interests of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of twenty-one years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice; and

(b) if in any proceedings before a court or such a tribunal a Minister of the Government of the Federation or a Minister of the Government of a Region certifies that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(5) Every person who is charged with a criminal offence shall be entitled -

(a) to be informed promptly, in language that he understands and in detail, of the nature of the offence;

(b) to be given adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or by persons of his own choice who are legal practitioners;

(d) to examine in person or by his legal representatives the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to the witnesses called by the prosecution; and

(e) to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence:

Provided that nothing in this subsection shall invalidate any law by reason only that the law prohibits legal representation in a court established by or under the Native Courts Law, 1956, the Sharia Court of Appeal Law, 1960, or the Court of Resolution Law, 1960, of Northern Nigeria (a), the Customary Courts Law, 1956, of Eastern Nigeria (b), or the Customary Courts Law of Western Nigeria (c), as amended, or any law replacing any of those laws.

(6) When any person is tried for any criminal offence, the court shall keep a record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the record within a reasonable time upon payment of such fee as may be prescribed by law.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

(a) Law No. 6 of 1956 and Nos. 16 and 17 of 1960.
(b) Law No. 21 of 1956.
(c) Laws of Western Nigeria, 1959, chapter 31.

(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court; and no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(9) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(10) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

Private and family life.

23. (1) Every person shall be entitled to respect for his private and family life, his home and his correspondence.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality, public health or the economic well-being of the community; or

(b) for the purpose of protecting the rights and freedom of other persons.

Freedom of conscience.

24. (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observances if such instruction, ceremony or observances relate to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom of other persons, including their rights and freedom to observe and practice their religions without the unsolicited intervention of members of other religions.

Freedom of expression.

25. (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights, reputations and freedom of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, wireless broadcasting, television, or the exhibition of cinematograph films; or

(c) imposing restrictions upon persons holding office under the state, members of the armed forces of the Federation or members of a police force.

Peaceful assembly and association.

26. (1) Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to trade unions and other associations for the protection of his interests.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights and freedoms of other persons; or

(c) imposing restrictions upon persons holding office under the state, members of the armed forces of the Federation or members of a police force.

Freedom of movement.

27. (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof; and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto.

(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) restricting the movement or residence of any person within Nigeria in the interest of defence, public safety, public order, public morality or public health;

(b) for the removal of persons from Nigeria to be tried outside Nigeria for criminal offences or to undergo imprisonment outside Nigeria in execution of the sentences of courts in respect of criminal offences of which they have been found guilty;

(c) imposing restrictions upon the movement or residence within Nigeria of members of the public service of the Federation or the public service of a Region, members of the armed forces of the Federation or members of a police force.

(3) Nothing in this section shall invalidate any law by reason only that the law imposes restrictions with respect to the acquisition or use by any person of land or other property in Nigeria or any part thereof.

(4) Nothing in this section shall invalidate any law by reason only that the law provides for the removal or exclusion of a person who is or was a chief by reference to a territory or a part of a territory from a particular area within that territory.

Freedom from discrimination.

28. (1) A citizen of Nigeria of a particular community, tribe, place of origin, religion of political opinion shall not, by reason only that he is such a person -

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of a Region to disabilities or restrictions to which citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not conferred on citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions.

(2) Nothing in this section shall invalidate any law by reason only that the law -

(a) prescribes qualifications for service in an office under the state or as a member of the armed forces of the Federation or a member of a police force or for the service of a body corporate established directly by any law in force in Nigeria;

(b) imposes restrictions with respect to the appointment of any person to an office under the state or as a member of the armed forces of the Federation or a member of a police force or to an office in the service of a body corporate established directly by any law in force in Nigeria;

(c) imposes restrictions with respect to the acquisition or use by any person of land or other property; or

(d) imposes any disability or restriction or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society.

Derogations from fundamental rights.

29. (1) An Act of Parliament shall not be invalid by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 18, 21, 22 or 28 of this Constitution, but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency;

Provided that nothing in this section shall authorise any derogation from the provisions of section 18 of this Constitution except in respect of deaths resulting from acts of war or any derogation from the provisions of subsection (7) of section 22 of this Constitution.

(2) In this section "period of emergency" means a period of emergency for the purposes of section 70 of this Constitution.

Reference to tribunal in certain cases.

30. (1) Where -

(a) any person is detained in pursuance of an Act of Parliament derogating from the provisions of section 21 of this Constitution; or

(b) the movement or residence of any person within Nigeria who is a citizen of Nigeria is lawfully restricted (otherwise than by order of a court) in the interest of defence, public safety, public order, public morality or public health,

that person shall be entitled to require that his case should be referred within one month of the beginning of the period of detention or restriction and thereafter during that period at intervals of not more than six months to a tribunal established by law and that tribunal may make recommendations concerning the necessity or expediency of continuing the detention or restriction to the authority that has ordered it:

Provided that such authority, unless it is otherwise provided by law, shall not be obliged to act in accordance with any such recommendation.

(2) A tribunal established for the purposes of this section shall be constituted in such manner as to ensure its independence and impartiality and its chairman shall be a legal practitioner appointed by the Chief Justice of Nigeria.

Compulsory acquisition of property.

31. (1) No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except by or under the provisions of a law that -

(a) requires the payment of adequate compensation therefor; and

(b) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria.

(2) Nothing in this section shall affect the operation of any law in force on the thirty-first day of March, 1958, or any law made after that date that amends or replaces any such law and does not -

(a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;

(b) add to the purposes for which or circumstances in which such property may be taken possession of or acquired;

(c) make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person owning or interested in the property; or

(d) deprive any person of any such right as is mentioned in paragraph (b) of subsection (1) of this section.

(3) Nothing in this section shall be construed as affecting any general law -

(a) for the imposition or enforcement of any tax, rate or due;

(b) for the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence;

(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;

(d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind, of deceased persons and of companies, other bodies corporate and unincorporate societies in the course of being wound up;

(e) relating to the execution of judgments or orders of courts;

(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;

(g) relating to enemy property;

(h) relating to trusts and trustees;

(i) relating to the limitation of actions;

(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;

(k) relating to the temporary taking of possession of property for the purposes of any examination, investigation or enquiry; or

(l) providing for the carrying out of work on land for the purpose of soil-conservation.

(4) The provisions of this section shall apply in relation to the compulsory taking of possession of property, movable or immovable, and the compulsory acquisition of rights over and interests in such property by or on behalf of the state.

Special jurisdiction of High Courts in relation to this Chapter.

32. (1) Any person who alleges that any of the provisions of this Chapter has been contravened in any territory in relation to him may apply to the High Court of that territory for redress.

(2) Subject to the provisions of section 115 of this Constitution, the High Court of a territory shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement, within that territory of any rights to which the person who makes the application may be entitled under this Chapter.

(3) Parliament may make provision with respect to the practice and procedure of the High Courts of the territories for the purposes of this section and may confer upon those courts such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling those courts more effectively to exercise the jurisdiction conferred upon them by this section.

Interpretation of Chapter III.

33. Without prejudice to the generality of section 165 of this Constitution, in this Chapter, unless it is otherwise expressly provided or required by the context -

"court" means any court of law in Nigeria but, except in relation to a member of the armed forces of the Federation, does not include a court-martial;

"law" includes an unwritten rule of law;

"member of the armed forces of the Federation" includes any person who is subject to naval, military or air-force law; and

"member of a police force" includes a person who is subject to any law relating to the discipline of a police force.

Appendix B

CASES DECIDED BY THE NIGERIAN COURTS IN WHICH THE "FUNDAMENTAL RIGHTS" PROVISIONS OF THE NIGERIAN CONSTITUTION WERE DISCUSSED

Freedom of conscience, freedom of expression and peaceful assembly and association

1. Dahiru Cheranci vs. Alkali Cheranci (1960 N.N.L.R.24) The defendant was convicted of "inciting a young boy to participate in politics" under the Northern Region Children and Young Persons Law, 1958. In his appeal, the defendant asked the High Court of the Northern Region to declare certain sections of the statute void, on the ground that these sections were inconsistent with paragraphs 7[1], 8[2] and 9[3] of the Sixth Schedule of the Nigeria (Constitution) Order in Council, 1954, as amended, which deals with "fundamental rights".

The Court stated that there is a presumption that the Legislature has acted constitutionally and therefore the burden of proof rests with the person challenging the constitutionality of a statute. The Court held that the sections of the statute in question did not constitute an encroachment on paragraph 7 dealing with that freedom of conscience, but that they did restrict the fundamental human rights to freedom of expression and to peaceful assembly as set forth in paragraphs 8 and 9 of the Constitution. The Court stated that "...a restriction upon a fundamental human right must before it may be considered reasonably justifiable (a) be necessary in the interest (in the present case) of public morals or public order; and (b) must not be exeessive or out of proportion to the object which it is sought to achieve." After taking into account the immaturity and the potential irresponsibility of young persons and the fact that the Northern Region was just emerging into self-government, the Court concluded that the Legislature was justified in controlling the political activities of juveniles. In dismissing the appeal, the Court held that the statute did not violate the constitutional guarantees specified in paragraphs 8 and 9.

1/ The Sixth Schedule to the Nigeria (Constitution) Order in Council, 1954, as amended, deals with fundamental rights. The text of paragraph 7 of the Sixth Schedule is the same as the text of Section 24 of the 1963 Constitution which appears in Appendix "A".

2/ The text of paragraph 8 of the Sixth Schedule to the Nigeria (Constitution) Order in Council, 1954, as amended, is the same as the text of Section 25 of the 1963 Constitution which appears in Appendix "A".

3/ The text of paragraph 9 of the Sixth Schedule to the Nigeria (Constitution) Order in Council, 1954, as amended, is the same as Section 26 of the 1963 Constitution which appears in Appendix "A".

Freedom of conscience, freedom of expression and peaceful assembly and association

2. Olawoyin vs. the Attorney-General of the Northern Region (1961 All N.L.R.269). The plaintiff sought a declaratory judgment to the effect that certain sections of the Northern Region Children and Young Persons Law, 1958, (see above paragraph 1), were invalid as they conflicted with paragraphs 7[1], 8[2] and 9[3] of the 1954 Constitution. He alleged that he was entitled to give political instruction to his children and that this right was endangered by the sanctions imposed by the statute. The High Court dismissed the case on the ground that no right of the appellant was shown to have been infringed and that it would be contrary to principle to make a declaration in vacuo.

The Federal Supreme Court affirmed the dismissal by the lower Court and held that a judgment could be granted only in cases where it is proved that the plaintiff has a direct interest in the outcome of the proceedings. In this case, the plaintiff failed to establish that there was an imminent danger that penalties would be imposed, since no legal action was pending or threatened.

Freedom of conscience and freedom from discrimination

3. Ojiegbe and anor vs. Ubani and anor (1961 All N.L.R.277). The plaintiffs filed an election petition concerning the election in the Aba Central constituency for the Federal House of Representatives, which had been held on Saturday, 12 December 1959. They objected to the election results because they, along with six or seven thousand other Seventh Day Adventists in the constituency, were under a disability during the election. They stated that the ethics of their religion restricted many activities, including voting, on Saturday, which is their Sabbath.

On appeal, the Federal Supreme Court held that there was no substance in the contention that the holding of an election on a Saturday violated the plaintiffs' rights under paragraphs 7[1/] and 11[4/] of the 1954 Constitution. It drew attention to the fact that the application to have the polling date changed on the basis that fundamental human rights were infringed was made neither at the time that the Electoral Commission refused to alter the polling date nor during the trial in the lower Court. The Court observed that the defeated candidate had lost the election by more than twenty thousand votes, therefore, even if all of the six or seven thousand Seventh Day Adventists had cast their votes in favour of the candidate, the results would have been the same.

4/ The text of paragraph 11 of the Sixth Schedule to the Nigeria (Constitution) Order in Council, 1954, as amended, is the same as the text of Section 28 of the 1963 Constitution which appears in Appendix "A".

Freedom of expression

4. In the case of Director of Public Prosecutions vs. Obi (1961 All N.L.R.186) the defendant was prosecuted for sedition under Sections 50 and 51 of the Criminal Code. He had published and distributed a pamphlet entitled "The People: Facts you must know", which contained inter alia the following statements concerning the Government of Nigeria: "down with the enemies of the people, exploiters of the weak and oppressors of the poor...." Under the Code, it is an offence to bring the Government into hatred or contempt or to incite dissatisfaction against the Government.

The Federal Supreme Court was asked by the High Court of Lagos to determine whether these Sections of the Criminal Code had been modified by Section 24[5/] of the Constitution of 1960 The Court held to the contrary and went on to state that the laws in question were not in conflict with the right of freedom of expression guaranteed by Section 24. In the opinion of the Court, the Code did not prevent fair criticism but only prohibited publications inciting contempt of the Government. The Court found that it is justifiable in a democratic society to take precautions to preserve public order and this may necessitate the prohibition of acts which, if not restrained, might lead to disorder even if those acts, in and of themselves, would not do so directly.

5/ The text of Section 24 of the Second Schedule to the Nigeria (Constitution) Order in Council, 1960, is the same as the text of Section 25 of the 1963 Constitution which appears in Appendix "A".

Freedom of expression

5. The Queen vs. Amalgamated Press of (Nigeria) Ltd. and anor(1961 All N.L.R.199). The Federal Supreme Court had before it two questions which had been referred by the High Court of Lagos:

(i) whether Sections 50 and 51 of the Criminal Code (see above paragraph 4) relating to seditious publications against the Government was invalidated by Section 24[5] of the 1960 Constitution; and

(ii) whether Section 59 (1) of the Criminal Code relating to the spreading of "false news likely to cause fear and alarm to the public"is violated by Section 24 of the Constitution.

In answering the first question in the negative, the Court referred to the case of the Director of Public Prosecutions vs. Obi.(see above paragraph 4) Regarding the second question which the Court also answered in the negative, it was held that Section 24 of the Constitution "guaranteed nothing but ordered freedom" and therefore that section could not be used as a licence to spread false news likely to cause fear and alarm to the public.

Right to a fair hearing in the determination of "civil rights"

6. Merchants Bank Ltd. vs. Federal Minister of Finance (1961 All N.L.R.598). The appellant challenged an order, revoking its licence made by the Minister of Finance, under the Banking Ordinance. The appellant maintained that the Ordinance vested the powers of revocation in the Minister of Finance, in violation of paragraph 5 of the Sixth Schedule of the 1954 Constitution, which provides that a Court is the final arbiter of "civil rights and obligations".

The Federal Supreme Court found that since the bank had acquired the right to carry on business under the Ordinance, it could not thereafter claim that such right could be revoked only in the manner prescribed by the Constitution. The Court took note of the matters dealt with in the Sixth Schedule and also examined the context in which the phrase "civil rights and obligations" appears in paragraph 5 (1).[6] In dismissing the appeal, it concluded that the right to engage in banking is not a "civil right" protected by the Constitution.

6/ The text of paragraph 5 (1) of the Sixth Schedule to the Nigeria (Constitution) Order in Council, 1954, as amended, is similar to the text of Section 22 (1) of the 1963 Constitution which appears in Appendix "A".

Right to a fair hearing in criminal cases

7. Gokpa vs. Inspector General of Police (1961 All N.L.R.423). The High Court of the Eastern Region ordered a new trial to the defendant on the ground that the first trial contravened the provisions of Section 21 (2)[7] of the 1960 Constitution which deals with the right of an accused to a fair trial. On the trial date neither defendant nor his counsel appeared and the Magistrate ordered a bench warrant to be issued against the defendant. The case was adjourned to the following day, when the defendant appeared and requested an adjournment on the ground that his counsel was unavailable. The request was denied and the Magistrate proceeded with the trial on that date. The defendant refused to give evidence, did not cross-examine witnesses and did not take an active part in the proceedings. There was no evidence that the defendant or his counsel had been informed of the scheduled date of trial.

The appeals Court concluded that the failure of the defendant and his counsel to appear was excusable. It ordered a new trial, and held that the Magistrate should have endeavoured to ensure that the accused is given an opportunity to defend himself with the aid of counsel in accordance with the provisions of Section 21 (2) of the Constitution.

The right to counsel in criminal cases

8. Shemfe vs. The Commissioner of Police (1962 N.N.L.R.87). The defendant requested an adjournment on the ground that his counsel was unable to appear in the pending criminal proceedings. The only way to furnish legal representation to the defendant would have been to adjourn the case for a third time since it appeared that no other counsel was available.

On appeal, the defendant asked the High Court of the Northern Region to rule that the denial of his request resulted in an "unfair" trial because he was obliged to act as his own counsel. The High Court took note of the fact that the absence of counsel was unexplained and concluded that it was unjustified. In the opinion of the Court the absence of counsel was not occasioned by the Magistrate but rather by the counsel of the defendant. It held that, in these circumstances, the absence of counsel was not a denial of the right to counsel in criminal cases specified in Section 21 (5)(c) and (d)[8] of the 1960 Constitution.

7/ The text of Section 21 (2) of the Second Schedule to the Nigeria (Constitution) Order in Council, 1960, is the same as the text of Section 22(2) of the 1963 Constitution which appears in Appendix "A".

8/ The text of Section 21(5)(c) and (d) of the Second Schedule to the Nigeria (Constitution) Order in Council, 1960, is the same as the text of Section 22 (5)(c) and (d) of the 1963 Constitution which appears in Appendix "A".

Right to counsel in criminal cases

9. Chief Obafemi Awolowo vs. Usman Sarki and the 'ttorney-General of the Federation (not yet reported). The plaintiff who was accused of treason, requested that he be represented by an English Barrister who was also a Barrister-at-Law of the Federal Supreme Court of Nigeria. He brought suit to challenge the order made by the Minister of Internal Affairs denying his counsel entry into Nigeria, on the ground that such order violated Section 21 (5)(c)[8] of the Second Schedule to the Nigeria (Constitution) Order in Council 1960; the plaintiff also alleged malice on the part of the Minister.

In disposing of the question of malice, the High Court of Lagos held that the allegation was not proved, and stated that even if it was proved, the Minister was excercising the powers conferred upon him by the Immigration Act. It held further that, under the Act, the Minister was entitled to deny certain persons admission into Nigeria. This denial was not contrary to the Constitution, because, in the opinion of the Court, the right to legal representation in criminal cases, as set forth in Section 21(5)(c) meant indigenous legal representation. This case went on appeal to the Federal Supreme Court but the Court's decision is not yet available.

Requirement that criminal offences and penalties be prescribed by written law

10. Oako vs. Fagbemi and anor (1961 All N.L.R.400). The defendant was prosecuted in a customary Court for the offence of "committing adultery by living with another man without judicial separation". She pleaded guilty and was subsequently found guilty by the trial Court.

The High Court noted that there was no statute specifying that the conduct of the defendant was a crime. The Court overturned the conviction and ordered that the fine and costs be refunded to the defendant. It held that the conviction was contrary to the provisions of Section 21 (10)[9] of the Constitution of 1960, which provided that criminal offences and penalties must be prescribed by written law.

9/ The text of Section 21(10) of the Second Schedule to the Nigeria (Constitution) Order in Council, 1960, is the same as the text of Section 22(10) of the 1963 Constitution which appears in Appendix "A".

Mr. Godfrey K. J. Amachree
Under-Secretary for Trusteeship

19 June 1964

C. V. Narasimhan
Chef de Cabinet

I have already communicated to you the message from the Permanent Mission of the United Kingdom, confirming the willingness of the Government of Nyasaland to pay for your return ticket from New York to Zomba and back. In continuation of your visit to Zomba for the Nyasaland Independence Celebrations, the Secretary-General has already informed you that he wishes you to join him for the African Summit which will take place in Cairo on 17 July. It was my understanding that you intended to proceed from Zomba to Lagos and from there to Cairo before returning to New York.

May I suggest that you take advantage of the return ticket to be provided by the Government of Nyasaland to cover your visit to Cairo also, and return from there to New York? The United Nations will, of course, pay for the cost of the deviation involved.

cc: Mr. Bruce Turner
Mr. David Vaughan
Mr. Lemieux

ST/

14 February 1964

Dear Mr. Fasso,

On behalf of the Secretary-General, I should like to acknowledge receipt of your letter of 6 February 1964 concerning Mr. Godfrey K.J. Amachree. In this connexion, I should like to point out that Mr. Amachree has been away on an official trip abroad of several weeks and returned to Headquarters only yesterday, 13 February.

Yours sincerely,

José Rolz-Bennett
Deputy Chef de Cabinet

Mr. Thomas N. Fasso
Fasso and Belserene
271 North Avenue
New Rochelle, New York

SG

cc: Mr. Amachree (with original incoming letter)

CVN

FASSO & BELSERENE
ATTORNEYS & COUNSELORS AT LAW
271 NORTH AVENUE
NEW ROCHELLE, N. Y.
TEL NEW ROCHELLE 6-7900-7901

THOMAS N. FASSO
JAY R. BELSERENE

February 6, 1964

Secretary General, United Nations
and
Chairman, Nigerian Delegation
First Avenue and 42nd Street
New York 17, N. Y.

Honorable Sirs:

We are the attorneys for Arthur Ruggiero, a working man, who resides at 68 Soundview Avenue, New Rochelle, New York. Mr. Ruggiero, during September of 1963, was asked by Hon. Godfrey K. J. Amachree to do some work for him in his kitchen, which he did.

Later, Mr. Ruggiero submitted a bill to Mr. Amachree in the sum of $309.25 for labor and materials. He never was paid. Then, the undersigned, former City Judge of New Rochelle, New York, wrote several very polite letters to Mr. Amachree, calling attention to his oversight and requesting payment, or, in the alternative, a meeting to discuss the justice of the matter; --to no avail.

As a consequence, it was necessary to serve a Summons upon Mr. Amachree for money damages; which Summons was not answered nor replied to. The question, quite naturally, arises:

Is there any respect whatsoever on the part of the Hon. Godfrey K. J. Amachree for the laws of the United States? Is there any respect and consideration on his part for workers who perform services for him? Finally, must this working man go unpaid? The man who did the work, naturally, is a respected member of our community. He is willing to submit to you anything you may require to indicate more fully just what services he rendered.

I trust that you, Sirs, and your Honorable Body, will not permit the gentleman from Nigeria, no matter how exalted his position, to disregard the just bill of Arthur Ruggiero.

Immensely appreciated is anything you may do for Mr. Ruggiero, to the end that he will receive payment.

Respectfully yours,

THOMAS N. FASSO

TNF:klw
cc: Mr. Arthur Ruggiero

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ETATPRIORITE

TECABOARD

KHARTOUM (SUDAN) =

33 MOST IMMEDIATE. UNDERSECRETARY GODFREY KKK JJJ AMACHREE SCHEDULED TO ARRIVE KHARTOUM FROM SALISBURY EIGHT FEBRUARY 0135 HOURS ON CENTRAL AFRICAN AIRWAYS FLIGHT 894 DEPARTING KHARTOUM SAME DAY 1210 HOURS ETHIOPIAN AIRLINES 714 TO ACCRA. PLEASE PASS HIM FOLLOWING MESSAGE FROM SECGEN WHICH HAS BEEN =

P2 =

COPIED TECABOARD LUSAKA: QUOTE ACTION AMACHREE INFO IVANSMITH. REFERENCE YOUR CABLE FROM LUSAKA. MOST REGRETFULLY I HAD TO INTERRUPT TRIP AND RETURN TO HEADQUARTERS LAST NIGHT. HOWEVER THIS DOES NOT CALL FOR YOUR OWN IMMEDIATE RETURN TO NEWYORK AS YOU MAY WISH TO COMPLETE YOUR TRIP =

P3/46 =

IN AFRICA. PLEASE CABLE YOUR TRAVEL PLANS. HAVE SENT MESSAGES TO GOVERNMENTS OF COUNTRIES I COULD NOT VISIT THIS TIME EXPRESSING MY DEEPEST REGRETS AND MY HOPE OF BEING ABLE TO VISIT THEIR COUNTRIES AS SOON AS CIRCUMSTANCES PERMIT. SECRETARY GENERAL. UNQUOTE +

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GODFREY KKK JJJ AMACHREE

IN CARE OF CENTRAL AFRICAN AIRWAYS FLIGHT 894 ARRIVING

FROM SALISBURY

KHARTOUM (SUDAN) =

ACTION AMACHREE 26 INFO IVANSMITH. REFERENCE YOUR CABLE FROM LUSAKA.

MOST REGRETFULLY I HAD TO INTERRUPT TRIP AND RETURN TO

HEADQUARTERS LAST NIGHT. HOWEVER THIS DOES NOT CALL FOR

YOUR OWN IMMEDIATE RETURN TO NEWYORK AS YOU MAY WISH TO

COMPLETE YOUR TRIP IN =

P2/42 =

AFRICA. PLEASE CABLE YOUR TRAVEL PLANS. HAVE SENT MESSAGES TO

GOVERNMENTS OF COUNTRIES I COULD NOT VISIT THIS TIME EXPRESSING

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P2/42 =

AFRICA. PLEASE CABLE YOUR TRAVEL PLANS. HAVE SENT MESSAGES TO GOVERNMENTS OF COUNTRIES I COULD NOT VISIT THIS TIME EXPRESSING MY DEEPEST REGRETS AND MY HOPE OF BEING ABLE TO VISIT THIER COUNTRIES AS SOON AS CIRCUMSTANCES PERMIT =

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ACTION

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INITIALS

Return to Records Control Room 2974

SECRETARY GENERAL UNNATIONS NEW YORK

AMACHREE LUSAKA WILL END VISIT HERE SATURDAY EIGHTH FEBRUARY STOP PLEASE CABLE URGENTLY WHETHER I SHOULD PROCEED TO GHANA AND AWAIT YOUR ARRIVAL OR PROCEED TO HEAD QUARTERS AS I UNDERSTAND YOU HAVE INTERRUPTED YOUR AFRICAN TOUR

AMACHREE

UNITED NATIONS
1964 FEB -6 AM 7:50
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UNATION 222422

10 January 1964

Dear Mr. Fasso,

I am sorry that I have been unable to reply to your letter before now but, as you no doubt realise, I have a very, very busy schedule.

There is no question of my not wanting to pay Mr. Ruggiero for the work he did.

Firstly, I would like to inform you, as I have already done by telephone, that Mr. Ruggiero did not complete his contract, and secondly, his charges were far in excess of what he had indicated to me the work would cost. I pointed out this fact to Mr. Ruggiero and he agreed to come and discuss the matter with me, but instead of doing so he went to you expecting that your letter to me would "frighten me out of my guts".

What amazes me about the whole incident is that Mr. Ruggiero and I have been on the best of terms and if he will only find it possible to come and have a talk with me I have no doubt that we will settle the matter amicably. All I want to do is to point

out what was not done and to discuss his bill with him.

I am not responsible for any delay in this matter and, therefore, request you to use your good offices to talk some sense into Mr. Ruggiero.

Wishing you all the best for 1964.

Yours truly

Godfrey K. J. Amachree

Mr. Thomas S. Fasso
271 North Avenue
New Rochelle. New York