

NIGERIA

MILITARY INJUSTICE

Major General Zamani Lekwot and Others Face Government-Sanctioned Lynching

INTRODUCTION

Fifteen Nigerians are currently imprisoned, awaiting death by hanging for their supposed participation in ethnic/religious riots in Kaduna State, in northern Nigeria, in May 1992. The death sentences were delivered by two Special Tribunals that tried some 70 suspects alleged to be involved in the riots. All constitutional guarantees were suspended for the trials, and there is no right of appeal. The farcical proceedings threaten to culminate in a government-sanctioned lynching. None of the trials even approached the stringent due process requirements for the imposition of the death penalty that are established by international standards.

The case of a group of six of those sentenced to death has attracted particular international attention in part because of the distinguished record of one of its members, retired Major General Zamani Lekwot, who was military governor of Rivers State in southern Nigeria in the 1970s and later held the title of Ambassador-at-Large to Mauritania, Senegal, Cape Verde and Gambia. The trial of the six, before Benedict Okadigbo, a retired judge, was characterized by an extraordinary level of abuse, including blatant bias and hostility by the judge, a presumption of guilt and inadequate access to counsel.

A number of factors point to the involvement of Nigeria's military government, led by President Ibrahim Babangida, in ensuring the convictions of the Lekwot group. Most significant is the promulgation of a military decree that barred any court from inquiring into abuses of constitutionally guaranteed rights that occurred during the trial.

Human rights attorney Chief Mike A. A. Ozekhome, president of the Universal Defenders of Democracy, a recently formed human rights group based in Lagos, has challenged the death sentences on the grounds that Lekwot and the five others did not receive a fair trial. The suit has secured a stay of the executions until March 31.

BACKGROUND

Political, ethnic and religious factors all contributed to the riots and the subsequent arrests, convictions and death sentences. Nigeria's tightly controlled transition to civilian rule has forbidden Nigerians from forming parties of their own choice, including any parties based on ethnicity or religion. In denying Nigerians a legitimate arena for the promotion of interests based on ethnicity, the government has driven these ambitions underground. This has heightened tensions among the country's more than 250 ethnic groups, which often see themselves as competing for political power.

In Kaduna State, as in northern Nigeria as a whole, the Hausa-Fulani ethnic group is the largest and most politically powerful. The Katafs are one of the ethnic Christian minorities in the north, of which General Lekwot is a member and for whom he has been for years a vocal leader and organizer. Zango-Kataf, inhabited by both Hausas and Katafs, has been a center of tension ever since colonial days. It is there that violence erupted in 1992.

Disagreements between the Hausas and Katafs over land ownership date back at least a century. Katafs claim that Hausas are settlers on their land, which the Hausas deny. Katafs resent the regional political system, a holdover from the colonial era, which vests authority over non-Muslims in Muslim leaders. The Katafs and other non-Muslim ethnic groups in the north have been demanding for years that they be allowed to elect a local chief of their choice. This right continues to be denied them.

A precursor to the May devastation occurred in February 1992, when approximately sixty Hausas and Katafs died in communal violence. The immediate cause of the conflict was a plan to move the local marketplace from the center of the Hausa district to a site where the Katafs were in the majority. Political analysts stress that a struggle for political power in light of the impending hand-over to democratic rule was also an important factor in the violence. In February 1992, the Nigerian government was promising to leave office by the end of the year. National Assembly elections were to take place in July 1992, Presidential elections were to be held in December and the new government was to take over in January 1993.¹

Katafs were irritated by several procedural issues surrounding the seven-person commission of inquiry established to investigate the violence. They complained that Kaduna Governor Dabo Lere appointed a majority of Muslims to the Commission, thereby weighting it against the Katafs. They also objected to the shift in the venue of the commission from Zongwa, the Zango-Kataf local government council headquarters, to Kafanchan, a larger city nearby, and finally to the city of Kaduna, capital of Kaduna state, where Muslims are the majority.

Both Muslims and Christians criticized the government's inadequate response to the crisis. After the February violence, Isa Kaita, a former federal minister and respected Muslim, and Kaduna's Archbishop Peter Jatau led meetings to help resolve problems between Christians and Muslims. They recommended that joint Christian-Muslim committees be formed at all levels of government to resolve problems and sent the recommendations to President Babangida, but no government action was taken.

¹ This was not to happen. National Assembly elections went ahead as planned in July 1992, but after presidential primaries were marred by widespread fraud, President Babangida announced in November 1992 that the hand-over to a civilian government would be postponed, for the third time, to August 27, 1993.

In mid-May, the violence spun out of control when a number of Katafs engaged in what was apparently a killing spree against the Hausas in Zango-Kataf. The violence spread to the cities of Kaduna, where some of the wounded were transported, and also to another large city, Zaria, also in Kaduna State. In those cities the violence took on a more overtly religious--rather than ethnic--tone, with Hausa Muslims apparently attempting to avenge the killings in Zango-Kataf by attacking Christians irrespective of their ethnic identity. The government claimed that fewer than 300 died, but others contend that thousands lost their lives. Calm was restored on May 20. On May 22, the governor, without legal authority, dissolved the Zango-Kataf local government and appointed a sole administrator, Mallam Haruna Zok, to oversee the area.

THE TRIAL

On May 18, the Federal government established the Zango-Kataf Civil and Communal Disturbances Tribunal in Kaduna City, with powers to try those allegedly involved in the bloodshed. In addition to the Chairman, Justice Okadigbo, the other six members were: Godwin Alaye Graham-Douglas (Senior Advocate of Nigeria), Alhaji Aminu Malumfashi, Hajia Tani Yusuf, Otunba A. Adeleke Adedoyin, Colonel Yusuf Abubakar and Mustapha Wali. The composition of the Tribunal, which includes five Hausas, four of them Muslim, led to a wide perception of bias against Lekwot and the five others.

General Lekwot was arrested on May 18, sent to Kuje Prison, nearly 200 miles away, and detained incommunicado under Decree 2, which provides for virtually unlimited detention without charge or trial. After pressure from human rights organizations and others, Lekwot and five other Kataf leaders were arraigned on July 29 before the Tribunal and charged with unlawful assembly with intent to subjugate the Hausa community in Zango-Kataf. Both before and during the trial, the defendants were held in abysmal conditions in Kaduna prison, where they were not allowed access to their families or attorneys.

According to Mike Ozekhome, the human rights attorney, the government violated its own military laws in establishing the Zango-Kataf Tribunal. Civil Disturbances Decree 53 of 1987, which provides the legal basis for the Tribunal, requires the government to establish a commission of inquiry and conduct investigations before bringing charges. That requirement was ignored when the Zango-Kataf Tribunal was established.

The trial was subject to obvious political influence. In August, when it became apparent that there was insufficient evidence to convict Lekwot and the others, the prosecution filed a motion not to pursue the case. Meanwhile, however, as reported by the Committee for the Defense of Human Rights, a Nigerian human rights group, the politically powerful Sultan of Sokoto, Alhaji Ibrahim Dasuki, and other prominent Hausa-Fulanis publicly demanded that those responsible for the Zango-Kataf riots not be spared.² Apparently in response Justice Okadigbo, in ordering that Lekwot and the others be released, said that the "police would have to do their duty." The six were immediately rearrested on the Tribunal premises and placed in incommunicado detention in Kaduna Prison.³

² "Urgent Call for the Release of General Lekwot and Others," Committee for the Defense of Human Rights, October 5, 1992.

³ *Ibid.*

On September 4, Lekwot and six others were charged in a new 22-count indictment, which included a charge of culpable homicide, punishable by death. Lekwot was also accused of distributing guns and ammunition to a riotous group and inciting a group of Katafs to violence. In December, virtually all the charges were dropped except that of culpable homicide.

During the second trial, Justice Okadigbo repeatedly demonstrated his bias against the defendants to the point of reportedly terrorizing the defense attorneys, the defendants and spectators. His improprieties included telling the defendants during the trial that there would be "gnashing of teeth" on the day of judgment, and threatening to jail defense lawyers if he did not like their lines of inquiry. On September 29, the leading defense counsel, Chief G. O. K. Ajayi, Senior Advocate of Nigeria, threatened to withdraw from the proceedings which, according to him, had become "impossible from the point of view of the defense."

Mr. Graham-Douglas, one of the Christian members of the Tribunal, resigned early in the proceedings, giving the reason that the other Tribunal members met privately without him and gave judgments on cases they had heard together without seeking his opinion.

In late October, defense lawyers went before a Kaduna High Court to seek an injunction restraining the Tribunal from further handling the case because the defendants were unlikely to receive a fair trial. The Kaduna High Court refused to grant the injunction on the grounds that it lacked jurisdiction over the case.⁴ The ruling was upheld by the Court of Appeal on November 20, 1992. The defense then took their case to the Supreme Court.

However, on December 1, while the case was pending before the Supreme Court, the government promulgated Decree 55 of 1992, which removed the authority of the regular courts, including the Supreme Court, to hear any case regarding any abuse of constitutionally guaranteed rights by the Tribunal and in all other cases involving military decrees.⁵ According to Decree 55, constitutionally guaranteed rights may be obviated by military decree. The decree states in part:

2. For the avoidance of doubt, if any law enacted before 31st December 1983, including the Constitution of Federal Republic of Nigeria 1979 is inconsistent with any Decree promulgated by the Federal Military Government, the Decree promulgated by the Federal Military Government shall prevail and that other law shall, to the extent of the inconsistency, be void.

3-(1) No civil proceedings shall lie or be instituted in any court or tribunal for or on account of, or in respect of any act, matter or thing done or purported to be done under or pursuant to this Decree by or on behalf of the Federal Military Government.

The decree was made retroactive to July 30, 1991, a common practice of the government in promulgating

⁴ According to Civil Disturbances Decree 53 of 1987, which is the legal basis for establishing the Zango-Kataf tribunals, all decisions of the tribunal are final.

⁵ Predictably, in Nigeria, where the most recent phase of military rule has lasted for ten years, military decrees form a substantial portion of the laws of the land.

decrees. The complete text of Decree 55 is included as an appendix to this report.

In protest of the Decree and the mistreatment of their clients, all eleven defense counsel withdrew on January 4, 1993. In announcing their withdrawal Ajayi said:

I have read and re-read Decree 55 of 1992 ... The effect is that the accused persons cannot challenge the proceedings of this Tribunal. It means that accused persons are under the mercy of the Tribunal.

Having regard to my professional conduct and my stand to defend the fundamental rights of Nigerians, I therefore feel that this Tribunal is not competent for me to stand to discharge my professional duties.⁶

Colonel Yohanna Madaki (rtd.), another of the group's defense attorneys and a former military governor of Benue and Gongola States, characterized the Tribunal's proceedings as "gangsterism."

Asked by Okadigbo to comment on the withdrawal of counsel, one of the accused remarked:

...[I]t is an indication that we have only been brought here to be executed and not to stand trial before the tribunal...Since we are here for execution and not trial, what then do we have to say?⁷

According to Mike Ozekhome, the federal government tried to impose its own defense counsel on the accused, but the offer was rejected and the trial was adjourned. The Tribunal did not sit again until February 2, when its only act was to convict and sentence to death by hanging Lekwot and the five others tried with him. Lekwot was convicted of culpable homicide, although, according to Mike Ozekhome, the only evidence linking him to the killings was the uncorroborated testimony of one illiterate farmer who claimed that Lekwot stabbed and cut the liver out of a Hausa Muslim, Rabiou Hassan. Also sentenced to death were:

- o Major James Atomic Kude, retired, the former Zango-Kataf supervisory councillor for education, also convicted of culpable homicide.**
- o Yohanna Karau Kibori, a businessman and farmer.**
- o Marcus Mamman, a businessman and farmer.**
- o Yahaya Duniya, Zango-Kataf's former officer of the Social Democratic Party.**
- o Julius Sarki Zamman Dabo, a member of the Zango-Kataf community.**

⁶ **Saxone Akhaine, Kaduna, "Zango-Kataf: Lekwot's lawyers withdraw from suit," *The Guardian* (Lagos), January 5, 1993.**

⁷ ***Ibid.***

Juri Ayok, former chairman of the Zango-Kataf local government, was acquitted for lack of evidence. Others sentenced to death by Justice Okadigbo in separate trials were Iliya Maza, a former member of the military, sentenced on February 1, 1993, and Gakon Dawa Kurfi, a retired police officer, sentenced on December 4, 1992.

A second Zango-Kataf Civil Disturbances Tribunal, chaired by Justice Adegbite, finished sitting in early March. Although the trials were apparently not characterized by the same level of abuse as those under Justice Okadigbo, it is responsible for sentencing to death with no appeal the following seven: Dan Zachary Azimi, sentenced on March 11; Bagwai Samaida, sentenced on February 15; Shubu Abubakar, sentenced on February 15; Shubu Ali, sentenced on February 15; Ayuba Tashie, sentenced on March 8; Jonathan Yashin, sentenced on March 8; and Bala B. Bonnet, sentenced on March 8.

The death sentences contravene internationally accepted standards of human rights, including the International Covenant on Civil and Political Rights.⁸ Although Nigeria has not ratified the Covenant, the Covenant's due process provisions are widely accepted as establishing minimum standards. Article 6-2 of the Covenant states:

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.... This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

The nature of such a "competent court" was clarified by the UN Economic and Social Council in the form of a resolution, enacted in 1984, entitled "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty." Among the Safeguards are the following points:

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

All of these provisions were breached by the Special Tribunal proceedings.

⁸ **Africa Watch opposes the death penalty in all cases, and is particularly opposed to cases in which the death penalty is imposed in violation of international standards.**

THE AFTERMATH

The reports of both tribunals were sent to Nigerian Attorney-General and Secretary for Justice Clement Akpamgbo, who will review them and send them with his recommendations to the National Defense and Security Council (NDSC), which in January 1993 replaced the Armed Forces Ruling Council. The NDSC may then decide whether to grant clemency. The government has not indicated when it will make its decision.

Since the death sentences were pronounced, both Christians and Muslims have indicated that whichever way the decision goes, it is likely to cause unrest. A number of protests have been staged, including one in Kaduna on February 8 in which some 300,000 Katsina women took part. Nigerian and international human rights groups and many prominent Nigerians, including former military leaders, have protested the death sentences. On February 10, Lars Brinkenberg, Danish Ambassador and representative of the European Community, delivered a letter to Chief Ernest Shonekan, head of the Transitional Council (which in January 1993 became the official executive branch of government, although Babangida retains absolute power over the nation), expressing concern about the death sentences. Shonekan told Brinkenberg that the government would give "due consideration" to the appeals for clemency. The U.S. has made no public statements condemning the killings but, according to the State Department, has raised the issue privately.

Meanwhile, the Supreme Council for Islamic Affairs and Jamatu Nasril Islam (loosely translated from Hausa as Movement for the Victory of Islam), both headed by the Sultan of Sokoto, have called for the death sentences to be carried out.

On February 3, 1993, Mike Ozekhome named President Babangida, Chief Shonekan, Justice Okadigbo and Attorney-General Akpamgbo in a suit brought in the Lagos High Court to revoke the death sentences of Lekwot and the other five and to release them because they did not receive a fair trial. In the suit, Ozekhome argues:

...that the purported 'trial,' 'conviction,' and 'sentence,' of Lekwot, Kude, Kibori, Mamman, Duniya and Dabo by Justice Okadigbol are most barbaric, shameful, despicable, illegal and constitute a violent violation of their fundamental right to life and to a fair trial recognized by sections 30 and 33 of the Constitution of the Federal Republic of Nigeria, 1979, Articles 4 and 7 of the African Charter on Human and Peoples Rights and Article 10 of the Universal Declaration of Human Rights, 1948.

He also asserts that Decree 55:

...is a repulsive and draconian piece of legislative judgment promulgated and delivered specifically and retroactively to convict Lekwot, Kude, Kibori, Mamman, Duniya and Dabo, without any right of Appeal and is consequently a bad law made 'ad homine' which is repugnant to natural justice, equity and good conscience, and to various sections of the African Charter on Human and Peoples Rights, Laws of the Federation of Nigeria, 1990, and the Universal Declaration of Human Rights, 1948, to which Nigeria as a supposed decent Nation within the international community is a signatory.

At a hearing of the case on March 3, the court granted the six a stay of execution until a hearing on March 17.

On that day, the Director of Legal Services of the Department of Justice, representing the government, requested a further extension in order to prepare the government's arguments. The judge granted the request and extended the injunction, barring the executions until March 31, when another hearing is scheduled.

The Constitutional Rights Project (CRP), a Nigerian human rights group based in Lagos, has attempted to take the cases of Lekwot and others to the international arena. The CRP sent a petition for a review of the case to the African Commission on Human and Peoples Rights, arguing that the Okadigbo Tribunal was unfair. The Nigerian member of the African Commission, Professor Umezurike, then wrote to Attorney-General Akpangbo urging that the death sentences not be carried out until the African Commission has had time to review the case. There was no indication when that review would occur.

In late February, in response to statements by the head of Kaduna Prison that he would not be able to ensure the safety of the prisoners in Kaduna, Lekwot and the other five convicted with him were transferred from Kaduna by black maria, a poorly ventilated police vehicle, to Port Harcourt Prison in Rivers State, where Lekwot served as governor. Lekwot apparently became ill from the arduous trip, was treated in a hospital and returned to prison. The others who have been sentenced remain in Kaduna Prison.

CONCLUSION

Nigeria is currently undergoing tremendous tension, primarily due to a deteriorating economy and increasingly vocal dissatisfaction with the military government and its stalled transition to civilian rule. Many Nigerians believe that the tension will be used as an excuse by the government to continue in office beyond August. Because of the emotions they have provoked on both sides, the Lekwot trial's death sentences are a flashpoint for unrest. Whether the government is willing to honor its international legal obligations by revoking the death sentences of Lekwot and the others and releasing them from prison will be a significant indicator of its stated commitment to reestablish the rule of law in Nigeria.

RECOMMENDATIONS TO THE NIGERIAN GOVERNMENT

- 1. Overturn the death sentences of all those convicted by the Zango-Kataf Tribunals. The death sentences are a clear violation of international standards concerning the imposition of the death penalty.**
- 2. Release from prison immediately all those who have been convicted by the Special Tribunals. If there are legitimate charges against any of them, they should be tried in regular courts of law.**
- 3. Rescind Decree 55, which has effectively removed Nigerians' constitutionally guaranteed human rights.**
- 4. At all levels of government, begin sincere and serious efforts to defuse tension and promote understanding among the various ethnic and religious groups.**
- 5. Clearly state and enforce policies that prohibit bias and discrimination along ethnic and religious lines.**

6. Turn over the reins of government to the National Assembly, who can oversee the already scheduled presidential elections.

Africa Watch is a non-governmental organization created in May 1988 to monitor human rights practices in Africa and to promote respect for internationally recognized standards. Its Chair is William Carmichael. Its Vice-Chair is Alice Brown. Janet Fleischman and Karen Sorensen are Research Associates; Bronwen Manby is a Schell Fellow; Ben Penglase, Urmi Shah and Anthony Levitow are Associates.

Africa Watch is a division of Human Rights Watch, which also includes Americas Watch, Asia Watch, Helsinki Watch, Middle East Watch and the Fund for Free Expression. The Chair of Human Rights Watch is Robert L. Bernstein and the Vice-Chair is Adrian W. DeWind. Aryeh Neier is Executive Director of Human Rights Watch; the Deputy Director is Kenneth Roth; Holly J. Burkhalter is Washington Director; Gara LaMarche is Associate Director; and Susan Osnos is the Press Director.