

# Nigeria Since May 1999: Understanding the Paradox of Civil Rule and Human Rights Violations Under President Olusegun Obasanjo

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This Article originated as a paper presented at the Third Annual Turning of the Centuries Conference held at Chicago State University on April 4–5, 2002. The author thanks Emeka Onumonu for his kind help with many of the sources used for this Article. The author also thanks Dylan Malagrino, Sarah Bawany, Cary Sullivan, and their colleagues on the *San Diego International Law Journal* for their excellent editorial assistance. The author dedicates this work to the loving memory of his father, Samuel S. Aka.

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## I. INTRODUCTION

Although Nigeria has enjoyed civilian rule since May 29, 1999,<sup>1</sup> “democracy”<sup>2</sup> or civil rule has not resulted in improved human rights for the country. A paradox exists between civil rule and human rights violations in the country that this Article focuses on.<sup>3</sup> The task of the piece is to explain why the expectation of improved human rights under a democratic regime has failed to materialize under General Obasanjo.<sup>4</sup> A debate rages concerning the impact of democratization on human rights in Africa that the Article contributes to.<sup>5</sup> The study draws on the experience

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1. This date marked the inauguration of Nigeria's latest democracy (and republic). Nigerians celebrate each of their exposures to democracy since independence with the appellation “republic”. The present Obasanjo regime sets off the Fourth Republic. The First existed from 1960 to 1966 and the Second from 1979 to 1983. An anticipated Third Republic became still-born when General Ibrahim Babangida (1985–93) annulled a presidential election that would have ushered in that republic. Each of the previous Republics preceding this latest one ended on a note of military intervention.

2. For reasons presented *infra* in Part V.A., we refer to the present government in Nigeria as “civil rule”, rather than as a “democracy” in any sense other than figure of speech.

3. A paradox is a statement that contradicts expectation of received wisdom. *See THE AMERICAN HERITAGE COLLEGE DICTIONARY* 989 (3d ed. 1993). The expected wisdom under contradiction here is that the experience of civil rule will result in improved human rights for the citizenry, which it has not.

4. Reference in this Article to the government under General Obasanjo should not be taken to mean that the President represents the only symbol of Nigeria's civilian government. For although the President occupies a dominant position in the country's presidential system of government, he is only one out of numerous symbols or centers of the constitutional system that includes a bicameral national assembly of 469 members (109 senators and 360 representatives), a national judiciary, a national civil service, thirty-six state governments plus a federal capital territory, and hundreds of local governments. *See, e.g.,* Richard Joseph et al., *Nigeria, in* INTRODUCTION TO COMPARATIVE POLITICS 546, 575–85 (Mark Kesselman et al. eds., 2nd ed. 2000) (listing the organization of the country's complex political system).

5. *See, e.g.,* Joseph Takougang, *Human Rights and Multiparty Democracy in Sub-Saharan Africa: A Historical Perspective*, 1 21ST CENTURY AFRO REV. 145, 145–77 (1995). *See generally* Akwasi Aidoo, *Africa: Democracy Without Human Rights*, 15 HUM. RTS. Q. 703 (1993).

of Nigeria since May 1999 to highlight the nature of the impact of governmental systems on human rights.<sup>6</sup> Much euphoria marked the return to civil rule in the west African country in May 1999 of a kind that has not been seen since the end of the civil war (1967–70).<sup>7</sup> The event signified an opportunity, after over fifteen years of repressive military rule, for the country to resume its experiment with democracy from where that journey stopped before soldiers seized power on New Year's Eve 1984.<sup>8</sup> Nigerians share a zeal for freedom and democracy that military rule dampens but never kills.<sup>9</sup> Additionally, because army rule between 1983 and 1999 was characterized by massive human rights violations,<sup>10</sup> the return to civil rule left renewed hope for improved human rights.

The Article seeks to understand why much of the hope for improved human rights has remained unrealized. It has four parts, in addition to this introduction and a conclusion. Part II. provides a definition of *human rights*, the history of these rights in Nigeria, and the machinery that has evolved over the years, all the way up to the Obasanjo presidency, for the enforcement of these rights. Part III. describes the practice of human rights in Nigeria before 1999. The section integrates General Obasanjo's

6. See discussion *infra* Part V.A.

7. For example, Abdulsalami Abubakar, the general transferring power, compared the return to civil rule to the country's receipt of independence from Britain in 1960, whereas Olusegun Obasanjo, the retired general receiving power, viewed it as "the beginning of a genuine renaissance in Nigeria." See Norimitsu Onishi, *Nigeria Military Turns Over Power to Elected Leader*, N.Y. TIMES, May 30, 1999, at 1, 6.

8. General Obasanjo intoned in his maiden address that "Today, we are taking a decisive step in the path of democracy. We will leave no stone unturned to ensure sustenance of democracy, because it is good for us, it is good for Africa, and it is good for the world." *Id.* at 1.

9. See Ali M. Ali et al., *Senate Backs House, Reopens Constitutional Breaches*, THISDAY (LAGOS), Aug. 28, 2002, available at <http://www.thisdayonline.com/archive/2002/08/28/20020828.html> (last visited Jan. 16, 2003) (containing the statement of one senator that Nigerians look "forward to democracy and democratization since independence as a precondition for the growth and development of the nation and its people..."); Larry Diamond, *Nigeria: Pluralism, Statism, and the Struggle for Democracy*, in 2 DEMOCRACY IN DEVELOPING COUNTRIES: AFRICA 33 (Larry Diamond et al. eds., 1988) (describing Nigerians as a people who have "never been content with authoritarian rule" and a people who, through the "vicissitudes of political crisis and economic disarray," have "maintained a profound commitment to personal freedom and political participation"). See also HUMAN RIGHTS WATCH, HUMAN RIGHTS IN NIGERIA: A BRIEFING FOR THE VISIT OF PRESIDENT CLINTON, Briefing Paper (Aug. 22, 2000), available at <http://www.hrw.org/campaigns/nigeria/print-version.htm> (last visited Jan. 14, 2003) (reporting the result of a survey on popular attitudes to democracy carried out in 2000, which found strong popular sentiments in favor of democratic governance among eighty percent of the Nigerian population).

10. See discussion *infra* Part III.

role and it points to the legacy of British colonialism in Nigeria as a major factor responsible for the country's poor human rights record. Part IV. is an assessment, using various objective benchmarks, of General Obasanjo's human rights record since May 1999. Part V. provides four explanations for the paradox symbolized in the coexistence of civil rule and unabated human rights violations in Nigeria since 1999.

## II. HUMAN RIGHTS IN THE NIGERIAN CONTEXT

Human rights are freedoms such as life, liberty, security, subsistence, and other guarantees to which people as humans have rights.<sup>11</sup> They are generally understood as claims or entitlements against the state or society held equally by all persons simply because they are human beings.<sup>12</sup> Governments have a "first responsibility" for promoting and protecting these rights.<sup>13</sup> They are obligated not only to respect but also to create all conditions necessary for the practical and effective enjoyment of every human right guaranteed for their citizenry.<sup>14</sup> No genuine development takes place at the expense of human rights.<sup>15</sup>

Three distinct categories of human rights identified in the literature are political-civil rights; social, economic, and cultural (or socioeconomic) rights; and, solidarity rights.<sup>16</sup> The first two categories of rights are fully

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11. See JACK DONNELLY, *INTERNATIONAL HUMAN RIGHTS* 1 (2d ed. 1998).

12. See *id.* (human rights "are usually taken to have a special reference to the ways in which states treat their own citizens"). Conceptually speaking, *human rights* is simply the "form in which the international community, under Western influence, has chosen to express human dignity . . . ." Although a concept with a Western origin, *human rights* is also so evolutionary and dynamic that today it is recognized and accepted throughout the world as a universal term. Virginia A. Leary, *The Effect of Western Perspectives on International Human Rights*, in *HUMAN RIGHTS IN AFRICA: CROSS CULTURAL PERSPECTIVES* 15, 29–30 (Abdullahi A. An-Na'm & Francis M. Deng eds., 1990) [hereinafter *HUMAN RIGHTS IN AFRICA*]. Note that *human rights* as understood and practiced today under the U.N. system is distinguished from the *idea* of human rights (or freedom), which is something common to every civilization. See Philip C. Aka, *The Military, Globalization, and Human Rights in Africa*, 18 N.Y.L. SCH. J. HUM. RTS. 361, 375–76 (2002).

13. LARRY DIAMOND, *DEVELOPING DEMOCRACY TOWARD CONSOLIDATION* 4 (1999) (quoting the text of the Declaration and Program of Action adopted by participants at the conclusion of the Second World Conference of Human Rights held in Vienna in 1993).

14. See *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, G.A. Res. 53/144, U.N. GAOR 53rd Sess., U.N. Doc A/RES/53/144 (1999).

15. U. OJI UMOZURIKE, *THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS* 23 (1997). See also Juan J. Linz & Alfred Stepan, *Toward Consolidated Democracies*, in *CONSOLIDATING THE THIRD WAVE DEMOCRACIES: THEMES AND PERSPECTIVES* 15 (Larry Diamond & Marc F. Plattner eds., 1997) (insisting that, irrespective of how freely elected they were or the substantiality of their majority, regimes should not be viewed as democracies if they fail to respect the rights of individuals and minorities, among other constitutional subversions).

16. See, e.g., Aka, *supra* note 12, at 371–74.

elaborated in the international bill of rights<sup>17</sup> that also, to a lesser extent, elaborates solidarity rights, such as the right to self-determination.<sup>18</sup> All three categories of human rights are also elaborated in the African Charter on Human and Peoples' Rights (ACHPR).<sup>19</sup> The ACHPR is considered unique among international human rights instruments for its emphasis on duty and solidarity rights.<sup>20</sup> The instrument among the international bill of rights elaborating on political-civil rights is the International Covenant on Civil and Political Rights (ICCPR).<sup>21</sup> The instrument among the international bill of rights elaborating socioeconomic rights is the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>22</sup> These two human rights instruments had been envisioned in 1948 as a single treaty, denoted as the International Human Rights Covenants, but was broken into two because of the Cold War.<sup>23</sup>

Political-civil rights include the right to life, dignity of human persons, personal liberty, fair hearing, private and family life, and right to freedom from discrimination.<sup>24</sup> Others are the right to freedom of thought, conscience and religion; freedom of expression and the press, peaceful assembly and association; and, freedom of movement.<sup>25</sup> Socioeconomic rights include the right to education; right to work, including protection against unemployment; right to form and join trade unions; and, right to social security, among other rights.<sup>26</sup> Solidarity

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17. Three instruments comprising the international bill of rights are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

18. See A.H. ROBERTSON & J.G. MERRILLS, *HUMAN RIGHTS IN THE WORLD* 34–35 (4th ed. 1996) (referring particularly to the UDHR).

19. African Charter on Human and Peoples' Rights (ACHPR), done June 27, 1981, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986).

20. See ROBERTSON & MERRILLS, *supra* note 18, at 249, 254–60.

21. International Covenant on Civil and Political Rights (ICCPR), adopted Dec. 1966, 999 U.N.T.S. 171 (entered into force on Mar. 23, 1976).

22. International Covenant on Economic, Social, and Cultural Rights (ICESCR), registered Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force on Jan. 3, 1976).

23. DONNELLY, *supra* note 11, at 8. See RHODA E. HOWARD, *HUMAN RIGHTS IN COMMONWEALTH AFRICA* 2 (1986); Leary, *supra* note 12, at 25–26. The cold war is the political-economic and ideological rivalry from 1945 to about 1990 between the United States and the former Soviet Union for control of countries in the developing world. See generally RONALD E. POWALSKI, *THE COLD WAR: THE UNITED STATES AND THE SOVIET UNION 1917–1991* (1998).

24. See, e.g., NIG. CONST. ch. IV, § 30–34 (1979).

25. *Id.*

26. See *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), arts. 22–27, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

rights include, in addition to the right to self-determination previously referred to,<sup>27</sup> the rights to peace, development, a clean/healthy environment, and of people to freely exploit/dispose of their natural resources.<sup>28</sup> The U.N. General Assembly, in 1986, recognized the right to development.<sup>29</sup> These rights are denominated “solidarity” because they require “the solidarity of peoples” to carry into effect.<sup>30</sup>

Political-civil, socioeconomic, and solidarity rights are referred to sometimes, respectively, as “first-generation”, “second-generation”, and “third-generation” rights. The denominations are based simply on when the rights in question were generated and do not suggest that any of these rights takes precedence over the other. The various generations of human rights “highlight the evolution and mutual interdependence of these rights rather than suggest that any category should have priority over the others.”<sup>31</sup> First-generation rights are primarily the legacy of the Age of Enlightenment and the American Bill of Rights; second-generation rights are the legacy of the Age of Industrialization and the Soviet Constitution of 1917; and, third-generation rights are a reflection of the failure of domestic sovereignty in the latter part of the twentieth century to solve global problems.<sup>32</sup> Each of the various generations of rights complements and completes the others.<sup>33</sup>

Political-civil rights are guaranteed but not always respected by constitutions of many African countries. The situation is worse for socioeconomic rights that, in many countries, are not even considered real rights worthy of protection as constitutional guarantees. But the situation appears to be changing for the better. Recently, the ACHPR issued a landmark decision in a suit filed against the Nigerian government that

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27. See *supra* text accompanying note 18.

28. CHRIS MAINA PETER, HUMAN RIGHTS IN AFRICA 59–74 (1990); KAREN A. MINGST & MARGARET P. KARNS, THE UNITED NATIONS IN THE POST COLD WAR ERA 165 (2d ed. 2000).

29. MINGST & KARNS, *supra* note 28, at 165.

30. UMOZURIKE, *supra* note 15, at 51. Karel Vasak, who first elaborated this latest generation of rights describes these rights as values that “can be realized only through the concerted efforts of all the actors on the social scene”:

These rights seek to infuse human dimension into areas where it has all too often been missing, having been left to the state or states . . . . [T]hey are new in that they may be both invoked against the state and demanded of it; but above all . . . they can be realized only through the concerted efforts of all the actors on the scene: the individual, state, public and private bodies and the international community.

*Id.* (quoting Karel Vasak, For the Third Generation of Human Rights: The Rights of Solidarity, Inaugural Lecture, 10th Study Session of the International Institute of Human Rights (July 1979)).

31. Aka, *supra* note 12, at 375.

32. *Id.* at 372–73.

33. For more on the nature of the complementary and reinforcing relationship among these rights see Table 1 *infra* in Part IV.B.

signals both a strong statement on the validity/enforceability of socioeconomic rights and movement toward protection of solidarity rights.<sup>34</sup>

Although reference to *human rights* often connotes individual rights, the concept is not limited to individual rights,<sup>35</sup> but rather includes collective or group rights.<sup>36</sup> Human rights can be either individual or group.<sup>37</sup> Political-civil rights and socioeconomic rights are individual rights that may also be enjoyed by groups;<sup>38</sup> and, solidarity rights like the rights to peace, development, a clean environment, and the right to self-determination are group rights that individuals may also enjoy.<sup>39</sup> Both the Universal Declaration of Human Rights (UDHR) and the ACHPR recognize both individual and group rights.

Guarantee of human rights in Nigeria, "has its genesis in the attempt to allay the fears of minority ethnic groups . . . ."<sup>40</sup> These minority groups feared that majority groups in their regions would dominate and/or relegate them to the margins of national economic and political

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34. See Jim Lobe, *African Commission Hands Down Far-Reaching Human Rights Decision*, Oneworld, July 3, 2002 (on file with author). Felix Morka, director of the Lagos-based Social and Economic Rights Action Center, a human rights non-governmental organization, which argued this case, praised the decision as the first by the African Commission "to specifically and comprehensively address violations of economic and social and cultural rights under the African Charter." *Id.* For one assessment of the composition, functions, and other features of the African Commission see Laurie S. Wiseberg, *The African Commission on Human and Peoples' Rights*, 22 A JOURNAL OF OPINION, 34-41 (1994) (now AFRICAN ISSUES).

35. Rhoda E. Howard, *Group versus Individual Identity in the African Debate on Human Rights*, in HUMAN RIGHTS IN AFRICA, *supra* note 12, at 181-82 (human rights "do not necessarily imply possessive individualism . . . ." *Id.*).

36. *Id.* at 182. ("The purpose of human rights is . . . to protect people-individually or in groups-against the state." *Id.*). See also Leary, *supra* note 12, at 30 (stating that *human rights* is a "dynamic and evolutionary" concept "that has recently been extended to cover many aspects of human dignity," including group rights, "not contemplated under the traditional Western rubric of human rights"). Professor Howard achieves a marriage between individual and group rights using the concept of "ethnic individualism," by which she means "a concern with the rights of individuals, either on their own or as members of families, kinship groups, and religious or other groups that they value. . . ." Howard, *supra* note 35, at 182.

37. For more on the nature of the complementary and reinforcing relationship between individual and group rights see discussion *infra* Part V.D.

38. See *supra* note 34 and accompanying text (referring particularly to socioeconomic rights).

39. Howard, *supra* note 35, at 182 (stating that the purpose of human rights is to protect people, whether individually or in groups, against the state).

40. Ekwueme Okoli, *Toward a Human Rights Framework in Nigeria*, in TOWARD A HUMAN RIGHTS FRAMEWORK 203, 204 (Peter Schwab & Adamantia Pollis eds., 1982).

life once Nigeria became independent from Britain. As a result, the British government, in 1956, appointed a commission headed by Sir Henry Willink (the Willink or minorities' commission) to inquire into the justification for these fears and recommend means for allaying them.<sup>41</sup> The end result was the insertion of fundamental guarantees in the country's independence and post-independence constitutions.

However, Nigerian constitutions do not guarantee all three categories of human rights. Political-civil rights are guaranteed as "fundamental rights."<sup>42</sup> These constitutions also embody socioeconomic guarantees,<sup>43</sup> but do not protect them as real or "fundamental rights."<sup>44</sup> Rather, the "guarantees" are viewed as mere aspirations and denoted non-justiciable, meaning that, unlike for political-civil rights, citizens may not sue and get remedies in a court of law if and when the government violates these rights.<sup>45</sup> Human rights non-governmental organizations (NGOs) in the country find the occurrence unsatisfactory. Thus, for example, the Committee for the Defense of Human Rights laments that the 1999 Constitution's socioeconomic profile reduces it to little more than "a treatise on abdication of responsibilities."<sup>46</sup> Finally, although rights guaranteed in Nigerian constitutions exist for both individuals and groups,<sup>47</sup> these constitutions do not provide for solidarity rights like the

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41. Report of the Commission Appointed to Inquire into the Fears of the Minorities and the Means of Allaying Them (1958) [hereinafter Willink Commission Report].

42. See, e.g., NIG. CONST., *supra* note 24, §§ 30–34 (1979) (whose provisions include the right to life, dignity of human persons, personal liberty, fair hearing, private and family life, right to freedom from discrimination, right to freedom of thought, conscience and religion, freedom of expression and the press, peaceful assembly and association, and freedom of movement).

43. See *id.* ch. II (dealing with "Fundamental Objectives and Directive Principles of State Policy").

44. *Id.*

45. For elaboration of the fundamental objectives and directive principles of state policy generally and description of the nature of the distinction between political-civil and socioeconomic rights in particular see FEDERAL REPUBLIC OF NIGERIA, 1 REPORT OF CONSTITUTIONAL DRAFTING COMMITTEE v–vii (1977).

46. COMMITTEE FOR THE DEFENSE OF HUMAN RIGHTS, ANNUAL REPORT ON THE HUMAN RIGHTS SITUATION IN NIGERIA 1999 100 (July 2000) [hereinafter COMMITTEE ANNUAL REPORT].

47. One writer posits that this writing of guarantees into the Constitution highlights a decision in favor of group rights in Nigerian human rights debate. OKOLI, *supra* note 40, at 204. Actually, the decision marks a simultaneous preference for both group and individual rights and illustrates the close inter-connection and complementarity of these rights. The guarantees contained in the 1960 and subsequent constitutions were rights denominated for people qua individuals. The guarantees were also, at the same time, "minority" rights, meant to assuage the fear or concern of minorities concerning possible domination by majority groups after the Willink commission failed to recommend for them the new states these minorities argued they needed to insulate them from majority domination. See also *supra* notes 35–39 and accompanying text. Today, these guarantees may be claimed by any group regardless of whether it is majority or minority.



right to peace or a clean environment or free exploitation of natural resources on a group's own land.<sup>48</sup>

The machinery traditionally used to enforce human rights in Nigeria, like in many other societies, is the judiciary or courts. During eras of civilian rule, these courts do a fairly good job protecting human rights,<sup>49</sup> but are much less effective in periods of military rule when judicial autonomy becomes severely vitiated.<sup>50</sup> The judiciary remained the only machinery for human rights enforcement in Nigeria until 1995. That was the year the human rights commission approach evolved as a supplement to the traditional machinery. The establishment of the National Human Rights Commission (NHRC) had all the mark of the strange irony that sometimes characterizes the conduct of public affairs in Nigeria. The NHRC was set up by a military decree and during the rule of the ruthless dictator General

48. The closest to these rights in Nigeria would be the "Federal Character" Doctrine. One of the important innovations of the country's Second Republic constitutionalism, this Doctrine, in pertinent part, provides that:

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

NIG. CONST., *supra* note 24, § 14(3) (1979). Put differently, to give every ethnic group within the country a sense of belonging and promote national loyalty, the Doctrine requires that the distribution of appointments, contracts, educational opportunities, or other federal benefits—what Nigerians colloquially dub "federal presence"—reflect the country's federal character, and not benefit any one group at the expense of others. However, it did not take long for the Doctrine to become distorted. *See generally* FEDERAL CHARACTER AND FEDERALISM IN NIGERIA (Peter P. Ekeh & Eghosa E. Osaghae eds., 1989). And no Nigerian leader has applied it consistently. Ironically, as this Article shows, this includes General Obasanjo, under whose first government the Doctrine was written into the Constitution. Prior to Obasanjo, General Abacha (1993–98) held the record for neglect of the Doctrine. Under him, all the military service chiefs, the Secretary to the Federal Government, the Inspector-General of Police, and seventeen out of the nineteen Assistant Inspectors-General of Police were all Northerners. *See* Philip C. Aka, *Nigeria: The Need for an Effective Policy of Ethnic Reconciliation in the New Century*, 14 TEMP. INT'L & COMP L.J. 327, 354 n.190 (2000).

49. *See generally* B. Obinna Okere, *Judicial Activism or Passivity in Interpreting the Nigerian Constitution*, 36 INT'L & COMP. L.Q. 788 (1987).

50. *See* Charles Mwalimi, *The Influence of Constitutions on the Development of a Nation's Law and Legal System: The Case of Zambia and Nigeria*, 8 ST. LOUIS UNIV. PUB. L. REV. 181, 184 (1989). For general assessment of the judiciary not limited to any one era, civilian or military *see, e.g.*, Jennifer Widner, *Building Judicial Independence in Common Law Africa*, in THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES 177–94 (Andreas Schedler et al. eds., 1999); B.O. NWABUEZE, JUDICIALISM IN COMMONWEALTH AFRICA: THE ROLE OF THE COURTS IN GOVERNMENT (1977).

Sani Abacha (1993–98).<sup>51</sup> In setting up the commission, Abacha meant to fulfill Nigeria's commitment to the United Nations and the Organization for African Unity (OAU) to establish a national institution for human rights protection!<sup>52</sup> Some observers point to the influence of external factors in explaining the foundation of the NHRC.<sup>53</sup> Others cite the foundation as a testament to the commitment of Nigerian people for justice even in the face of great odds.<sup>54</sup> At any rate, the NHRC was empowered to deal with all matters relating to human rights protection under the Nigerian Constitution, the ACHPR, and the UDHR; it was specifically charged with the responsibility of monitoring and investigating alleged cases of human rights violations and making recommendations to the central government.<sup>55</sup> The NHRC has sixteen members and has, since its inception, been headed by a retired judge.<sup>56</sup>

Soon after he assumed office, President Obasanjo established a commission, the Human Right Violations Investigation Commission (HRVIC or the Oputa Panel),<sup>57</sup> to investigate past human rights abuses in the country. The panel's mandate was to ascertain the nature and causes of these abuses, with particular reference to mysterious deaths and assassinations or attempted assassinations; identify persons or organizations who perpetrated those abuses; determine whether the violations were a product of state policy; and, recommend measures designed to redress these past injustices and prevent/forestall future violations.<sup>58</sup> The work of the panel initially covered the period 1994–99 but was later extended backward

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51. *Righting the Wrongs of the Past*, Special International Report on Nigeria, WASH. TIMES (Sept. 30, 1999) [hereinafter *Righting the Wrong*].

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. "Oputa" refers to Chukwudifu I. Oputa, a retired Supreme Court justice who chaired the seven-person commission. The six other members are Alhaji Ali Kura Michika, Rev. Matthew Kuka, Margaret Pam, Mallam Mamman Daura (later replaced by Alhaji Adamu Lawal Bamalli), Tunji Abayomi, Modupe Areda, and T.D. Oyelade (secretary). General Obasanjo was the only former Nigerian military ruler to appear before the commission. Three living former military rulers whose regimes preceded Obasanjo's, namely, Generals Muhammadu Buhari (1983–85), Ibrahim Babangida (1985–93), and Abdulsalami Abubakar (1998–99), were subpoenaed to appear before the commission but none appeared. See Shola Oshunkeye, *No Hiding Place for the Generals*, TELL (LAGOS), Aug. 27, 2001, at 31–35 (including a description of the abuses for which the generals were subpoenaed); Mustapha Ogunsakin, *Oputa Panel Ends Sitting, Warns of Imminent Crisis*, GUARDIAN ONLINE (Lagos), Oct. 19, 2001 (on file with author).

58. Although the Oputa Panel's charge mentions *redress*, more than anything else, the purpose of the commission was actually reconciliation. In setting up the panel, General Obasanjo spoke about "restor[ing] harmony in our country," and about moving the country forward from "an unprecedented wickedness and oppressive era in our history." *Righting the Wrongs*, *supra* note 51. Also, in elaborating his understanding of his panel's charge, Justice Oputa stated that "[a]n eye for an eye will only leave the country blind." *Id.*

to the period of the first military coup in 1966.<sup>59</sup> There are two possible reasons why General Obasanjo chose to establish a fresh, independent commission, rather than assign the task to the already existent NHRC. The first is that he wanted to distance his government from any association that smacks of the military past. The second is the need to increase the level of confidence of Nigerians in the exercise, given the NHRC's ambiguous history.<sup>60</sup> He also probably surmised that only a fresh, independent commission can draw out the strain of reconciliation so central to the work of the Oputa Panel.

### III. PRACTICE OF HUMAN RIGHTS IN NIGERIA BEFORE 1999

#### A. *Problem of Human Rights in Nigeria*

Since its formation in 1914, Nigeria has unveiled numerous constitutions<sup>61</sup> that embody human rights guarantees. Constitutional

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59. Although the duration covered by the panel is broad, the focus on "mysterious deaths and assassinations or attempted assassinations" made the panel's mandate rather limiting. Human rights violations in Nigeria for the period in question encompass large-scale deprivations of life, liberty, and property. However, the mandate covers only life and leaves out liberty and property. Also, even the spectrum of *life* covered is narrow, limited as it is to mysterious deaths and assassinations or attempted assassinations. Life here, for example, does not include the pogrom in 1966 and 1967 of 100,000 Easterners, mostly Igbos, not to talk of the millions who died during the civil war from 1967 to 1970 either through starvation "as a legitimate tool of war" instituted by the federal government or killings that occurred from the federal government's incessant and wanton targeting of unarmed civilians. Because the period covered by the inquiry included 1966 to 1975 when General Gowon was in office, the General should have been subpoenaed to provide an accounting of the acts of atrocities that happened during his watch. Unfortunately, only the three generals whose rules immediately preceded General Obasanjo's presidency were invited. The non-invitation of General Gowon signifies that the government included, obviously for political gains, but did not really mean to cover the atrocities the federal government perpetrated against Igbos and other Easterners from 1967 to 1970. An Igbo group made a reparations claim of \$86 billion for losses inflicted on the ethnic group, which the government simply ignored. Worse still, the President has broken promises that raise question regarding the depth of even the gesture of reconciliation the panel represents. For example, following repeated appeals since he took office, General Obasanjo agreed to pay the retirement benefits of Igbo ex-servicemen who fought on the "rebel" (Biafran or non-federal) side during the war. But when the retirees submitted their claims, a junior minister in the defense department called them "traitors" and advised that they seek their livelihood in "buying and selling" rather than expect any benefits from the government. The President neither reprimanded this official nor in any way dissociated his government from this position. To the contrary, he subsequently promoted this official to full minister. See, e.g., John-Abba Ogbodo, *Effiong Leads Biafran Ex-Soldiers to Reps, Seeks Pensions*, GUARDIAN ONLINE (Lagos), Feb. 27, 2002 (on file with author).

60. *Righting the Wrongs*, *supra* note 51.

61. See, e.g., Ebere Nwaubani, *Constitution-Making and the Nigerian Identity, 1914-1960*, in *THE TRANSFORMATION OF NIGERIA: ESSAYS IN HONOR OF TOYIN FALOLA*, 73-112

provisions for human rights in Nigeria are *inadequate* given that, as we indicated in the previous section, the country provides for only political-civil rights and leaves socioeconomic rights and solidarity rights virtually unprotected. But although worrisome, this is not the main source of trouble. That real pain lies with respect for rights. Rights guaranteed in the country's numerous constitutions are often observed in the breach without regard to which government is in power. Rights become abused either because the military comes seizing its way into power and discards the constitution, or because a civilian (democratic) government assumes office and disrespects these rights.

In short, huge discrepancies exist between constitutional provisions of human rights in Nigeria and actual implementation of these rights.<sup>62</sup> The country was founded on a note of egregious human rights violation. Because it negates the right of people to determine for themselves rather than have foreigners do so for them, colonial control is inconsistent with any notion of human rights.<sup>63</sup> Indeed, British rule in Nigeria, as in other colonies, involved acts replete with negative ramifications for the life, liberty, and property of Nigerians.<sup>64</sup> But by far the most serious of the human rights atrocities Britain perpetrated on Nigerians was the fact that it lumped together, by fiat, without any consultation whatsoever, a multiplicity of diverse peoples who until 1914 had never lived together under one governmental roof or even closely interacted with one another.<sup>65</sup> This lumping together, commemorated in history as "The Amalgamation", is a root factor responsible for the country's poor human rights record since independence.<sup>66</sup>

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(Adebayo Oyebadé ed., 2002); Chris N. Okeke, *The Debt Burden: An African Perspective*, 35 INT'L LAW. 1489, 1493, n.27 (2002) (counting eleven constitutions from 1914 to 2001).

62. See, e.g., Chris W. Ogbondah, *Press Freedom in West Africa: An Analysis of One Ramification of Human Rights*, 22 A JOURNAL OF OPINION 21-26 (1994) (now AFRICAN ISSUES).

63. See Aka, *supra* note 12, at 371-81.

64. *Id.* at 381. (British rule was marked by abuse of Nigerian individual and collective rights in all categories and "left in its wake negative legacies in politics, economics, and social lives with ruinous consequences for human rights. . . ." *Id.*).

65. See, e.g., Philip C. Aka, *The "Dividend of Democracy": Analyzing U.S. Support for Nigerian Democratization*, 22 B.C. THIRD WORLD L.J. 225, 229 (2002). Nigeria houses three of the largest and most competitive ethnic groups ever in Africa. These ethnic groups which collectively make up two-thirds of the country are Hausa-Fulani, Igbo, and Yoruba. Seven percent of the world's languages are spoken in the country, the highest number of languages in any single nation. *Id.* at 228-29.

66. See, e.g., Robert Guest, *Survey: Nigeria, Fissiparous Folk*, ECONOMIST, Jan. 15, 2000, at 14 (indicating that "one of Nigeria's most enduring problems" is "holding together a country with such a diverse and fractious population" and that "[a]ntagonism between north and south is not simply about religion; it is a tribal matter, too, with deep historical roots"). Nigerians perpetually rue "the mistake of 1914" and, several years before the civil war, talks about confederation and secession were fashionable in the country. See 1 A.H.M. KIRK-GREENE, CRISIS AND CONFLICT IN NIGERIA: A

Probably because of this erroneous human rights foundation, in the years since its independence in 1960, Nigeria has moved from one episode of human rights violations to another. "Most adult Nigerians have directly and poignantly experienced" human rights abuses,<sup>67</sup> arising from military rule, civil war, violent changes of government, and nonstop governmental corruption,<sup>68</sup> to name just these occurrences.<sup>69</sup> The country started and completed a civil war within the very first decade of its existence as an independent nation!<sup>70</sup> Dubiously reputed as "the bloodiest civil war of the 20th century,"<sup>71</sup> the conflict claimed the lives of 3 million Igbos,<sup>72</sup> a substantial proportion of the entire Igbo population.<sup>73</sup> Military rulership,

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DOCUMENTARY SOURCEBOOK 1966–1969 3 (1971); EGHOSA E. OSAGHAE, CRIPPLED GIANT: NIGERIA SINCE INDEPENDENCE 1, 46 (1998). The President himself, in a recent ex-ray of the state of the union, allowed that "the major mistake of independence was that we had three countries [Hausa-Fulanis, Igbos, and Yorubas] in one . . . ." *Obasanjo Declares No Agreement With Northern Elders*, GUARDIAN ONLINE (LAGOS), Sept. 29, 2002 (on file with author).

To illustrate this difficulty in living together under one national roof, as early as 1945, northern Muslims orchestrated deadly "riots" that led to the deaths of hundreds of innocent Igbos in Jos and destruction of valuable Igbo properties. This started a pattern that would recur repeatedly in the life of the country. A repeat of this deadly act in May 1953, this time in Kano, impelled the British colonial authorities to set up a commission of inquiry into these "disturbances", the idea being to avert further reoccurrences. From every indication, as future acts of violence against Igbos prove, this simply did not work.

67. WILLIAM D. GRAF, *THE NIGERIAN STATE* 13 (1988).

68. Robert Guest, *Survey: Nigeria, Under New Management*, ECONOMIST, Jan. 15, 2000, at 3.

69. See OLADIMEJI ABORISADE & ROBERT J. MUNDT, *POLITICS IN NIGERIA* 159–61 (2d ed. 2002) (listing episodes of political violence with ramifications for human rights from 1953 to 2000).

70. A sampling of the numerous works on the Nigerian civil war, otherwise known as the Biafra war include JOHN DE ST. JORRE, *THE BROTHERS' WAR: BIAFRA AND NIGERIA* (1972); CDENEK CERVENKA, *THE NIGERIAN CIVIL WAR 1967–1970* (1971); KIRK-GREENE, *supra* note 66; 2 A.H.M. KIRK-GREENE, *CRISIS AND CONFLICT IN NIGERIA: A DOCUMENTARY SOURCEBOOK JULY 1967–JANUARY 1970* (1971); FREDERICK FORSYTH, *THE BIAFRAN STORY* (1970).

71. KIRK-GREENE, *supra* note 66, at vii.

72. See Alexander A. Madiebo, *Obasanjo, The Civil War, and Resource Control*, VANGUARD ONLINE (LAGOS), June 29, 2001, available at <http://www.vanguardngr.com/news/articles/2001/June/29062001/p14290601.htm> (last visited Jan. 21, 2003). Major General Madiebo commanded the Biafran Army. For his memoir on the war see ALEXANDER A. MADIEBO, *THE NIGERIAN REVOLUTION AND THE BIAFRA WAR* (1980).

73. The Nigerian federal government declared all-out war against the Igbos and other ethnic groups in the former eastern region for engaging in "secession" by declaring themselves an independent Republic of Biafra. But the secession followed an unprovoked genocide by northern Muslims the federal government could have stopped but failed to stop which claimed the lives of about 100,000 Easterners, mostly Igbos, and caused millions living in the North to flee to the South, abandoning their possessions and

in existence during the war, continued until 1999 when General Obasanjo took office.<sup>74</sup> The only respite, additional to the period 1960 to 1966, was during the Second Republic from 1979 to 1983. Even so, democracy, to the extent it was experienced during these two fleeting periods, was replete with anti-democratic features, which rendered it low quality.<sup>75</sup> A résumé of “the overriding story of Nigeria” since independence has been “[t]he progressive erosion of democratic and developmental promise.”<sup>76</sup> One common feature that the colonial and post-colonial periods share is the violation of the human rights of inhabitants.

### B. Human Rights in Nigeria from Buhari to Abacha

Oppressive military rule from 1983 to 1999 by a desperate generation of military dictators wreaked havoc on *all* categories of human rights, without exception. From Muhammadu Buhari (1983–85) to Ibrahim Babangida (1985–93) to Sani Abacha (1993–98), Nigerian military rulers violated the political-civil rights of their citizens. Buhari believed every Nigerian could use a little discipline and he frog-jumped government employees who came late to work.<sup>77</sup> Babangida unveiled a fake transition to democracy program and annulled a free election because he did not like the winner.<sup>78</sup> Under him, the government used its secret police to silence

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creating a refugee nightmare that ran into several million people. See OSAGHAE, *supra* note 66, at 63, 69. Igbo and other Easterners declared Biafra simply to save themselves from extermination given the inability of the federal government to protect their lives, liberty, and property.

74. Including the period before the civil war, Nigeria came under military rule for a total of almost twenty-nine out of thirty-nine years, counting from 1960. Nigerian commentators depicted military rule as a passing aberration. But until 1999, when General Obasanjo took office, military rule was the norm in the country and civil rule the aberration. Actually, as William Graf points out, the real norm of Nigerian politics is the seemingly endless alternation of “civilian and military regimes” or what he dubs “pendulum-movement.” GRAF, *supra* note 67, at 234.

75. See Larry Diamond, *Nigeria: The Uncivic Society and the Descent into Praetorianism*, in *POLITICS IN DEVELOPING COUNTRIES* 423–27, 433–40, 464–71 (Larry Diamond et al. eds., 2d ed. 1995).

76. *Id.* at 417. See also Robert J. Mundt & Oladimeji Aborisade, *Politics in Nigeria*, in *COMPARATIVE POLITICS TODAY* 681, 682 (Gabriel A. Almond et al. eds., 7th ed. 2000) (stating, quite correctly, that Nigerians feel unrelieved frustration “over the failure of their potentially wealthy country to provide for basic human needs, for education, for reliable transportation and communications and for a state structure free of rampant corruption”); Richard Joseph, *Nigeria and the Challenge of Leadership*, TELL (LAGOS), July 5, 1999, at 48 (maintaining that “[t]he Nigerian people have paid too great a price for the confusion, deception and despotism inflicted on [them] by her leaders, military as well as civilians, in the last few decades”).

77. Robert Guest, *Survey: Nigeria, The Last Despot?*, ECONOMIST, Jan. 15, 2000, at 4.

78. One analyst aptly castigated the failed Babangida transition program as “one of the most sustained exercises in political chicanery ever visited on a people.” See Diamond, *supra* note 75, at 443. For a critical analysis of this program see generally *TRANSITION WITHOUT END* (Larry Diamond et al. eds., 1997).

disagreeable journalists such as Dele Giwa, who was killed through a parcel bomb.<sup>79</sup> Abacha held the all-time record for human rights disrespect and atrocities.<sup>80</sup> Under him, dissidents were routinely tortured, political prisoners were tried *in camera* before military tribunals that hardly set them free, and execution of armed robbers and other wrongdoers were commonplace.<sup>81</sup> Abacha also hanged prominent Nigerians such as the environmentalist and Ogoni leader Ken Saro-Wiwa; imprisoned others, such as Obasanjo, Shehu Musa Yar'Adua, and Moshood Abiola;<sup>82</sup> and, forced the rest, such as the Nobel laureate Wole Soyinka, into exile. Except for Buhari, all of these generals tried and summarily executed hundreds of mostly young army officers whom they accused, truly or falsely, of plotting coups against them.<sup>83</sup> Because military regimes abrogate the Constitution when they come into office and rule by decrees and fiats, political-civil rights are usually the first to go under any military regime;<sup>84</sup> so, though still unjustified, there is really little surprise that these rights came under assault during this period.

But political-civil rights were not the only rights violated during this period; socioeconomic rights and solidarity rights also came under attack. By 1999, Nigeria earned about \$280 billion in oil revenues since the production of oil in commercial quantity in the country.<sup>85</sup> But most of this income was squandered through corruption and mismanagement, and little of it benefited the ordinary people.<sup>86</sup> Worse still, the country accumulated a

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79. See Diamond, *supra* note 75, at 450, 486 n.100.

80. Guest, *supra* note 77, at 4. ("Abacha's parting gift to the nation he pillaged was to make Nigerians determined never to see his like again." *Id.*). See also COMMITTEE ANNUAL REPORT, *supra* note 46, at 108 (indicating that the general had a "culture" of breaking up meetings, rallies, and other gatherings, even religious ones).

81. COMMITTEE ANNUAL REPORT, *supra* note 46, at 108.

82. Yar'Adua was General Obasanjo's deputy during his days as military head of state; Abiola was the presumed winner of the election Babangida annulled. General Obasanjo was the only one among these imprisoned prominent Nigerians to come out of prison alive; the others died in prison.

83. See Julius O. Ihonvbere, *A Critical Evaluation of the Failed 1990 Coup in Nigeria*, 29 J. MOD. AFR. STUD. 601-26 (1991) (analyzing the abortive April 1990 coup against General Babangida). Buhari had hardly consolidated his rule before he was removed in August 1985 in a palace coup carried out by General Babangida. Altogether he was in office for only about twenty months.

84. See generally Ogbondah, *supra* note 62, at 21-26.

85. Robert Guest, *Survey: Nigeria, A Tale of Two Giants*, ECONOMIST, Jan. 15, 2000, at 5.

86. *Id.* For notions correctly portraying political corruption as unlawful assault on individual and group human rights see Joseph, *supra* note 76, at 50 (stating that recent "Pharaonic corruption" in the country constitutes "an abuse of fundamental human rights, for it deprived many Nigerians of the means to sustain life itself"). See also

crushing external debt of about \$30 billion.<sup>87</sup> Although some leaders, like Abacha, were more blatantly avaricious than others,<sup>88</sup> all of Nigeria's military rulers, without exception, engaged in graft.<sup>89</sup> As of 1998, the country's per capita income was a paltry \$345 a year, about one-third what it was at the height of the oil boom in 1980.<sup>90</sup> Despite huge receipts of revenue from oil, by 1999, Nigerians were, on average, poorer than they were in 1974.<sup>91</sup> Unlike countries of comparable size and endowment, like Indonesia that turned their oil incomes into comparatively productive investment, Nigerians siphoned their oil income abroad or used it for prestige projects.<sup>92</sup> Few attempts made to correct this situation through economic reforms failed because those attempts usually came too late and did not go far enough.<sup>93</sup> So, the parlous state of economic affairs left citizens little socioeconomic rights for enjoyment.

Nor did solidarity rights fare any better. Rather, a serious deterioration occurred in the quality of the relationship between the government and many ethnic groups, as well as among ethnic groups themselves. One episode in the Niger Delta that epitomized this worsening was the Ogoni uprising against the national government.<sup>94</sup> The Ogonis complained bitterly and understandably about the negative environmental effects of oil exploration and drilling on their lives and sought more share of oil

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Ndiva Kofele-Kale, *The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime Under International Law*, 34 INT'L LAW. 149-63 (2000); NDIVA KOFELE-KALE, *Preface* to THE INTERNATIONAL LAW OF STATE RESPONSIBILITY FOR ECONOMIC CRIMES: HOLDING HEADS OF STATE AND OTHER HIGH RANKING STATE OFFICIALS INDIVIDUALLY LIABLE FOR ACTS OF FRAUDULENT ENRICHMENT xv (1995).

87. This unfortunate situation came about because, as Robert Guest explains, successive Nigerian governments borrowed billions of dollars against future oil revenues which they wasted too. Guest, *supra* note 85, at 5.

88. See *id.* at 6 for details.

89. Although the true total will probably never be known, it is estimated that Nigerian military rulers misappropriated or embezzled tens of billions of dollars. *Id.*

90. *Id.* at 5.

91. *Id.*

92. *Id.* (citing DAVID L. BEVAN ET AL., NIGERIA AND INDONESIA: THE POLITICAL ECONOMY OF POVERTY, EQUITY AND GROWTH (Oxford University Press 1999)). An anecdotal bad joke regarding corruption in the two countries is that whereas in Indonesia government functionaries settle for only ten percent commission, in Nigeria they go for broke, settling for nothing less than the entire 100 percent. *Id.*

93. See Chukwuma F. Obidegwu, *Nigeria: Priorities and Prospects for the 1990s*, in PROSPECTS FOR RECOVERY AND SUSTAINABLE DEVELOPMENT IN AFRICA 126-61 (Aguibou Y. Yansane ed., 1996) (analyzing General Babangida's "home-made" structural adjustment program).

94. See, e.g., Eghosa E. Osaghae, *The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State*, 94 AFR. AFF. 325-44 (1991); Aka, *supra* note 48, at 344-45. The Ogonis are a Nigerian ethnic group of about 500,000 people. An overview of the group's history can be found in Osaghae, *supra*, at 327-38. See also Stephen Wright, *The Government of Nigeria*, in INTRODUCTION TO COMPARATIVE GOVERNMENT 542, 584 (Michael Curtis ed., 4th ed. 1997).



revenues to compensate for these effects.<sup>95</sup> The uprising culminated in the kangaroo trial and hanging of Saro-Wiwa and eight other Ogoni indigenes.<sup>96</sup> In a recent unprecedented decision, the African Commission on Human and Peoples' Rights sided with the Ogoni people in their struggle against the government and vindicated the Ogoni position. The Commission ruled that the Nigerian military regime engaged in "massive violations" of the socioeconomic rights of the Ogoni people.<sup>97</sup> It found that the government failed to protect Ogoni property, lands, and health from destruction caused by oil exploration by foreign oil companies and "ruthless military operations" by Nigerian security forces.<sup>98</sup> A key element of the assault on individual and group human rights in the military years, especially during the regime of General Abacha, was an elaborate international public relations campaign "by which tyranny was defended abroad, paid for with assets that should have been used to meet the needs of Nigerians at home."<sup>99</sup> Professor Richard Joseph advised that these "nefarious machinations" should form an issue in any accounting of the abuse of power during the military years,<sup>100</sup> but, unfortunately, the Oputa Panel did not include this issue.

### C. General Obasanjo's Contribution to Violations Before 1999

Significantly, General Obasanjo has been a participant in a number of the episodes leading to human rights violations in Nigeria. He is a veteran of the Biafran war, which, as we have seen, led to the violations of the human rights of Igbos and other Easterners. General Obasanjo takes deep pride both for his supposed valor in the war as well as for his role in reunifying the

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95. For the exact nature of these effects *see, e.g.*, William Boyd, *Introduction to KEN SARO-WIWA, A MONTH AND A DAY: A DETENTION DIARY* i, x (1995) (commenting on how "[w]hat was once a placid rural community of prosperous farmers and fishermen is now an ecological waste land reeking of sulphur, its creeks and water holes poisoned by indiscriminate oil spillage and ghoulishly lit at night by the orange flames of gas flares"). A recently declassified Central Intelligence Agency (CIA) report equated the oil spills in the Niger Delta to about a dozen Exxon-Valdez oil spills over a two or three-year period! *See* Charles Cobb Jr. & Reed Kramer, *Our Democracy Is Working—Obasanjo*, *THISDAY* (LAGOS), May 19, 2001, at 13.

96. For one account of the quality of the "Ogoni Nine" trial *see* WOLE SOYINKA, *THE OPEN SORE OF A CONTINENT: A PERSONAL NARRATIVE OF THE NIGERIAN CRISIS* 145–53 (1996).

97. Lobe, *supra* note 34.

98. *Id.*

99. Joseph, *supra* note 76, at 50.

100. *Id.*

country.<sup>101</sup> His meteoric rise in the army all the way to military head of state was a recognition and/or reward for his part in the war. In addition to his role as an army commander, Obasanjo also held a political position as a Federal Commissioner (or Minister) for Works,<sup>102</sup> and was therefore, an integral part of the corrupt Gowon government.<sup>103</sup> He accepted the appointment in the hope that he could “make a difference in the administration” from within,<sup>104</sup> but was never able to bring himself to vigorously criticize the misdeeds of the government.<sup>105</sup> Also, as military head of state from 1976 to 1979 Obasanjo exercised power dictatorially with negative consequences for human rights. These interludes of dictatorship include the quashing of a demonstration by university students, leading to the death of six students in 1978;<sup>106</sup> the attack on the home of Afro-beat musician Fela Anikulapo-Kuti during which the talented musician was beaten, his mother thrown out the window, and their home set ablaze;<sup>107</sup> and, the hanging of about thirty alleged coup plotters, some of whom have been said to be innocent.<sup>108</sup>

Two occurrences, however, which seem to take the rough edge off Obasanjo’s political-civil rights record as a military ruler are his transfer of power to civilians in 1979 and his campaign against military intervention into politics and advocacy for democracy, as a private citizen, after he left office. To illustrate the latter occurrence, General Obasanjo, in a 1991 review of African political and economic events, criticized the human rights practices of many African leaders whom he asserted turn the hopes and expectations of their people into a revolution of “fire and thunder”.<sup>109</sup> Little

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101. See EZENWA OHAETO, CHINUA ACHEBE: A BIOGRAPHY 152 (1997) (recounting an announcement by Obasanjo, then an army colonel, “praising himself for his accomplishment in crushing Biafra and asking those in hiding to come out and surrender themselves”). See also OLUSEGUN OBASANJO, MY COMMAND: AN ACCOUNT OF THE NIGERIAN CIVIL WAR (1981) (General Obasanjo’s personal account of the Nigerian civil war).

102. ONUKABA A. OJO, OLUSEGUN OBASANJO: IN THE EYES OF TIME 170 (1997). Obasanjo accepted the appointment, according to Ojo, “hoping to be able to make a difference in the administration.” *Id.*

103. See *id.* See also *id.* at 174 (indicating that by 1975, the Gowon regime had become “synonymous with the most blatant form of venality in public life”).

104. Ojo, *supra* note 102, at 170.

105. See *id.* at 175 (disclosing that “[w]orried by the vitriolic media attacks on Gowon and his administration, [Obasanjo] pleaded with the press at formal and informal meetings to tone down their attacks”).

106. See OSAGHAE, *supra* note 66, at 94; Wadas Nas, *Buhari, Obasanjo and Human Rights*, WEEKLY TRUST (ABUJA), June 7, 2002, available at <http://gamji.temppomainname.com/wada58.htm> (last visited Mar. 7, 2003).

107. Aka, *supra* note 12, at 411.

108. Nas, *supra* note 106.

109. Olusegun Obasanjo, *Africa in the 1990s: The Challenges of Economic Reforms*, in THE LEADERSHIP CHALLENGE OF ECONOMIC REFORM IN AFRICA 5 (Olusegun Obasanjo & Hans d’Orville ed., 1991). The abuses Obasanjo criticized include persecution and repression of opposition parties and the press, intolerance of dissent, and the concentration of power “to a degree that would have struck even Louis XIV as both unwholesome and unnecessary.” *Id.*

wonder that one book on the Babangida failed transition to democracy program co-edited by a team of respected Nigerian and western scholars praised Obasanjo as "one of [Africa's] most passionate and eloquent voices for democracy and permanent military withdrawal from politics," adding that "[i]n both his writings and his deeds, General Obasanjo stands as an example of the difference that leadership, vision, and integrity can make to the future of Nigeria and the quest for democracy."<sup>110</sup>

However, equally compelling evidences exist that negate his support for democracy or portray that support as conflicted.<sup>111</sup> For example, in 1989, the General published a book in which he called for a one-party system of government and a unicameral legislature.<sup>112</sup> Analysts assessed the proposal as a complete departure from the multi-party presidential system of the country's Second Republic (retained in the present Fourth Republic) Obasanjo helped establish in 1979.<sup>113</sup> Although he defended that his advocacy was not for a classical one-party system, but for a system of administration with sufficient checks and balances to prevent abuses,<sup>114</sup> the explanation was not persuasive. Furthermore, as a young military officer during the 1970s, Obasanjo did *not* see anything wrong with soldiers assuming a political role in government. During an interview with the British Broadcasting Corporation (BBC) in London, Obasanjo maintained that "... it will probably not be right to cut out the military for a special political office or political favor just because they happen to have the monopoly of violence."<sup>115</sup> Closely examined, then, tributes to Obasanjo's democratic credentials, such as the one by Diamond, Kirk-Greene, and Oyediran cited above, go mainly to his record as the general who returned power to civilians. The action takes on special meaning when it is considered that he was the first to do so in the history of the country and that several fake transitions to civil rule programs took place in the twenty years before 1999 when General Abubakar orchestrated another successful handover that, incidentally, transferred power back to General Obasanjo.

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110. Larry Diamond et al., *Acknowledgments*, in *TRANSITION WITHOUT END*, *supra* note 78, at xi.

111. One biography of the President rightly portrayed him as "a study in ambivalence and ambiguity." OJO, *supra* note 102, at 28.

112. See generally OLUSEGUN OBASANJO, *CONSTITUTION FOR NATIONAL INTEGRATION AND DEVELOPMENT* (1989).

113. See ALAN RAKE, *AFRICAN LEADERS: GUIDING THE NEW MILLENNIUM* 182 (Scarecrow Press 2001).

114. *Id.*

115. OJO, *supra* note 102, at 168.

The same conflicting evidence or tone of “ambiguity” found in political-civil rights characterized Obasanjo’s records in the other human rights categories. In socioeconomic rights, as military head of state, Obasanjo failed to distinguish himself as a particularly wise economic manager. He continued some of the wasteful prestige projects started by the Yakubu Gowon regime (1966–75), one of the most visible of which was the hosting of the second World Black and African Festival of Arts and Culture, an international cultural extravaganza.<sup>116</sup> When governmental spending outstripped oil returns and the economy went into decline, the General responded by a variety of means that included the introduction of a program designed to boost agriculture and reduce food imports,<sup>117</sup> belt-tightening, austerity measures,<sup>118</sup> and external borrowing,<sup>119</sup> none of which, unfortunately, succeeded in turning around the bad economic tide.<sup>120</sup> The government’s relationship with minority and majority ethnic groups did not become damaged when General Obasanjo was in office and the General actually made a contribution to solidarity human rights by helping to incorporate into the Constitution the “Federal Character” Doctrine designed to give a sense of belonging to every group in the country; a Doctrine, as we indicated, the closest to a solidarity right in the Nigerian Constitution. Ironically and unfortunately, again as previously indicated, now as a civilian president, General Obasanjo is violating the very same “national unity” principle he helped create.<sup>121</sup>

#### IV. DISCERNING THE SHAPE OF THE PARADOX

##### A. *General Obasanjo’s Record*

Given the context of widespread human rights abuses during the military era from 1985 to 1998 outlined in the preceding section, General Obasanjo’s assumption of office in 1999 raised much new hope for human rights progress. A generality of Nigerians felt that only a civilian or “democratic” government will halt or reverse the trend of relentless assault on human rights sired by prolonged military rule. Many Nigerians were aware of General Obasanjo’s suspect record as a

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116. OSAGHAE, *supra* note 66, at 78, 98.

117. TOYIN FALOLA ET AL., *THE MILITARY FACTOR IN NIGERIA 1966–1985* 39 (1994).

118. OSAGHAE, *supra* note 66, at 98–99.

119. *Id.* at 99; FALOLA ET AL., *supra* note 117, at 39.

120. See, e.g., OSAGHAE, *supra* note 66, at 104 (concluding that “[i]n essence, the Nigerian economy remained the peripheral capitalist economy it had been at independence” under Obasanjo); FALOLA ET AL., *supra* note 117, at 55 (citing a study which shows that the country’s external debt rose by 325 percent from 1974 to 1979, including the period of General Obasanjo’s stewardship, standing at \$6.8 billion as of 1979 when the general left office).

121. See discussions *supra* note 48 and *infra* Part IV.B.3.

democrat both as a military head of state and as a private citizen in the years after he left office. However, many figured that only a "safe hand" like him with tentacles to the coup-prone Nigerian military can stabilize the political system after over fifteen years of developmental decay from military rule.<sup>122</sup> It also helped that Nigerians remember General Obasanjo kindly for transferring government to civilians.<sup>123</sup> Other factors that appeared to have worked in the general's favor included his high personal profile<sup>124</sup> and a shrewdness in making himself over "as all things to all manner of people" during his run for the presidency,<sup>125</sup> including the parley of an "authority of personal suffering"<sup>126</sup> emanating from his imprisonment by General Abacha for an alleged treasonable plot to overthrow the government.<sup>127</sup>

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122. See ABORISADE & MUNDT, *supra* note 69, at 246 (stating that "[t]he context of President Obasanjo's election was seen by most international observers as propitious for a move toward stable democracy"). Cf. Adebayo Williams, *Briefing: Nigeria, A Restoration Drama*, 98 AFR. AFF. 407, 409-10 (1999). (Nigerian power brokers went "for a safe pair of hands that would guarantee the status quo and save the military from wholesale disgrace and humiliation by an embittered and resentful populace." *Id.*); COMMITTEE ANNUAL REPORT, *supra* note 46, at 101, 103 (contending that most aspects of General Abubakar's transition program "were geared seriously toward the smooth emergence of a successor apparatus that could protect [the departing military's] loot and afford them security" and that "the dominant raison d'être of the entire [transition] program" was to install Obasanjo as president).

123. RAKE, *supra* note 113, at 183. Although it sounds strangely ironic that a general is viewed thankfully for *returning* power not belonging to soldiers that was unlawfully taken, what gives his act the poignancy and meaning it had for many Nigerians was that he was the first to do so after General Gowon (1966-75) had made a similar promise but failed to keep it. Nigerian military rulers find power so sweet that only two of the lot that ruled the country conducted a successful transition program leading to the transfer of power to civilians. Incidentally, Obasanjo, the General power was transferred to, was the same man who made history as the first to return power to civilians. In addition, therefore, to being considered a "safe hand", Obasanjo probably won simply because he kept his promise to surrender power in 1979.

124. See ABORISADE & MUNDT, *supra* note 69, at 246.

125. Williams, *supra* note 122, at 411.

126. *Id.*

127. See OJO, *supra* note 102, at 203. Obasanjo served only three years of his fifteen-year sentence before he was released from prison by General Abubakar (1998-99) and pardoned in time to run for office in 1999. Williams, *supra* note 122, at 410; Guest, *supra* note 77, at 4. Part of the experience of the authority of personal suffering Williams talks about is General Obasanjo's persistent reference to God and claim that he is a "born-again Christian". Obasanjo is just one out of numerous African leaders who use religion as a means of increasing their bases of popular support. See generally Stephen Ellis & Gerrie Ter Haar, *Religion and Politics in Sub-Saharan Africa*, 36 J. MOD. AFR. STUD. 175 (1998); ELIZABETH ISICHEI, *A HISTORY OF CHRISTIANITY IN AFRICA* 339-40 (1995).

Only months to the end of General Obasanjo's term in office, the expectation of improved human rights under a democratic regime has not materialized; rather, under his watch, the nation's human rights picture may have deteriorated rather than seen any improvement. To be sure, there is a changed atmosphere for the enjoyment of human rights, thanks to the practice of civil rule that Obasanjo presides over. Indeed, as the London *Economist* points out, "Nigeria is a far less fearful place than it was a couple of years ago."<sup>128</sup> Also, the president has introduced an array of initiatives that arguably benefits human rights. He has fought political (or governmental) corruption, grappled with the Niger Delta crisis, investigated past human rights abuses, and repaired the country's pariah foreign policy image, among other accomplishments to his credit.<sup>129</sup> However, in no single area among the three categories of human rights has any reckon-able progress been made.

Starting with political-civil rights, more than 10,000 people have died from communal and ethnic-religious conflicts.<sup>130</sup> This does not include deaths and injuries from the bungling and incompetence of the government<sup>131</sup> nor liberties unlawfully denied<sup>132</sup> nor valuable private and public properties destroyed in a society where the per capita income is only

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128. Guest, *supra* note 68, at 4–5.

129. Such as more ready availability of petrol in a country that is a large oil supplier in the world. Guest, *supra* note 77, at 5. More carefully considered, some of the initiatives like the institution of the Oputa Panel are irreducible minimums needed to move the nation forward that the government really has little choice over. Although, as we indicated, the panel's reconciliation mandate does not go far enough, for all its imperfections, the panel garnered for the government critical legitimacy needed to bring the nation together around any agenda after over fifteen years of divisive and conflict-ridden rule. See Joseph, *supra* note 76, at 49 (listing the provision of "as complete an accounting as possible of the abuse of power since the military seizure power in December 1983" among the imperatives he said the country needs to become a "democratizing nation"). See also ANDREW RIGBY, *JUSTICE AND RECONCILIATION* (2001) (indicating that peace and reconciliation commissions are needed in societies wracked by violent conflict to reconcile people to their recent history and lay foundations for a peaceful, stable future; these commissions are designed to help individuals and communities cope with the aftermath of national trauma as well as deal with the impulse for revenge, among other wrenching issues). With respect to an issue like the repair of the country's external image battered by military rule, Abubakar's reforms and the termination of military rule started the process that Obasanjo's coming into office then built on.

130. See *Talking Point*, Interview by Robin Lustig with Olusegun Obasanjo, President, Nigeria, Abuja, Nig. (Feb. 16, 2002), at 6 (on file with author).

131. For example, in January 2002, an antiquated military arms depot exploded in a densely populated area of Lagos, killing more than 1000 people. See *Toll in Blast at Nigerian Army Exceeds 1,000*, N.Y. TIMES, Feb. 3, 2002, at 6.

132. See Nwabueze Okonkwo, *Group Tasks Obasanjo on Awaiting Trial Syndrome*, THISDAY ONLINE (LAGOS), Mar. 28, 2002 (on file with author) (estimating the number of persons detained while awaiting trial in Nigerian prisons, many of them women and youths, to be "well over 50,000"). The group in this news report taking Obasanjo to task is the Rights of Prisoners (ROP), a human rights NGO that concentrates its activities on issues relating to prisoners.

\$345 a year. Violence arising from increased crime activities has also grown in the land.<sup>133</sup> A trusted member of the president's own cabinet, the Attorney-General, was assassinated in December 2001 by paid killers who are still at large.<sup>134</sup> Turning to socioeconomic rights, the economy is still in shambles with no light at the end of the tunnel as to any improvement.<sup>135</sup> Unemployment in Nigeria that, even in the best of times approaches depression level, has not changed under General Obasanjo.<sup>136</sup> The devaluation of the Naira (the nation's local currency), measured in exchange rate against the U.S. dollar and other western currencies, proceeds apace unabated.<sup>137</sup> General Obasanjo defends that the economy is doing well because, for example, he has increased workers' salaries several times over what they were when he took office.<sup>138</sup> But this is a case of the few public employees who have jobs being better paid. Even so, salary payment by the national government has become so irregular that public servants now go without pay for many months on end. These employees include essential-duty workers like police officers. The situation is much worse at the sub-national levels. There irregular salary payment, which used to be a (mis)treatment meted only to teachers, has now extended to other categories of public servants, at times with violent

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133. See *infra* notes 166–67 and accompanying text.

134. See Wole Soyinka, Ajibola Ige, An Ecumenical Spirit (Jan. 12, 2002) (funeral oration for the deceased Attorney-General by the Nobel laureate read at the Liberty Stadium, Ibadan, on January 11, 2002) (on file with author).

135. See, e.g., U.S. DEPT OF STATE, NIGERIA: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2000 1 (Feb. 23, 2001) (pointing out that due to a multiplicity of reasons, including corruption and non-transparent governmental contracting practices, “[t]he economy has declined for much of the last three decades”).

136. Lynda Ikpeazu, *Democracy and the Underprivileged*, VANGUARD (LAGOS), July 17, 2001, at 29; Tayo Adesanya, *Road Map to Economic Growth*, THENEWS (LAGOS), July 3, 2000, at 64 (disclosing that “Nigerians are becoming desperate by the day” and that the economy “is in coma”); CRP, *Things are Getting Worse!*, GUARDIAN ONLINE (LAGOS), Apr. 10, 2001, available at <http://www.crp.org.ng/or100401.htm> (last visited Jan. 20, 2003) (berating General Obasanjo's economic record); CRP, *May Day and the Plight of Nigerian Workers*, GUARDIAN ONLINE (LAGOS), May 1, 2001, available at <http://www.crp.org.ng/or100401.htm> (last visited Jan. 20, 2003). The Constitutional Rights Project (CRP) is a Nigerian human rights NGO founded in 1990 that has observer status with the African Commission on Human and Peoples' Rights. Part of the CRP's human rights activities is the publication of a human rights column that appears every Tuesday in the Lagos-based daily, *The Guardian*.

137. By April 2001, the value of the Naira declined to about ₦132 to the \$1, from its value of ₦88 to the \$1 in May 1999 when General Obasanjo took office. CRP, *Things are Getting Worse*, *supra* note 136.

138. See *Talking Point*, *supra* note 130, at 7. (“Today, an average Nigerian worker takes home a living wage. Three years ago, an average Nigerian was not on a living wage.” *Id.*).

consequences.<sup>139</sup> Some states owe their public employees a backlog of salaries of up to six months and more. Notice that the president did not argue that his administration created more jobs, which in many countries today has become the test of good management of the national economy.

The same lack of progress surrounds solidarity rights. For example, although the Oputa Panel claimed it reconciled many former adversaries, it, at the same time dwelled on the lingering crisis in the Niger Delta,<sup>140</sup> and warned, reading from memoranda and other evidences it received in the course of its public deliberations across the nation, that the country faces “a simmering discontent” that, it advised, should not be allowed “to boil over”.<sup>141</sup>

When he took office, the president faced problems of political-constitutional reforms, economic crisis, governmental corruption, and worsening ethnic relations<sup>142</sup> that have been joined since 1999 by major episodes with equally negative consequences for human rights abuses that include Odi,<sup>143</sup> Choba,<sup>144</sup> Liama,<sup>145</sup> and Benue State.<sup>146</sup> There have also been atrocities arising from clashes between Christians and Muslims emanating from the adoption of Islamic Sharia law in the

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139. See, e.g., Taye Obateru, *Workers Kill Director Over Delayed Salary in Plateau*, VANGUARD (LAGOS), Dec. 3, 2002.

140. Justice Oputa recounted that the sittings in Port Harcourt (in the Niger Delta) “were dominated by evidence of environmental pollution from oil exploitation and gas flaring in Ogoniland . . .” Ogunsakin, *supra* note 57.

141. *Id.*

142. See Reuben Abati, *Obasanjo: Matters Arising*, May 27, 2001, available at <http://www.nguardiannews.com/editorial2/en822701.html> (last visited Jan. 20, 2003) (listing those priorities, quoting from the president’s inaugural speech following his swearing in as president, as the crisis in the oil-producing areas; food supply, food scarcity, and agriculture; corruption; infrastructure; poverty alleviation; health services; and, political and constitutional dialogue). The President also disclosed in this self-same speech that “[i]n pursuit of these priorities, I have worked out measures which must be implemented within the first six months.” *Id.*

143. See discussion *infra* Part IV.B.4.

144. Choba is a community nearby to Odi where the government deployed soldiers to disperse protesters outside the gates of Willbros Nigeria Ltd., subsidiary of an American pipeline construction company. Community members reported that the soldiers killed four people; injured several others, of whom one had his arm amputated; raped about sixty-seven women; ransacked several stalls near to the company; and, detained twenty-one youths. The Nigerian press published photographs showing soldiers raping several women, but the government dismissed the photographs as fake and outrightly denied any rapes. It also denied that it had deployed soldiers to the community. However, in a special report on the event that also includes the violation in Odi, Human Rights Watch stated that, although it cannot verify the figure of sixty-seven rapes alleged by the community, “it seems certain that soldiers did indeed rape quite a large number of women and killed several people.” HUMAN RIGHTS WATCH, *THE DESTRUCTION OF ODI AND RAPE IN CHOBA* (Dec. 22, 1999) at 11, at <http://www.hrw.org/press/1999/dec/nibg1299.htm>.

145. This is a town that, like Odi and Choba, is also in the Niger Delta. Here Nigerian soldiers burned down about sixty homes and left hundred of people homeless. See John Iwori, *In Bayelsa, Soldiers Sack Town, Raze 60 Homes*, THISDAY ONLINE (LAGOS), July 2, 2002 (on file with author).

146. See discussion *infra* Part IV.B.4.



northern part of the country,<sup>147</sup> violations connected with the operations of ethnic militias,<sup>148</sup> and abuses arising from communal conflicts by ethnic groups in various parts of the country.<sup>149</sup> General Obasanjo faced enormous challenges when he took office in 1999 and nobody disputes that the problems were, in many respects, simply daunting.<sup>150</sup> Compared to his first outing in 1979, the President faced a nation with a “distinctly somber” mood this second time around.<sup>151</sup> Some of the unofficial debriefings or advice the President has received since he took office<sup>152</sup> were actually a litany of the numerous difficult challenges ahead.<sup>153</sup> The

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147. See discussion *infra* Part IV.B.2.

148. See, e.g., HUMAN RIGHTS WATCH (WITH CENTER FOR LAW ENFORCEMENT EDUCATION), NIGERIA: THE BAKASSI BOYS (May 2002). Bakassi Boys consist of a core group of former shoe salesmen and car-parts dealers who closed their shops to wage war on the armed bandits plaguing the southeast of the country. The group is named after the shoe market where these individuals used to work. International and domestic human rights groups castigate this and other vigilante groups for human rights atrocities such as torturing people and summarily executing them. But their formation and operation follow the failure or powerlessness of the incompetent, corrupt, and underfunded Nigerian police to stem the high wave of crimes in the country. Bakassi denies that it kills people and maintains that politicians who complain about its operation have “skeletons in their cupboards.” See D’Arcy Doran, *Nigerian Vigilantes Hailed as Heroes, Scorned as Killers*, PHILA. INQUIRER, Sept. 8, 2002. See also Peter P. Ekeh, *A Review of HRW’s and CLEEN’s Report*, available at <http://waado.org/NigerDelta/Documents/ConstitutionalMatters/PoliceVigilante/ReviewBakassiBoys> (attributing the emergence of vigilantism to the absence of the state in Nigeria and contending that multiple police formations are what is needed in the country to overcome the incompetence of the Nigerian Police Force).

149. INTER-CHURCH COALITION ON AFRICA, ICAAF HUMAN RIGHTS REPORT: THE SITUATION IN NIGERIA IN 1999/2000 11–12 (Feb. 2000) (listing various communal disputes, including those between Ijaw-Urhobos and Itsekiris, Tivs and Jukun/Kuteb, Yorubas and Hausas in Shagamu and Kano, Ijaws and Ilajes in the Niger Delta, and Ijaws and Yorubas in Lagos).

150. See Guest, *supra* note 68, at 3 (the list of problems the magazine recounts includes poverty and indebtedness, ethnic violence, bad roads, unworkable telephones, idle factories, millions of unemployed youths, no tradition of democracy and of effective governance, and political corruption); Williams, *supra* note 122, at 408. (The President “inherits a polity marked by deep ethnic divisions and discontents, an ailing economy characterized by structural disequilibrium and disfigured by large-scale looting of the national treasury, a thoroughly disgraced and humbled military establishment, and a restive and increasingly militant riverine populace.” *Id.*).

151. Williams, *supra* note 122, at 408. (“Unlike the euphoria and the wave of optimism that swept through Nigeria twenty years earlier when Obasanjo drew the curtain on thirteen years of military dictatorship after a well-organized and brilliantly coordinated transition program, the mood of Nigerians this time is distinctly somber and generally downbeat.” *Id.*).

152. See, e.g., *id.* at 407–13; Joseph, *supra* note 76, at 48–50; Adesanya, *supra* note 136, at 64–65.

153. See sources cited *supra* note 152 (including the ominous prediction in Williams, *supra* note 122, at 412–13, that if he did not show “outstanding political skills and unusual personal bravery, Obasanjo may well find he has been handed a poisoned chalice by his sponsors”).

President himself well understood and appreciated the magnitude of the challenges ahead—and wholeheartedly accepted them.<sup>154</sup> However, General Obasanjo has performed below expectation.

Nigerian journalists and the public have used words like “underachieving”, “lackluster”, and “worse than average” to refer to the President’s performance.<sup>155</sup> After close to one full term in office, the President has been unable to satisfactorily address or substantially resolve any one of the priorities he mapped out for himself when he took office. The Niger Delta crisis still festers, the economy is still in a coma,<sup>156</sup> no constitutional reform has been forthcoming,<sup>157</sup> and the result of his effort to curb governmental corruption is mixed.<sup>158</sup>

Judging performance based on whether the level of conflict in the country, cumulatively, is decreasing rather than increasing, the President yet again does not measure well. Much schism followed the annulment of the presidential election in 1993.<sup>159</sup> One account put the level of tension in the country as General Obasanjo took office as follows: “Nigeria faced its most serious turmoil and crisis since the Biafran War, and southern concerns

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154. In a victory speech following his election, the newly-elected President stated: I understand the clear message of the Nigerian people. In giving me their mandate, they have asked me to lead this country by example. They want me to lead them aright. They want me to restore the dignity of our country. They want me to revitalize our political institutions and reinvigorate the economy. They want me to alleviate poverty and to reduce corruption. They want me to ensure the security of their lives and property. They want justice and equity in a country they can truly call their own. They want much more.

Olusegun Obasanjo, *To Build a New Nigeria*, NEWSWATCH (LAGOS), Mar. 15, 1999, at 20. In the same speech, the President also pledged to devote himself “entirely to the upliftment of” not just Nigerians, but also black people across the world. *Id.*

155. See Paul Nwabuikwu, *Obasanjo as IBB’s Campaign Manager*, GUARDIAN ONLINE (LAGOS), May 9, 2001, available at <http://www.ngrguardiannews.com/editorial2/en820906.html> (last visited Jan. 16, 2003) (basing his measurement on issues like electricity supply, transportation, food, security, and education which he said are “the indices which determine voter perception of an elected president’s performance in Nigeria”). See also Abati, *supra* note 142 (listing many problems the problems has yet to resolve, including economic retrogression and the crisis in the Niger Delta, which he assessed to be “worse than before”).

156. Adesanya, *supra* note 136, at 64.

157. See discussion *infra* Part V.C.

158. See John Chiahemen, *Nigerian MPs Ask Obasanjo to Resign, Allege Misrule*, REUTERS, Aug. 13, 2002 (on file with author) (quoting an important government source to the effect that the President’s anti-corruptive drive “was showing no sign of succeeding”); CRP, *Corruption: US Exposes Top Government Officials*, GUARDIAN ONLINE (LAGOS), June 12, 2001 (focusing on U.S. media report about top Nigerian officials who operate foreign accounts in the United States in contravention of Nigerian regulations and portraying Obasanjo’s anti-corruption crusade as “a selective exercise carried on by the president alone while most of his lieutenants pay lip service”). For a description of the CRP’s identity see discussion *supra* note 136.

159. OSAGHAE, *supra* note 66, at 15 (stating that the schisms so “threatened the very foundations of the country” that “there were widespread fears of it breaking up or another civil war erupting”).

about northern domination reached new and dramatic heights that talk of secession returned for the first time since the war. Even Abacha's very death raised by several notches inter-ethnic tension and distrust."<sup>160</sup> To what extent has this climate of centrifugal pull/drift changed under General Obasanjo? The indubitable answer would be not very much, judging from relentless calls made for a national conference to negotiate the terms for membership in the union,<sup>161</sup> talks of a looser union (confederation),<sup>162</sup> and outright threats or movement toward secession in parts of the country.<sup>163</sup> It is possible, as some have argued, that the heightened tension is that grievances repressed during the military days are now coming to surface, taking advantage of the environment of democracy.<sup>164</sup> However, even allowing for this possibility, civil(ian) rule should reduce or at least stem the cumulative level of conflict and schism, which it has not done, if the nation is to claim any progress from such rule. Moments of human rights violation, since and before independence in Nigeria, have always been many. But under the President, these moments seem to be increasing rather than decreasing.<sup>165</sup> The rising level of violence in the country compelled

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160. Aka, *supra* note 48, at 356 (inside quotes omitted).

161. See *National Conference: The Way Forward*, GUARDIAN ONLINE (LAGOS), June 21, 2001, available at <http://www.nguardiannews.com/editorial2/en825201.html> (last visited Jan. 13, 2003); *Southern Governors Demand National Conference*, UN INTEGRATED REGIONAL INFO. NETWORKS, July 9, 2002 (on file with author). See also Eddy Odivwri, *I'm Not Against Sovereign National Conference—Obasanjo*, THISDAY (LAGOS), June 26, 2002 (on file with author).

162. See Ali A. Mazrui, *Shariacracy and Federal Models in the Era of Globalization: Nigeria in Comparative Perspective*, Paper Delivered at the International Conference on Restoration of Shariah in Nigeria: Challenges and Benefits (Mar. 2001), at 1–7 (on file with author).

163. See, e.g., Francis Ndubuisi & Nzeshi Onwuka, *Derivation: Niger Delta May Secede . . .*, THISDAY (LAGOS), Aug. 5, 2002 (on file with author); Suleiman Mohammed, *Secession Not Solution to Our Problems—Obasanjo*, DAILY TRUST (ABUJA), May 28, 2002 (on file with author); Moses Ebe Ochon, *On Biafra and Related Issues*, WEEKLY TRUST (ABUJA), Mar. 29, 2002 (on file with author); Amanze Obi, *Coup, Secession, and Selective Amnesia*, THISDAY ONLINE (LAGOS), Mar. 17, 2002 (on file with author); Uba Aham, *Biafra*, THENEWS (LAGOS), May 21, 2001, at 22–23, 25–26, 35–36; Amaechi Dike, *The Fear of Biafra*, ABUJA MIRROR, May 31–June 6, 2000 (on file with author). Ethnic groups that have threatened to leave the union include Igbos, Yorubas, and groups in the Niger Delta. See also discussion *infra* Part IV.B.3.

164. See INTER-CHURCH COALITION ON AFRICA, *supra* note 149, at 12 (stating that ethnic clashes “represent an overflow of frustrations over social and economic issues built up during the many years of repressive and corrupt military rule”). See also Guest, *supra* note 66, at 15 (stating that “[s]ince the end of military rule, communal violence has increased, perhaps because the police no longer suppress it so forcefully”).

165. See *IBB on OBJ: Matters Arising (I)*, VANGUARD (LAGOS), Dec. 2, 2002, available at <http://www.vanguardngr.com/articles/2002/politics/p328112002.html> (last visited Jan. 20, 2003) (suggesting that the president has failed to use his leadership to forge “national integration among the multiple ethnic nations in the country”).

the U.S. government, in August 2002, to issue a travel advisory, warning its citizens about the hazards of travel to Nigeria.<sup>166</sup> The travel advisory was sequel to one the State Department issued in April 2000 in the wake of the mounting ethnic-religious conflicts following the adoption of Islamic Sharia law in many northern states.<sup>167</sup> What makes these travel advisories significant is that soon after the installation of civilian government in Nigeria, Washington removed a U.S. order suspending direct flights to Lagos imposed during the period of military rule due to alleged ineffective security at the airport.<sup>168</sup>

We will conclude this section on a note of two observations concerning the deficit in human rights that has taken place in Nigeria since 1999. The first is the fact that political-civil rights, which ordinarily should do better in a civilian-democratic setting, has, like the other sectors, unfortunately, not been immune from violation. For example, in response to the high crime wave in the country, a situation that has led to the deaths of policemen who lose their lives in encounters with armed robbers, Major-General Victor Malu, Obasanjo's former Chief of Army Staff, ordered military officers to shoot on sight any armed robber they found at the scene of robbery. They "should be shot in the head to ensure that their numbers were drastically reduced . . . . [T]here was no point aiming at any other part of the body of an armed suspect but the head."<sup>169</sup> When he gave this order in October 1999, over twenty-six policemen had lost their lives in encounters with armed robbers.<sup>170</sup> But this would still not justify shooting these *suspects* on sight, certainly not in a society supposedly under the rule of law and which calls itself a democracy. More recently, following the vandalizing or burning of police stations in parts of the country, Tafa Balogun, Inspector-General of the country's police force, ordered his officers to shoot on sight any rioters who attack police barracks. "Your duty is to defend your barracks against mob action," he said. "Shoot and kill whenever they want to attack your barracks . . . . All I want to hear is that as they were trying to burn a police station or barracks that no fewer than a certain number, say 45, were killed in the process."<sup>171</sup> Actions like these both highlight the government's low regard for political-civil rights *and* betray the low quality of the country's incipient democracy.

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166. Nigeria—Travel Warning issued August 8, 2002, U.S. Department of State, Consular Information Sheet for Nigeria, Aug. 28, 2002.

167. *Id.* Unfavorable conditions, which the Department cited in this latest advisory include violent crime, kidnapping for ransom of persons associated with the petroleum industry in the Niger Delta, still ongoing religious and ethnic conflicts between Muslim and Christian groups and between other ethnic groups, problems arising from implementation of Islamic Sharia law, and danger of financial loss arising from scam operations.

168. Aka, *supra* note 65, at 256.

169. COMMITTEE ANNUAL REPORT, *supra* note 46, at 9.

170. *Id.*

171. *Nigeria: Shoot Anti-Police Rioters on Sight, Law Enforcers Told*, IRIN, Oct. 21, 2002 (on file with author).

The second observation is that human rights violations abroad by Nigerian peacekeepers that existed during the military era has continued under General Obasanjo. Nigerian military forces in Sierra Leone played a major and important role in saving lives and securing peace in that troubled land. However, genuine concerns of human rights violations by these forces also exist. Serious human rights abuses, ranging from summary executions of suspected rebels and their collaborators, extortions, brutality, and excessive use of force, perpetrated by Nigerian soldiers serving under the Economic Community of West Africa Monitoring Group (ECOMOG) in Sierra Leone have been documented.<sup>172</sup> The lesson to be drawn from this unfortunate occurrence is that promoting human rights in foreign relations can be an onerous and unmanageable additional responsibility for a government, such as Nigeria's, which lacks a culture of respecting human rights at home for its own citizens. However, the occurrence spells setback for a country that must aspire to be a constitutional democracy within the shortest possible time-period.<sup>173</sup> Nigeria "can play an important role in articulating Africa's contributions to democratic construction."<sup>174</sup> As Professor Joseph advises, if the country has any goal remaining to shoot for, that goal is the destiny to "become one of the most important nurseries of democratic theorizing and construction during the coming decade,"<sup>175</sup> entailing projection of positive values abroad<sup>176</sup> peacekeeping atrocities, unfortunately, can only serve to diminish.

#### *B. Assessing General Obasanjo's Record: Analysis of Four Crises*

The manner in which the President has handled a number of crises just reinforces the assessment of his performance as below average. Four of these crises explored here are: 1) the Niger Delta trouble; 2) the Sharia quagmire; 3) the secession conundrum; and, 4) the military reprisals in Odi and Benue State. These crises are chosen for two reasons. The first is the substantial ramifications they portend for human rights in the country (Table 1). The second is because, by their complexity, these crises typify the problems a Nigerian leader will face. Finally, note that none of the

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172. HUMAN RIGHTS WATCH, *supra* note 9, at 8–9. ECOMOG consists of military troops from seven West African countries, including Gambia, Ghana, Guinea, Nigeria, Sierra Leone, and Senegal. Nigeria leads the coalition.

173. Joseph, *supra* note 76, at 49.

174. *Id.*

175. *Id.*

176. *Id.* at 50. ("Why not create a Radio Free Nigeria that can carry on the [pro-democracy] mission of Radio Kudirat to the rest of the continent?" *Id.*).

crises, with probably the exception of the last, is actually new. Even the last is not very new, as we will see when we get to the topic. There is no intention to engage in a comprehensive treatment; rather, this is a cursory discussion on the crises that zeros in on their ramifications for human rights.

**Table 1**  
**Major Episodes Involving Human Rights**  
**Violations under General Obasanjo**

| <b>CRISIS</b>                                | <b>HUMAN RIGHTS RAMIFICATIONS</b>  |
|--|--|
| 1. Niger Delta trouble                       | An issue of mainly solidarity and socioeconomic rights with repercussions for political-civil rights.  |
| 2. Sharia quagmire                           | An issue of political-civil rights and solidarity rights driven by hard economic times (socioeconomic rights) as an aggravating underlying factor.   |
| 3. Secession conundrum                       | An issue of mainly solidarity rights aggravated by hard economic times (socioeconomic rights) with repercussions for political-civil rights as the government increasingly uses force to suppress popular protest. |
| 4. Military Reprisals at Odi and Benue State | An issue of political-civil rights connected with solidarity rights and aggravated by hard economic times (variables related to socioeconomic rights).   |

### *1. The Niger Delta Problem*

Large-scale violence characterized the relationship between oil producing areas and the government before General Obasanjo took office.<sup>177</sup> What made the Niger Delta the human rights crisis it is and a

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177. See Aka, *supra* note 48, at 347; JEDREZEJ G. FRYNAS, OIL IN NIGERIA: CONFLICT AND LITIGATION BETWEEN OIL COMPANIES AND VILLAGE COMMUNITIES 54 (2000) (stating that government security measures aimed against anti-oil protesters included extra-judicial killings, rapes, arbitrary arrests, beating and floggings, harassment, and intimidation).

threat to political stability is “[t]he reliance of past regimes on repressive tactics over dialogue, and their repeated failure to address the Delta’s fundamental problems . . . .”<sup>178</sup> The problem was one that called for political dialogue as opposed to any violent suppression of popular protest.<sup>179</sup> The President pledged himself to pursue that dialogue when he took office.<sup>180</sup> However, that is a promise breached, not kept. For rather than seek a peaceful solution, the government deployed large numbers of soldiers and Mobile Police (a branch of the Nigerian Police notorious for its brutality) troops in the Niger Delta.<sup>181</sup> It also established a special task force to protect oil pipelines that in 2000 carried out several extrajudicial executions in oil-producing communities in Delta State.<sup>182</sup> The victims, which included children ranging from eight to fourteen years, were persons suspected of vandalizing pipelines or stealing petroleum products.<sup>183</sup>

There are two plausible conclusions that may be drawn from the government’s “handling” of this problem. The first is that the government still resorts to the same repressive strategy that failed woefully in the past. This does not bespeak political vision for a democratic government. The second is that the government is more interested in protecting oil pipelines than it is in protecting human rights and resolving the crisis.<sup>184</sup> The President’s poor handling of the Niger Delta crisis led directly to the atrocities in Odi, Choba, and Liama. During an address to the nation on October 1, 2002 to mark the anniversary of the country’s forty-second independence, General Obasanjo promised to submit a bill to the National Assembly that would

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178. AFRICA POLICY INFORMATION CENTER, STRATEGIC ACTION ISSUE AREA: NIGERIA, n.d. (on file with author).

179. HUMAN RIGHTS WATCH, *supra* note 9, at 10; INTER-CHURCH COALITION ON AFRICA, *supra* note 149, at 16. (“The military and paramilitary police cannot be expected to establish an atmosphere of calm and security in the Delta and are more likely to commit violations themselves.” *Id.*).

180. Obasanjo, *supra* note 154, at 20. (“My first duty and priority is to reconcile the people of this country and heal their wounds.” *Id.*).

181. HUMAN RIGHTS WATCH, *supra* note 9, at 5.

182. *Id.*

183. *Id.*; HUMAN RIGHTS WATCH, NIGERIA: HUMAN RIGHTS DEVELOPMENT (2001), available at <http://www.hrw.org/wr2kl/africa/nigeria.html> (last visited Jan. 14, 2003).

184. This unfortunate “solution” calls to mind what Professors Aborisode and Mundt said concerning the difficulty of ending autocratic rule in a petroleum economy: “[C]ontrol the spigot and the narrow slice of the populations that operate and protect it, render helpless or neutralize opponents,” and safely ignore the rest. ABORISADE & MUNDT, *supra* note 69, at 247.

allocate thirteen percent of oil earnings to oil-producing areas in what he called “the beginning of our renewed efforts to correct the unfairness” to the Niger Delta.<sup>185</sup> So less than one year to the end of his presidency, there is still no viable solution in sight to the Niger Delta crisis. Thus, then, on this issue, it is fair to say that government policy appears to have changed little from what it was in 1980, when a former permanent secretary in the Federal Ministry of Mines and Power audaciously told the oil-producing areas to their face without mincing words that given their “small size and population,” no matter the amount of their grievances and resentment, “that they could not threaten the stability of the country nor affect its continued economic development.”<sup>186</sup>

One recent development relating to a lawsuit the Ogonis brought against the Nigerian national government at the African Commission on Human and Peoples’ Rights supports a contention of lack of due seriousness on the government’s part in addressing the Niger Delta question. The government made one submission to the Commission that acknowledged the widespread destruction wrought in Ogoniland by oil exploration and the security forces. Yet, it did not participate in the case and failed to reply to repeated Commission requests about whether relief for the plaintiffs might be accorded through Nigerian courts.<sup>187</sup> As a result, the Commission declared that no apparent domestic remedy was available and that the plaintiffs were right to appeal to the Commission.<sup>188</sup> In addition to proving that the government does not take the problem seriously, the occurrence also supports the contention, such as that made by Fareed Zakaria, concerning the low commitment of illiberal democracies to human rights.<sup>189</sup>

## 2. *The Sharia Quagmire*

Twelve out of the nineteen northern states in the country have adopted Islamic Sharia law as legal system since General Obasanjo took office.<sup>190</sup> Many of these states declaring Sharia law adopted the Maliki tradition, which mandates the strictest interpretation of the Koran but with less than onerous evidentiary requirement.<sup>191</sup> Under this interpretation, for example, an adulterer’s pregnancy by itself alone is perfect proof of guilt (non-onerous evidence) where the punishment is

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185. Olusegun Obasanjo, Address to the Nation to Mark the 42nd Anniversary of the Country (Oct. 1, 2002) (on file with author).

186. See Aka, *supra* note 48, at 340.

187. Nigerian domestic law incorporates the ACHPR. Lobe, *supra* note 34.

188. *Id.*

189. See discussion *infra* Part V.A.

190. These Sharia states include Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara.

191. See Richard Dowden, *Death by Stoning*, N.Y. TIMES, Jan. 27, 2002, at 28.



death by stoning (strict interpretation of the Koran).<sup>192</sup> The Sharia states insist that these laws are needed to curb growing crimes in the country that the secular penal code, in their view, does not effectively address,<sup>193</sup> but the real motivation behind these declarations is a political protest by the affected northern states designed to complicate matters for General Obasanjo for allegedly neglecting the North in his administration.<sup>194</sup> The declaration of Sharia law has led to numerous violent clashes between Muslim and Christian groups in various parts of the country that have resulted in thousands of deaths and injuries, as well as destruction of valuable public and private properties estimated at millions of dollars.<sup>195</sup> Prominent Nigerians like Professor Wole Soyinka, regard, not incorrectly, the replacement of the secular penal code with Sharia law that occurs in the Sharia states as effective acts of secession from the country.<sup>196</sup> At any rate, the declarations violate the Nigerian Constitution<sup>197</sup> and international human rights instruments to which the country is a party. These include the ICCPR and the Convention on the

192. *Id.*

193. There is no study, to our knowledge, validating the claim that Sharia law is a more effective deterrent to crimes than the secular penal code.

194. The North has dominated political power since the birth of the country in 1960 and is not, unlike the Igbos and ethnic minorities in the Niger Delta, neglected developmentally. Even under General Obasanjo, the North still holds the vice presidency and important ministerial positions like defense, finance, and petroleum. The real basis of northern complaint of "marginalization" under General Obasanjo is a fear that the days of its domination of national politics may soon be over.

195. See, e.g., Obiora Chukwumba, *Tension in the Land*, TELL (LAGOS), Nov. 22, 1999, at 14-19, 22; D'Arcy Doran, *Nigerian City Shell-Shocked After Anti-U.S. Riots*, REUTERS, Oct. 14, 2001 (on file with author). In Kaduna State alone, Christian-Muslim riots in 2000 left up to 5000 people dead.

196. See Wole Soyinka, *The Last Presidential Visitor?*, NIGERIA WORLD, Aug. 25, 2000. In this article released just before then U.S. president William J. Clinton visited the country, Professor Soyinka stated ominously that President Clinton "may prove to be the last serving U.S. president to have visited a nation called Nigeria." *Id.*

197. The Constitution prohibits sub-national governments from adopting an official religion, but allows states to elect to use Islamic or Sharia customary law and courts, taking into account the substantiality of the Muslim population of the country. People who defend the constitutionality of promoting Sharia law to penal code in the country cite to the provision in the Constitution that states that a Sharia court of appeal may exercise "such other jurisdiction as may be conferred upon it by the law of the State." But such argument is unavailing because it misses the real issue. Sharia has existed in the country long before now but has never been elevated from personal law to penal code because of the religious-pluralism of the country. The compromise worked out by the Constituent Assembly in 1978 permitting Sharia appeals in the 1979 Constitution did not provide authorization for promotion of Sharia law, which has always been recognized in the country as personal family law, into criminal code.

Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>198</sup> both of which the country has ratified, and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT),<sup>199</sup> which the country signed but has yet to ratify.<sup>200</sup> The U.N. Special Rapporteur on Torture has confirmed that punishments such as amputation and flogging imposed by Sharia courts in the North breach the CAT.<sup>201</sup> Also, many of the restrictions imposed on women are equally breaches of the CEDAW.<sup>202</sup>

The President responded to the rash of declarations by doing nothing. He said he regarded the adoptions as the use of religion for political ends that would not last because they were not right.<sup>203</sup> The excuse is unsophisticated for a political actor with the experience of the President and is unpersuasive. A proper handling of this delicate crisis should, at the very least, have consisted of the government's seeking an advisory opinion from the highest court of the land on the constitutionality of these adoptions, as a number of the human rights NGOs in the country advised.<sup>204</sup> Without condemning these declarations, General Obasanjo has repeatedly expressed his personal distaste for Sharia punishments.<sup>205</sup> But the real worry for the President, known for his knack for international approval, is the negative effect of Sharia implementation on the perception of the country abroad and the democratic pretenses of the government. International human rights NGOs have petitioned the government concerning imposition of harsh punishments by Sharia courts, including the imposition of death by stoning on poor northern women convicted of extra-marital sex.<sup>206</sup> This was the driving reason

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198. *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1979).

199. *Convention Against Torture (CAT)*, G.A. Res. 39/46, U.N. GAOR, 39th Sess., U.N. Doc. A/39/51 (1984).

200. HUMAN RIGHTS WATCH, *supra* note 9, at 6.

201. *Id.*

202. *Id.*

203. See Cobb & Kramer, *supra* note 95, at 13 (where, in answer to a question from two U.S. reporters, Obasanjo answered that "political Shar'ia is new and [it] will come and go, because if you want to use Shar'ia to achieve political ends it will not hold . . . unless you use what is right, whatever else you use doesn't last"). The question to the President that evoked this answer was how a person like himself can "manage a nation in which a chunk of it seems to be governed by a different set of laws." *Id.*

204. *Id.*

205. See *id.*

206. See, e.g., HUMAN RIGHTS WATCH, NIGERIA: WOMAN SENTENCED TO DEATH UNDER SHARIA (Oct. 23, 2001); HUMAN RIGHTS WATCH, NIGERIA: REVERSE WOMAN'S SENTENCE OF DEATH BY STONING (Oct. 23, 2001) (a Human Rights Watch letter to General Obasanjo); HUMAN RIGHTS WATCH, AMPUTATION BY A SHARI'A COURT (Oct. 15, 2001) (a Human Rights Watch letter to General Obasanjo); HUMAN RIGHTS WATCH, NIGERIA: TEENAGE MOTHER WHIPPED (Jan. 23, 2001). Among these groups is the National Organization of Women (NOW), which has marched in front of the Nigerian

for his Attorney-General's dispatch of a circular letter in spring 2002 to the Sharia governors in which the top government lawyer complained about disparity in the allocation of punishment against Muslims, calling such discriminatory punishment unconstitutional and "against equity and good conscience."<sup>207</sup> But even this obviously timid action was quickly nullified by the President's subsequent argument that the country is a multi-religious rather than a secular state.<sup>208</sup>

"Explanations" like the President's miss out on the real issue, namely: that Sharia law, until now, has never been penal code or plenary legal system in the country. That was the import of the Constituent Assembly decision in 1978 refusing to create a federal Sharia court of appeals.<sup>209</sup> It is true that Sharia has a long history in the North that goes back to the end of the nineteenth century. However, the practice has been a gradual but progressive removal of the harsher punishment of Islamic law in the country and full Sharia was never introduced, taking into account, to use the President's language, the multi-religious character of the country.<sup>210</sup> Advocates of full Sharia are yet to persuade anyone why the penal code is no longer adequate after this long usage to tackle crimes in the land. Such explanation is necessary considering that, as one analyst correctly points out, the penal code introduced in the North beginning in 1960 integrated elements of Islamic law.<sup>211</sup> Because the Obasanjo government failed to act to deal with this problem, the violations coming from Sharia implementation are, as the International Commission of Jurists (ICJ) argues in an appeal to the President over a ruling on August 19, 2002, upholding the penalty of death by stoning of a woman for engaging in extra-marital sex, imputed to his government.<sup>212</sup>

A fact that makes the President's handling of this problem particularly unsatisfactory is that the problem is one that has been building for a long time. Besides the Constituent Assembly controversy of 1978 over the

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Embassy in Washington, D.C. with placards such as "Follow the law and not the Cleric", "Ho, Ho! Hey, Hey! Religious extremists go home and pray!", and "Rocks are for gardens, not to hurt women".

207. See Emmanuel Onwubiko, *Nigeria Declares Sharia Rule Illegal*, GUARDIAN ONLINE (LAGOS), Mar. 21, 2002 (on file with author).

208. Musa Aliyu & Mustapha I. Kwaru, *Nation Not a Secular State—Obasanjo*, DAILY TRUST (ABUJA), Feb. 18, 2002 (on file with author).

209. OSAGHAE, *supra* note 66, at 90–91.

210. Dowden, *supra* note 191, at 28.

211. *Id.*

212. Copy of letter received via private e-mail on file with author.

issue,<sup>213</sup> military leaders mixed politics and religion such that during the Babangida years, “religious conflict between Muslim and Christians led to repeated instances of mass-level violence” “to a degree previously unknown in” the country.<sup>214</sup> In short, as religion scholar Elizabeth Isichei puts it, although in the period after the civil war, “[m]any Christians in the South accepted Muslim political dominance, preferring this to the risk of further bloodshed, . . . an underlying tension” always existed that threatened to explode any time into open religious conflict.<sup>215</sup> The trouble with Sharia is not the limb cut in enforcing that law as penal code, though that also is a major problem. It is the general environment of repression enforcement of Islamic law can engender in an ethnically diverse and religiously pluralistic society like Nigeria, especially one that now calls itself a democracy.<sup>216</sup> But in addition to not promoting inter-ethnic and inter-religious harmony, the adoption of Sharia in the North is also a pointed attack on what little rights women had before in that part of the country.

Professor Ali A. Mazrui, in well-publicized lectures in defense of the North,<sup>217</sup> argues that Sharia declaration in northern Nigeria is only one form of acts of “cultural self-determination” or nationalism within Nigeria that major ethnic groups in the country, including Igbos and Yorubas, are engaging themselves in.<sup>218</sup> There are three main problems with this position.

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213. See *supra* notes 197 and 209 and accompanying texts.

214. Diamond, *supra* note 75, at 448. For details of these mass-level conflicts see OSAGHAE, *supra* note 66, at 250–51. Such mixture of religion and politics included the predominance of Muslims in the various military regimes beginning with General Buhari; and, the Babangida government’s action, in 1986, stealthily enrolling Nigeria as a member of the Organization of Islamic Conference (OIC). See FALOLA ET AL., *supra* note 117, at 117–20. Before 1986, Nigeria, for reason even then hard to comprehend for a secular country, held observer status in the organization. *Id.* at 117.

215. ISICHEI, *supra* note 127, at 342.

216. See Daniel Pipes & Jonathan Schanzer, *Militant Islam’s New Strongholds*, N.Y. POST ONLINE, Oct. 22, 2002. (“Implementing Islamic law means forbidding such practices as construction of churches, music performances, the wearing of pants, drinking alcohol, and riding in mixed-gender taxis. Forced conversions to Islam are reported, as well as coerced divorces of Muslim women from Christian men.” *Id.*).

217. Mazrui, *supra* note 162, at 1–7; Etim Imisim, *Why North Regrets Investing in Obasanjo—Ali Mazrui*, THISDAY ONLINE (LAGOS), Apr. 3, 2002, available at <http://www.thisdayonline.com/news/20020403news16.html> (last visited Jan. 21, 2003).

218. Mazrui, *supra* note 162, at 1; Imisim, *supra* note 217. Professor Mazrui contended that part of “what the debate about Shariacracy is all about” is that “Nigeria is the only African country outside Arab Africa which has seriously debated an alternative to the Western constitutional and legal inheritance.” *Id.* at 7. What is strange about this one-party “debate” is that the secularism of the country, given its nature as a patchwork of ethnic nationalities, is not in question. That secularism was challenged but affirmed when in 1978, again, as now, under Obasanjo’s rule, the country refused the introduction of Sharia courts at the federal level. Mazrui maintains that it is possible to implement Sharia in a country without compromising the particular country’s secularism. What makes this argument unpersuasive is that Sharia represents for Muslims a complete way of life that does not co-exist or comport with any other system. The promotion of Islamic law from personal family law into complete legal code in the North is a major constitutional development that is bound to have far-reaching ramifications for the Nigerian political system that no amount of scholarly rationalization will minimize.

The first is that what the Sharia north is doing, changing the country's secular status by abrogating the uniform penal code of the country and replacing it with Sharia law, is something that rises beyond mere plain expression of nationalism; it is an act of effective secession from the country, as Professor Soyinka reasoned. The fact that the Sharia north did not call their action secession from the country is immaterial so long as it has that effect. So although the northern expression is truly cultural self-determination or nationalism, it is an expression outside, not within, the Nigerian state. As Professor Mazrui himself puts it, the "problem posed by the Sharia debate is whether a federal system is able to support cultural self-determination of its constituent parts and still retain cohesion as a federation."<sup>219</sup> The plain and unequivocal answer to his rhetorical question as to whether Sharia can be "implemented at state level without compromising secularism at the federal level"<sup>220</sup> is that it cannot. The same is true of some of the expressions of nationalisms from other groups in the country that have accompanied the expression the Sharia north engaged in. As discussion of the secession crisis below indicates, those nationalistic responses are occurring outside, not within, the Nigerian state. This is particularly the case with the Igbos who are trying to re-establish, using peaceful means, an independence for which they unsuccessfully fought from 1967 to 1970.<sup>221</sup>

The second problem with Professor Mazrui's position derives from his suggestion or implication that these expressions of cultural self-determination by the major ethnic groups in Nigeria are contemporaneous. They are not. Expression of Igbo nationalism was sequel to and a reaction to northern expression. It *followed* the declarations and accompanying violence from clashes between Muslim and Christians in parts of the country that led to the death of thousands of innocent people, a substantial majority of them Igbos.<sup>222</sup> In order of occurrence, the Sharia declarations preceded this latest expression of Igbo nationalism.

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219. Mazrui, *supra* note 162, at 7.

220. *Id.*

221. Mike Palo, *From Washington DC to a Troubled Nigeria* (RADIO NETH. radio broadcast Nov. 9, 2001) (on file with author).

222. Chukwumba, *supra* note 195, at 14–19, 22; Palo, *supra* note 221 (indicating that Igbo striving for independence today "had in fact begun from" killings that occur from ethnic-religious unrest similar to the one they experience in 1966). An opening prayer broadcast on September 15, 2001, on the Voice of Biafra International (VOBI) described in graphic terms the atrocities unleashed on Igbos by "fanatical Muslims", ending with a petition to God to "[b]y your great power, free us from the curse of Islamic bondage. . . ." *Id.* For more on this new radio station see *infra* text accompanying notes 236–37.

The third and final problem is Professor Mazrui's portraiture of the declarations as a (helpless) response to globalization.<sup>223</sup> The portraiture is unconvincing. The declarations have little to do with external influence and everything to do with Nigerian internal politics, particularly the intention of the North to get back at Obasanjo, after they have helped used their vote to put him in office with the clear understanding that he would protect northern interests (read northern domination), but which he has failed to do since he came into office, hence the sudden "marginalization" of the North.<sup>224</sup> Mazrui's position that Northerners' holding political office for the numerous years they did pre-1999 "for a while camouflaged" their economic marginalization, which disadvantage he said became exposed once General Obasanjo, a non-Northerner, took office as president,<sup>225</sup> is interesting but without merit.

### 3. *The Secession Conundrum*

Another problem, additional to the first two, General Obasanjo has displayed below average ability in handling is the secession conundrum. The rash of Sharia declarations and implementations in the North is an act of effective secession from the country that is, however, not covered here, having been analyzed already. That leaves us only with the South as focus of analysis. Three groups or collection of groups in this region who have threatened or moved toward secession since the President came into office are Igbos, Yorubas, and communities in the Niger Delta.<sup>226</sup> Of the three, the two ethnic groups that have made the most advance in this option are Igbos and Yorubas. The Yoruba move for self-determination outside Nigeria pre-dated Obasanjo's second coming; it goes back to 1993 with the annulment of the presidential elections of that year presumed to have been won by a Yoruba, Chief Moshood Abiola. Although Yoruba secessionism has "not entirely disappeared,"<sup>227</sup> that option appears to have waned since Obasanjo, who is Yoruba, took office.<sup>228</sup> The situation leaves out Igbos as the one ethnic group under Obasanjo that have pursued the secessionist option with the most intensity and it is on this group that the rest of this discussion mostly revolves.

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223. For a recent extended analysis of this concept see Aka, *supra* note 12, at 415–22.

224. See Minabere Ibelema, *Nigeria: The Politics of Marginalization*, 99 CURRENT HIST. 211–14 (2000).

225. Mazrui, *supra* note 162, at 7.

226. See discussion *supra* note 163.

227. ABORISADE & MUNDT, *supra* note 69, at 246.

228. *Id.* See also Reuben Abati, *Obasanjo, Secession and the Secessionists* (2), GUARDIAN ONLINE (LAGOS), Dec. 23, 2001 (maintaining that Yorubas, unlike Igbos, talk secession but never "cross the line" in terms of actually seceding).

Recent Igbo effort for independent self-determination took off in May 2000 when the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), led by Ralph Uwazurike, an Igbo lawyer, embarked on a program aimed at resurrecting the defunct Biafra Republic whose demise followed the defeat of Igbos in the civil war.<sup>229</sup> In a petition it sent to the United Nations, MASSOB conveyed that,

The said Biafra is currently struggling to gain independence from Nigeria. We, therefore, under the present circumstance, humbly apply to be admitted, registered or treated, as the case may be, as an unrepresented nation in any of the organs of the United Nations, having renounced our Nigerian nationality.<sup>230</sup>

MASSOB stated that its campaign for the actualization of Biafra would be non-violent and non-exodus.<sup>231</sup> It explained that the motivation behind its launching of what it called New Biafra was, like in 1967, the “unprovoked and organized killing[s]” of Igbos, which had continued unabated.<sup>232</sup> It said the recent killings had been triggered by the adoption of Sharia law in northern states in the country that had led to violent clashes between Christians and Muslims in various parts of the country.<sup>233</sup> In particular, it cited the crisis in Kaduna, a cosmopolitan city in the North with a substantial Christian population, where an estimated 5000 Igbos died.<sup>234</sup> Replying to his Igbo critics, especially Igbo governors said to have reaffirmed their resolve in “one Nigeria,” MASSOB maintained that none of the dissenting voices has any answer concerning the safety of Igbo life and property in Nigeria.<sup>235</sup>

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229. Organizations advocating for Igbo sovereign self-determination have been born before 2000 when MASSOB made its outing. For example, Ekwe Nche, a pan-Igbo nationalist organization based in Chicago, Illinois adopted a constitution on February 19, 1999 that has as one of its objectives, “striv[ing] for the peaceful actualization of the Sovereign State of Biafra.” See Ekwe Nche ORG. CONST. § 2.5.1 (on file with author). I am grateful to Professor Justin K. Akujieze of Chicago State University for this information.

230. Chukwuma, *supra* note 195, at 17.

231. Toye Olori, *Igbos Resurrect Biafra Secessionist Bid*, INTERPRESS NEWS SERVICE, May 29, 2000 (on file with author). The Movement elaborated that “[i]ndependence is different from overthrowing of government. Independence goes with negotiation. We are negotiating Biafra’s independence.” *Id.* “Non-exodus” means that in actualizing New Biafra, Igbos would not have to leave their jobs and properties outside Igboland this time, as they did in 1967.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.* Position such as MASSOB’s appears validated by the fact that Igbo traders the president tried to console during a visit to Kano replied with “Give Us Biafra.” The Igbos lost their properties in Kano as a result of deadly clashes between Christians and Muslims in this metropolitan northern city that followed the U.S. bombing of Afghanistan in the war against terrorism.

But the campaign for peaceful re-establishment of Biafra's independence appears to be something beyond MASSOB and the Igbo governors; numerous organizations of Igbos in exile have emerged that are doing abroad what MASSOB is doing at home. Visible handiworks of these motley of actualization organizations include the formation of a Biafra House designed as a nucleus for a full-fledged Biafran Embassy in the United States upon formalization of Igbo independence; and, the unveiling of an underground radio, Voice of Biafra International (VOBI), based in the United States, that beams messages into Igboland and other parts of Nigeria.<sup>236</sup> The radio station hit the airwaves effective September 2001.<sup>237</sup>

The Obasanjo government's response to these gestures of secession has been that nobody gets out of the country without a fight. "We can find a peaceful way of living together in harmony," the President said, but "[t]here is no peaceful way of getting out of Nigeria."<sup>238</sup> Consistent with this hard-line position, the government has brutalized and persecuted groups like MASSOB engaged in peaceful and nonviolent agitation for independence.<sup>239</sup> About 3000 members of MASSOB have been killed by Nigerian security forces since 1999.<sup>240</sup> The number does not include people detained indefinitely without trial.<sup>241</sup> There are a number of problems with this "handling" of the crisis.

First, by high-handedly suppressing mere advocacy, the government is violating the constitutional rights of these organizations seeking independence "to freely and non-violently express their opinions and thoughts."<sup>242</sup> As one Nigerian human rights NGO argued, in condemning police brutalities on MASSOB, "[a]s long as [the organization] carries out its activities in a peaceful and non-violent manner without coercing or forcing support from the people, it is perfectly within its rights under the Constitution."<sup>243</sup>

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236. Palo, *supra* note 221.

237. *Id.*

238. Muyiwa Adeyemi & Isa Abdulsalami, *We Can Find Peaceful Living...*, THISDAY ONLINE (LAGOS), Dec. 7, 2001 (on file with author).

239. See, e.g., Anayo Okoli, *Police Swoop on MASSOB, Closes H[ead]q[ui]arters*, VANGUARD (LAGOS), Nov. 5, 2002 (on file with author) (reporting a police raid of the group's office in Onitsha during which at least one person was killed); Gordi Udejah, *Police Arraign 17 MASSOB Members for Treasonable Felony*, GUARDIAN ONLINE (LAGOS), Oct. 29, 2002; CRP, *Police Brutalities on MASSOB*, GUARDIAN ONLINE (LAGOS), Feb. 13, 2001 (commenting on a siege on the headquarters of MASSOB, the second time in less than two months, at the end of which "houses were again burnt, deaths were recorded, and severe injuries inflicted").

240. See Emma Amaize, *3,000 MASSOB Members Killed, Group Alleges*, VANGUARD (LAGOS), Nov. 13, 2002 (on file with author).

241. See Uwem Umo, *Court Orders I[n]spector-G[eneral of] P[olice] to Release MASSOB Detainees*, DAILY TRUST (ABUJA), Nov. 18, 2002 (on file with author).

242. CRP, *supra* note 239.

243. *Id.*



Second, in ruling out and making peaceful change impossible, General Obasanjo is, in other words, as President John F. Kennedy would say it, wittingly or unwittingly making revolutionary change inevitable. This is especially the case in a country like Nigeria where, as we indicated earlier, the major ethnic groups have had an extremely difficult time finding a peaceful way of living together in harmony.<sup>244</sup> It is probably in realization of this difficulty in living together that years ago, as a private citizen, the President advocated insertion of a clause for secession in the country's Constitution.<sup>245</sup>

Third, the hard-line posture betrays a double standard in the government's response to what it perceives as threats to the country's integrity. The government chose to do nothing when Sharia law was declared and implemented in the North but is persecuting groups agitating for independence. The effect of both expressions is the same. Both are agitations for self-determination outside the Nigerian state; the only difference is that one, the agitation for independence, is more pointed and direct. Can it then be that the government is disbursing punishment based on which expression of independence outside the state is more pointed? The government has no constitutional justification to do this any more than it has the right to punish mere advocacy and dissent.

Fourth, persecuting groups agitating for independence glosses over the fact that some of the recent secessionist movements in the country are a response to Sharia adoptions in the North as well as the killings and the climate of insecurity those declarations or adoptions engendered. This is particularly the case with Igbos who, as an ethnic group, have borne the brunt of the killings and destructions in the North arising from the clashes between Christians and Muslims in the aftermath of Sharia adoptions in that region. Now, as when they seceded in 1967, the Igbos complain that the national government has failed to guarantee their safety and protect their lives and properties.<sup>246</sup>

Fifth, related to the last, the government's "tough-stance" response glosses over fundamental problems of the country that give vent to secession. Talks of secession "are signifiers" that "point to serious distortions within the polity."<sup>247</sup> After the civil war, the national government announced a reconstruction program designed to reintegrate Igbos into the Nigerian

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244. See *supra* notes 65–66 and accompanying text.

245. See discussion *infra* note 388.

246. Palo, *supra* note 221.

247. Reuben Abati, *Obasanjo, Secession and the Secessionists* (3), GUARDIAN ONLINE (LAGOS), Dec. 30, 2001 (on file with author).

polity.<sup>248</sup> But the program was insincerely executed and never worked.<sup>249</sup> As a result, rather than any rehabilitation, the fate and experience of Igbos since the end of the war have been one of exclusion and neglect in national appointments<sup>250</sup> as well as in the distribution of projects, amenities, opportunities, and related infrastructure.<sup>251</sup> Igbos have complained, to no avail, about their marginalization in Nigerian national life.<sup>252</sup> Igbo marginalization is a cumulative one of a kind no other ethnic group in the country suffers and therefore deserving of urgent alleviation in a regime, especially a democratic one, committed to equity and social justice. The East was the theater of the Biafra war whose scars still remain because, as we said, the planned reconstruction never happened. Also, some of the ethnic groups in the oil-producing area, such as the Etches and Ikwerre in the Niger Delta are Igbos. In short, Igbos bear a double burden of neglect the result of being an oil-producing area and the location of Igboland as a theater of a brutal war whose effects to date still lingers.<sup>253</sup> A factor that reinforces the rankle and sense of injury arising from this marginalization is that the wealth of the nation, since the birth of the country controlled by non-Easterners, come from the East.<sup>254</sup>

Even though Igbo support was instrumental in the win that brought General Obasanjo into office, this neglect has continued unabated under his government. In comparison to the other two major ethnic groups in the country, the President excludes Igbos in his administration,<sup>255</sup> and in the

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248. Aka, *supra* note 48, at 338–41.

249. *Id.* at 338–43. See also Alexandra Zavis, *Biafra's Shadow*, ASSOCIATED PRESS, Mar. 13, 2000 (on file with author). (“Despite a flurry of reconstruction during Nigeria’s 1970s oil boom, part of national reconciliation efforts, the southeast has since been left in decline.” *Id.*).

250. See Beko Ransome-Kuti, *Vision for New Nigeria*, THENEWS (LAGOS), Dec. 20, 1999, at 48 (noting that “[s]ince the civil war[,] one can hardly see an Igbo in any prominent position in government institutions in Nigeria”).

251. See, e.g., Aka, *supra* note 48, at 327–61; CHINUA ACHEBE, *THE TROUBLE WITH NIGERIA* 45–50 (1983) (discussing “the Igbo problem”). See generally JOE IGBOKWE, *IGBOS TWENTY-FIVE YEARS AFTER BIAFRA* (1995).

252. See sources cited *supra* note 251. Marginalization is a term in Nigeria seldom applied to majority groups, but Igbo marginalization arises from their defeat in the civil war and government policy since after the war designed to check and contain, rather than reintegrate, them into the political system. Aka, *supra* note 48, at 337–38. See generally IGBOKWE, *supra* note 251. For its theme, the work draws on the idea of Russian writer Leo Tolstoy (1828–1910), to paint a poignant picture of Igbo dilemma in Nigeria: “I sit on a man’s back, choking him and making him carry me, and yet assure myself and others that I am very sorry for him and wish to ease his lot by all possible means—except by getting off his back.” *Id.* at v; see also the vivid pictorial illustration of this imagery on the book’s cover.

253. Put differently, what makes the situation of the East a veritable double jeopardy is that this single region houses two marginalized communities, namely, Igbos and oil-producing minorities, which include Igbos.

254. IGBOKWE, *supra* note 251, at vi (stating that “over 80 percent” of the country’s wealth comes from the East).

255. See Dike, *supra* note 163 (pointing out that the President excluded Igbos in the appointment of Service Chiefs, and that there was no single Igbo among the thirty-six police commissioners in the country that the President appointed).

sitting of federal amenities and industries. Under General Obasanjo, most national projects have gone to the Yoruba southwest to the neglect of other parts of the country. Federal roads in that part of the country have been reconstructed; however, those in Igboland and the rest of the eastern region, destroyed during the war, have yet to receive any attention. In addition, appointments to federal positions have favored Yorubas to the neglect and disadvantage of other ethnic groups, particularly Igbos. All the finance-related positions in the national government are held completely and exclusively by Yorubas from the President's ethnic group.<sup>256</sup> The exclusion contradicts the pledge Obasanjo gave before taking office in 1999 to ensure that every individual and group in the nation gets "justice and equity in a country they can truly call their own,"<sup>257</sup> and it negates the belief one biography said he expressed many years ago that "he did not fight the [Biafra] war to reduce the Igbos to serfs in Nigeria."<sup>258</sup> Most important, the exclusion is unconstitutional in that it violates the Federal Character Doctrine mandating that the President take into account the federal (or ethnic) nature of the country in composing his government. As the Ogoni uprising teaches, neglect of a minority group can cause the government problems, much more with an major ethnic group like Igbos, which makes up one-quarter or more of the country's population.<sup>259</sup> So, constitutional concerns apart, neglect of the Igbos does not show shrewd political skills on the part of General Obasanjo and he comes up for major blame in the secessionist movement among the Igbos that is bringing his government the present headache that it does not need.

As indicated earlier, every recent leader of the country has violated this "federal character" principle;<sup>260</sup> therefore, Obasanjo is not different in this

256. Yusuf Ozi-Usman, *Obasanjo's Appointment of Auditor-General Raises Dust*, WEEKLY TRUST (ABUJA), July 5, 2002 (on file with author) (stating that in addition to the Auditor-General, the Governor of the Central Bank of Nigeria, the Accountant-General of the Federation, Minister of State for Finance, and the Director-General of the Debt Management Office are all Yorubas).

257. Obasanjo, *supra* note 154, at 20.

258. OJO, *supra* note 102, at 154. Reinforcing the notion of Igbo marginalization, this statement took place in the context of a reluctance by the Rivers State government in returning Igbo property in the State, especially in Port Harcourt, declared "abandoned property" when their Igbo owners fled for their lives, leaving these belongings during the war. Obasanjo was said to have been "particularly distressed" by the Rivers State government's handling of the issue.

259. Censuses are a sensitive business in Nigeria and no reliable headcount of any of the country's numerous ethnic groups exist, but estimates of Igbo population within the country alone (not including those in the Diaspora) range from twenty-five to forty million. See IGBOKWE, *supra* note 251, at 1 (putting the figure at "some 25 million people which constitutes almost a quarter of the Nigerian population").

260. See discussion *supra* note 48.

respect. However, what is so puzzling or ironic in General Obasanjo's case is that as military ruler, his government wrote the 1979 Constitution that introduced this principle. The purpose of the Federal Character Doctrine, looking at the language of Section 14(3) is to promote national unity and command national loyalty. There is no guarantee that complying with the principle will bring unity, but non-adherence with the principle guarantees that there will be no unity.

The appropriate response to the threats of secession the Obasanjo government faces should have been "to seek to address the problems of marginalization, corruption, and failed federalism that bedevil" the country.<sup>261</sup> Rather than dissipate energy suppressing advocacy and dissent, the government should have sought urgently to "redress the injustices unleashed on various sections of the country, especially the marginalization of" Igbos.<sup>262</sup> The ideal expectation for the government should be that no ethnic group is pushed to desperate extremes where secessionism becomes an attractive option.<sup>263</sup> As one human rights NGO advised, "[i]f sincere efforts are made to address these problems, groups such as MASSOB will fizzle out, no matter how romantic their ideals may seem."<sup>264</sup> Instead, the Obasanjo government has posited that national unity is not a negotiable proposition<sup>265</sup> and it assumes the unity and integrity of the country as something automatic.<sup>266</sup> Even with these glaring centrifugal pulls, the President insists that there is no danger of the country breaking up. "Today, no serious-minded Nigeria is talking of breaking Nigeria up. Nigerians today have hope, and when you have hope, you have a lot. Nigerians today feel that they can get justice."<sup>267</sup>

#### 4. Military Reprisals at Odi and Benue State

Odi is the name of a town of about 15,000 people in the Niger Delta that a contingent of soldiers from the Nigerian army razed to the ground in November 1999.<sup>268</sup> The government deployed about 2000 troops who came in more than twenty vehicles, including several armored personnel carriers (APCs) mounted with machine guns.<sup>269</sup> About 300 soldiers engaged in the actual operation<sup>270</sup>—an orgy of

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261. CRP, *supra* note 239.

262. Dike, *supra* note 163.

263. Abati, *supra* note 247.

264. CRP, *supra* note 239.

265. Aka, *supra* note 65, at 253.

266. Tayo Oke, *Why Obasanjo Must Succeed: Why He Cannot*, THENEWS (LAGOS), Feb. 7, 2000, at 49.

267. *Talking Point*, *supra* note 130, at 7.

268. HUMAN RIGHTS WATCH, *supra* note 144, at 1.

269. *Id.* at 5.

270. *Id.*

destruction that went on for ten whole days.<sup>271</sup> According to Human Rights Watch, barring a bank, a church, and a health center, “[t]he troops demolished every single building . . . and may have killed hundreds of unarmed civilians.”<sup>272</sup> The government’s account was that only forty-three people died, eight of them soldiers.<sup>273</sup> The soldiers were sent in following the killing of twelve policemen by an armed gang of young men from Odi.<sup>274</sup> The gang who killed the twelve policemen had “no apparent political agenda,” but acted “against a rising clamor from those living in the oil producing areas for a greater share of the oil wealth.”<sup>275</sup> President Obasanjo visited the town about four months after it was razed down and described what happened there as “a tragedy”, but blamed the community for failing to act earlier against the criminal gang.<sup>276</sup> The initial response of the government, presented by the President’s special advisor on media and publicity, was to state “categorically” that no “internationally acceptable human rights provisions as practiced elsewhere in the developed world” have been violated, and that the operation was a “carefully planned and cautiously executed exercise to rid the society” of criminals.<sup>277</sup> But it beats anybody how an operation of this high magnitude of destructiveness in which, by the government’s own admission, thirty-five unarmed civilians died, can be still called “carefully planned and cautiously executed.” Human Rights Watch called the operation “the single most serious incident in which extrajudicial executions were carried out by the Nigerian armed forces since the government of President Obasanjo came to power in May 1999.”<sup>278</sup>

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271. *Id.* at 6.

272. *Id.* at 1. A Senate delegation on a tour to inspect the damage done to the city lacked words to describe the damage, managing only to comment that, “The facts speak for themselves. No need for speech as there is nobody to speak with.” *Id.* at 7 (quoting then Senate President Chuba Okadigbo).

273. *Id.* at 6.

274. *Id.* at 1, 4. *Odi Leaders to Sue Government for Military Invasion*, VANGUARD (LAGOS), Nov. 18, 2001 (on file with author). As Human Rights Watch puts it in another report, the soldiers “killed hundreds of civilians, perhaps as many as 2,000.” HUMAN RIGHTS WATCH, NIGERIA: MILITARY REVENGE IN BENUE: A POPULATION UNDER ATTACK 3 (Apr. 2002).

275. HUMAN RIGHTS WATCH, *supra* note 274, at 1.

276. *Odi Leaders to Sue Government for Military Invasion*, *supra* note 274.

277. *Id.* at 5. (“I wish to make it categorically clear that government, by this act, has not violated any internationally acceptable human rights provisions as practiced elsewhere in the developed world . . . . How can it be said that a carefully planned and cautiously executed exercise to rid the society of these criminals is a violation of human rights?” *Id.*).

278. HUMAN RIGHTS WATCH, *supra* note 274, at 3.

In Benue State, located in the middle belt region of the country, Nigerian soldiers numbering about 200–300, in October 2001, carried out a military operation targeted at seven towns and villages.<sup>279</sup> The operation lasted three days and, like in Odi, the soldiers used military vehicles that include several armored tanks.<sup>280</sup> More than 200 and probably up to 300 people died, and the soldiers destroyed homes, shops, public buildings, and other property in seven or so towns and villages involved.<sup>281</sup> The operation was in response to the abduction and killing of nineteen soldiers on a mission to restore peace in the area affected by the conflict between two ethnic groups, Tivs and Jukuns.<sup>282</sup> The mutilated bodies of the soldiers were found on October 12, 2001, in the grounds of a primary school in Zaki-Biam, one of the seven communities involved.<sup>283</sup> So this was an operation that took place within the context of the broader, long-standing inter-communal conflict in the area.<sup>284</sup> The operation was a carefully coordinated one designed to take local residents by surprise; eye witnesses reported that the soldiers pretended they had come to discuss peace, but instead, turned against those they found in the communities.<sup>285</sup> The soldiers began their killing spree while the President, the Minister of Defense, and the Chief of Army Staff were all attending the soldiers' funeral in the federal capital Abuja.<sup>286</sup>

The government quickly and strongly condemned the killing of the soldiers,<sup>287</sup> but greeted the news of the military reprisals first with silence before the President, forced by growing pressure by the media, responded that the soldiers might have acted in self-defense.<sup>288</sup> He defended that such action was to be expected from the military.<sup>289</sup> But as Human Rights Watch noted in its report on the attacks, the President's response bore no relation to the gravity of the attacks.<sup>290</sup> The first real government condemnation of the soldiers' actions came from the Vice President following a visit to some of the afflicted communities. He stated: "Two wrongs do not make a right . . . . Unfortunately, things went out of hand and today we have to manage two wrongs."<sup>291</sup>

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279. *See id.* at 6.

280. *Id.*

281. *Id.* at 6–13. *See also id.* at 13–18.

282. *Id.* at 5.

283. *Id.*

284. *Id.*

285. *Id.* at 6.

286. *Id.* at 18.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.* at 19.

The President has admitted that he ordered the killings, but defended that he did so to "save lives and property."<sup>292</sup> This admission compelled on the president by the exigency of an impeachment threat by the National Assembly contradicts the government's position on at least one of these reprisal attacks. Taking Odi for example, the government denied that it ordered any military action. All it did, it said, was deploy troops to the area "under the control of the state governor . . . to avert a total breakdown of law and order."<sup>293</sup> What make the killings in Benue so difficult to fathom were that (1) it did not have to occur after Odi<sup>294</sup> and (2) the President still used force without legislative consent, even though after Odi the House of Representatives passed a resolution requesting the president to first obtain National Assembly consent before deploying troops to quell any civil unrest in the country.<sup>295</sup> His defense, after the fact, that he did not need legislative approval to use troops is unpersuasive. No government-supported independent investigation of these unlawful reprisals took place and no military personnel engaged in these atrocities were ever prosecuted.<sup>296</sup> Rather than hold them accountable, the government reportedly promoted some of these soldiers.<sup>297</sup> In doing so, as Human Rights Watch correctly points out, the President effectively created an environment that encourages perpetration of human rights violations.<sup>298</sup>

### C. International Response to Obasanjo's Human Rights Abuses

Domestic and international human rights NGOs have openly criticized General Obasanjo's human rights records.<sup>299</sup> The criticisms include ones

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292. *Obasanjo Under Fire*, MAIL & GUARDIAN ONLINE, Sept. 12, 2002 (on file with author); Gilbert da Costa, *Nigerian Leader Admits Missions*, ASSOCIATED PRESS, Sept. 12, 2002 (on file with author); *Lawmakers Say President Ordered Killings*, CHI. TRIB., Sept. 5, 2002, at 6.

293. HUMAN RIGHTS WATCH, *supra* note 144, at 6.

294. HUMAN RIGHTS WATCH, *supra* note 274, at 3. ("When news broke of the killings of the nineteen soldiers in Benue . . . , many Nigerians feared, and warned, that 'this could be another Odi. Tragically, their predictions came true.'" *Id.*).

295. HUMAN RIGHTS WATCH, *supra* note 144, at 7-8; INTER CHURCH COALITION ON AFRICA, *supra* note 149, at 16.

296. *Id.* at 5; U.S. DEPT OF STATE, *supra* note 135, at 5.

297. U.S. DEPT OF STATE, *supra* note 135, at 5.

298. HUMAN RIGHTS WATCH, *supra* note 9, at 5.

299. Domestic human rights NGOs that have criticized the government's human rights records include the Constitutional Rights Project (CRP) and the Rights of Prisoners (ROP). The CRP publishes a human rights column that appears every Tuesday in the Lagos-based daily, *The Guardian*. Publications in the newspaper the group has released criticizing the Obasanjo administration's human rights records include: *Police Brutalities on MASSOB*, Feb. 13, 2001 (condemning unprovoked violence by security forces on a movement agitating for the establishment of an independent state in eastern Nigeria using

for atrocities committed by Nigerian peacekeepers abroad.<sup>300</sup> However, to the dismay of these NGOs, no similar open criticism has come from the United States and other western countries that not only have specifically refrained from criticizing the Nigerian government publicly but have also continued to conduct diplomatic dealings with the regime business as usual. General Obasanjo visited the United States for talks with President Bush and other U.S. government officials one week after the killings in Benue. The visit provided a unique opportunity for the U.S. government to raise the human rights violation issue forcefully. However, to the contrary, "U.S. officials did not express concern publicly about the killings in Benue, and their meetings with President Obasanjo were dominated by discussions about measures to fight terrorism."<sup>301</sup>

Two explanations may be hazarded for this state of affairs. First, these countries appear to consider any kind of democracy, even a non-human rights protective one like Obasanjo's, better than military rule. This point is elaborated in Part V.A. of this Article. Another explanation, already adverted to, is the global war on terrorism emanating from the United States. Since the terrorist attacks on September 11, 2001, the focus in the United States has been on the war on terrorism as an issue of both domestic and foreign policies. The campaign appears to leave the Bush

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peaceful, nonviolent means); *Sad Reminders*, Mar. 21, 2001 (condemning human rights abuses by security forces in Odi in the Niger Delta); *First Term Failures!*, Mar. 13, 2001 (enumerating a list of human rights businesses, among them governmental corruption); *Transparency and Naira Value*, May 15, 2001 (same); *Two Years of Obasanjo and Prison Conditions*, May 28, 2001 (lamenting the syndrome of detention without trial in prisons across the nation). For a sampling of ROP criticism see Nwabueze Okonkwo, *Group Tasks Obasanjo on Awaiting Trial Syndrome*, THISDAY (LAGOS), Mar. 28, 2002 (putting the number of detainees awaiting trial in Nigerian prisons at "well over 50,000").

Human Rights Watch is among the international human rights NGOs that have criticized the Obasanjo government's human rights records. See, e.g., Dan Isaacs, *Rights Group Slams Nigeria Over Killings*, BBC, April 1, 2002, available at <http://www.allafrica.com> (last visited Jan. 19, 2003) (condemning the reprisal killings in Benue State); Appolonia Emeanua, *Jos Crisis: Group Urges Obasanjo to Make Findings Public*, THISDAY (LAGOS), Dec. 17, 2001 (on file with author) (berating the government for failing to prevent another mass killing of about 2000 people by security forces); *Human Rights Watch Writes to President Obasanjo over Massacres*, UN INTEGRATED REGIONAL INFO. NETWORKS, Apr. 19, 2002, available at <http://www.hrw.org/press/2002/ok??nigeriaor18.ltr.htm> (last visited Jan. 13, 2003); HUMAN RIGHTS WATCH, *supra* note 274; HUMAN RIGHTS WATCH, *MILITARY MASSACRES UNPUNISHED: OBASANJO'S HUMAN RIGHTS PROGRESS CALLED INTO QUESTION*, April 1, 2002 (on file with author); HUMAN RIGHTS WATCH, *NIGERIA: HOLD MILITARY TO ACCOUNT*, Nov. 1, 2002 (on file with author).

300. See HUMAN RIGHTS WATCH, *NIGERIA: MILITARY MUST ACCOUNT FOR ABUSES*, May 11, 2001 (on file with author). See also *supra* note 172 and accompanying text.

301. HUMAN RIGHTS WATCH, *supra* note 274, at 2. The closest to a public condemnation of the killings in Benue was a press statement the U.S. embassy in Abuja issued on Nov. 9, 2001, urging the Obasanjo administration to conduct an "impartial and transparent" investigation into the killings and unrest, and to bring to justice those responsible for the killing of Nigerian soldiers and civilians. *Id.* at 21.



administration little political energy for human rights pursuits. "The new element in determining American foreign policy is what assets—bases, intelligence, and diplomatic leverage—it can bring to bear against Al-Qaeda."<sup>302</sup> Worse still, as one American analyst warns, the campaign threatens to lead to a permanent demotion of human rights "in the hierarchy of America's foreign policy priorities."<sup>303</sup> Some scholars have begun correctly to equate the effect of the Bush government-led war on terrorism on international relations to the atmosphere that prevailed during the just ended cold war.<sup>304</sup>

Reinforcing the Bush administration's overweening attentiveness to the war against terrorism and with direct consequence for Nigeria are recent American plans to establish a military base in Sao Tome and Principe, said to be within hailing distance of Nigeria's new capital, Abuja.<sup>305</sup> Meanwhile, without explicitly criticizing his government, western leaders appear to be distancing themselves from the Obasanjo government<sup>306</sup> and his policies have come up for critical comment in influential western media.<sup>307</sup> For his part, General Obasanjo has expressed dissatisfaction with the low level of western support for

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302. Michael Ignatieff, *Foreign Policy Reconsidered*, in PERSPECTIVES ON TERRORISM: HOW 9/11 CHANGED U.S. POLITICS 105 (Allan J. Cigler ed., 2002). Al-Qaeda, spelled variably as al-Qaida and al-kada, is a terrorist organization supported by the Saudi millionaire Osama bin Laden, that in the past has its basis of operation in Afghanistan. The organization went underground or moved its headquarters to somewhere else following the defeat of the Taliban government in Afghanistan and its replacement by the present interim government friendly to the United States and supportive of U.S. interests in the region.

303. *Id.* at 104–05. Professor Ignatieff correctly points out that although the global human rights movement "does not have its headquarters in Washington[,] . . . if Washington turns away, the movement loses the one government whose power can be decisive in stopping human rights abuses." *Id.* at 104.

304. *See id.* at 105. ("The intellectual and political climate of a war on terror now resembles the atmosphere of the cold war." *Id.*). Professor Ignatieff says human rights are the "the best guarantor" of U.S. national security, adding that "[a]s the cold war should have taught us, cozying up to friendly authoritarians is a poor bet in the long term." *Id.*

305. Gerald Horne, *U.S. and West Africa*, PEOPLE'S WEEKLY WORLD NEWSPAPER, Oct. 19, 2002 (on file with author).

306. *See As the Nation Bleeds*, THISDAY ONLINE (LAGOS), Aug. 6, 2002, available at <http://www.thisdayonline.com/archive/2002/08/06/20020806edi01.html> (last visited Jan. 15, 2003) (describing the poor diplomatic reception "not dignifying for the leader of the most populous country in Africa" the President received from Secretary of State Colin Powell during an uninvited visit to the United States, his ninth in three years).

307. For example, the *New York Times*, in a recent editorial, stated that the general's carriage and the record of his domestic performance three years into his term leave the roots of democracy still "shallow" in the country. *See Troubled Times in Nigeria*, N.Y. TIMES, Feb. 23, 2002, at A14.

Nigerian democratization,<sup>308</sup> and he has recently begun to advocate for a different developmental model for Africa.<sup>309</sup> The General is not known to tolerate criticism well.<sup>310</sup>

#### D. Recapitulation

General Obasanjo came into office in May 1999 with a mandate for change to stabilize Nigeria's political and economic system.<sup>311</sup> The president duly accepted the challenge, promising the country a genuine renaissance<sup>312</sup> that he has, however, yet to deliver in numerous fields with ramifications for human rights in the several years since he took office. No meaningful political change has taken place nor has the country's crisis of economic decline been addressed with the attention it deserves. The President's middling performance must be frustrating and indeed humbling for a person like him who, as a private citizen, spared no time in criticizing African leaders for their political misdeeds.<sup>313</sup>

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308. See discussion *infra* note 344. See also Madu Onuorah, *Obasanjo Rejects Western Standards for Africa*, GUARDIAN ONLINE (LAGOS), Mar. 26, 2002 (on file with author) (castigating "the West for setting unattainable standards for African countries under minimal assistance" and decrying that the West should threaten to withdraw developmental aid any time it is not satisfied with the conduct or direction of any African state). With respect to Nigeria's external debt, which the President repeatedly but unsuccessfully argued for the West to forgive, Obasanjo maintains that the country was paying back debts that "had been repaid two times over" and that most of the debt, estimated at about \$30 billion, accrued from "accumulated interests and punitive charges." *Id.*

309. See Robin Wright, *Olusegun Obasanjo: Nigerian Survivor*, L.A. TIMES, June 3, 2001, at M3 (maintaining that Africa must find its own model of development rather than "ape the development model of the rest of the world"); Onuorah, *supra* note 308 (arguing that "Africa should be free to evolve and enforce its own standards for good governance and human rights"). The separate development model the President advocates is one that, according to him, must take care of such essentials of life, "things that make a substantial difference" like health, education, labor saving devices that enable farmers to increase production, electricity, and roads from village to markets. *Id.*

310. OJO, *supra* note 102, at 154 (commenting that Obasanjo is a man "incapable of handling criticisms, and tended to respond rather aggressively to them").

311. See, e.g., Mundt & Aborisade, *supra* note 76, at 728 (stating the hope of the nation that General Obasanjo will be able "to prevent further destruction of the economy and begin the long process of turning the country around"); Dan Isaac, *Nigeria's Turbulent Prospects*, BBC Jan. 11, 2002 (on file with author). ("[I]t was hoped that a civilian government . . . would bring greater social stability and a platform for sustained economic growth." *Id.*).

312. Obasanjo, *supra* note 154, at 20.

313. See *supra* note 109 and accompanying text. Also, in 1994, while contributing to a debate on a constitutional future for the country, General Obasanjo charged that, "Nigeria is a country perpetually potentially great, almost permanently in crisis, regularly threatened with disintegration, prolongingly devoid of democracy, and economically plundered and mismanaged, forever talking about democracy but retreating from democracy." *The Kaduna Caucus*, WEST AFRICA (LONDON), Feb. 14-20, 1994, at 252. It is interesting that less than one year to the end of one full term in office as civilian president, most of these features still remain. Finally, in an "African leadership"

Beginning with political change, there are two aspects to the problem, namely: the quality of the country's democracy or civilian rule and political restructuring. We will deal with the first aspect here and save the second for the next part of the Article focusing on that topic. We have argued that Nigeria since May 1999 is a transitional regime that does not rise to the level of a democracy, one reason why we choose to designate the country's present experimentation as civil(ian) rule rather than any democracy.<sup>314</sup> To make matters worse, given the high degree of military presence in the government, even the civilian character of the government is suspect or questionable. The demilitarization expected for the Fourth Republic has yet to take place.<sup>315</sup> Rather, the legacy of military rule remains very strong in the land. The political system remains unweaned from the suffocating legacies of former military dictators, three of whom—Buhari, Babangida, and Abubakar—are still very much around and unabashedly parade their influences. All three were summoned but none of them answered the subpoena to appear before the Oputa Panel.<sup>316</sup> The President, the Director of National Security, the Defense Minister, and the Director of the State Security Service (national intelligence) are all retired military persons.<sup>317</sup> Last but not least, lawmakers who are supposed to oversee the executive and ensure the proper entronement of democracy are all either Abacha, Abubakar, or Babangida boys.<sup>318</sup> Because of this large military presence in the government or in spite of it, the President relies heavily on the army to contain ethnic and religious violence and to even patrol the

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conference he hosted in his farm at Ota in 1988, General Obasanjo lambasted African leaders for excessive attention to political issues and their insipidness with respect to economic issues. "When African leaders talk among themselves they fire the imagination and really applaud on political matters," he said. "But when it comes to economic issues . . . [these leaders] are not nearly as enthusiastic as they are about political issues." Philip C. Aka, *Leadership in African Development*, 14 J. THIRD WORLD STUD. 213, 229 (1997). General Obasanjo is not good at taking his own counsel given that, as president, he has also excessively "applaud[ed] on political matters," to the near-neglect of economic issues.

314. See discussion *infra* Part V.A.

315. Joseph, *supra* note 76, at 49. ("Demilitarization of the Nigerian polity is one of the most important and difficult exercises the Obasanjo administration must perform for the nation. This project has to be thorough, comprehensive, and even radical in conception." *Id.*).

316. Oshunkeye, *supra* note 57, at 31–35.

317. John Chiahemen, *Nigerian Democracy Wobbles, Army's Profile Rises*, REUTERS, Oct. 29, 2001 (on file with author).

318. *Id.*

streets.<sup>319</sup> Also, many Nigerian cities have come under military-enforced curfews.<sup>320</sup> Professor Oladimeji Aborisade rationalized that General Obasanjo “has created an administration that is effectively a military-civilian dyarchy . . . .”<sup>321</sup> Assuming one calls his administration a dyarchy, it is a dyarchy with a strong military accent. In addition to this lack of a strong civilian presence in a supposedly civilian government, since taking office General Obasanjo has failed to adjust his leadership style to the tenets and imperatives of democratic rule, and he has a frosty relationship with the National Assembly,<sup>322</sup> which in the least does not help the growth of democracy. The President is a legendarily stubborn individual with a cantankerous personality,<sup>323</sup> who takes advice from no one.<sup>324</sup> These multiplying anti-democratic features belie General Obasanjo’s contestation that Nigerian “democracy is working”<sup>325</sup> and contradicts his argument that he has done well enough

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319. *Id.*

320. *Id.*

321. ABORISADE & MUNDT, *supra* note 69, at 247.

322. See, e.g., Oma Djebah, *Presidency Set to Deal with Anyim*, THISDAY (LAGOS), July 1, 2002 (on file with author). Pius Anyim is the president of the Nigerian senate, the third since May 1999. Two previous senate presidents were removed at the instigation of General Obasanjo because he found them too independent to control or get around. A similar disharmonious tenor characterizes his relationship with the House of Representatives. Recently, the Speaker of the House of Representatives accused him of running a dictatorship, even going as far as likening him to Adolf Hitler! See *Obasanjo is Running a Dictatorship*, THISDAY SUNDAY (LAGOS), Aug. 18, 2002 (on file with author). The latest in the ever-deteriorating relationship between the President and the National Assembly was a call by the House of Representatives for the President to resign or face impeachment. It backed its call with an elaborate list of constitutional violations against the President, including an alleged tendency to spend money without legislative appropriation or to spend appropriated money in a manner not mandated by the legislature. When the President responded with an address to the nation in which he dismissed the ultimatum as a “joke gone too far”, the Senate supported their colleagues in the House, making the ultimatum to resign or be impeached a joint one by the whole National Assembly. For a sample of the many news-stories on this latest breaking story on the evolution of Nigerian democracy see, e.g., da Costa, *supra* note 292; Ali et al., *supra* note 9; Steve Nwosu, *A Presidency in Crisis*, THISDAY (LAGOS), Aug. 17, 2002 (on file with author); Rotimi Ajayi & Emmanuel Aziken, *Reps Give Obasanjo Two Weeks to Resign*, VANGUARD (LAGOS), Aug. 14, 2002 (on file with author); Chiahemen, *supra* note 158. Not surprising, the dispute with the National Assembly overshadows much of the President’s recent action and activities, including his address to the nation on October 1, 2002, to mark the 42nd anniversary of the country’s independence.

323. *IBB on OBJ*, *supra* note 165. (“Obasanjo has been a very quarrelsome President. He has quarreled with his Vice President, with the Presidents of the Senate, the Speaker of the House of Representatives, the National Chairmen of his political party, some governors of the states and almost every single important stakeholder in his Party . . . .” *Id.*).

324. Abati, *supra* note 142. (“You have a legion of advisers but they are quick to tell whomever cares to listen that you don’t take any advice . . . . [I]t is dangerous to have a president who does not listen to any one.” *Id.*).

325. See Cobb & Kramer, *supra* note 95, at 13.

to deserve another term in office.<sup>326</sup> On a visit recently to Nigeria, former U.S. president William J. Clinton counseled Nigerians about the need for compromise and concessions in democracy, given that “no one is all-wise, all-knowing or has all the truth.”<sup>327</sup> He said that “governance is about using your power for a while to uplift the fortunes of the people and it requires compromising with your adversaries. No victory or defeat is ever final.”<sup>328</sup> These are good counsel the President can use.

The matter of the relationship between economic development and human rights is addressed in Part V.B. of the Article. We therefore address here more generalized issues not covered in that section. There are five aspects to the discussion here. The first is the need to diversify the economy beyond its present heavy dependence on oil. “Nigeria cannot depend on oil forever. To prosper in the long term, it must learn how to create wealth, rather than simply extracting it from the soil.”<sup>329</sup> This is because income from oil fluctuates whereas what the country needs is growth that comes “from steady investment in higher productivity, which can last and sustain itself.”<sup>330</sup> Nigeria is likely to remain poor and its democracy unstable if it continues to build the mainstay of its economy heavily on oil.<sup>331</sup> But although diversification of the economy has become very imperative,<sup>332</sup> under General Obasanjo, the Nigerian government is putting all its economic eggs into the oil (and natural gas) basket rather than “devis[ing] other ways of making

326. See *Talking Point*, *supra* note 130, at 7. The President has long since announced his candidacy for a second term in the presidential election scheduled for April 2003. See da Costa, *supra* note 292; *Obasanjo Under Fire*, *supra* note 292.

327. Eddy Odivwri, *Solutions to Nigeria's Problems Within, Says Clinton*, THISDAY ONLINE (LAGOS), Sept. 25, 2002, available at <http://www.thisdayonline.com/news/20020925news01.html> (last visited Jan. 15, 2003).

328. *Id.*

329. Robert Guest, *Umpteenth Time Lucky*, ECONOMIST, Jan. 15, 2000, at 16.

330. *Id.*

331. *Id.* See also HUMAN RIGHTS WATCH, WORLD REPORT 2002: AFRICA OVERVIEW 4 (2002) (stating that Nigeria will have a hard time creating “a functional democracy” solely depending on oil); Odivwri, *supra* note 327 (quoting former U.S. president William J. Clinton’s advice to Nigerians that “modern economy focuses more on what is in your head and not what is under your feet”). As President Clinton correctly pointed out, comparing Saudi Arabia, one of the largest oil producers in the world, with Japan, a non-oil producing nation, oil producing nations are not necessarily wealthy nations. Japan has a GDP three and a half times that of Saudi Arabia. *Id.*

332. Philip C. Aka, *Education, Economic Development, and Return to Democratic Politics in Nigeria*, 18 J. THIRD WORLD STUD. 21, 22 (2001). (“Concern in the country for a long time now, including since the return to democratic rule . . . has centered around how to diversify the economy away from its prolonged heavy dependence on crude oil.” *Id.*).

money.”<sup>333</sup> Second, there is still suffocating government control over the economy or what one scholar called economic statism,<sup>334</sup> an occurrence that reinforces governmental corruption,<sup>335</sup> among other evils. Although separate, points one and two are interconnected to the point of being inextricable. Nigeria needs to develop, “for the first time, a basis of production and accumulation outside of oil and outside the state”<sup>336</sup> that, unfortunately, has not happened under General Obasanjo. Third, provision of basic infrastructure and amenities such as electricity, clean water, and good roads necessary for the efficient and effective operation of the economy is still lacking.<sup>337</sup> Fourth, income equality or

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333. Guest, *supra* note 329, at 16. In a subdued address to the nation commemorating the country's 42nd independence anniversary, the President claimed that he had expanded the base of the economy. Yet, although he made fleeting reference to agriculture and industry, the exclusive dependence on crude oil export was still obvious. He was “pleased to report” an increase in the nation's proven oil reserves from “about 25 to almost 32 billion barrels of oil. We have also increased the oil production capacity from about 2.4 million to about 3 million barrels per day.” Even his search for “foreign investment”, for which he has made numerous trips abroad, revolved around the same oil sector. He foresees a production of 4–5 million barrels of oil per day by 2005—and an “improvement of [national] government earnings by over 50 percent”—with inflow of foreign capital. Obasanjo, *supra* note 185. The problem with this remark is that it is an overly rosy projection that does not take into account fluctuations in oil prices nor the additional negative environmental damage from increased oil exploration on oil-producing areas, assuming oil reserves are non-depletable, but which they are not. The country's multiplying economic problems question General Obasanjo's optimism that Nigeria can “become a semi-industrialized country by the end of this decade.” Cobb & Kramer, *supra* note 95, at 13.

334. See Diamond, *supra* note 9, at 82–85 (discussing reorganization of state-society relationship). Most of the opposition in the country to relinquishment of governmental control of the economy comes from the northern establishment, “which fears that wholesale privatization would deliver the economy into the hands of the much larger, richer, and better organized Southern bourgeoisie.” *Id.* at 84. See also Guest, *supra* note 66, at 15. (“Northern elites feared that they would lose in an unrestricted commercial contest, so they used the state to restrict the operation of market capitalism.” *Id.*). Note that, as Diamond, *supra* note 9, at 85, reminds us, advocacy of reduced government interference in the economy does *not* mean advocacy of complete state withdrawal from the economy. Rather, as Professor Joseph says, Nigeria actually needs a “viable state” that is not eroded by the “excesses of prebendalism” (complete disregard for legal rules and procedures). Joseph, *supra* note 76, at 49.

335. Robert Guest, *The Stony Road to Reform*, *ECONOMIST*, Jan. 15, 2000, at 7. However, the *Economist* believes Nigeria will still be poor even if its wealth were not wasted away through governmental corruption. Guest, *supra* note 329, at 16. *But cf.* Joseph, *supra* note 76, at 50. (“A sharp reduction in the funds stolen from the country's annual earnings, the dramatic reduction in lavish projects undertaken solely as a means of siphoning wealth, and the conversion of the billions stashed abroad into invisible capital at home . . . would give an immense boost to the Nigerian economy.” *Id.*).

336. Diamond, *supra* note 9, at 85.

337. In his speech to the nation to mark the 42nd independence anniversary of the country, the President gave his latest update on steps his government is taking to ensure there is no power blackout in the country. Obasanjo, *supra* note 185. However, it is hard to understand why governments in Nigeria, including civilian ones like Obasanjo's, many decades after independence have difficulty rendering to the citizens a service as basic as generation of enough power for domestic and economic activities in the entire country.

the gap between rich and poor in the country is widening rather than narrowing. The incipient middle class has diminished to the point of extinction. During his address to the nation on the occasion of the country's forty-second anniversary on October 1, 2002, the President disclosed that twenty percent of Nigerians control fifty-six percent of the wealth of the country; eighty percent controls the other forty-four percent.<sup>338</sup> Nigerian statistics are notoriously unreliable, and anecdotal evidence will uncover a gap greater than this, but at least one gets the picture. One aspect to the gap often overlooked by analysis such as the President's is the economic gap among ethnic groups. Inconsistent and inequitable application of "unity" doctrines such as the Federal Character Principle can lead to disparities among ethnic groups in the distribution of national resources that can create tension or conflict in the body politic.<sup>339</sup> Fifth and finally, economic bad news result in a deficit in socioeconomic rights that in turn produce negative spillover effects on political-civil and solidarity (or group) rights. No wonder that, in the area of solidarity rights, ethnic "bicker[ing] over the division of the oil spoils"<sup>340</sup> in the country has grown, not abated, as the economic pies decrease under General Obasanjo.

What is so tragic about the President's middling performance report card is that, for all the difficult legacies coming from long army rule, it did not have to be for somebody with Obasanjo's skills, leadership experience, and understanding of the Nigerian condition having been president before in a military setting. To whom much is given, much is expected. Obasanjo is the only individual in Nigerian post-colonial history privileged to serve the country in both military and civilian

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338. Obasanjo, *supra* note 185.

339. Conflict can arise sometimes when through the witting or unwitting action of the government, an ethnic group that is the victim of inequitable treatment realizes the true extent of its exploitation. For example, the escalation of violence in the Niger Delta intensified after residents of the area, along with other Nigerians, were bused to a rally military strongman General Abacha, hell-bent on legitimizing his military rule into a civilian one, orchestrated. According to one report,

For youths from the Niger delta who took part in this extravaganza, the sight of Nigeria's capital was a revelation. They goggled at the smooth roads, the gleaming hotels and the splendid houses that oil money had brought for their rulers. They noted that whereas the delta has thousands of rivers but almost no bridges, Abuja has hundreds of bridges but no rivers to speak of. They realized for the first time how badly they had been robbed, and have nursed an implacable sense of grievance ever since.

Robert Guest, *Oil Alone Doesn't Make You Happy*, *ECONOMIST*, Jan. 15, 2000, at 9.

340. Guest, *supra* note 329, at 16.

capacities.<sup>341</sup> By the time his term lapses in 2003, he would have governed the country for almost eight years—four years as civilian president and three and two-thirds years as military head of state. This is equivalent to two terms in office for a U.S. president and close to one-fifth of the entire time the country had been independent. Could the President therefore justifiably insulate himself from all the sins and troubles associated with previous leadership in the country commentators complain about?<sup>342</sup> General Obasanjo thoroughly enjoys the ceremonial trappings of the job, but has neither the patience nor appetite for the mundane grub of everyday governance. He traveled out of the country ninety-three times for a total of 340 days over three years in office, causing some critics to label him “the absentee president of Nigeria.”<sup>343</sup> Obasanjo has such love for foreign travels that he continues to engage in them even though he himself concedes these expensive foreign trips for an increasingly poor country, undertaken supposedly in search of western support for the Nigerian economy, have yielded the country little economic returns.<sup>344</sup> This indulgence in unwarranted profligacy contrasts sharply with General Obasanjo’s touted image as a frugal person and his “low profile” orientation as a military head of state.<sup>345</sup> The President does not like to be compared with previous Nigerian leaders (he seems to believe he is better than all of them, particularly the military ones),<sup>346</sup> but still commits himself to tired policies of the past that brought the country to its present deplorable condition.<sup>347</sup> Due to this less-than-average performance in office, less than one year to the end of his term in office, General Obasanjo now finds himself in the awkward position of a leader feted abroad but criticized by his people at home.<sup>348</sup>

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341. Tobs Agbaegbu, *Two Times Lucky*, NEWSWATCH (LAGOS), Mar. 15, 1999, at 9–18.

342. See, e.g., ACHEBE, *supra* note 251.

343. See *As the Nation Bleeds*, *supra* note 306. The only other world leader who comes close to this record is His Holiness Pope John Paul II, who is said to have traveled abroad ninety-one times in, but note this, the twenty-four years he has been papal leader. *Id.*

344. See William Wallis, *Survey—Nigeria*, FINANCIAL TIMES (LONDON), Apr. 9, 2002 (An interview the President gave to the London Financial Times where he conveyed: “In three years I went round the world and I didn’t get anything. From April 1999, I went round the countries in Europe, twice over, I went to Japan to America to Canada and I got good words . . . [But] [n]o action at all.” *Id.*).

345. OSAGHAE, *supra* note 66, at 98. Note, however, as earlier indicated, in *supra* notes 117–19 and accompanying text, that the low-profile orientation was something induced then by the dwindling fortunes of the Nigerian economy. The state of the economy today necessitates but, unfortunately, does not get a similar low-profile orientation.

346. See Wright, *supra* note 309.

347. For example, under his administration, prestige projects of dubious economic utility or value, associated with the *ancien régime*, still goes on. The President budgeted \$330 million for a national soccer stadium in Abuja, more money than the government spends on either health or education. He has also spent tens of millions of dollars on aircraft for himself. *Id.*

348. *Lawmakers Say President Ordered Killings*, *supra* note 292.



## V. UNDERSTANDING THE PARADOX: TOWARD AN EXPLANATION

Four explanations of the paradox between civil rule and human rights violations in Nigeria since 1999 that we explore in this section are (1) the relationship between human rights and democracy, (2) the relationship between human rights and economic development, (3) the relationship between human rights and political restructuring, and (4) the complementarity of individual and collective rights or inter-relationship between these two categories of rights. These explanations illustrate rather than exhaust all the possibilities.

A. *Human Rights and Democracy*

A relationship exists between human rights and democracy. Prospects for human rights are better under a democratic setup than under authoritarian military rule or any other type of dictatorship. Democracy forms the bedrock for any serious talk about human rights protection or promotion.<sup>349</sup> Without that foundation, any talk about human rights is unserious or meaningless, given, as the experience of Nigeria from 1983 to 1999 well exemplifies, the violation of human rights that occurs in eras of military rule. Yet the existence of a democracy does not automatically translate into human rights gains. Democracy can exist uncoupled with human rights.

Some scholars have commented on this strange or ironic possibility. Jack Donnelly writes that “[d]emocracy and human rights have very different, and often competing, theoretical and moral foundations.”<sup>350</sup> He highlights “[t]he potential conflicts between human rights and democracy”<sup>351</sup> and maintains that “a procedurally democratic government may still systematically violate human rights.”<sup>352</sup> Fareed Zakaria has pointed out that the majority of democracies that are flourishing today in many parts of the world are formal electoral or procedural democracies not underpinned with constitutional liberalism and are therefore non-human rights protective.<sup>353</sup> “Today the two strands of liberal democracy, interwoven in the western political fabric, are coming apart in the rest of the world. Democracy is flourishing;

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349. See Aka, *supra* note 12, at 430–32.

350. DONNELLY, *supra* note 11, at 154.

351. *Id.* at 155.

352. *Id.* at 154.

353. See generally Fareed Zakaria, *The Rise of Illiberal Democracy*, in GLOBALIZATION AND THE CHALLENGES OF A NEW CENTURY 181–82 (Patrick O’Meara et al. ed., 2000).

constitutional liberalism is not.”<sup>354</sup> He calls these democracies “illiberal democracies” and sharply distinguishes them from liberal democracies, which are rights-protective.<sup>355</sup> Zakaria maintains that constitutional liberalism, which he defines as a “bundle of freedoms,” such as rule of law, separation of power, and the protection of basic liberties of speech, assembly, religion, and property, is “theoretically different and historically distinct from democracy.”<sup>356</sup> He identifies “a spectrum of illiberal democracy” from modest offenders to near-tyrannies with countries in between.<sup>357</sup> Illiberal democracies are difficult to handle, he explains, because they are wrapped in “the mantle of legitimacy,” in the sense that their legitimacy and strength derive from a perception by the international community that “they are reasonably democratic.”<sup>358</sup>

One scholar, Akwasi Aidoo, has for Africa validated some of these findings, noting that “everywhere” in the democratizing continent, human rights have “routinely and systematically” been violated, without regard to whether the country affected is a democracy or not.<sup>359</sup> He argues, and of particular significance for this study, that “. . . respect for human rights will not necessarily issue from current democratization process in Africa unless human rights are specifically identified as a target in the struggle.”<sup>360</sup> Stated differently, Aidoo argues for liberal, not illiberal, democracies in Africa.

These scholarships give helpful insight into the human rights situation in Nigeria since May 1999. Zakaria’s “spectrum of illiberal democracy” theory applies to the country. Nigeria under General Obasanjo is a strong testament that “a procedurally democratic government may still systematically violate human rights.”<sup>361</sup> Also, the rights-protective quality of the country’s civil rule is so low that Nigeria should rank toward the “near-tyrannies” in Zakaria’s spectrum of illiberal democracy.<sup>362</sup> In other words, under General Obasanjo the country is not just an illiberal democracy but a particularly low-quality one that, as Zakaria would probably view it, mixes an insubstantial “degree of democracy with a substantial degree of illiberalism.”<sup>363</sup> The low right-protectiveness justifies the designation of the country as simply civil rule as opposed to any democracy in any sense other than figure of speech. Another

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354. *Id.* at 182.

355. *Id.* at 181–84.

356. *Id.* Zakaria quotes Philippe Schmitter approvingly for the position that liberalism as a political ideology “has never been immutably or unambiguously linked” to the practice of democracy. *Id.* at 181.

357. *Id.* at 182.

358. *Id.* at 193–94.

359. Aidoo, *supra* note 5, at 707.

360. *Id.* at 704–05.

361. DONNELLY, *supra* note 11, at 154.

362. Zakaria, *supra* note 353, at 182.

363. *Id.* at 182.

justification reinforcing the deliberate and obvious choice of civilian in place of democracy or democratic rule is due to our perception of the Obasanjo regime as still transitional. In his piece surveying the challenges of leadership Obasanjo confronts upon his assumption of office in 1999, Professor Joseph rated Nigeria under Obasanjo as only a "a post-authoritarian system with democratic aspirations."<sup>364</sup> Reference to the Fourth Republic as a democracy, as we have occasionally done in this Article, is a figure of speech that should leave nobody under any illusion regarding the transitional character of the Obasanjo government.<sup>365</sup> However, although it is to be perceived as no more than a transitional government, the Obasanjo administration was also expected to accomplish a thorough demilitarization of the political system<sup>366</sup> such as would lay the foundation for the evolution of the country within this new century as an "important nurser[y] of democratic theorizing and construction" in Africa or constitutional democracy.<sup>367</sup> This failure represents the tragedy of human rights and democracy in the country since 1999, considering that there is no individual more suited to accomplish this demilitarization, given his past ties to the army establishment, than General Obasanjo. Zakaria's work also helps us understand why the United States and other western governments have refrained from criticizing General Obasanjo's human rights records. So long as they are not downright military regimes, illiberal democracies like Nigeria under General Obasanjo possess a mantle of legitimacy from the international community, which views them as "reasonably democratic" irrespective of how pitifully low the human rights content of their "democracy" is. Similarly, although it still makes little sense, we understand why Obasanjo continues to be perceived internationally as the voice of democracy in Nigeria and Africa, even though he presides over a "democracy" exceedingly illiberal or low content in human rights.

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364. Joseph, *supra* note 76, at 48. Joseph adds, *inter alia*, that "... it would be self-deluding to believe that Nigeria is now a democratic state." *Id.*

365. Assessing the Nigerian government since 1999 as less than full democracy in no way belittles the country's political development. This is because, given the option the country could have faced if power had not been transferred in 1999 (for example, possible civil war), the label of "a post-authoritarian Nigeria with democratic aspirations" provided by Professor Joseph is still a significant achievement. *Id.*

366. See *id.* at 49. ("Demilitarization of the Nigerian polity is one of the most important and difficult exercises the Obasanjo administration must perform for the nation. This project has to be thorough, comprehensive, and even radical in conception." *Id.*). The logic behind such demilitarization, Professor Joseph explains, is that Nigeria has seen the military emerge as "the central political institution in the nation" that an occurrence like "[t]he mere handover of power from a military general to a retired military general," although important, does not alter. *Id.*

367. *Id.*

## B. Human Rights and Economic Development

Another possible explanation for the coexistence of civil rule in Nigeria with human rights violations is that a certain level of economic prosperity (economic development) is necessary for human rights progress. No such prosperity, as we have seen, unfortunately, has occurred in Nigeria. Rather, the decline in the economy that has gone on "for much of the last three decades,"<sup>368</sup> has continued unabated under General Obasanjo. There are two important senses, one direct, the other indirect, in which no progress in economic development can spell bad news for human rights. The first, indirect, is that no progress in economic development can result in reduced popular attachment to democracy or non-military rule, the very context necessary for any human rights promotion to occur. This is the sense most often invoked in the average discussion on the relationship between human rights and economic development. General Obasanjo talks repeatedly about the "dividends of democracy,"<sup>369</sup> even though his government has delivered little such material dividends. Still under this view, Professors Robert J. Mundt and Oladimeji Aborisade argued that Nigerians are very outcome-oriented in their approach to support of democracy.<sup>370</sup> Specifically, they said, the attraction of democracy for Nigerians is "its association with prosperity."<sup>371</sup>

The second sense, unlike the first, less often talked about, is that socioeconomic rights (pursued and achieved through economic development) are an integral part of human rights. Lack of progress in economic development means a reduction in these rights with possible negative spillover effect on the two other categories of political-civil rights and solidarity rights. The relationship is direct because, unlike in the first sense, it is not filtered in through any intervening variable. One would think that this relationship, being direct, would be something more talked about or at least something that gets as much attention among scholars and politicians as the first. But the reason it is not much talked about is that, as earlier indicated, socioeconomic (and solidarity) rights are considered non-real rights, unlike political-civil rights, unfit

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368. U.S. DEPT. OF STATE, *supra* note 135, at 1. See also OSAGHAE, *supra* note 66, at 15 (identifying economic crisis as one of the major themes of post-independence politics in Nigeria).

369. See, e.g., Wright, *supra* note 309. ("We adopted democracy not just for the intrinsic value of democracy, but because our people believe that democracy can enhance their quality of life . . . They expect, rightly, a democracy dividend. If that doesn't come, they will feel disenchanted." *Id.*).

370. Mundt & Aborisade, *supra* note 76, at 727. ("Nigerians are more interested in the outcome of the political process than in the process itself." *Id.*).

371. *Id.*

for protection as guaranteed rights in many national constitutions, including Nigeria's. This unsatisfactory constitutional treatment of socioeconomic (and solidarity) rights is unfortunate because the human rights concept embraces all three categories or generations of rights without exception.

One lesson relating to this topic is the complementarity of political-civil and socioeconomic rights. Performance in *both* fields is necessary to solidify rights. Strong performance in the political-civil rights field and weak performance in the socioeconomic area will not consolidate rights. The Obasanjo regime finds itself even in a worse situation because political-civil rights have also not fared well. Some of the conflicts in Nigeria with severe consequences for human rights have been worsened by economic difficulties in the country. The message is that Nigeria may have to reconsider its decision that socioeconomic rights are not justiciable. Making these rights justiciable may make the government buckle up, although one, conversely, can also make the argument that governments already doing little now will find their hands full with additional legal-constitutional obligations if socioeconomic rights become real rights.

### *C. Human Rights and Political Restructuring*

In addition to a democracy imbued with rights (liberal democracy) and a certain level of economic prosperity, real restructuring of the political system is also necessary for human rights to take root in Nigeria. The absence of that fundamental political restructuring is a third explanation for the paradox between civil rule and human rights violations in the country since 1999. Obasanjo came into office promising change, but after over three years in office, has yet to take restructuring seriously. The imperative of federalism as the only viable format for organizing Nigeria was recognized as far back as 1954 when the country was still a British colony.<sup>372</sup> Yet, with the exception of the First Republic (1960–66), the country has been a federal system that is run in a unitary format.<sup>373</sup> This anomalous situation was

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372. On the eve of a conference leading to the adoption of the 1954 Constitution, the Colonial Secretary, Lord Chandos, wrote in his diary: "It was clear that Nigeria if it was to be a nation, must be a federation, with as few subjects reserved for the Central Government as would preserve national unity." KIRK-GREENE, *supra* note 66, at 10. See also GRAF, *supra* note 67, at 133 (remarking that an important truism of Nigerian politics is that "the country's continuing existence as a nation-state hinges on its capacity to evolve and maintain an adequate system of federalism").

373. The military lodged power in the center at the expense of the states out of fear of the country disintegrating if true federalism is introduced. OSAGHAE, *supra* note 66, at 24. The first post-colonial government to introduce the country to a unitary system

expected to be corrected but has not changed under General Obasanjo's civilian government. The 1999 Constitution inheres centralizing features inconsistent with federalism. For example, the document provides that judges of the state high courts are to be selected by a federal body, to be known as the National Judicial Council, which is also charged with funding the operation of these state courts.<sup>374</sup> In addition, the Obasanjo administration also operates like a unitary government. The President's Attorney-General recently chastised states for what he called their "needless agitation . . . for more and more freedom so that they may not come under any kind of supervision whatsoever."<sup>375</sup> He reminded them "that they were not originally nations which came into the union, each with its own rights . . . . Some of them seem to have forgotten who their father is and we need to remind them that is the Federal Government."<sup>376</sup> The President himself recently unilaterally increased the revenue allocation to the federal government to the detriment of the states and local governments.<sup>377</sup>

The need for a fundamental reform of the Nigerian political system had been apparent for long, no perceptive leader could miss it. Professor Joseph observed that the ethnic challenges Nigeria faces all across the country is "so systemic in nature that more comprehensive frameworks for resolving and preventing them must be developed."<sup>378</sup> He also recommended, quoting one key Nigerian politician, that "a regrouping of some of Nigeria's 36 states" into "larger entities" was necessary for "beneficial governance consequences."<sup>379</sup> The constitutional drafting expert Chief Frederick R. A. Williams seems to share the same view.

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(for a few short months in 1966) was a military government. The flaw with this logic is that it could lead precisely to the disintegration the government was trying to avoid. The argument is even less plausible and more incomprehensible in a civilian regime. Nigerian unity must be fragile indeed if devolution of powers in what is supposed to be a federal system could lead to disintegration.

374. HUMAN RIGHTS WATCH, *supra* note 9, at 7.

375. Fred Ohwahwa, *Agabi's Unitarist Agenda*, GUARDIAN ONLINE (LAGOS), July 28, 2002 (on file with author) (citing the attorney general's paper delivered at a seminar on "The Ethnic Question").

376. *Id.* The federal government upbraids the sub-national governments for waste and mismanagement, but Abuja is also guilty of the very same crimes it levels against these sub-national governments. With his endless foreign trips, the President has not proven himself a frugal person and may have set the bad example for travels and rampant itineraries that the governors seem to follow. What, therefore, the Attorney-General inveighs against is not the non-transparency and non-accountability of sub-national functionaries; it is that these non-federal functionaries have failed to account (or, in Nigerian military parlance, "report") to the federal government.

377. *Id.*

378. Joseph, *supra* note 76, at 50.

379. *Id.* Other structural changes he suggested include fundamental judicial reforms and the evolution of legislatures at the state and national levels into true parliaments rather than conduits for "opportunistic gatherings devoted mainly to the pursuit of appointments and financial payoffs." *Id.* at 49.

He believes that the states are too small and not sufficiently large to cater for the social and economic needs of the people and that "far too many powers are vested in the federal government."<sup>380</sup> He would want the states retained as they are now but organized into a group as federating units such that the new group of states can exercise greater powers over those matters that affect the lives of the people.<sup>381</sup> Adebayo Williams stated, focusing on the Niger Delta, that if the President "decides to temporize, hoping that the trouble will go away, he risks not satisfying anybody and worsening the tension."<sup>382</sup> Professors Aborisode and Mundt, in their joint work on politics in Nigeria, observed that "the long evolution toward a de facto unitary state" in the country needs to be reversed,<sup>383</sup> and they contended that the "challenge" for the country "is to find a constitution imbued with the federalism necessary to allow each area a high level of autonomy, while at the same time providing for a distribution of income from the country's natural resources that will give all areas an incentive for loyalty to national institutions."<sup>384</sup> Finally, the London *Economist* in its survey on Nigeria since Obasanjo came into office, argued that fundamental structuring is the only medicine for minimizing governmental corruption in Nigeria. "The whole Nigerian political system, built up in a series of unfortunate steps over the past 40 years, tends to encourage corruption. To curb it, Mr. Obasanjo must change the system itself."<sup>385</sup> It maintains that Nigeria needs "a government that enables citizens to thrive, rather than stealing their money and strangling their businesses with controls."<sup>386</sup>

Even before General Abacha's death on June 8, 1998, "it was obvious," for example, "that a particular type of military tyranny had exhausted its historical and political possibilities in Nigeria."<sup>387</sup> The lesson from the over fifteen years of destructiveness and developmental decay of military rule that ended in May 1999 was that the nation cannot proceed business as usual. General Obasanjo himself in the past recognized the need for restructuring. He made a case for insertion of a clause permitting secession

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380. Shola Oshunkeye & Dayo Aiyetan, *Opata Panel is Unnecessary*, TELL (LAGOS), Aug. 27, 2001, at 56 (interview).

381. *Id.*

382. Williams, *supra* note 122, at 413.

383. ABORISADE & MUNDT, *supra* note 69, at 248.

384. *Id.*

385. Guest, *supra* 85, at 6.

386. Guest, *supra* note 329, at 16.

387. Williams, *supra* note 122, at 409.

in the Constitution in a book published since he came into office,<sup>388</sup> and, in 1994, as a private citizen, he supported the call for a conference of whatever name that “will deal comprehensively with the fundamental issues of Nigerian existence.”<sup>389</sup> So why has he not embraced fundamental reforms, when as Professor Joseph says, all individuals charged with leadership in the Fourth Republic “are bearers of a great mandate”?<sup>390</sup>

The only plausible explanation can be that General Obasanjo is an unabashed “systems man” who does not believe in fundamental or structural reforms.<sup>391</sup> As one perceptive analyst puts it, the President belongs in the generation of Nigerians that place premium on unity at the expense of fairness and equity and which sees devolution of powers as courting “separatism at best and disintegration at worst.”<sup>392</sup> The *London Economist* says: “President Obasanjo may not yet have embraced radical reform, but he is clearly trying to change things for the better.”<sup>393</sup> But how can the President change things for the better without embracing radical reforms? Didn’t the magazine predict “that the latest government, like its predecessors, will fail to live up” to any reasonable expectations without fundamental change—such as the evolution of an economy not solely dependent upon oil?<sup>394</sup> The irony of Obasanjo’s election and second coming is that the intrigues of leadership recruitment in the country has led to the choice of a “compromise” candidate<sup>395</sup> who does not believe in structural reforms precisely at a very time the political fate of the country hangs on such reforms. These intrigues result in the anomaly for the country of a President “who is feted internationally but increasingly

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388. See generally OLUSEGUN OBASANJO, *THIS ANIMAL CALLED MAN* (2000).

389. See *The Kaduna Caucus*, *supra* note 313, at 252 (General Obasanjo’s keynote address at a workshop on “State of the Nation, Which Way forward?” as part of an ongoing debate at the time on Nigeria’s constitutional future).

390. Joseph, *supra* note 76, at 48. Professor Joseph describes this great mandate as one not just derived from the elections of February 1999, but also emanating “from the historical struggles of our people against authoritarian rule in all its forms since we were brought under European systems of dominance three or more centuries ago.” *Id.*

391. See OJO, *supra* note 102, at 29 (Obasanjo “is a man who believes in the system, and leadership to him means tinkering with the existing structures to evolve a more dynamic one . . .” *Id.*); Olusegun Obasanjo, *Nigeria: Which Way Forward*, DAILY TIMES (LAGOS), Aug. 7, 1985, *quoted in* THE PRECARIOUS BALANCE 116 (Donald Rothchild & Naomi Chazan ed., 1988). (“ . . . I was by virtue of my training and upbringing what you might call a systems man. I believe that if a system is good and well-founded, any person with average ability could make it work . . .” *Id.*).

392. Oke, *supra* note 266, at 49.

393. Guest, *supra* note 329, at 16.

394. *Id.*

395. See, e.g., Akpo Esajere, *Obasanjo Reveals Northern Agenda on Power Shift*, GUARDIAN ONLINE (LAGOS), Sept. 29, 2002 (on file with author) (disclosing a pact between so-called northern elders and politicians within the President’s own political party and presidential candidates in February 1999 in which the Northerners agreed to “allocate power to the South” in return for key positions in the government).



criticized at home.”<sup>396</sup> There will be little human rights progress made unless the country is politically restructured. Moreover, if the country breaks up under the weight of the tons of cleavages and contradictions that weigh it down, it will be mainly because its leadership has not taken restructuring seriously.<sup>397</sup>

#### *D. Complementarity of Individual and Collective Rights*

In addition to all the factors specified above, human rights progress in Nigeria requires simultaneous attention to both individual and collective rights. What this means is that proper or adequate attention to human rights in the country is not limited to just maintaining a balance between political-civil rights and socioeconomic rights as analyzed in Part V.B. above; it also, of necessity, is something that incorporates attention to the balance between individual and group rights. However, neither the Obasanjo government nor Westerners who assess the progress of human rights in Nigeria and Africa seem to fully appreciate the need for this complementarity of individual and collective rights. General Obasanjo has not paid adequate attention to the Niger Delta problem and he has excluded Igbos in his administration. Human rights NGOs who have assessed the Obasanjo government's human rights records have paid little attention to the violation of the rights of Igbos in Nigeria since the end of the civil war in 1970 that has continued unabated under General Obasanjo. These groups have talked about the violation of the human rights of the Ogonis and other groups in the Niger Delta, which is all right yet incomplete since it does not include the situation of the Igbos, a major ethnic group comprising one-quarter of the country's population. In short, a factor accounting for the paradox between civil rule and human rights violations that exists in the country under General Obasanjo arises from a lack of due recognition of the relationship between individual and group rights and therefore necessity for simultaneous attention to both two categories of rights.

One way to bridge the gap between individual and collective rights will be for the Nigerian constitution to recognize and protect solidarity rights along with socioeconomic rights as the ACHPR already does. Group rights need attention in Nigeria and Africa because, as Professor Rhoda Howard noted and the experience of the Igbos and the Ogonis and other

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396. *Lawmakers Say President Ordered Killings*, *supra* note 292, at 6.

397. See Bolaji Akinyemi, *Nigeria: A Mere Geographical Expression?*, *GUARDIAN* (LAGOS), July 6, 2001, at 8–9; Peter Ekeh, *Breakdown in Nigeria's National Consensus*, *GUARDIAN* (LAGOS), July 2, 2001, at 63. Both articles argue that the country must adopt genuine federalism if it is to avert disintegration.

marginalized ethnic groups in the Niger Delta bear out, abusive state policies put groups at risk in Africa.<sup>398</sup> Collective or group rights are real rights that, along with individual rights, require protection in national constitutions. Proper attention to human rights in Nigeria in particular and the African continent as a whole requires that the two rights go together. Recognizing these rights may force governments to pay more attention to economic development for individuals and groups alike and accept it as an important yardstick for assessing their performance. No strategy for human rights promotion in Nigeria will succeed that does not pay strong attention to group rights. The country will not make headway in human rights promotion if attention is not paid to group rights. Group rights have always been critical in Nigeria. A major factor lending impetus to guarantee of "fundamental rights" in the country's Constitution was concern about "minority" (group) rights.<sup>399</sup>

One reason for attention to group rights in Nigeria and other African countries is that problem in this area spill over and complicate achievements in other rights categories. For example, problems in solidarity rights can affect socioeconomic development (less peace to generate prosperity). There is a need for continual restructuring of the political system, discussed already above, to eliminate oppression and give *every* group within the country ownership and a sense of belonging in the political system. There will still be problems in a materially prosperous country if certain sections of the country feel that they do not receive their fair share of the national wealth. Promoting increased access to state power for all groups is a human rights issue in Nigeria. Accomplishing this purpose can also minimize opportunities for conflict that could result in human rights violations. Even military regimes try to correct these problems, much more so civilian governments. The importance of ethnicity in African politics<sup>400</sup> guarantees that the influence of group identities in Nigeria and other African societies will remain strong for a long time to come.

## VI. CONCLUSION

The expectation of improvement anticipated from civilian rule has not materialized and violations of human rights have continued to occur in Nigeria even under a civilian regime. General Obasanjo's record since 1999 belies the hope of Nigerians that a non-military regime will be more human rights-protective. Explanation for the paradox occasioned by the coexistence of civil rule and human rights violations in Nigeria

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398. Howard, *supra* note 35, at 168.

399. Willink Commission Report, *supra* note 41.

400. See NAOMI CHAZAN ET AL., *POLITICS AND SOCIETY IN CONTEMPORARY AFRICA* 108-18 (3d ed. 1999).

since 1999 is that progress in human rights requires: 1) a democracy imbued with rights (or liberal democracy) that Nigeria does not have; 2) a certain measure of economic prosperity, which has yet to take place in the over three years General Obasanjo has been in office; 3) fundamental restructuring of the political system, which is yet to occur in the country; and, 4) due recognition, not present yet, of the relationship or complementarity of individual and group rights.

It is tempting to conclude that Nigerians set themselves up for disappointment by pitching their hopes high on one fallible civilian government after over fifteen years of developmental devastation arising from military rule.<sup>401</sup> But nobody needs to fall into that temptation. The real disappointment, as this Article shows, is that Obasanjo has performed below every expectation. Nigeria is a country that, since independence, has "moved away from . . . the actualization of its vast potential,"<sup>402</sup> and Obasanjo was elected to "prevent further destruction of the economy and infrastructure and begin the long process of turning the country around."<sup>403</sup> Because he has not done this, the elusive search for a formula that will harmonize ethnic competition, class conflict, social diversity, and other cleavages<sup>404</sup> into a productive synthesis goes on even as prospects for the country's intactness as one nation, the very precondition necessary for that search to proceed, grows bleaker everyday.<sup>405</sup>

In addition to any explanation like that provided here, the paradox represented by the coexistence of civil rule and human rights violations in Nigeria since 1999 reinforces the irony of Nigeria's status as "a perpetual underachiever."<sup>406</sup> A retired general, for all of his limitations as a military leader, expected to perform, has performed below expectation. A "democratic" political experiment expected to stabilize human rights has resulted in human rights violation of a kind associated with military rule. Yet, in spite of the disappointment for human rights

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401. For example, focusing on the economy, one representative analysis advised General Obasanjo to put together "a revolutionary economic blueprint which will inspire speedy economic growth." It indicated that the President needs a ramification of proper leadership that combines the patriotic nationalism of Charles de Gaulle; the untiring, selfless application to duty of Winston Churchill; the economic wizardry of General Dwight Eisenhower; and, the economic vision of Franklin D. Roosevelt. Adesanya, *supra* note 136, at 64-65.

402. OSAGHAE, *supra* note 66, at 13-14.

403. Mundt & Aborisade, *supra* note 76, at 728.

404. GRAF, *supra* note 67, at 13.

405. See discussion *supra* Parts IV.B.1.-4.

406. Williams, *supra* note 122, at 408.

the Obasanjo government signifies, the country needs to keep authoritarian rule at bay and stay the course of civil-democratic rule. "Democracy is the worst possible form of government except for all others."<sup>407</sup> "There is no better way of developing the values, skills, and commitments of democratic citizenship," including respect for human rights, "than through direct experience with democracy, no matter how imperfect it may be."<sup>408</sup> Because it forms the basis for any meaningful discussion of progress in human rights, democracy, even a low human-rights protective one, is better than military rule.

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407. Winston S. Churchill (1874–1965), British politician and two-time prime minister.

408. See DIAMOND, *supra* note 13, at 3.