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BILL OF RIGHTS IN THE 1989 CONSTITUTION: FUNDAMENTAL RIGHTS OR FUNDAMENTAL DEROGATIONS.

TRAVEL RESTRICTION ON HUMAN RIGHTS ACTIVISTS



DEMOCRACY: IN DIARCHY WE ARE

AFRICAN PERSPECTIVE

OPINIONS

FREEDOM OF EXPRESSION AND NIGERIA'S STATE SECURITY DECREE

BY BAYO OLOYEDE

INTRODUCTION

From independence in October 1960 to January 1966 when the Nigerian Armed Forces first usurped political power and from October 1979 to December 1983, Nigeria operated as a democracy. She therefore had various fundamental rights including the right to freedom of expression, the right to fair hearing and the right to personal liberty guaranteed her citizens in both her 1963 and 1979 Constitutions the 'grundnorms' of those periods.

Section 36 (1) of the 1979 Constitution, for instance, proclaims to wit:

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

Section 33 of the same Constitution provides for "fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality"² The right to personal liberty was also guaranteed in Section 32 of the Constitution.

The country's second attempt at constitutional democracy was terminated on 31st December 1983 and on the heels of this demise came the State Security Decree.

The objective of this paper is to appraise the decree in the light of the sensitive and delicate relationship between freedom of expression and national security.

THE STATE SECURITY DECREE

The State Security (Detention of Persons) Decree No.2 of 1984 was promulgated by Major General Muhammadu Buhari, Head of Nigeria's fourth military government and leader of the December 31st, 1983 coup d'état. Although enacted 9th February 1984, it was effective, retroactively, from the day the government usurped political power.³ An omnibus detention - without - trial law, it empowers the Chief of Staff Supreme Head-quarters to detain any person he is satisfied "has been concerned in acts prejudicial to State Security or has contributed to the economic adversity of the nation, or (is) in the preparation or instigation of such acts"⁴ for a renewable period of three months. It suspends Chapter IV (the Fundamental Human Rights provisions) of the 1979 Constitution

and precludes the courts from inquiring into any act done or intended to be done under it.

Since its promulgation six years ago, there have been three amendments to the decree.⁵ The first, introduced on May 23rd, 1986 increased the number of executors of the intent of the decree from one to two (i.e. from the former Chief of Staff Supreme Headquarters to both the Chief of General Staff⁶ and the Inspector-General of Police) and raised the minimum of period of detention without trial from three to six months.⁷ The second, enacted July 30th, 1988 further increased the number of executors by one, the addition being the Minister of Internal Affairs,⁸ while the third, promulgated January 25th 1990 because of ceaseless opposition to the decree, reverted the executing authority to only the Chief of General Staff, reduced the minimum detention period to six weeks and set up an advisory review panel for those detained under the decree.⁹

SOCIO-POLITICAL CONTEXT

Although the period between October 1, 1979 and December 31st, 1983 (the duration of the Second Republic) was more liberal than the military epoch preceding it, Shagari's four years rule witnessed an unprecedented mismanagement of the Nigeria economy. Not only did foreign debt and unemployment accumulate during the period, official corruption marked by inflated contracts also increased greatly. Moreover, owing to the mismanagement, the entire economy itself was on the brink of collapse. One of the major reasons for the military take-over of December 31st 1983 was therefore to stem the increasing tide of corruption and salvage the economy from total collapse.

The new government, like every conscious Nigeria, know that Second Republic politicians and their agents were the largest single group responsible for the country's economic woes. By partly directing Decree 2 at those who have "contributed to the economic adversity of the nation" therefore, the decree seems to have been targeted against those politicians and their agents who engaged in corrupt practices to the detriment of the nation.

Apart from this group, the decree was also targeted against all Second Republic politicians, whether involved in corrupt practices or not. The new military government was conscious of the fact that the politicians might not, naturally, willingly accept the take-over and might do anything to destabilise it, more so when it had declared itself a "corrective" regime. It therefore needed a legal instrument with which to hold the politicians in check until it took sufficient control of the country.¹⁰ Thus when the decree was promulgated February 9, 1984, it retroactively, gave legal cover to subsisting but otherwise illegal detention by providing that:-

*Any person detained in any such place (prescribed in Section 1 (1) between 31st December 1983 and the date of the making of this Decree shall be deemed to have been detained under this Decree notwithstanding that no order was issued in respect thereto.*¹¹

The decree also seems directed against all mem-

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bers of the public who might, in sympathy with the ousted civilian government, or in moral opposition to military rule, or to specific 'corrective' actions or policies of the new government engage in "acts prejudicial to state security". The definition of such acts was however left to the wide discretion of the Chief of Staff, Supreme Headquarters, who in order to defuse the serious tension generated by the widespread arrests and detention of the first months of the December 31st, 1983 coup, had to reassure the nation through media executives on January 19, 1984 that the new government was "not out to witch hunt, arrest or remove people on a tip off."¹²

When the military came back to power on December 31, 1983, there were legislative and executive precedents to fall back upon in its relation with the citizenry. Decree 2 was therefore a descendant of the State Security (Detention of Persons Decree (Decree No. 3) 1966 promulgated by the Aguiyi Ironsi regime¹³ and a reincarnation of Section 3 (1) and (2) of the war - time Armed Forces and Police (Special Powers) Decree (Decree No. 24) 1967 enacted by the Gowon government.

APPLICATION AND INTERPRETATION OF DECREE 2

Since coming to life in 1984 the State Security (Detention of Persons) Decree has been applied to many expressions involving both individuals and the press. One of the very first of such cases involved Dr. Tai Solarin.

Shortly after the military take over of December 31, 1983, Tai Solarin, a renowned social critic, advocated for a return to civil rule within three to six months. He called on the Buhari government to appoint tested civilians to run the country. He was consequently detained for eighteen months under Decree 2.¹⁴

Another individual expression to which Decree 2 was applied concerned Chief Gani Fawehinmi. Fawehinmi, a prominent human rights lawyer and celebrated rule-of-law crusader, was arrested on June 17, 1989¹⁵ at his chambers and in the company of Chief Michael Imoudu, a veteran labour leader, and Dr. Tai Solarin for holding an "Alternative to Structural Adjustment Programme (SAP) seminar¹⁶ which the police stopped midway. While Chief Imoudu and Dr. Solarin were released the following day, Chief Fawehinmi, the convener of the seminar, was subsequently detained at Gashua prison (a remote prison in the North) for four months and a day.¹⁷

Decree 2 was also applied in respect of Gbenga Olawepo, Public Relations Officer of the proscribed National Association of Nigerian Students (NANS)

and final year Mass Communication student of the University of Lagos. Olawepo was arrested on September 19, 1989 and detained for alleged "espionage activities"¹⁸ because he delivered a speech which the government considered embarrassing¹⁹ at the 13th World festival of Youths and Students held in Pyongyang, North Korea. His release was only secured through the court on December 3, 1990 on technical ground. He was held in a State Security Service (SSS) cell instead of a police cell or prison custody prescribed by Section 1 (1) of the decree.²⁰

The April 22, 1990 abortive coup also provided many individual expressions to which Decree 2 was applied. Those of Dr. Tunji Braithwaite, a Second Republic politician and prominent Lagos Lawyer, and Professor Obaro Ikime, a University of Ibadan History lecturer and Leader of the University's Chapel of Resurrection are particularly interesting.

A few days after the crushing of the coup and while the tense atmosphere generated by the coup still pervaded, Tunji Braithwaite called on the Babangida government not to kill the coup plotters. He advised that rather than "spilling innocent blood",²¹ the government should look into the fundamental issues raised by the culprits as a way of stopping further coups. The fundamental issues were the serious allegations including drug pushing and homo-sexuality levelled against the government and broadcast by the coup plotters as justifications for their abortive bid. He was promptly arrested and detained.

Braithwaite could not comprehend the reason for his detention. He quickly instructed his lawyer, Dr. Olu Onagoruwa, to institute a N1 million suit against the Babangida government for "illegal detention". When he was told in court that he was being detained under Decree 2, he asked his lawyer to discontinue the suit because it amounted to "a waste of time".²²

In the case of Obaro Ikime, who was also believed to have made some comments in respect of the coup shortly before its crushing²³ and was detained on April 28, 1990, his wife, Hannah, sued the Federal Government for her husband's detention and urged the court to invoke its jurisdiction to release him. But she was told by an Ibadan High Court presided over by Justice Timothy Ayorinde that since the detention was ordered by a person vested with the power to do so (the Chief of General Staff) and since the fact of his detention was not in dispute, "the court has no jurisdiction to entertain the detainee's application questioning his detention".²⁴ As submitted by Justice Ayorinde,

"When it comes to the exercise of legislative powers which are exercised by the executive, the legislative has the power to make laws which it deemed fit for the maintenance of law, order and good government of its country."²⁵

Among Decree 2 and freedom of expression case

Since coming to life in 1984 the State Security (Detention of Persons) Decree has been applied to many expressions involving both individuals and the press. One of the very first of such cases involved Dr. Tai Solarin.

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involving individuals, the case of Kayode Adebisi, a member of Gani Fawehinmi Solidarity Association (GFSA), who was detained on May 9, 1990, was unusual and bizarre.

Adebisi, on the said date and at the Nigerian National Petroleum Corporation (NNPC) depot in Sagamu, Ogun State, gave a leaflet issued by the GFSA titled "The Rule of Law VS. The Rule of Force"²⁶ to a male acquaintance who was sitting near him. The man departed and re-appeared a few minutes later with an armed soldier who identified himself as a security agent and immediately placed Adebisi and his friend, one Olaniyi²⁷ under arrest. When the GFSA sought his release in court, it was told that the office of the Attorney General has produced a detention order signed by the Chief of General Staff. The detention order stated that "Mr. Adebisi has been engaged in acts prejudicial to State Security.²⁸ It was dated May 9, 1990, the day Adebisi was arrested.

Apart from cases involving individuals in their personal capacity, at least ten journalists were also known to have been visited by Decree 2 in the conduct of their professional duties. These journalists are: Tony Ukpong, Femi Aborisode, Paxton Idowu, Etim Etim, John Edward, Chris Okojie, Chris Mamah, Lateef Jakande, Banji Ogundele and Chris Okolie. An abstract each of their cases is also relevant.

TONY UKPONG

Mr. Tony Ukpong, a journalist with the Weekly Metropolitan newspapers was arrested on December 20, 1988 by the State Security Service (SSS) for writing a story alleging corruption in the issuance of new police uniforms and speculating on the retirement of the Inspector General of Police. He was detained for about eight months without trial. His release was secured on July 31st, 1989 following a court action instituted on his behalf by the Civil Liberties Organisation (CLO). The organisation based its suit on ill health but SSS officials disputed the ground of action claiming the Ukpong was healthier at the time than when he was arrested. He was however released because "the order under which he was being held had been revoked by the Chief of General Staff."²⁹

FEMI ABORISADE:

Mr. Femi Aborisode, Editor of a trade union journal, the Labour Militant, was arrested on February 6, 1989 by the State Security Service (SSS) in connection with his publications and detained for seven months.³⁰ No formal charges were preferred against him. His application for release was rejected by a Lagos High Court headed by Justice Moni Fafiade who contended that the court was incompetent to adjudicate on any matter relating to Decree 2.³¹

PAXTON IDOWU:

Mr. Paxton Idowu, Editor of the Republic, and four other journalists of the newspaper were arrested on June 16, 1989 and detained for about five days for publishing a story based on a court action filed by Alhaji Mohammed Bashir challenging his detention under Decree 2. Alhaji Bashir had sworn in an affidavit filed at a Lagos High Court that he was being detained on grounds of certain personal and commercial disagreement between him and the Chief of General Staff, Vice Admiral Augustus Aikhomu, who subsequently signed his detention order.

Mr. Idowu's wife, Florence Idowu, who was in advanced stage of pregnancy, was detained for a day in lieu of her husband whom security agents did not meet at home when they called to arrest him.³²

ETIM ETIM

Mr. Etim Etim, a Guardian reporter, was detained on August 16, 1989 for three months without trial over some of his reports and because his name "had been mentioned in the course of their (SSS) investigation into how classified information had been leaking to the press.³³ While in detention, he was accused, under interrogation, of being "an agent for foreign interests"³⁴ and being a "security detainee", he was not allowed to communicate with the outside world.³⁵

JOHN EDWARD:

Mr. John Edward, a senior journalist with Lagos News, was picked up on December 6, 1989 by the Police and detained at the State Directorate of Investigation and Intelligence (SDII) Panti Yaba. The detention was not unconnected with a feature article he wrote in the previous Monday edition of Lagos News titled "Sheidu Ahmadu. Your Men Are Giving The Police Bad Name".³⁶

CHRIS OKOJIE:

Mr. Chris Okojie, Deputy Editor of the Vanguard, was detained from April 24 to May 11, 1990 at the Apapa office of the Directorate of Military Intelligence (DMI) over some of his paper's publications in respect of the April 22, 1990 coup attempt.³⁷

CHRIS MAMAH:

Mr. Chris Mamah, Deputy Editor of the Punch, was also picked up by agents of the State Security Service (SSS) on April 27, 1990 and detained over some of his paper's publication in respect of the April coup.³⁸

LATEEF JAKANDE:

Alhaji Lateef Kayode Jakande, a former civilian governor of Lagos State, publisher of Lagos Daily News, Evening News and Sunday News and former

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President, International Press Institute (IPI) was detained on May 1, 1990 in connection with his papers' publications on the April 22 abortive coup. He was let off the hook after only a day because he was to chair a committee at a conference of the IPI in France.³⁹

BANJI OGUNDELE:

Mr. Banji Ogundele, Editor, Sunday News, was also detained alongside Alhaji Lateef Jakande.⁴⁰

CHRIS OKOLIE:

Chief Chris Okolie, publisher and Editor-in-Chief of Newbreed and President magazines, was detained from June 8 to July 24, 1990 because the Newbreed published, under a banner headline titled "Ogboru Speaks", a letter purportedly written to General Ibrahim Babangida by the run-away civilian suspect of the April 22 coup attempt, Chief Great Ogboru. An ex parte motion filed on his behalf by Newbreed's News Editor, Mr. Toye Fawole, demanding N1 million for unlawful arrest and detention failed because he was detained under Decree 2. The Chief of General Staff, Vice Admiral Augustus Aikhomu told media executives during the detention that Okolie was detained for publishing "an embargoed document".⁴¹

In the wake of the April 22, 1990 abortive coup d'etat, more than five newspapers and magazines were also shut for weeks by the Federal Military Government because of their publications in respect of the coup. Since their cases border on national security and freedom of expression, the reasons for their forced closure are worth surveying.

THE PUNCH NEWSPAPER:

Punch, the first newspaper to be closed down, was sealed up on April 29 1990 because of the (its) editorial comment of Friday April 27, 1990⁴² which was on the April 22, 1990 abortive coup.

JOHN WEST PUBLICATIONS:

The Ikeja premises of John West publications, the holding company for the Lagos Daily News, Evening News, Sunday News and John West Publishing Company Ltd., were also sealed up on May 1, 1990 because of the editorial comment of Sunday April 29 in the Sunday News.⁴³ A government source, according to Newswatch, described the editorial which was also on the April 22 coup, as "negative and critical of the government".⁴⁴

THE NEWBREED MAGAZINE:

The plot 14 Western Avenue premises of the Newbreed magazine, also housing Ihaza Co. Ltd., H. Hannal Holdings Ltd., Newbreed Printing and Pack-

aging Co. Ltd., and Chris Okolie Chambers, were similarly sealed up on June 8 on account of Newbreed's publication of Ogboru's 'letter to Babangida.

THE CHAMPION NEWSPAPERS:

The Champion newspapers were shut on Saturday June 9, 1990 and Mr. Emma Agu, Editor, Daily Champion, arrested. Before the enforced closure, the newspapers' offices were ransacked by security agents who took away Daily Champion's printing plates of April 9 and 11, 1990.⁴⁵ The meaning to be derived from this was that the April 9 and 11 editions of the Daily Champion contained the 'offensive' publications for which the Champion newspapers were closed down.

THE VANGUARD:

The Vanguard was also sealed up on Saturday June 9, 1990 and the newspaper's Personnel and Circulation Managers arrested.⁴⁶ It was not told its offence.

The process of closing down these journals consisted in security agents ordering out the papers' workers within minutes and numerous security men, mostly anti-riot policemen occupying their premises. Where a search was necessary before sealing up as in the case of Daily News, the security agents came with brandishing search warrants.

APPRAISAL:

The application of Decree 2 to the expressions in the foregoing cases bring out some interesting points. Foremost, the decree has been used in all the cases to punish expressions which the individuals and the press have the fundamental and constitutional right to make. The Universal Declaration of Human Rights simply codifies an obvious natural and inalienable right of man when it provides in Article 19 that everyone has the right to freedom of opinion and expression.⁴⁷ Though subject to derogation by laws reasonably justifiable in a democratic society, the 1979 Constitution also recognises this right.⁴⁸ And in spite of the suspension and or modification of certain sections of the 1979 Constitution occasioned by the 1983 military incursion into politics, this fundamental right remains constitutionally protected.⁴⁹ The suspension of Chapter IV (the entire Fundamental Human Rights Provisions) of the 1979 Constitution by Decree 2 itself is in respect of "Acts prejudicial to State security".⁵⁰ It is difficult to see how any of the expressions punished in the treated cases threatened national security.

Take the case of Tai Solarin. How could advocating for a timely return to civil rule constitute a threat to State Security? Or the mere holding of a seminar by Chief Gani Fawehinmi? Or more intriguingly, Adebisi's gift of a leaflet, whose content and source were never declared illegal, to an acquaintance? The same holds for all the other cases.

The application of Decree 2 to individual and journalistic expressions as exemplified by all the cases

The application of Decree 2 to individual and journalistic expressions as exemplified by all the cases seems to suggest that the objective of the decree is to deter the publication of views and opinions opposed to the policies and actions of the Federal Military Government or those the government would not like expressed.

seems to suggest that the objective of the decree is to deter the publication of views and opinions opposed to the policies and actions of the Federal Military Government or those the government would not like expressed. As the cases of Gbenga Olawepo, NAN's Public Relations Officer detained after delivering "an embarrassing speech" at a public forum in North Korea, and Chief Chris Okolie, incarcerated for publishing "an embargoed document", indicate, individual citizens, journalists and the press are also expected to correctly presume these unwanted views and opinions and preclude them for their expressions.

The effect of this on freedom of expression is, of course, a discouragement of debates on public issues; public debates which, for utmost national progress and welfare, ought to be robust, wide-open and uninhibited. With the way Decree 2 has been applied to freedom of expression, would be critics of official conduct may be deterred from voicing out their criticisms, even though they are believe to be true and, even though they are in fact true. Because of doubt as to whether their expressions would be deemed to fall into the zone of "acts prejudicial to State Security", and because they have no legal instrument with which to claim their fundamental right of free expression or seek redress in respect of repression thereof,⁵¹ they would tend to make only statements that steer far clear of the 'unlawful zone'. As Hidehike Hayashi rightly points out at the 7th World Media Conference:

Regardless of what remarkable thoughts, principles and beliefs people embrace within themselves, they will close their mouths if they do not have the freedom with which to express their ideas to others. They know that if, finding silence intolerable, they speak out, they will be persecuted...⁵²

Another unsettling aspect of the application of Decree 2 to expressions has to do with the objective yardstick with which to measure punishable expressions. The forcible closure of the Punch in the wake of the April 22, 1990 coup was said to have been predicated on its 'offensive' editorial comment of Friday April 27, 1990.⁵³ But, as Newswatch recalls, "other newspapers carried editorial opinions that said more or less the same things".⁵⁴ This is an evidence of the type of definitional problems generable by a penal offence the determination of whose ingredients is left to the prerogative and 'wisdom' of only one person.

Also arising from this unlimited jurisdiction is the possibility of abuse. While the Republic's court story involving Mohammed Bashir and the Chief of General Staff (which led to the detention of the paper's editor and four of the paper's journalists) is difficult to connect to national security, the arrest and detention of the editor's pregnant wife in lieu of her husband and the ferocity which attended the case⁵⁵ are puzzling.

The way Decree 2 is being applied to expression also makes the enactment a contradiction in terms for rather than serve the intended purpose of preserving State Security, its use for the suppression of unwanted views is capable of engendering or increasing state in-

Nothing adds more to men's hatred of government than its refusal to let them talk... Besides, suppression of their mere words shows a fear of them, which only encourages them to greater activity in secret. A widespread belief is aroused that the government would not be so anxious to silence its critics unless what they have been saying is true.

security. This is because freedom of expression is one of the four essential conditions upon which the security of every nation and that of its citizens are founded.⁵⁶ When you deprive men from the arena where comments are free, you send them to the cellar where revolutions are born.

Putting the quietus on opposing views and opinions through an omnibus 'national security' enactment like Decree 2 can never be an antidote against national insecurity. This, as Chafee pungently explains, is grounded on the facts that:

"Nothing adds more to men's hatred of government than its refusal to let them talk... Besides, suppression of their mere words shows a fear of them, which only encourages them to greater activity in secret. A widespread belief is aroused that the government would not be so anxious to silence its critics unless what they have been saying is true."⁵⁷

Rather than the counterproductive sealing of citizens' lips in the name of State Security, Chafee's three-pronged recommendation for maintaining the delicate balance between freedom of expression and State Security seems to be the only viable option. As Chafee affirms:

"A wise and salutary neglect of talk, coupled with vigorous measures against plans for actual violence and a general endeavour to end dis-content is the best legal policy toward anarchy..."⁵⁸

SUMMARY AND CONCLUSION

This paper set out to:-

- (1) appraise the State Security (Detention of Persons) Decree (Decree No.2) 1984 in the context of the relationship between freedom of expression and national security; and
- (2) to determine whether or not the decree derogates from the freedom of expression of Nigerians.

An examination of the decree and its application to expressions revealed as follows:

1. Decree 2 has existed in Nigeria in one form or another since the first military incursion into politics (except, of course, during the Second Republic). The Aguiyi-Ironsi regime set the ball rolling with the State Security (Detention of Persons) Decree (Decree No. 3) 1966. Since then, every military administration has found it expedient to enact an omnibus 'national security' detention - without-trial law with which it incarcerated anyone suspected to be an irritant against it. The Gowon regime enacted the Armed forces and Police (Special Powers) Decree (Decree No. 24 of 1967) while the Obasanjo administration promulgated the Public Security (Detention of Persons) Decree (Decree No. 1) of 1979.

These preventive detention decrees always suspended the fundamental Human Rights provisions of the operative Constitution including the provision for freedom of expression.

2. The State Security (Detention of Persons) Decree, 1984 was being used to punish expressions which have nothing to do with State security and which punished citizens, journalists and journals who have the fundamental right to make comments in accordance with Article 19 of the Universal Declara-

tion of Human Right which guarantees freedom of expression world-wide and the slightly modified Section 36 of the 1979 Constitution which assures the freedom in Nigeria.

For example, Dr. Tai Solarin was detained by the Buhari regime for eighteen months under Decree 2 for advocating for an early return to civil rule. Chief Gani Fawehinmi was also incarcerated for four months and a day in Gashua by the Babangida regime for convening an 'Alternative to SAP' (Structural Adjustment Programme) seminar. The same held for Gbenga Olawepo, a part three Mass Communication student of the University of Lagos and Public Relations Officer of the prescribed National Association of Nigerian Students (NANS), who was detained for about three months for delivering an 'embarrassing' speech at the 13th World Festival of Youth and Students in North Korea. Ditto for Tunji Braithwaite, Obaro Ikime and Kayode Adebisi who were detained for similar expressions.

In the case of journalists, Tony Ukpang, Femi Aborisade, Paxton Idowu, Etim Etim, John Edward, Chris Okojie, Chris Mamah, Lateef Jakande, Banji Ogundele and Chris Okolie were incarcerated for various durations under Decree 2 in the Vanguard, the Champion, the Daily News and the Newbreed magazine were also sealed up for weeks in contravention of their publishing rights.

3. Following from the above, the objective of Decree 2 of 1984 in relation to expressions seemed to be the suppression of opposing or unwanted views and opinions. Under the decree, the Buhari and Babangida regimes saw 'acts prejudicial to State Security' in every unwanted expression or criticism. The detention of Gbenga Olawepo of NANS and Chief Chris Okolie, who was detained for publishing Ogboru's "letter" to Babangida, showed that expressions whose contents were unknown could even become embargoed before publication!

4. Since the ingredients of offence are not defined in Decree 2 and since the determination of expressions that constitute threats to national security is left to the sole 'wisdom' and wide discretion of an individual (i.e. the Chief of General Staff) there could hardly be an objective yardstick for measuring punishable expressions under the decree. For example, Punch was forcibly closed down by the Babangida government in the wake of the April 22, 1990 coup on account of its editorial opinion of Friday April 27, 1990 while other papers which expressed similar views were not tampered with.

5. The unlimited jurisdiction granted the Chief of Staff in solely determining punishable expressions under Decree 2 was capable of being abused. This was evident in the detention of Mr. Paxton Idowu, Republic's Editor, and four other journalists of the newspaper for publishing a court story involving serious allegations against the Chief of General Staff. There was no connection whatever between the punished expres-

sion and the security of the State. Moreover, the detention of Paxton Idowu's pregnant wife in his stead under the case portrayed malice.

6. The application of Decree 2 in the wake of the April 22, 1990 coup d'etat showed that the Babangida regime did not understand the fundamental freedom of expression retained by the combined effect of Section 36 of the partly suspended 1979 Constitution and the Constitution (Suspension and Modification) Decree (Decree No. 1) 1984.⁵⁹ Neither did it show an understanding of the proper role of the press in a democratic society. In detaining Dr. Tunji Braithwaite and closing down, albeit temporarily, the Punch, the Vanguard, the Champion, the Daily News and the Newbreed for their publications and comments in respect of the coup, the government punished lawful expressions accommodated under freedom of expression.

7. Freedom of expression being one of the essential conditions upon which the security of every nation is founded, the use of Decree 2 for the suppression of opposing or unwanted expressions was capable of defeating the intended purpose of the decree which was, the maintenance of the security of the State. On the contrary, such use might generate State insecurity.

In conclusion, Justice Timothy Ayorinde's position on Decree 2 in the Obaro Ikime case requires some examination. In dismissing Ikime's application questioning his detention for lack of jurisdiction, Justice Ayorinde contended that:

When it comes to the exercise of legislative powers which are exercised by the executive (under military dispensations, of course) the legislative has the power to make laws which it deemed fit for the maintenance of law, order and good government for it country.⁶⁰

The central question arising from his contention is: Is Decree 2, going by its application to expression, a law fit for the maintenance of law, order and good government of Nigeria?

As analysed earlier, the use of the decree for the suppression of critical views and dissenting opinions accommodated under freedom of expression as assured by Article 19 of the Universal Declaration of Human Rights and Section 36 of the 1979 Constitution cannot guarantee the maintenance of law, order and good government in a democratic society. For a democracy to thrive, the remedy for objectionable ideas must be counter arguments. The discontented must be allowed to talk in order to know the cause of their discontent and take steps to end those causes. Justice Hughes underlines this in the American case of *De Jong V. Oregon*⁶¹. When he wrote:

The greater the importance of safeguarding the community from incitements to the over-throw of our institutions by force and violence, the more imperative is the need to preserve, inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsible to the will of the people and that changes, if desired, may be obtained by peaceful means.

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