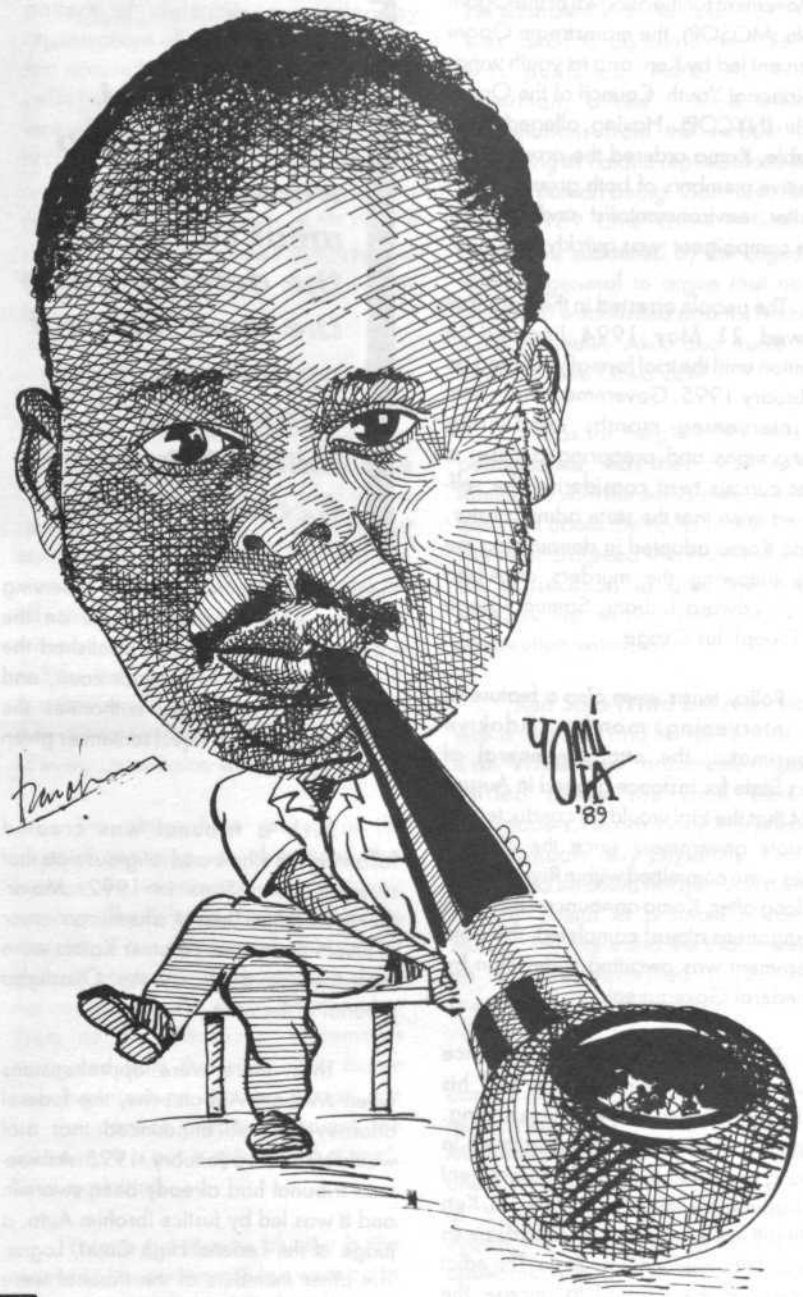
Editor's Note:

This pen and ink illustration of course has its history. It was composed for and published in the Daily Times, Lagos, in 1989.

Years later, the subject of the drawing, Ken, walked past the desk of the artist, Yomi Ola, and caught a glimpse of the work. Impressed, Ken asked if he could append his signature on it, and Ola obliged. Here we publish the autographed version for the first time.



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From the diary of a Judicial Reporter

Muyiwa Adekeye

AN INSISTENT CLOUD OF THE POLITICAL HOVERED AROUND THE TRIAL of Ken Saro-Wiwa and 14 of his Ogoni compatriots last year. It was there before the gruesome events of 21 May 1994 that triggered the trials. And the political cloud was thickened by government actions all through.

One such defining action was the press conference arranged by Rivers State administrator Dauda Komo, one day after four prominent Ogonis were murdered. In what sounded like judgement before trial, the lieutenant-colonel blamed the killings on

the Movement for the Survival of the Ogoni People (MOSOP), the mainstream Ogoni movement led by Ken, and its youth wing, the National Youth Council of the Ogoni People (NYCOP). Having alleged them culpable, Komo ordered the arrest of the executive members of both groups. Ken - a writer, environmentalist and minority rights campaigner was quickly detained.

The people arrested in the days that followed 21 May 1994 lingered in detention until the trial formally opened on 6 February 1995. Government had spent the intervening months conducting investigations and preparing a case; a rather curious twist considering the self-assured mien that the state administrator, Dauda Komo adopted in denouncing the guilty following the murders of Albert Badeyi, Edward Kobani, Samuel Orege and Theophilus Orage.

Policy twists were also a feature of the intervening months. Adokiye Amaesimaka, the attorney-general of Rivers State for instance argued in August 1994 that the trial would be conducted by the state government since the alleged crimes were committed within Rivers State. Not long after, Komo announced that with investigations almost completed, the state government was awaiting a decision by the Federal Government.

The reason for this incoherence between a state's chief executive and his chief legal adviser was a little puzzling. But perhaps it did not matter too much in the long run. Even if the state government had retained the initiative on the case, Ken might still have faced a Civil Disturbances Special Tribunal for Rivers State. The edict empowered the tribunal to impose the death penalty and MOSOP challenged it in court perceiving that it was a legal noose waiting only to be tightened around its own neck.

As it were, the Federal Government took over the case in November 1994 and appointed a Civil Disturbances Special Tribunal to handle it - Legal muscle for this move was provided by Decree 2 of 1987 which empowers the Head of State to create a special tribunal, independent of the normal judicial system, to try cases arising from civil riots. One provision of the decree is that there must be a serving member of the Armed Forces on the tribunal. The decree also abolished the right of appeal to a superior court, and invested in the military authorities the power to confirm or reject sentences given by the tribunal.

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Such a tribunal was created following the ethnic and religious riots that swept Kaduna State in 1992. Major-General Zamani Lekwot, a former governor of Rivers State, and 16 other Katafs were sentenced to death by the Okadigbo tribunal in the case.

Thus, there were apprehensions when Michael Agbamuche, the federal attorney-general, announced that trial would start on 16 January, 1995. A three-man tribunal had already been sworn-in and it was led by Justice Ibrahim Auta, a judge of the Federal High Court, Lagos. The other members of the tribunal were retired Justice Etowu Eyo Arikpo and Lieutenant Colonel Hameed Ibrahim Ali.

When 16 January came, the case could not start. The prosecutions did not appear, although the tribunal chairman, Auta, showed up. Justice Arikpo too was absent. Not so the defence attorneys led by Gani Fawehinmi. When Auta announced that trial would not be starting that day, Gani requested to be granted access to his clients some of whom were held in a military camp, the Zamani Lekwot Cantonment in Port-Harcourt. Auta declined to give such an order because the tribunal was not sitting.

On 6 February 1996, the trial opened as five defendants appeared before the tribunal to face four counts of murder each. There were two sets of charges - Ken, his deputy in MOSOP, Ledum Mitee and Dr. Barmem Kiobel, a former commissioner and academic, were charged with having 'counselled and procured' the four murders. John Kpumen and Baribor Bera were charged with having executed the mandate to murder.

The prosecution was led by Chief Philip Umeadi, a senior advocate appointed to handle the case. He was assisted by another private attorney, Joseph Biodun Daudu. Leading the defence was Gani who had with him Femi Falana, Fatai Osho, Emmanuel Likala, and other lawyers. That first day, Gani asked the tribunal to grant the accused persons bail, permit their counsels regular access to them and order their transfer to prison custody. Only his request for access was granted.

When Gani proposed a two week adjournment to enable the defence study the case, Umeadi opposed it, suggesting instead that one week would do. Gani wryly observed that he was asking for only two weeks to study a case which took Umeadi eight months to prepare. The tribunal granted Gani's wish.

As the lawyers argued inside the Rivers State House of Assembly Complex, a crowd of Ogonis gathered outside, wishing to catch a glimpse of their detained leaders. When the tribunal rose and the Black Maria conveying the accused persons rumbled by, they burst into a spontaneous demonstration. Gani emerged to address them and shore up their spirits. We heard him saying, 'you have maintained this country as hewers of wood and drawers of water. For several years, the country has lived on your sweat, on your tears, on your blood. Now, no more.' The Ogonis took up the refrain, shouting 'no more' as enraged security men began to disperse them. Mr. Bayo Fadugba, a lawyer, had earlier announced that he was in court to hold a watching brief for Shell on behalf of his principal, Mr. O. C. J. Okocha.

As a result of the effontery of the Ogonis, the Rivers State Internal Security Task Force under the command of Lt. Col. (then Major) Paul Okuntimo put in place new security measures to forestall the possibility of further protests around the courtroom. When the trial resumed on 21 February, the trial venue took a new appearance - that of a war-camp. Armed soldiers and anti-riot policemen littered the approaches to and the premises of the Rivers State Secretariat within which the trial venue was situated.

Anyone, including journalists, who wanted to observe the proceedings had to be accredited at the Police Officers' Mess from where buses would convey them to the trial venue. The militarised atmosphere at the trial venue and the accreditation requirement served as effective crowd control strategy. But the security operatives went a bit too far. They demanded that lawyers too be accredited; and the defence team refused, affirming that the only thing a lawyer needed to do to practise his profession is to pay practising fees. But fine arguments did not protect Femi Falana, a member of the defence team, from getting slapped and Gani from being manhandled.

The lawyers still stood their ground however, and after some haranguing were allowed to enter the trial venue without accreditation. K. Z. Dudari, an assistant commissioner of police who took part in defusing the tension and making peace with the lawyers, mumbled a few words in Hausa to an uncomprehending Gani: Kai, Gani, mai surutu ne (Gani, you are a troublemaker).

When business opened, Gani submitted two affidavits sworn to by two prosecution witnesses asserting that they and other prosecution witnesses had been bribed and threatened in order to provide incriminating evidence against the accused.

On 13 March 1995, the prosecution opened its case by calling its first witness, Garrick Barilee Leton, the first president of MOSOP. As Umeadi led him in evidence, the drift of the prosecution's case became clear. The prosecution was trying to establish a pattern of violence perpetrated by organisations allegedly controlled by the first accused, Ken Saro-Wiwa. Although Leton was president when NYCOP was formed, and although he participated in NYCOP functions, he insisted that its creation was an attempt by Ken to form a private army and deviate from MOSOP's ideals. After Leton, Prisulla Vikue, a former director-general testified along similar lines.

Frustrations faced by the defence team in cross-examining these two witnesses created the scene for one of the epic battles of the trial. The defence counsels had only been provided with a summary of the evidence to be led by each prosecution witness. They felt this was not sufficient as it had impeded the effective cross-examination of the witnesses so far called. They asked for a redress leaving the tribunal in no doubt that they would withdraw from the case if they did not get access to the full statement of every prosecution witness.

The atmosphere reeked of the gradual warming up of magma that betrays the imminence of a volcanic eruption. The defence team reminded the tribunal of the defendants' right to fair hearing as guaranteed by section 33 of the constitution. For them, the denial to them of the witnesses' statements derogated from that right. 'No matter how ingenious an accused person can be, he cannot prepare against the unknown. It is not a question of magic', Gani explained.

Falana put it more bluntly. In the absence of the statements, 'we were put in a dark room blindfolded, looking for a pin to puncture the prosecution's case'. Gani asked the prosecution to be fair. 'Criminal procedure is not hide and seek. All cards must be on table.' When Joseph Daudu, arguing for the prosecution, said that all the defence needs the written statements for is cross examination and not the preparation of the defence, Mitee - who was now defending himself - snapped. 'I cannot conceive of any defence that does not include cross-examination.'

To strengthen the argument, Falana said even in heaven, there is fair hearing. He illustrated with the case of Adam who was asked to explain himself before he was punished. Auta, the tribunal chairman, asked if God also took explanations from the serpent before punishing it? Falana replied that a serpent is not a human being. Gani also recalled that in 1989, Chief Rotimi Williams used statements submitted by the Lagos State attorney-general to argue that no case had been established against his clients, Colonels Halilu Akilu and Kunle Togun over the Dele Giwa case.

It was the height of the defence's performance, was they displayed their familiarity with the authorities on what the law says about the rights of the accused. The tribunal agreed with them and ordered the prosecution to give the defence counsels the written statements of the prosecution witnesses.

Ken Saro-Wiwa believed the trial was a charade and his demeanour said it all. While legal arguments raged, he whiled away the time perusing newspapers. He obviously was present in the courtroom only physically, Ken was convinced he could not get justice and he did not intend to promote a contrary illusion. He regarded the trial merely as an avenue contrived to obtain a prearranged guilty verdict.

The defence counsels eventually came around to this view. The occasion as provided by the testimony of Alhaji Mohammed Kobani, younger brother of one of the victims of the horrifying murders of 21 May 1994. Kobani was an eyewitness to the riot at Grokoo. He appeared with Lt. Col. Komo at the 22 May 1994 press conference where Komo, pronounced MOSOP guilty. At that press conference, Alhaji Kobani had narrated what he said was the authentic account of how the four prominent Ogoni men were murdered. The defence saw a chance to destroy his credibility by pointing out the contradictions between his testimony in court, his written statement and his account at that press conference.

When the defence lawyers tendered a video recording of the 22 May 1994 press conference, the tribunal refused to admit it in evidence. Then the

lawyers said the tribunal should compel the government to produce the video in court. But the tribunal let the Rivers State Government get away with the explanation that either no tape of the broadcast existed or that it had been erased. When this explanation did not prompt the tribunal to accept the copy provided by the defence, the defence team withdrew saying the tribunal had shown one pro-government bias too many.

Thus on 22 June 1995, the defence lawyers announced their withdrawal. Ken agreed with it wholeheartedly, convinced that a continuation of the case by the lawyers would only accord legitimacy to a flawed process. When the tribunal appointed lawyers for the accused, Ken refused to co-operate with them. The prosecution kept on calling witnesses who left the witness stand without being cross-examined. When the prosecution closed its case, Ken's court-appointed lawyer made a 'no-case' submission.

On 13 September 1995, the tribunal ruled that Ken, alongside the other accused persons, had a case to answer. The tribunal was not swayed by the lawyer's argument that even if the prosecution's claim was true that Ken had blamed the gentlemen gathered at Grokoo on 21 May 1994 for his banishment to Port-Harcourt, that did not amount to an incitement to kill. The lawyer insisted that the claim was not even true, as the policemen who escorted Ken back to Port-Harcourt did not write that in their statement.

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Well, even before 31 October 1995, the tribunal's verdict was obvious. That day it found Ken guilty and said his punishment would be death by hanging. The sentence was pronounced with all gravity, but justice unfortunately was not seen to have been done.

Part of the ammunition that was used to assail not only the verdict, but the entire process that produced it had been provided by Michael Birnbaum, a British Queen's Counsel who came to observe the trial. He reported that by denying the accused persons both the right of appeal and access to ordinary courts, the trial was flawed. 'Nothing that I saw or heard in Nigeria allayed the grave doubts as to its (the tribunal's) legality and fairness' Birnbaum later wrote.

Birnbaum refused to buy Agbamuche's explanation that the government resorted to using a tribunal to ensure a speedy trial. In his rebuttal of Agbamuche, Birnbaum quoted Justice Augustine Nnamani: 'If speed is the main consideration, it would have been better to take definite steps to deal with the known factors for delay in the courts.' Instead, the government elected to furnish the tribunal with hi-tech aids like computer and automatic recording machines.

On allegations of bias by the tribunal, Birnbaum felt they were true. And he cited two instances. One was that the tribunal went ahead to try 15 people when the summary of evidence provided by the prosecution disclosed no case against 11 of them.

Indeed, government, rather than the tribunal, determined who would go on trial and when. By the Civil Disturbances Decree 2 of 1987, it is the tribunal that ought to decide if it is satisfied that a basis exists to try an accused person. Yet the government decided there must be a trial well before passing any information to the tribunal. The first date of the trial was filed for 16 January 1995. The prosecution did not apply to start the trial until 28 January 1995.

The second evidence of bias Birnbaum noticed involved the use of simultaneous trials involving the same witnesses and the same summary evidence. That raised the danger of placing accused persons in double jeopardy.

It is now history. Even before the full record of proceedings had reached them, the military authority confirmed the sentence and ordered the execution of Ken and eight others. What is not so obvious is whether the Ogoni debacle would eradicate tribunals from Nigeria's legal system. **GR**