

# AMNESTY INTERNATIONAL MEMORANDUM

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## **Nigeria: A new chance to commit to human rights-** Implementation of the outcome of the Universal Periodic Review

Amnesty International welcomes the Nigerian government's engagement with the UN Universal Periodic Review (UPR) and its stated commitment to cooperate in every aspect of the mandate of the Human Rights Council.

The organisation also welcomes the fact that during the February 2009 UPR Working Group session, Nigeria made public that President Yar'Adua signed on 19 January 2009 the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Prevention and Punishment of the Crime of Genocide, the Optional Protocol to the Convention Against Torture and that Nigeria ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Amnesty International looks forward to Nigeria's considered response to the recommendations made by other states during the review. The organisation calls on the government to accept and implement as many of the recommendations of the UPR as possible and as a matter of urgency. We ask in particular for the Nigerian's government attention to the following key recommendations:

➤ **Stop violence against women and implement Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in all states<sup>1</sup>**

Amnesty International notes the government's analysis that "the biggest challenges facing Nigeria are in the areas of ... tackling the socio-economic, health problems and cultural practices that put women at a disadvantage." The organisation hopes that Nigeria will meet these challenges including by ensuring the full implementation of CEDAW.

The Nigerian Constitution provides for equality in law and freedom from discrimination. However, violence against women remains pervasive, including domestic violence, rape and other forms of sexual violence by both state officials and private individuals.<sup>2</sup> While some states in Nigeria have adopted state legislation to protect women from discrimination and violence, almost 24 years after its ratification, CEDAW is yet to be implemented at Federal and State level.

In August 2005, the Federal Government constituted the Committee on the Review of Discriminatory Laws Against Women, with a mandate to review discriminatory legislation. The Committee published its findings in May 2006; however, to date the discriminatory legislation is yet to be repealed or amended.

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<sup>1</sup> Recommendations 16 (Norway; Mexico; Ireland); 18 (Italy; Austria; Ukraine; Qatar) Norway; Ireland) and 19 (The Netherlands, Bahrain, France, Belarus, Malaysia, Viet Nam, Angola)

<sup>2</sup> Amnesty International, Nigeria: Rape the silent weapon, AFR 44/020/2006 (28 November 2006); Amnesty International, Nigeria: Unheard voices, AFR 44/004/2005 (31 May 2005)

*Amnesty International urges the government to repeal all laws that discriminate against women, to prohibit all forms of violence against women and to fully implement the provisions of CEDAW in both federal and state legislation.*

➤ **Improve access to justice<sup>3</sup>**

Amnesty International welcomes the statements by the government in the UPR Working Group that it is addressing the issue of delays in the criminal justice system. Amnesty International considers it extremely important to improve access to justice for all Nigerians.

Amnesty International research<sup>4</sup> reveals that three out of every five inmates in Nigeria's prisons have not been convicted of any offence; they await trial for years in appalling conditions. Few can afford a lawyer and the government-funded Legal Aid Council is unable to provide assistance for everyone who needs this. The Council has only 91 lawyers to cover the whole country.

*Amnesty International urges the government to improve access to legal aid and to provide adequate resources to the Legal Aid Council to hire more lawyers.*

Many prisoners did not have a fair trial. Patrick Obinna Okoroafor, for example, continues to be incarcerated 'during the pleasure of the governor of Imo State' in Aba prison, Abia State, despite a High Court judgement on 18 October 2001 which pronounced his death sentence to be illegal, null and void. He was only sixteen when he was sentenced to death by a Robbery and Firearms Tribunal on 30 May 1997. He did not have the right to appeal and said he was tortured while in police detention.

*Amnesty International urges the government to immediately and unconditionally release Patrick Okoroafor.*

In the past years, several government-established commissions have recommended reforms to improve access to justice. Amnesty International welcomes the prioritisation of criminal justice sector reform bills, which are currently pending before the National Assembly.

*Amnesty International urges the Federal Government to implement the recommendations of past commissions and to improve access to justice for all Nigerians. The Federal Government should also review the Prison Act and the Police Act, and ensure that the right to a fair trial is fully guaranteed.*

➤ **Prevent and prosecute acts of extrajudicial executions, torture and other ill treatment<sup>5</sup>**

During the review, many states<sup>6</sup> expressed their concerns about torture and extrajudicial executions carried out by the Nigerian security forces. Amnesty International welcomes the government's stated zero-tolerance policy on extrajudicial executions and torture by security forces and looks forward to see its plan for implementation of this commitment. In particular, Amnesty International urges the government to ensure that the relevant provisions of international and regional instruments are reflected in national legislation, including legislation criminalising torture and extrajudicial executions, and to promptly, thoroughly and fully investigate and prosecute any persons suspected of having carried out torture or extrajudicial executions.

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<sup>3</sup> Recommendations 21 (Belgium; Mexico; Slovakia) and 25 (United Kingdom, Portugal, France, Germany, Austria)

<sup>4</sup> Amnesty International: Nigeria: Prisoners' rights systematically flouted, AFR 44/001/2008 (26 February 2008).

<sup>5</sup> Recommendations 14 (Benin, Germany) 15 (Ukraine, The Netherlands, Ireland) and 22 (Slovakia, Denmark, Portugal)

<sup>6</sup> These states include Argentina, Benin, Brazil, Italy, Netherlands, New Zealand, Slovakia, Sweden, Turkey, and the United Kingdom.

Extrajudicial executions, torture and other ill-treatment are prohibited in Nigeria. Article 33 of the Constitution guarantees the right to life, while article 34 guarantees the right to dignity of human person and states that no person shall be subject to torture or to inhuman or degrading treatment. In addition, several international and regional instruments to which Nigeria is a party prohibit extrajudicial executions and torture and other ill-treatment, including the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Over the years Amnesty International has documented many cases of human rights violations by the security forces in Nigeria. There are consistent reports that the Nigeria Police Force have executed detainees and people who refuse to pay bribes or during road checks, referring to them as "criminal suspects". In other cases suspected armed robbers are reported to have been shot during arrest. In addition, the Police Force routinely tortures suspects in order to extract confessions.<sup>7</sup>

*Amnesty International calls on the government to investigate of all cases of human rights violations promptly, independently and impartially and to bring to justice those responsible in accordance with international standards for fair trial.*

➤ **Adopt a moratorium on executions<sup>8</sup>**

Amnesty International notes the statement by the Minister of Foreign Affairs in the UPR Working Group that Nigeria "continues to exercise a self-imposed moratorium [on the death penalty]." We urge the government to formalize this self-imposed moratorium, as recommended by Nigeria's National Study Group on Death penalty (2004) and Presidential Commission on Reform of the Administration of Justice (2007), the African Commission on Human and Peoples' Rights, and by no less than 10 states during the dialogue in the UPR Working Group.<sup>9</sup> This is also in line with resolution 62/149 and resolution 63/168 adopted by the UN General Assembly in 2007 and 2008 respectively calling upon states which maintain the death penalty "to establish a moratorium on executions with the view to abolishing the death penalty". In 2008 106 countries voted in favour, 46 voted against and 34 abstained.

Although Section 33(1) of the Nigerian Constitution allows for judicial executions, there are no Constitutional provisions making the death penalty mandatory for specific crimes.

Under international human rights standards, capital punishment may only be imposed after the most exacting due process of law. However, weaknesses in the Nigerian criminal justice system may lead to breaches of international human rights law and standards. Suspects in capital cases and death row prisoners are regularly denied their right to a fair trial and an impartial appeal process. Recent research carried out by Amnesty International and LEDAP indicates that hundreds of death row prisoners in Nigeria may be innocent.<sup>10</sup> In 2006, at least six death row prisoners were executed without ever having had an opportunity to appeal their

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<sup>7</sup> Amnesty International publications: Nigerian police and security forces: Failure to protect and respect human rights AFR 44/006/2008 (16 May 2008); Nigeria: Prisoners' rights systematically flouted, AFR 44/001/2008 (26 February 2008); Nigeria: Rape the silent weapon, AFR 44/020/2006 (28 November 2006); Nigeria: Abia State police kill 16 'armed robbers', AFR 44/019/2006 (18 August 2006); Nigeria: Fears of human rights violations after troops deployed in Bayelsa State, Niger Delta, AFR 44/006/2005 (8 March 2006); Ten years on: injustice and violence haunt the oil Delta, AFR 44/022/2005, (3 November 2005); Nigeria: Police use of lethal force against demonstrators must be investigated, AFR 44/021/2003 (15 July 2003); Nigeria: Security forces: Serving to protect and respect human rights?, AFR 44/023/2002 (19 December 2002).

<sup>8</sup> Recommendation 13 (The Netherlands, Brazil, Mexico, Slovakia, Italy, Turkey, Sweden, United Kingdom, New Zealand, Azerbaijan)

<sup>9</sup> In November 2008, the African Commission on Human and People's Rights at its 44th Ordinary Session in Abuja, Nigeria, adopted a resolution calling on state parties to the African Charter on Human and Peoples' Rights to observe a moratorium on the death penalty. On 18 December 2008, the United Nations General Assembly adopted, by a large majority, a second resolution calling for a moratorium on the use of the death penalty.

death sentence. They had been tried and convicted by Robbery and Firearms Tribunals under the jurisdiction of the military. There continues to be at least 80 prisoners on death row who were sentenced to death by these tribunals, with no right of appeal. Moreover, there are currently at least 40 juvenile offenders on death row, in violation of international and regional standards and national law which prohibit the imposition of the death penalty on juveniles.

By declaring a formal moratorium on executions, the Federal Government of Nigeria would be exercising important leadership on the issue of the death penalty in line with the global trend towards abolition. A moratorium on executions requires a commitment by all Nigerian authorities not to carry out executions, regardless of whether death sentences have been passed. A moratorium would eliminate the risk of executing the innocent as well as prisoners who have not yet exhausted all possibilities of appeal.

*Amnesty International urges the government to indicate its support of the recommendations to establish a moratorium on the death penalty and to urgently review all cases of death row inmates who were under the age of 18 at the time of commission of the [alleged] crime, as well as the cases of those sentenced to death by military tribunals, seriously ill inmates, including mentally ill and elderly inmates, with a view to commuting their death sentences.*

➤ **Abolish legislation that discriminates on the basis of gender or sexual orientation and reject the ‘same gender marriage (prohibition) bill’<sup>11</sup>**

Amnesty International is concerned by the Nigerian government’s statement in the UPR Working Group, that it was not aware of any ‘Lesbian, Gay and Transgender group’ in Nigeria. This is particularly disturbing in light of the draft ‘Same Gender Marriage (Prohibition) Bill’ currently before the House of Representatives. Although we note the government’s recognition that “as citizens, all Nigerians have their fundamental rights guaranteed by the Constitution,” we are concerned that these rights are not respected for all under Nigeria’s criminal code and penal code, under which consensual same sex conduct between adults is punishable with terms of imprisonment. The Nigerian government has obligations under international human rights standards to promote and protect the human rights of its population without distinction of any kind, including sexual orientation or gender identity. The use of laws to imprison individuals for consensual same-sex relations in private is a violation of Nigeria’s international human rights obligations.

The draft ‘Same Gender Marriage (Prohibition) Bill’ would introduce criminal penalties for marriage ceremonies between persons of the same sex as well as for persons witnessing or helping to formalize such a marriage. The bill singles out one group of people to be deprived of rights that are guaranteed for all people in the 1999 Constitution. Amnesty International believes that provisions of the draft bill violate the right to freedom from discrimination, freedom of private and family life, freedom of religion or belief, freedom of expression and freedom of association. This is in contravention of Nigeria’s obligations under Chapter IV, Fundamental Rights, of its own Constitution as well as the Universal Declaration of Human Rights, the African Charter on Human and Peoples’ Rights and the International Covenant on Civil and Political Rights.<sup>12</sup>

*Amnesty International urges the Federal Government not to sign into law the ‘Same Gender Marriage (Prohibition) Bill’ and repeal all legislation that discriminates on the basis of gender and sexual orientation.*

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<sup>10</sup> Amnesty International and LEDAP, Nigeria: Waiting for the hangman, AFR 44/020/2008; Amnesty International, Nigeria: Prisoners’ Rights systematically flouted, AFR 44/001/2008

<sup>11</sup> Recommendation 12 (Canada, Finland)

<sup>12</sup> Amnesty International, Nigeria: ‘Same Gender Marriage (Prohibition) Bill 2008’ violates Constitution, AFR 44/007/2009

➤ **Ensure the independence of the National Human Rights Commission**<sup>13</sup>

During the review in the UPR Working Group, several states expressed concern that the National Human Rights Commission (NHRC) is not fully independent of the government. Indeed, the dismissal of the Executive Secretary of the NHRC in March 2009 coming after the dissolution of the Governing Council in 2007 and the similar dismissal of her predecessor in 2006, seriously undermines the independence and authority of the NHRC in carrying out its human rights work.

*Amnesty International calls on the government to take all necessary measures, including through legislation, to ensure full independence in the National Human Rights Commission's work to protect and promote human rights.*

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<sup>13</sup> Recommendation 4 (New Zealand, Portugal)