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# Nigeria

## Rape - the Silent Weapon

### 1 INTRODUCTION

Rape of women and girls by both the police and security forces, and within their homes and community, is acknowledged to be endemic in Nigeria – not only by human rights defenders but also by some government officials at both federal and state levels.<sup>1</sup>

The government, however, is failing in its obligation to exercise due diligence: the perpetrators invariably escape punishment, and women and girls who have been raped are denied any form of redress for the serious crimes against them.

Amnesty International has found that the Nigerian police force and security forces commit rape in many different circumstances, both on and off duty. Rape is at times used strategically to coerce and intimidate entire communities. Amnesty International has met some of the women and girls who have been raped, some of whom have been abducted by the security forces in areas of the country where violence is rife, and has documented their harrowing experiences – most recently during visits to Nigeria in January and February 2006.

The government's response has been, and continues to be, woefully inadequate. Rape is a crime under Nigerian national law and is an internationally recognised human rights violation. Despite this, the government is failing in both its national and international obligations to prevent, investigate and prosecute rape, whether committed by state actors or non-state actors, and to provide any reparations to the victims. Further, Amnesty International has discovered that the Nigerian government has failed in its international obligations to take action against agents of the state who have committed rape and sexual abuse, and has failed to amend discriminatory legislation that guarantees impunity from charges of rape.

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<sup>1</sup> Amnesty International acknowledges that men and boys are also subjected to rape, including by state actors, although to a lesser extent. This report focuses on rape and significant other forms of sexual violence against women and girls, as part of Amnesty International's long-term campaign to stop violence against women. In 2005 Amnesty International published a report describing how up to two-thirds of women in certain groups in Nigeria had experienced violence within the family, including marital rape and rape by family members: Amnesty International, *Nigeria: Unheard voices: violence against women in the family* (AI Index: AFR 44/004/2005), 31 May 2005.

Rape is a form of gender-based violence against women. The Committee on the Elimination of Discrimination Against Women stated in its General Recommendation No. 19 that gender-based violence is a form of discrimination which the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) requires its states parties to eliminate in all its forms. Nigeria ratified the Convention on 13 June 1985.

The Declaration on the Elimination of Violence Against Women (DEVAW) states that the term "violence against women" means 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.' DEVAW specifies that rape, marital rape and sexual abuse are forms of violence against women. Article 2(c) makes clear that 'Physical, sexual and psychological acts of violence perpetrated or condoned by the State wherever it occurs' also fall within the definition of violence against women. In order to take all measures to eliminate violence against women States must 'refrain from engaging in violence against women' ( Article 4(b)) and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons'. (Article 4c)

It is well documented and widely accepted that rape causes severe physical and psychological pain and suffering. Further, it is undisputed that rape can have serious physical, psychological and reproductive consequences for the victims, including death, unwanted pregnancies, complications in childbirth, and sexually transmitted infections, including HIV/AIDS. International courts and tribunals have affirmed that rape carried out by state agents can be a form of torture.<sup>2</sup> The Nigerian government compounds these acts of torture by failing to exercise due diligence in bringing perpetrators to justice and by failing to offer women and girls any form of redress or reparation.

The testimonies collected by Amnesty International lead to one uncompromising conclusion: that women and girls in Nigeria continue to be discriminated against in law and practice. This is due to several factors: the social stigma attached to being a victim of rape discourages women from reporting the crime and very few cases of rape are brought to court. Definitions of rape in national legislation continue to be inadequate and there are considerable differences between the different definitions (between federal, state, *Sharia* and customary law) leading to arbitrary decisions concerning the seriousness of this crime. Current legislation may penalize the woman or girl who has been raped rather than the perpetrator. Police investigations are hindered by corruption and incompetence and convictions are rare. There is no effective, independent mechanism for complaints against the police.

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<sup>2</sup> *Aydin v Turkey* 23178/94 [1997] ECHR 75, 25 September 1997; *Raquel Martí de Mejía v Peru* 1 March 1996, Report 5/96, Inter-American Court of Human Rights.

While men from all sectors and all walks of life commit rape with impunity in Nigeria today, Amnesty International is particularly concerned with those men who exercise state authority, specifically the police and security forces. Our findings indicate that rape by police and security forces is endemic, and that the government appears to lack the political will to tackle this human rights issue. The organization is making specific recommendations to the Nigerian authorities, judicial and legal officials, civil society groups and the international community to initiate and support reforms of policy, law and practice in Nigeria in order to prevent and end violence against women and, in particular, to protect women from rape and other forms of violence perpetrated by state actors.

## **2 RAPE – HIDDEN FROM VIEW**

Although reports by non-governmental organizations, some police records, statements by state prosecutors and media reports indicate that rape in the family, the community, and by the police and security forces occurs on an alarming scale, lack of comprehensive official statistics make it difficult to establish accurately its true scale. The lack of comprehensive official figures also makes it difficult to assess the extent of direct state involvement in perpetrating gender-based violence against women, or state failure to prosecute and punish perpetrators of rape. Amnesty International considers a lack of official records of rape to demonstrate complacency by the government in addressing effectively violence against women in Nigeria.

However, the lack of records is only part of the problem. The low level of reporting in cases of rape inhibits the collection of data even where the political will exists. A nationwide survey undertaken in 2005 by the CLEEN Foundation, a Nigerian NGO which promotes public safety, security and justice, found that only 18.1 per cent – less than one in five – of some 10,000 respondents who had been raped had reported the offence to the police.<sup>3</sup>

There are many reasons for this which have been well documented and researched: rape carries a heavy social stigma, sometimes resulting in rejection by families and communities; the police are sometimes unwilling to make official reports; victims fear reporting rape where the police themselves are the perpetrators; some women are unable to obtain a medical examination to substantiate their report; or they simply do not know how to report rape and obtain help.

The Federal Government does not make public any records it holds of incidents of gender-based violence in general nor of rape in particular. Reporting is thought to be sporadic, piecemeal and inconsistent. Despite requests, Amnesty International has yet to receive statistics from the Ministry for Women's Affairs, the National Human Rights Commission,

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<sup>3</sup> CLEEN Foundation, *National Crime Victimization Survey 2005 - overview of 2005 report*, PowerPoint presentation of 12 June 2006, [www.cleen.org](http://www.cleen.org).

and the Nigerian Police Force in Lagos State, which has stated that it produces annual and monthly crime reports. The Commissioner of Police in Enugu State provided figures indicating 28 cases of rape and indecent assault in 2004 and 26 cases in 2005; there was no data, however, on the perpetrators, thus making it impossible to identify rape by state actors.

Information on rape in Nigeria can be gleaned from other sources, including non-governmental organizations and the media. For example, the CLEEN Foundation publicizes crime statistics on its website which are extrapolated from annual crime reports produced by the Federal Government which are given restricted distribution. According to CLEEN's figures, 2,241 cases of rape and indecent assault were reported in 1999; 1,529 in 2000; 2,284 in 2001; 2,084 in 2002; 2,253 in 2003; 1,626 in 2004 and 1,835 in 2005.

Project Alert against Violence against Women, a non-governmental organization based in Lagos, includes data on rape in its annual reports covering incidents of violence against women in the whole country: in 2003, 32 cases of rape and sexual assault were reported, and 46 cases were reported for the period covering December 2004 to November 2005.

Other non-governmental sources, such as *The Punch* newspaper, reported in 2005 that 513 people – 134 women and 379 men – were in police custody in connection with 423 cases of rape in Lagos State during the first four months of 2005. Many of the rapes were believed to have taken place in institutes of higher education. According to this article, of these 423 cases, 304 were reported to have been referred to the courts, representing a 72 per cent increase on the same period in 2004. It acknowledged, however, that according to official sources (the article did not specify which sources) only one in 50 rape cases were actually reported.<sup>4</sup> Amnesty International has not been able to obtain more details about these statistical calculations.

*The Daily Champion*, a newspaper that frequently publishes articles on violence against women, reported in 2002 that police statistics from Lagos indicated that four to six girls and women were raped each day in Lagos. It also claimed that the frequency of rape, in particular of young children, had subsequently increased throughout the country, but in particular in Lagos, Enugu and Cross River States.

Many human rights defenders to whom Amnesty International spoke expressed concern that rape of young children appeared to be increasing; some prosecutors, however, suggested that such cases were more likely to be reported to the police and prosecutions brought.<sup>5</sup>

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<sup>4</sup> *The Punch*, 3 June 2005.

<sup>5</sup> Amnesty International has not been able to obtain adequate evidence on this issue; however it is a situation of significant concern and merits further research. An issue which likewise merits more is the issue of rape of young pupils in primary and secondary schools and female students in higher institutes of learning, but also the corruption in the educational system which appears to be increasing and which

### **3 THE PERPETRATORS**

While there is no doubt that rape is prevalent across all sectors of Nigerian society, the prevalence of rape committed with impunity by state actors is particularly alarming in the current situation. Testimonies of women who have been raped and reports by Nigerian human rights organizations identify the Nigerian Police Force and other members of the security forces, in particular the military, as the principal state actors responsible for rape. The Director for Women's Affairs within the Ministry for Women's Affairs told Amnesty International in February 2006: "*Around 60 per cent of violence against women is committed in army barracks or police stations, according to research by non-governmental organizations*". While Amnesty International cannot confirm this figure, it is clear that rape by state officials is a human rights violation that needs urgent attention.

#### **3.1 The Nigerian Police Force**

The Nigerian Police Force is notorious for persistent human rights violations, including extrajudicial executions and torture. Amnesty International has received credible reports that women have been raped by the police in the street, while being transferred to police stations, while in police custody, or when visiting male detainees.

When Amnesty International interviewed the Commissioners of Police in Lagos and Enugu States in January 2006, they demonstrated some understanding of the seriousness of the crime of rape in general. The Lagos State Commissioner of Police also acknowledged the importance of obtaining a medical examination within 24 hours of the rape. Both stated that the victim could request to file a report with a female police officer. When asked how many reports of rape by police officers had been reported, however, the responses were categorical: in the case of Enugu State, "*rape by police has not happened*"; and, in the case of Lagos State, no such reports had been received. The Commissioners of Police, on the other hand, pointed to an increased level of rape of young girls by men within the family and the local community.

Amnesty International has, however, interviewed victims of rape where the perpetrators have been identified by the victims as members of the Nigerian Police Force, including in Enugu State. The organization has also received many reports of rape by the police from human rights organizations throughout Nigeria, including Women's Aid Collective (WACOL), Legal Defence and Assistance Project (LEDAP), Women's Rights Advancement and Protection Alternative (WRAPA), and Project Alert, and from the Nigerian media.

*"The police use their authoritative position over detainees and people visiting... Everybody knows that rape and other sexual violence by the police happens on a daily basis,*

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is resulting in a highly sexualized and exploitative situation for female students.

but there are no reports,” the then Executive Director of the National Human Rights Commission told Amnesty International in February 2006.<sup>6</sup> According to Uju Eneh, WACOL’s Acting Director in Enugu State, inadequate reporting and investigation of rape by police officers was partly because “only really few of the police officers are willing to do something. Lots [of them] cover up for the others”. The Lagos State Director of Public Prosecutions also admitted to Amnesty International in January 2006 that she has heard of cases where the police commit rape, but that no such cases were currently before her.

The Nigerian non-governmental organization Civil Liberties Organisation (CLO) has identified rape and other forms of sexual violence, or the threat of such violence, as among various methods of torture used by the police to extract confessions or other information. Such methods include insertion of foreign objects, such as broomsticks or broken bottles, into the woman’s vagina. Both detainees and members of their families have been subjected to rape or the threat of rape. In one case, the three-year-old daughter of a detainee was reported to have been raped.<sup>7</sup>

### 3.1.1 Abuse of power and authority

Although the role of the police is to protect the human rights of all people within Nigeria and to maintain law and order, Amnesty International has documented many instances where the abuse of their authority has resulted in rape. Women and girls have been raped by police on patrol or during arrest and detention – including in cases where no criminal offence is suspected.

According to Joy Nzi Ezeilo, Executive Director of WACOL, “the police abus[e] their power, either while on duty or off duty but still wearing their uniform”. She explained that few such cases are reported because “women who have been raped by the police are afraid of being stigmatized in the community and in the family”. In addition, the police are generally not trusted to investigate adequately alleged human rights violations by their own forces, given corruption within the police force and lack of an independent police complaints mechanism.

The rape of two young students who were abducted and repeatedly raped by three police officers, including a Deputy Superintendent of Police, in Enugu State in 2004 elicited national and international condemnation.

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<sup>6</sup> Bukhari Bello, Executive Director of the National Human Rights, was dismissed on 19 June 2006 by the Minister for Justice, apparently because of his criticism of the Nigerian Government; see Amnesty International, *Nigeria: Government interference with the independence of the National Human Rights Commission* (AI Index: AFR 44/012/2006), 27 June 2006.

<sup>7</sup> Civil Liberties Organisation, *Climate of impunity – a report on the use of torture by the Nigerian Police*, October 2005, p. 58-59, 67.

The two students, aged 17 and 18 years at the time, told Amnesty International in January 2006 how, on 27 September 2004, they were abducted by two men with Nigerian Police Force badges while returning home from the market: “*We begged him to let us go, but the policeman said he would arrest us. When we refused to get into the car, the other man pushed us inside*”. They were threatened with arrest on trumped-up charges if they protested, and were forced to go with the police officers to the police detective college. They were subsequently taken to the home of one of the men, having been told that they would be safer there than in custody. They were, however, repeatedly raped:

*“A detective colleague came into the house, he smelled of alcohol...I don’t know what happened; he said he doesn’t have money. He asked me for money for drink, [but] I said [I] have no money. He reassured me he won’t harm me. Then [the] man’s face changed. He said he won’t do any harm. I was crying but [he] told [me] to be quiet. He said it’s final. He can shoot us. I was crying and before I knew it I was pushed inside [the] room. He shouted ‘shut up’ and said we should take off our clothes. He took out a gun and showed us the bullets, and pulled off his clothes. He raped me three times. Afterwards I was crying and he looked for fuel to take us back. It was around midnight we were brought to other men who raped us too as payment for the petrol.”*

Both women have been assisted by WACOL in Enugu and the Centre for the Victims of Extra-Judicial Killings and Torture (CVEKT) which has provided medical assistance.

CVEKT submitted complaints to the police in Enugu State, the National Assembly, the National Human Rights Commission, and the Inspector General of Police (IGP). The alleged perpetrators were arrested but released on bail a day later. WACOL also wrote to the IGP. The then Federal Minister for Women’s Affairs, Obong Rita Akpan, gave assurances that the IGP was investigating the case. The police officers were re-arrested and prosecuted, following a protest march and continuous campaigning by WACOL, including on national radio.

The three police officers were first charged with rape and abduction by a magistrate’s court in Enugu and the case was subsequently transferred to a high court. The defendants pleaded not guilty. An application for bail filed by the defence lawyer on 17 May 2006 was refused and the defendants remained in detention awaiting the next hearing.

Nigerian NGOs have reported to Amnesty International that the girls and members of their families have been subjected to intimidation, including anonymous death threats, to coerce them into withdrawing the case. A senior police officer was also reported to have approached their relatives to offer a bribe if criminal charges were dropped.

NGOs reported to Amnesty International that the case has been investigated by the internal police complaints mechanism. The organization has not been able to obtain

information about the status of this investigation, but the police officers are reported to have been dismissed from the Nigerian Police Force.

The CLO's area coordinator based in Enugu reported a similar case. On 20 February 2002 an 18-year-old woman was reported to have been taken to a police station in Enugu and sexually abused by police officers before being released the next morning. After ensuring that the woman's case was reported to the police, a barrister from CLO brought the case to the High Court in Enugu. The judgment stated that the acts were "*condemnable and intolerable in a civilized society*" and that the "*men ought never to have been employed in the Nigerian Police Force ... there is no doubt that they are apes in the midst of men*".<sup>8</sup> The victim was awarded N300,000 (approximately US\$2,345) in compensation, but this had not been paid by July 2006. The perpetrators continued to serve in the police force.

WACOL reported the alleged rape of a 13-year-old orphan by an assistant superintendent of police in Lagos during investigation of a theft in June 2005. He is reported to have taken her from police custody, claiming that he was transferring her case to the Police Divisional Headquarters at Karu, Abuja. He is alleged to have taken her to his residence and raped her. The case was first referred to a magistrate's court and subsequently transferred to the Abuja High Court.<sup>9</sup> Amnesty International has not been able to obtain any update on this case.

Project Alert in Lagos reported allegations of the rape of refugees in 2005 by members of the Nigerian Police Force stationed in a camp administered by the United Nations High Commissioner for Refugees (UNHCR) in Osun State. Despite repeated requests, Amnesty International has received no further details from UNHCR about these allegations.

In November 2005, following an investigation by the UN into allegations of rape by Nigerian police serving with MONUC, the UN peacekeeping operation in the Democratic Republic of the Congo, the entire Nigerian contingent was withdrawn from MONUC and at least 10 police officers were also dismissed from service in Nigeria having been found responsible for rape. A representative of the Nigerian Police Force, however, stated that they would not face any criminal charges in Nigeria. The police Public Relations Officer, Haz Iwendi, was reported as saying: "*These are typical Nigerian police. They went there and instead of doing the job they were sent to do, they started abusing little girls and raping women.*"<sup>10</sup>

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<sup>8</sup> Enugu High Court suit No. E/79/M/2002 as cited in *Insider Weekly, Gang rape in Enugu*, 15 November 2004, pp. 14-15.

<sup>9</sup> *The Guardian* (Lagos), 10 January 2006; *Sunday Sun*, 12 June 2005.

<sup>10</sup> *Daily Champion*, 'How Police Raped Congolese Women', 17 September 2005; Reuters, *Nigerian sacks 11 policemen over Congo sexual abuse*, 26 November 2005.

### 3.1.2 Rape in custody

Many non-government organizations, including those working specifically on prison reform, have reported that women and girls are frequently raped while in detention, or when they visit a detained male relative. Uju Agomoh, Executive Director of Prisoners' Rehabilitation and Welfare Action (PRAWA), a leading non-governmental organization working on rehabilitation and prison reform, explained that sometimes female visitors are faced with serious consequences as a result of police force corruption. They believe that by being forced into having sex with a police officer, the detainee that they are visiting may be released more quickly. This kind of corruption within the police force contributes to the state perpetrating and condoning violence, since regardless of consent, neither inmates nor women visiting can have truly consensual relations because of the power relationships involved.<sup>11</sup>

Uju Agomoh further stated that despite the lack of official statistics, unpublished research by NGOs has shown that rape of female detainees in police cells is all too frequent, but because of fear of repercussions victims are very reluctant to report their cases. In a report on torture in June 2005, Access to Justice, a non-governmental organization in Lagos, described how two young women who were arrested in Lagos on allegations of theft had been raped: "*the police officers stripped them naked and left them in that state for more than five hours of interrogation, after they infused gaseous substances into their vagina*".<sup>12</sup> In another case, a woman suspect was reported to have been told that, if she consented to sex, she would not be tortured and ill-treated during interrogation.<sup>13</sup>

In recent years human rights defenders and non-governmental organizations in Lagos, Abuja and Port Harcourt have reported that the police frequently raid streets known to be frequented by commercial sex workers, harassing, arresting and gang-raping them before releasing them without charge. In February 2006 the then Executive Director of the National Human Rights Commission told Amnesty International: "*Police often arrest prostitutes, have sexual intercourse with them and then release them*".

Rape inflicted by or at the instigation of or with the consent or acquiescence of a public official can be torture if it is committed for any of the prohibited purposes contained within Article 1(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Rape is sometimes used to extract confessions from a criminal suspect, or to frighten a detainee into submission. In other cases, women relatives visiting detained family members and friends have been raped as a means of exerting pressure on the detainee. In each of these instances, the state is obliged not only to

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<sup>11</sup> Some countries have passed laws prohibiting sexual relationships with inmates of prisons or other individuals to whom they owe a duty or care. Amnesty International, '*Not part of my sentence - Violations of the Human Rights of Women in Custody*', (AIUSA), AI Index: AMR 51/01/99.

<sup>12</sup> Access to Justice, *Breaking point - how torture and the police cell system violate justice in the criminal investigation process in Nigeria*, Lagos, 2005, p. 13.

<sup>13</sup> Access to Justice, *ibid.*, p. 13.

prevent, investigate and prosecute the crime of rape but also to prevent, investigate and prosecute rape as a form of torture. Consent that is coerced through threat or false promises is not consent in Amnesty International's view. At the European Court of Human Rights in the *M.C. v Bulgaria*<sup>14</sup> case, the court held "*In international criminal law, it has recently been recognized that force is not an element of rape and that taking advantage of coercive circumstances to proceed with sexual acts is also punishable.*"

### **3.2 Rape in prisons and other detention facilities**

The failure to separate men from women in prisons and other places of detention, which is particularly problematic in pre-trial detention in Nigeria, increases the vulnerability of women to rape. The Executive Director of PRAWA explained to Amnesty International that the risk to women was increased where they were held in wings within men's prisons, especially when these were insecure. The risk was particularly great during outbreaks of violence in prisons.

A Nigerian non-governmental organization reported that most, if not all, women detainees had been raped in the chaos following a prison breakout in Port Harcourt in June 2005. The perpetrators were believed to have included both male detainees and those who had entered the prison from the outside.

Representatives of the International Federation of Women Lawyers (FIDA) in Port Harcourt confirmed these reports to Amnesty International in February 2006. The prison authorities had transferred the women to the prison hospital for medical treatment. The victims, however, had been unable to identify the perpetrators. FIDA representatives raised concerns that, while charges relating to the prison breakout were subsequently brought, no one was charged with rape.

### **3.3 Nigerian security forces**

Security forces deployed in the Niger Delta by the Federal Government to restore law and order and protect oil production have used rape as a counter-insurgency tactic and to intimidate the population. The security forces have used rape to humiliate and dehumanize women and their communities; to coerce them into divulging information about the whereabouts of certain individuals; to intimidate the community into submission; or as a collective punishment. Women have been held for several weeks in sexual slavery in military barracks and repeatedly raped. Amnesty International is not aware of a single case where the alleged perpetrator has been prosecuted. Amnesty International notes that where sexual

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<sup>14</sup> *MC v Bulgaria*, [2003] ECHR 646, 4 December 2003.

slavery is part of a 'widespread or systematic attack on a civilian population with knowledge of the attack', it is a crime against humanity in international law.<sup>15</sup>

Rape by the security forces in the Niger Delta has been well documented by international non-governmental organizations, including Amnesty International and Human Rights Watch, as well as Nigerian groups such as WACOL and Women Advocates Research and Documentation Centre (WARDC). Amnesty International has no reason to believe that it has decreased. Since the release of allegations these reports of rape and sexual slavery by the security forces have, however, been largely ignored by the government and judicial authorities, apart from the Human Rights Violations Investigations Commission, known as the Oputa Panel, which was established in 1999 to investigate human rights violations committed between 1966 and return to civilian rule in 1999. However, Amnesty International has not seen any evidence that the recommendations have been implemented.

Prompted by the lack of an adequate official response, on 12 November 2002 WACOL organized a "Women's Court" in Abuja, which was reported to have heard the traumatic accounts of more than 20 victims of gender-based violence in the Niger Delta. The "judges" subsequently made recommendations to the Federal Government. None of these recommendations had, however, been implemented by August 2006. Although some police officers attended the "Women's Court", the security forces were not represented.

During a visit to the Niger Delta in February 2006, Amnesty International interviewed women who suffered continuing gender-based violence, as well as those raped in Ogoniland in 1994 and in Odi in 1999. Amnesty International believes that cases of rape documented during this and previous visits represent only a fraction of the total number of cases of violence against women in the Niger Delta.

### **3.3.1 Ogoniland**

Violence in the Niger Delta has been particularly intense in Ogoniland, home to the minority ethnic group of the Ogoni. The Ogoni people have been subjected to serious human rights violations, including extrajudicial executions; the execution after an unfair and politically motivated trial of Ken Saro-Wiwa and eight other Ogoni on 3 November 1995; unlawful arrests; and rape and other forms of sexual violence.

An academic study undertaken in Nigeria identified members of the security forces as being primarily responsible for the gender-based violence, including rape, sexual slavery and forced pregnancy, committed in Ogoniland between 1990 and 1998.<sup>16</sup> Forty-seven per cent of acts of violence – including violence of a non-sexual nature such as extrajudicial executions,

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<sup>15</sup> Rome Statute of the International Criminal Court, Article 7 (1) (g).

<sup>16</sup> O. Okechukwu Ibeanu, *Insurgent civil society and democracy in Nigeria: Ogoni encounters with the state 1990-1998*, Research report for ICSAG Programme of the Centre for Research and Documentation, Kano, Kano State, Nigeria.

destruction of property and verbal abuse – suffered by Ogoni women was attributed to the security forces. A report published by the non-governmental organization Centre for Democracy and Development in 2001 also documented gender-based violence in the Niger Delta, including in Ogoniland, perpetrated for the most part by the military.<sup>17</sup>

Investigation by the government into human rights violations (covering the period of 1966-1999) by the security forces in Ogoniland has been limited to the work of the Oputa Panel. Although other cases from the Niger Delta may have been considered, those from Ogoniland were prominent during the Oputa Panel's hearings. The Panel's public hearings included sessions in Port Harcourt where the experiences of victims, including women who had been raped by members of the security forces, and their families were documented. The report of the Oputa Panel was submitted to the Federal Government in May 2002 but has yet to be made fully public and accessible to the Nigerian people.<sup>18</sup> No one has been brought to justice for the human rights violations committed in Ogoniland and no reparations have been awarded to the victims, many of whom continue to suffer the physical and psychological effects of these violations more than 10 years later.

In February 2006, Amnesty International met several of the women and girls who had been raped in 1994. These harrowing accounts demonstrate the profound and very long term physical, psychological and social consequences of rape: serious physical injuries, unwanted pregnancies, psychological trauma and rejection by families, including husbands, and communities. Suffering is compounded by the denial of any form of justice or reparations.

Grace, an Ogoni human rights defender aged in her 40s, described how soldiers had gang-raped her, and also provided Amnesty International with photographs of injuries sustained by her child as a result of torture.

*“I was raped by three army men. They carried guns and they had uniforms. They kicked in the door and one man shouted to me ‘if you move, I’ll move you’, as he hit me in the face. He threw me on the bed and raped me using his gun. Other persons came and also raped me. Another woman had miscarriage because of being raped too. My son was trying to run away from the soldiers but he was beaten up by them. There were no witnesses to the rape. No doctor was available, I treated myself with boiling water and salt and opened my private parts to burn germs in the uterus, I also got herbal drugs [to treat the injuries]. I didn’t report [the rape] to the police, there is no police in Ogoniland, [but] I testified for the Oputa Panel, had my face covered by a black cloth. I have no money so I can’t go to court.”*

Another woman recounted how she was raped and her husband killed by soldiers in 1994:

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<sup>17</sup> Sokarie Ekine, *Blood & Oil*, published by Centre for Democracy and Development, London, 2001, pp. 57-65.

<sup>18</sup> Amnesty International has received a copy of the report.

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*"I was lying naked in bed when they came into my house with force, and knocked on the door. They beat me so that I lost some teeth. They carried my husband outside and shot him dead. I had delivered a stillborn child by surgery recently and [the] wound never healed nicely. [There was a large scar across her stomach.] The soldier hit me on wound, and raped me. There were two men. I still have pain in the operation wound. The men in uniform were looking for my husband and other women's husbands; the wives were sometimes tortured and raped. I was afraid to report it, so I fled to the bush. I didn't report to [the] chief because he had been detained."*

Girls under 18 years were among those raped by the security forces in Ogoniland. Fatima, 10 years old at the time, described how she had been repeatedly raped and held in sexual slavery for five days in April 1994. She had testified at the Oputa Panel hearings, but expressed disappointment that the Panel's investigations had led neither to prosecution of the alleged perpetrators nor reparations for the victims:

*"The army came in at night and asked for my brother and father. I didn't know where they were. They took me to their station. I stayed there five days. Four men raped and beat me. They all used me. When they saw I was almost dead they dropped me along the road. I couldn't find anybody. I ran to the clinic inside the bush. My tummy was rising. I saw an old man and he took me to the place. The man operated me in the bush. He was then shot by the army. I remembered wounds all over my body. Now I am called "Army property" by the youth in the community where I live. My father has disowned me. I did not report to anybody. It is a shameful thing."*

Peace, now aged 23 but only 11 years old at the time, suffered a similar experience:

*"I was in the house at night. Army people push[ed] [into] the house and carr[ied] us to their camp. They beat and raped me. They kept me there for one week, they maltreated me, forced us to cook for them after the raping. I wanted to escape, I managed. When I escaped the army people shot me. Since then I suffer from the raping. I don't know the cause for the rape and the beating. Since then I have pain in my leg. During that time, [there was] no open clinic. I couldn't run with the bullet, so I enter the bush. They did not check for rape because I did not have money. My uncle brought me to the hospital. The doctor said I was pregnant, I told him about the rape. He operated me. He put a little thing in my private parts. I have not had a period since then. I am still suffering. I did not have any medical report [to prove that I was raped]. When something like this happens, you are segregated [from the rest of the community]."*

### **3.3.2 Choba, Rivers State**

In October 1999 the security forces raped women from the Choba community, an Ikwerre community based in Port Harcourt, who together with men from the community, were

protesting against perceived long-standing unfulfilled promises by Wilbros, a US company in Port Harcourt.<sup>19</sup> A report by Human Rights Watch provides eyewitness accounts of uniformed security forces and the use of military vehicles. Wilbros, however, claimed that no military forces were called in and that the police force was in charge of dispersing the demonstrators. The report by Human Rights Watch states 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*”.<sup>20</sup> A report by WACOL included the allegations of rape and added that the subsequent outcry had resulted in the establishment of an investigation by the Senate. There is, however, no known outcome to this investigation.<sup>21</sup> None of the perpetrators has been brought to justice.

### 3.3.3 Odi, Bayelsa State

As many as 200 people were killed when the military invaded the Odi community in Bayelsa State in November 1999. The raid lasted several days and most of the town was razed.

WACOL recorded over 50 allegations of rape by the security forces in Odi in 1999.<sup>22</sup> In February 2006 Amnesty International interviewed some of the women who had been raped, abducted and forced into sexual slavery; many continue to struggle with the physical and psychological consequences.

Gloria, a mother of four, described how she had been raped in front of her children:

*“Soldiers came through the only road, and therefore there was no escape so we had to run into the bush. For days I was hiding there, but hunger drove us out to eat and we went back to Odi. The army came and soldiers captured and raped us in the presence of our children, outside my house. There were two men in uniform. As they had finished, there was no food and they only left me there. I went back to bush. After the rape my husband said that he would not want to be married to me anymore because army people had raped me. In our culture it is forbidden for married woman to sleep with [an]other man since he may fall ill in that case. My husband left me, and up until now the children are with me. I have not remarried. I told my husband and my in-laws about the rape but not the police and not the army. There was no medical treatment, and no medical report was obtained after the rape.”*

Another woman recounted how she had been raped in her home by four army officers:

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<sup>19</sup> Amnesty International, *Nigeria: Time for justice and accountability* (AI Index: AFR: 44/014/2000), 21 December 2000.

<sup>20</sup> Human Rights Watch, *The Destruction of Odi and Rape in Choba*, 22 December 1999.

<sup>21</sup> WACOL, *A cry for justice: the truth about sexual violence against women in Nigeria*, Enugu, 2003, p.3.

<sup>22</sup> WACOL, *ibid.*

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*“In 1999 at the time of the crisis I was at home but my husband was away, four soldiers visited my house. They pushed the door to enter, they brought out my two children who were already sick and in bed. They were thrown out of the house. The men started using me. All four soldiers raped me, I had instant period. One of my children died at that time. We had no food to eat. We were suffering after everything. When husband came back he refused me because if woman is married she can't meet other man, it is long time traditional custom in our culture. After about one year we came together again, he had married another woman but divorced me. I am still living in his house. Army people wore uniforms, I don't know their names [and] no witnesses, nobody saw what happened in my house. WACOL has reported to Federal Government but I had not reported to anybody.”*

Joy, a 35-year-old farmer, described how her husband had left her after she was held in conditions amounting to sexual slavery:

*“Before I come back home my older daughter was crying about the coming of Federal troops to destroy Odi. My second daughter was killed and they took the third one. My mother was crying with fear. So the army people captured me and bring me to where they were staying. Three of them used me. They kept me for a week. After the government intervention [they] let me go. When I came back everything was burnt down. My daughter died. In my place when you are used by another man your husband leaves you. He left me since 1999. I went to see a doctor at the hospital one month after. I had health problems: my stomach was swelling. He gave me drugs. I did not do an examination for rape. The government did nothing. I told the chief of the community, and he did not do anything.”*

Annkio, aged 45 years and widowed with four children, had a similar experience:

*“The army people enter the village. I went to the bush with my seven children. We stay[ed] in the bush for a week. I had my menstruation, so I went to the village to pick up and wash some clothes. Three army men came; they asked me to put my finger in my private part to show that I had my menstruation. I had to do it three times because there was not enough blood. They raped me, the three of them. They took me to their camp. I asked if I could go and take my children. They allow me to go and take my children. They didn't touch the children. I was with them for two weeks before finally they left and I could go back to my house.”*

The government's response to the serious human rights violations, including gender-based violence, committed in Odi in November 1999 was wholly inadequate. One of the victims reported that *“some free doctors were sent by the government because of the suffering. They gave first aid”*. As far as Amnesty International is aware, however, there has been no official investigation and no one has been brought to justice. President Olusegun Obasanjo publicly expressed regret about the excessive force used by the military. In a meeting with Amnesty International in mid-2000, however, he defended the deployment of troops in view

of the murder of 12 police officers during earlier attempts to arrest armed youths in Odi and said that he had no intention of holding an independent and open inquiry into the events in Odi.<sup>23</sup> President Obasanjo is reported to have told a local television station that he had no apology to make.<sup>24</sup>

In the absence of any action by the authorities to investigate the events in Odi and bring the perpetrators to justice, WACOL submitted a communication to the African Commission on Human and Peoples' Rights. The Commission advised that in accordance with standard procedures, before a complaint can be considered by an international or regional human rights body, WACOL must exhaust domestic remedies first. Considering it unlikely that a public prosecutor would bring criminal charges against the security forces, WACOL filed a civil case on behalf of nine rape victims from Odi before the High Court in Port Harcourt; the case was subsequently transferred to the High Court in Yenagoa, Bayelsa State. WACOL requested that financial compensation be provided by the Federal Government. Cynthia Onwuka, a legal officer with WACOL, informed Amnesty International that the court had dismissed one of the cases on the basis of a statute of limitations.<sup>25</sup> WACOL are, however, continuing to pursue the eight remaining cases.

#### **3.3.4 Odioma, Bayelsa State**

On 19 February 2005 members of a military Joint Task Force, Operation Restore Hope, raided the community of Odioma in Bayelsa State, allegedly to arrest leaders of an armed group suspected of killing four local councillors and eight others earlier that month.<sup>26</sup> At least 17 people were reported to have been killed and at least two women raped. Two of those killed, Balasanyun Omieh, a woman said to be 105 years old, and two-year-old Inikio Omieye, burned to death; three others were reported to have been shot. In just a few days, approximately 80 per cent of the homes in Odioma were razed; many members of the community fled the violence and did not return. The suspects were not captured. Amnesty International met many victims and witnesses during visits to Odioma in May 2005 and in February 2006. The security forces were still in Odioma in February 2006 and reports of rape continued to be made.

A woman in her mid-30s recounted her traumatic experience:

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<sup>23</sup> Amnesty International, *Nigeria: Time for justice and accountability* (AI Index: AFR 44/014/2000), 21 December 2000; Amnesty International, *Nigeria: Reported reprisal killings by government soldiers must be investigated* (AI Index: AFR 44/006/2001), 24 October 2001.

<sup>24</sup> Amnesty International, *Nigeria: Security forces constantly fail to protect and respect human rights* (AI Index: AFR 44/026/2002), 19 December 2002.

<sup>25</sup> According to the Public Officers Protection Act (CAP 379), any action, prosecution or other proceedings for any act, neglect or default against any public official pursued under law or while on public duty must be initiated within three months after the alleged violation. The allegations in this case dated from November 1999 and the suit was filed on 14 February 2002.

<sup>26</sup> Amnesty International, *Nigeria: Ten years on: Injustice and violence haunt the oil Delta* (AI Index: AFR 44/022/2005), 3 November 2005, p. 4.

*“They were shooting everywhere, everything was burning down. We ran to the bush. They came back, the armed people held my mother, they raped her, they fuck[ed] her. They bring some people to the sea. They shot them in the water. I follow[ed] my mother. I saw the King [being forced by soldiers to] eat sand. I start[ed] to beg. They raped me. I was two months pregnant and I had a miscarriage. They raped my nine-year old daughter by using their hands inside her. They killed my uncle. They still do it, they rape if we do not pay.”*

A 23-year old woman told Amnesty International in February 2006 how the security forces had terrorized the community during the raid in February 2005:

*“We were all at home. Then we run to the bush. I slept there with my baby. The militaries slept with young ladies and married ones. They came at night in the bush; they were looking for men but they could not find them. They beat us [women and children] they raped some women. They tied us under the rain, we did not eat for about five days then they went back to the community. They turned [the women’s] clothes, beat them, and sleep with them. They tried with me but I was with a baby that saved me. If the husband was there they do it in front of him. They came back every night.”*

Another woman, a trader, recounted how she had been raped and her daughter sexually assaulted:

*“They used their guns and forced and threw me, then tore my knickers. There were three men. I have pain even today and wound. I was carried to the school house, they used my daughter too. She is 12 years old. They tied my husband and me, and used [their] hands on my daughter. They also raped my sister. Another man raped a woman who was 4 months pregnant and she lost the child. They raped me too. I don’t know their names, they were military men. Everybody in the village saw them, they didn’t hide, they didn’t care... I told my friends, they all know about the rape and it didn’t only happen to me. I didn’t tell the police because I fear them. My mother told me ‘this time [military] men touch women, they kill children’ and ‘it never happened in the Biafra war’, but now it happens.”*

### **3.3.5 Ugborodo, Delta State**

WARDC, which has recently examined the dimension of gender in the violence in the Niger Delta, has reported that women were raped by the security forces during a demonstration in February 2002, in protest against perceived failure to implement a memorandum of understanding between the community of Ugborodo, Delta State, and Chevron Nigeria Ltd.

Victims reported that soldiers used guns to rape them: “The women were stripped naked while guns were pointed into their private parts”.<sup>27</sup>

## 4 RAPE – A CRIME UNDER INTERNATIONAL AND NATIONAL LAW

Rape – whether committed by a state actor or a non-state actor – constitutes a violation of women’s rights and fundamental freedoms. It violates the rights of women and girls to be free from torture, to mental and physical integrity, to liberty and security of the person, and prevents enjoyment of rights such as the right to health, employment and freedom of expression – and, in some cases, it denies them the right to life.

There is no universally accepted legal definition of rape – definitions vary between different legal systems. Increasingly, however, the Elements of Crime of the Rome Statute for the International Criminal Court, and international and regional human rights tribunals have developed principles which should govern definitions of rape in domestic laws.<sup>28</sup>

While crimes of rape in Nigeria are for the most part individual crimes which cannot reach the threshold for crimes against humanity of a ‘widespread or systematic attack on a civilian population with knowledge of the attack’, the definition of rape in the Elements of Crime to the Rome Statute of the International Criminal Court is the most advanced definition available to international lawyers.<sup>29</sup>

The Rome Statute defines the crime against humanity of rape in Article 7(1)(g) of the Elements of Crimes:

*“1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”*

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<sup>27</sup> WARDC, *The 11-day siege: gains and challenges of women’s non-violent struggles in Niger Delta*, Lagos, December 2005, p. 47.

<sup>28</sup> Principles underlying the development of the definitions of rape include: gender neutrality, recognizing that men as well women are raped; violation of the victim’s sexual autonomy, rather than use of force or violence as an aspect of the crime; rape by foreign objects and penetration of any part of the body by a sexual organ; and care in the use of references to consent, since coercion is often used. Elements of Crimes, Rome Statute of the International Criminal Court; and *M.C. V Bulgaria*, European Court of Human Rights, Application 39272/98, Judgement 4 December 2003.

<sup>29</sup> Rome Statute of the International Criminal Court, adopted on 17 July 1998.

*2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”*

Amnesty International therefore recommends that this definition be incorporated fully into domestic law so as to maximize the protection of the human rights of women and girls and to ensure the right to redress and reparations in cases of rape.

Acts of rape such as those set out in this report and discriminatory laws that condone rape or prevent its successful prosecution amount to violations of various international human rights treaties such as the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), as well as regional treaties such as the African Charter on Human and Peoples' Rights (the African Charter).

States that fail to exercise due diligence to prevent, stop, investigate, prosecute and provide reparations for violence against women, wherever it occurs, may be held accountable for violating their rights under international human rights law.

#### **4.1 International human rights law**

Rape of women and girls is an act of gender-based violence and constitutes “discrimination” as prohibited by CEDAW, which sets out a detailed mandate to secure equality between women and men and to prohibit discrimination against women.

The Committee on the Elimination of All Forms of Discrimination against Women has confirmed that the definition of discrimination against women contained in Article 1 of CEDAW includes violence against women: “*The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.*”<sup>30</sup> The Optional Protocol to CEDAW offers women a direct means for seeking redress at the international level for violations of their rights under CEDAW. Nigeria ratified CEDAW without reservations on 13 June 1985, and the Optional Protocol on 22 November 2004. On 22 August 2006, a bill for the Domestication of CEDAW had its first reading in the Nigerian Senate, following long-term and sustained campaigning by Nigerian NGOs.

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<sup>30</sup> CEDAW General Recommendation No. 19, (Violence against Women), UN Doc. A/47/38, 29 January 1992, para. 6.

By ratifying CEDAW, Nigeria has undertaken to:

*“condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.”<sup>31</sup>*

Article 5(a) of CEDAW is also particularly significant:

*“States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”*

Violence against women reflects unequal power relations between men and women. The right not to be discriminated against on the grounds of race, sex, sexual orientation, gender expression and identity, age, birth, or religion, is an inherent human right of every woman, man and child. Articles 2(1) and 3 of the ICCPR, ratified by Nigeria in 1993, provide that:

*“2(1). Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

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<sup>31</sup> CEDAW Article 2.

3. *The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.*"

Although the Convention against Torture, which Nigeria ratified on 28 June 2001, does not specifically include rape, it has become accepted that rape is a form of torture.<sup>32</sup> The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated in 1992 that "[s]ince it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture".<sup>33</sup>

For rape to amount to torture, it must have been committed by, or at the instigation of, or with the consent or acquiescence of a public official or another person acting in an official capacity – in other words, state actors. Rape can amount to torture where it is intentionally inflicted for purposes such as obtaining information or a confession from the victim or a third person; punishing the victim; intimidating or coercing the victim or a third person; or for any reason based on discrimination of any kind. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment under international law obliges states to investigate and prosecute such violations.<sup>34</sup>

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified by Nigeria on 18 February 2005, specifically obliges states to adopt appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex, to punish the perpetrators of violence against women, and implement programmes for the rehabilitation of women victims. In Article 1, the protocol defines violence against women as:

*"all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflict or of war."*

The Protocol states that *"Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited"*, and requires states to prohibit, prevent and punish *"all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public"* (Article 4). The Protocol also obliges states to

<sup>32</sup> *Aydin v Turkey* 23178/94 [1997] ECHR 75, 25 September 1997; *Raquel Martí de Mejía v Peru* 1 March 1996, Report 5/96, Inter-American Court of Human Rights.

<sup>33</sup> See UN Doc. E/CN.4/1992/SR.21, para. 35.

<sup>34</sup> *MC v Bulgaria*, [2003] ECHR 646, 4 December 2003.

*“prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards” (Article 5).*

The Rome Statute of the International Criminal Court (Rome Statute), adopted in 1998 and ratified by Nigeria in 2001, recognizes a broad spectrum of sexual and gender-based violence as crimes against humanity and war crimes. These include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.<sup>35</sup> The Rome Statute also criminalizes gender-based persecution,<sup>36</sup> and ‘outrages upon personal dignity, in particular humiliating and degrading treatment.’<sup>37</sup>

#### **4.2 The law on rape in Nigeria**

The Nigerian authorities at both federal and state levels have failed to address adequately gender-based violence, including rape. There is no federal or state legislation criminalizing violence against women, and most bills initiated by non-governmental organizations on violence against women are still pending.<sup>38</sup> Nor are current provisions relating to rape adequately enforced in the criminal justice system. These provisions are inadequate and outdated and urgent legislative reform is needed to ensure conformity with Nigeria’s obligations under international human rights law.

In August 2005 the Federal Government constituted the Committee on the Review of Discriminatory Laws Against Women, which operated under the auspices of the National Human Rights Commission with a mandate to review discriminatory legislation, including in relation to rape. It submitted its final report to the Federal Minister of Justice on 16 May 2006.<sup>39</sup>

Different legal systems coexist in Nigeria: the Penal Code (Northern States) Federal Provisions Act of 1959 (‘the Penal Code’) and the accompanying Criminal Procedure Code

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<sup>35</sup> Rome Statute of the International Criminal Court, Article 7 (1) (g) (Crimes against Humanity), or Article 8 (2) (b) (xxii): the entry on war crimes substitutes ‘any other form of sexual violence also constituting a grave breach of the Geneva Conventions’ for ‘any other form of sexual violence of comparable gravity’.

<sup>36</sup> *ibid*, Article 7 (2) (h).

<sup>37</sup> *ibid*, Article 8 (2)(xvi).

<sup>38</sup> Initiatives have, however, been taken by state authorities. The Domestic Violence and Related Matters Bill in Lagos State had its public hearing on 12 April 2006. Similar bills have had public hearings in Benue State, Jigawa State (north) and Ogun State. Other states have enacted laws prohibiting specific forms of violence against women, or certain harmful traditional practices, and early and forced marriages.

<sup>39</sup> Amnesty International regrets that it has not been able to obtain a copy of the final report, despite communication to the committee.

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Cap 81 Laws of the Federation 1990 (CPC) apply to all states under its jurisdiction in northern Nigeria; the Criminal Code Act of 1961 ('the Criminal Code') and the accompanying Criminal Procedure Act Cap 80 Laws of the Federation 1990 (CPA) apply to southern Nigeria; and *Sharia* penal legislation applies to 12 northern states, and the accompanying criminal procedure codes apply to those states that have adopted them.<sup>40</sup>

#### 4.2.1 *The Constitution of the Federal Republic of Nigeria, 1999*

Although the Constitution of the Federal Republic of Nigeria, 1999, does not specifically prohibit rape, it clearly prohibits torture and other inhuman or degrading treatment. Section 34(1) states that: "*Every individual is entitled to respect for the dignity of his person, and accordingly, (a) no person shall be subjected to torture, or to inhuman or degrading treatment*". Article 17(2)(b) adds that "[...] *human dignity shall be maintained and enhanced*".

#### 4.2.2 *The Penal Code*

The Penal Code (Nigerian Laws Cap 89), applicable in the north of Nigeria, criminalizes both rape and "defilement" (rape of a girl under the age of 13 years). Section 282(1) of the Penal Code defines rape as:

*"A man is said to commit rape who, save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances – (a) against her will; (b) without her consent; (c) with her consent, when her consent has been obtained by putting her in fear of death or hurt; (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (e) with or without her consent, when she is under fourteen years of age or of unsound mind."*

The note of explanation to Section 282(1) states that "*mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape*".

A definition which presumes only penetration of a vagina by a penis discriminates against women and girls who may have been raped by use of a foreign object or who have

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<sup>40</sup> The three systems establish different offences, punishments and criminal procedures. The Penal Code is applicable to all residents – both Muslim and non-Muslim – of the states under its jurisdiction in the north; the Criminal Code is applicable to all residents in the southern states under its jurisdiction; and the *Sharia* penal codes are applicable to Muslims in the 12 states that have introduced these codes, as well as to non-Muslims who agree to be bound by them. The geographical areas of jurisdiction of the Penal Code and the Criminal Code correspond to different administrative areas at the time of independence. Each of these penal codes contains provisions that Amnesty International considers contrary to international standards of fair trial and include use of the death penalty.

been penetrated orally or anally by the penis. (In addition, the definition in Section 282 is not gender-neutral and is based on the concept that only a woman can be raped.)

The criminal offence of rape is punishable by imprisonment of up to 14 years, which can be combined with a fine.<sup>41</sup>

The Penal Code also makes specific provision in relation to children under the age of 16 years who are sexually assaulted by those in positions of authority. Section 285 on acts of gross indecency provides a punishment of imprisonment for up to seven years and a fine: “*Provided that a consent given by a person below the age of sixteen years to such an act when done by his teacher, guardian or any person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section.*”

#### 4.2.3 The Criminal Code

Section 357 of the Criminal Code Act (Nigerian Laws Cap 38), applicable in the south of Nigeria, defines rape as:

*“Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.”*<sup>42</sup>

“Carnal knowledge”, as explained in Chapter 1 of the Criminal Code, implies penetration. This could be interpreted as including penetration by a foreign object and therefore the Criminal Code provides a broader definition of rape than the Penal Code, which uses ‘sexual intercourse’ rather than ‘carnal knowledge’.

Under Section 358, rape is punishable by life imprisonment, with the possible addition of caning.<sup>43</sup>

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<sup>41</sup> Section 283 states “*whoever has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to a fine*”.

<sup>42</sup> In explaining the definitions used, the Criminal Code explicitly states that unlawful carnal knowledge means “carnal connection which takes place otherwise than between husband and wife”. Rape of a woman by her husband is therefore not regarded as rape under the Criminal Code; the only charge that could be brought would be assault. Both the Criminal Code and the Penal Code therefore condone marital rape and discriminate against women married to the perpetrator. Likewise, the Kano *Sharia* Penal Code Law explicitly condones marital rape and discriminates against married women who have been forced into having sexual intercourse by their husbands.

<sup>43</sup> The Special Rapporteur on Torture has stated that “corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment” (UN Doc. A/56/156), Para. 39). Amnesty International has not received any reports of the sentence of caning

Rape of a girl under 13 years is commonly referred to as “defilement” and is categorized as an offence against morality in the Criminal Code. Section 218 provides: “Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life, with or without caning.” The law sets a limit of two months within which charges must be brought in a case of ‘defilement’. According to many human rights defenders, prosecutors and others whom Amnesty International interviewed, this restricts the number prosecutions of “defilement”. Young girls who are raped are therefore discriminated against in the law by the limitations imposed on bringing a case before the courts and by the definition of the crime. The crime of rape is considered a crime against morality rather than a form of child abuse or assault.

While violence against women is not a specific criminal offence within the Criminal Code, it does include other relevant offences such as common assault or indecent assault. Provisions for these offences, however, discriminate against women and girls, including those who have been raped. For example, Section 360 of the Criminal Code defines indecent assault against a woman as a misdemeanour punishable by up to two years’ imprisonment, whereas if the victim is a man a sentence of up to three years’ imprisonment applies. Under Section 222, a person who “unlawfully or indecently deals with a girl under 16 years of age is guilty of a misdemeanour and is liable to imprisonment for two years, with or without caning”. If the victim is a boy under 14 years of age, however, the sentence is seven years’ imprisonment.<sup>44</sup>

#### 4.2.4 Sharia penal codes

Rape is criminalized in the *Sharia* penal laws which were introduced from 1999 and are now in force in 12 states in the north.<sup>45</sup> The definitions of rape, however, do not conform to the principles underlying the Rome Statute definition, do not provide sufficient protection or redress for women and girls who have been raped, and also discriminate against married women and girls.

For example, the Kano State *Sharia* Penal Code Law 2000 provides in Section 126 that:

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being applied. However, Amnesty International holds that judicial corporal punishment, including flogging (caning), should be abolished.

<sup>44</sup> Section 216 of the Criminal Code.

<sup>45</sup> It is important to distinguish *Sharia* law as a religious legal system and the *Sharia* penal law of Nigeria. *Sharia* law, which stems from texts including the *Qur’an*, *sunna*, *qiyas* and *ijma*, lays down rules regarding personal life of a person of Muslim faith in relation to worship, ritual, conduct, as well as legal matters such as contracts, marriage, inheritance and divorce. It therefore regulates what is known as family law, as well as contract law, and has always applied to people of Muslim faith in northern Nigeria. The *Sharia* penal codes, on the other hand, introduce criminal offences such as *zina*, murder, rape, and robbery as part of the *Sharia* legal system.

*“(1) A man is said to commit rape if [he] has sexual intercourse with a woman in any of the following circumstances:*

- a. against her will; or*
- b. without her consent;*
- c. with her consent, when her consent has been obtained by putting her in fear of death or of hurt;*
- d. with her consent, when the man knows that he is not her husband and that her consent is given because she is or believes to herself to be lawfully married; or*
- e. with or without her consent, when she is under fifteen years of age or of unsound mind.*

*(2) Sexual intercourse by a man with his own wife is not rape.”*

As found in the penal code, an explanation to Section 126 specifies that: *“Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape”*.

Under the Kano *Sharia* Penal Code Law the criminal offence of rape carries different penalties according to the marital status of the perpetrator. Rape is punishable by death by stoning if the perpetrator is married, and caning (100 lashes) and up to life imprisonment if the perpetrator is unmarried. Lawyers representing cases before *Sharia* courts explained to Amnesty International that the provision of the death penalty reflects recognition that rape is an extremely serious criminal offence.

A discrepancy in sentencing is therefore introduced: if a Muslim married man in one of the 12 northern states where *Sharia* law applies is convicted of rape of someone other than his wife, he faces a sentence of death by stoning – a particularly cruel, inhuman and degrading punishment – whereas a man, whether married or not, who is convicted of rape under the Penal Code or the Criminal Code may be sentenced to up to 14 years or life imprisonment.

Amnesty International opposes sentencing that discriminates on the basis of a person’s religion or marital status and opposes all sentences that constitute cruel, inhuman or degrading punishment. It opposes the death penalty in all circumstances as it is a violation of the right to life and is the ultimate cruel, degrading and inhuman punishment. The death penalty has never been shown to deter crime more effectively than other punishments.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report of a visit to Nigeria in 2005, stated in relation to the sentence of death by stoning that *“even if the sentence is never carried out, the mere possibility that it can threaten the accused for years until overturned or commuted constitutes a form of cruel, inhuman or degrading treatment or punishment”*. The Special Rapporteur recommended a constitutional challenge to this punishment.<sup>46</sup> A previous Special Rapporteur on extrajudicial, summary or arbitrary

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<sup>46</sup> See <http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.53.Add.4.pdf>.

executions had opposed mandatory death sentences, including for rape: “*the death penalty should under no circumstances be mandatory by law, regardless of the charges involved*”.<sup>47</sup> In April 2005 the UN Commission on Human Rights urged those countries retaining the death penalty: “*that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately*”.<sup>48</sup> In 2005 UN Human Rights Committee called for the penalty of death by stoning to be abolished in law.<sup>49</sup>

## 5 STATE ACTORS ENJOY IMPUNITY

Women and girls who are raped by state actors in Nigeria have little hope of obtaining justice and reparation. The Federal Government has demonstrated no serious commitment to address violence against women in general, and rape in particular. Despite this lack of will, the Nigerian government’s obligations under international law are clear. It is obliged to exercise due diligence to ensure that the rights recognized under international human rights law are made a reality in practice: if a right is violated, the state must restore the right violated as far as possible and provide appropriate compensation.

Prosecutions for rape are brought in only a small number of cases. Victims are sometimes pressured into withdrawing the case or parents of victims prefer financial settlement out of court to a criminal prosecution. Where cases are brought to court, prosecution sometimes fails because police refer cases to a court lacking appropriate jurisdiction and progress is then obstructed by the slow administration of the judicial system. In some cases, the alleged perpetrator is charged with a different and less serious criminal offence.

In the few cases where a conviction is secured, judges seldom impose the maximum sentence. This indicates an apparent failure by the judiciary to acknowledge the gravity of the crime. In addition, compensation is rarely awarded. According to a retired high court judge, Ezebuilo Ozobu, in Enugu State, whom Amnesty International met in January 2006, failure to award compensation results from the absence of appropriate legislation.

With the exception of a few high-profile cases, state actors alleged to have committed rape enjoy complete impunity. Amnesty International is aware of only a few cases in which police officers have been prosecuted and convicted of the criminal offence of rape and knows of no case where members of other security forces have been prosecuted for gender-based violence, including rape. Human rights activists, serving and retired high court judges and

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<sup>47</sup> UN document E/CN.4/1999/39, 6 January 1999, para. 63.

<sup>48</sup> Resolution 2005/59, adopted on 20 April 2005.

<sup>49</sup> See Concluding observations of the Human Rights Committee: Yemen, UN Doc. CCPR/CO/84/YEM, 9 August 2005, para. 5.

some prosecutors shared their concerns about the low rate of prosecution and even lower rate of convictions with Amnesty International in early 2006.

The low rate of prosecutions is explained in part by the fact that most women and girls who have been raped do not report the crime. But major problems exist once women do report the crime. According to Nigerian human rights defenders, including the Executive Director of WACOL, only 10 per cent of prosecutions result in a conviction. Factors contributing to this low conviction rate are difficulties in obtaining forensic evidence admissible in court and also legislation relating to evidence.

The Lagos State Head of Department, Public Prosecution, Lagos State Ministry of Justice, stated in January 2006 that most cases are not referred for prosecution. She believed that a contributing factor was that many victims were minors and “*under 12 years old*”; these cases are largely settled out of court because of the stigma attached to the rape of a child. Ezebuilo Ozobu, the retired High Court judge interviewed by Amnesty International, however, believed that parents’ anger and desire for justice explained the slightly higher rate of reporting in cases involving “defilement”.

The Attorney General and Commissioner for Justice of Rivers State has also stated that a major problem is that rapes are not reported. He told Amnesty International in February 2006 that he had only worked on one case of sexual violence: the alleged sexual assault of a minor whose mother had pressed for prosecution. In an effort to increase the rate of prosecution for rape and other forms of gender-based violence, he was reported to have adopted a policy allowing only female prosecutors to prosecute rape cases.

A now retired High Court judge from Enugu State who preferred to be anonymous, claimed to Amnesty International that he had heard only two cases of rape during his career as a High Court judge, in one of which he had imposed the maximum sentence.

A human rights defender in Kano State reported to Amnesty International that she was aware of four cases of rape in January 2006 which were all at different stages of criminal proceedings. One other case had, however, been dismissed by the court on the grounds that it was unsupported by medical evidence. The defendant had claimed that there was no penetration and that “*he was only playing with her*”.

Male lawyers practicing *Sharia* law in Kano State stated to Amnesty International that they were unaware of any rape cases under *Sharia* legislation that had been reported to the police or brought to court. A human rights defender gave Amnesty International a different version of events: she countered that male lawyers practising *Sharia* law were not interested in cases of gender-based violence. Another human rights defender from Kano State reported how she only knew of two successful convictions of rape under the *Sharia* penal code in Kano State.

In one of the cases, two 30-year-old men were convicted by the Yankaba *Sharia* court of raping a three-year old girl. She was reported to have first been raped and subsequently suffocated to stop her crying. According to LEDAP, the two men, believed to have been members of the victim's family, were sentenced to death by hanging and were awaiting execution in Katsina prison, Katsina State.

In the absence of action by the Federal and State Governments to ensure that alleged perpetrators of rape are brought to justice, some Nigerian non-governmental organizations have pursued private prosecutions, through a process known as *fiat*. Lawyers can apply to the State or Federal Attorney General for a *fiat* to enable a private prosecution in a criminal matter that would normally be prosecuted by the state. Although more costly for the victim, and therefore precluding those who cannot afford to take such a route, some human rights defenders believe that the process of *fiat* is more likely to secure a conviction in cases where state actors are prosecuted.

### **5.1 Lack of training and discriminatory attitudes**

Others factors that contribute significantly to the high level of impunity for state actors are the lack of training of the police and the absence of an independent police complaints mechanism to investigate allegations against the police.

The police force lacks training and expertise to prevent and to respond effectively to violence against women. The problem is compounded by attitudes towards women prevalent among male police officers. A woman who has been raped may be confronted by inferences that she was in some way responsible, for example, by questions and comments about her presence at the place where the rape occurred or about her manner of dressing. Such attitudes, coupled with the social stigma attached to rape, dissuade women from reporting the crime.

A woman high court judge told Amnesty International on condition on anonymity: *“the police who are taking the report are often displaying discriminatory and dismissive attitudes towards the victim. They would challenge the rape victim by saying that she must have done something to the man and that she must have attracted him.”*

The state has a duty to ensure that violence against women is reported, recorded, investigated and prosecuted. The attitudes among male police officers, however, prohibit an effective response.

## **5.2 Lack of effective investigation and prosecution**

### **5.2.1 The Public Officers Protection Act**

According to The Public Officers Protection Act (CAP 379), a federal statute, section 1 ‘any action, prosecution, or other proceedings for any act, neglect or default against any public official pursued under law or while on public duty’ must be initiated within three months after the alleged misconduct.<sup>50</sup> This act imposes limits on the period of time in which complaints can be made and this very short span of time would appear to limit the possibility of prosecution of public officials. Should traumatized victims not summon the courage to bring a civil suit or to complain to the police within three months, the possibilities of filing formal complaints against police or other state actors who may have committed rape are significantly restricted.

### **5.2.2 Lack of effective, independent police review body**

Reluctance to report a rape by a police officer to a colleague of the alleged perpetrator is an important factor in the under-reporting of rape. Corruption within the Nigerian Police Force is widely acknowledged. Colleagues or relatives of the alleged perpetrator have in some cases employed threats or bribes in an attempt to secure withdrawal of the complaint.

Some allegations of rape are reviewed within existing internal police review systems and may result in internal disciplinary measures. Complaints are normally referred to either the Police Complaints Bureau or the “Orderly Room Trial” mechanism. In addition, a Police Service Commission was established by law in 2001. Current procedures, however, lack independence and are ineffective.

The public can report misconduct by the police to the Police Complaints Bureau, an internal investigation unit established in 2003, which is reported to have an office in each police station. In addition, so-called “human rights desks” were reported to have been established in some police stations in Lagos in June 2006 as part of a pilot project. There appears, however, to be little practical evidence of the work of the Police Complaints Bureau or the “human rights desks”. According to human rights defenders, where they exist, such mechanisms lack adequate resources and are inefficient.

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<sup>50</sup> This legislation clearly hampers the process of victims seeking a remedy and reparations against state actors for alleged rape by awarding costs to the defendant if the plaintiff fails to prove his or her case (section 2); and if in the opinion of the court the plaintiff has not given the defendant sufficient opportunity to ‘tender amends’ (to make pre-trial settlement) (section 2 (d)). The defendant might use an attempt to ‘tender amends’ as a defense to any suit (section 2 (c)). While the losing party in litigation usually bears the costs of the winning party in civil (non-criminal suit) in a common law system, this Act should be amended to ensure that it does not apply to criminal proceedings for rape, and that it does not hamper victims’ right to a remedy and reparations.

The “Orderly Trial Room” is an internal police review mechanism – where complaints against police officers are examined by their peers. The panel established to review the complaint has a mandate to recommend disciplinary action, including dismissal, suspension and demotion, when referring the case to the Police Service Commission for decision. The orderly trial room panel lacks independence and impartiality: there is, for example, no mechanism to preclude participation of close colleagues of the alleged perpetrator. Amnesty International is aware of only one case where this mechanism has been used in a case of rape: that of two girls who were raped in Enugu, where two junior officers were dismissed from the police force and a senior officer suspended. Criminal proceedings were also brought. (This case is described above.)

The Police Service Commission is responsible for the appointment, promotion, discipline and dismissal of police officers below the grade of Inspector General of Police. It consists of a retired Justice of the Supreme Court or Court of Appeal, a retired police officer not below the rank of Commissioner of Police, and four members of civil society. Its mandate includes investigation of misconduct, separate from and parallel to criminal investigation. It cannot, however, refer cases to the courts for prosecution. Human rights organizations are concerned that, in practice, the Police Service Commission lacks both the political will and adequate resources to implement its mandate: complaints are reported to be referred back to the police for further investigation. It does not, therefore, provide an adequate independent mechanism to investigate allegations of rape by police officers.

### **5.2.3 *Alleged perpetrators charged to the wrong court***

The high court in each state, and relevant appeal courts, and all courts in the *Sharia* penal system have jurisdiction over cases of rape. Magistrates’ courts, which are the lowest-level court in the Nigerian criminal justice system, do not exercise jurisdiction over such cases.

Lawyers and public prosecutors whom Amnesty International met in 2006 pointed out that the police frequently refer cases for prosecution to the wrong court, resulting in lengthy, if not indefinite, delays and denying the right of the victim to an effective remedy. Amnesty International notes that it also often results in the suspect being detained illegally under a so-called “holding charge”.<sup>51</sup> Vital evidence, including statements by witnesses and victims, may be regarded as less credible after a lengthy delay. In cases of “defilement”, where charges must be brought within two months, such delays could prevent prosecution altogether.

The recent Reform of the Criminal Justice Bill aims to eliminate errors by the police and ensure that cases are brought before the correct court. The bill introduces time limits of

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<sup>51</sup> Magistrates frequently use this practice to hold a detainee in custody indefinitely, pending legal advice from the Director of Public Prosecutions. This practice, which has been declared unconstitutional, is often referred to as the main reason for the high level of awaiting trial detainees resulting in overcrowding of detentions and prisons in Nigeria.

up to a maximum of 90 days that the police have to charge a suspect after which the individual must be released. As of September 2006, this bill was at the legal drafting committee of the Federal Ministry for Justice awaiting consideration before hearings at the National Assembly.

#### **5.2.4 *Admissibility of medical reports as evidence***

Criminal procedure codes do not specify what kind of medical reports are admissible as forensic evidence in cases of rape. However, in practice, according to medical doctors, in both public and private practice, human rights defenders, prosecutors, lawyers and judges whom Amnesty International interviewed in 2006, only medical reports issued by a medical practitioner in a government-run hospital are accepted by courts as admissible evidence.

One lawyer thought that private practitioners were equally competent to produce valid medical reports as forensic evidence and that it was therefore unreasonable for courts not to accept such reports. He also explained that private medical practitioners are not under an obligation to refer victims of rape to a government-run hospital but that they can do so. One private medical practitioner, working in a church-administered hospital, stated that her hospital would avoid any issues that could potentially result in criminal proceedings and therefore would, presumably, not provide a medical report that could be used as forensic evidence in a possible prosecution for rape.

The practice of only allowing medical reports by doctors in government-run hospitals as evidence has a discriminatory effect on women and girls who do not have easy access either to government-run hospitals or health care facilities. This is particularly acute in rural areas.

The Head of the Obstetrics and Gynaecological Department at the University Teaching Hospital in Lagos told Amnesty International in January 2006 that the problem was compounded by the limited number of medical professionals qualified to deal with rape cases.

The majority of the women whom Amnesty International interviewed and who had been raped had not been able to obtain a medical report. Some said that they had no access to a clinic or hospital, others that they were unable to pay for a report, and others that they had sought medical assistance some time after the rape had occurred. Where medical reports had been obtained, the majority were from private medical practitioners at high cost, and would be considered inadmissible as evidence.

Delays in obtaining medical reports are also a problem. Staff of the Women Advocates Research and Documentation Centre (WARDC) in Lagos referred to the case of a seven-year-old girl who was alleged to have been raped. When taken to obtain a medical report, she was first required to wait for several hours, and then told to return the next day. In another case, the father of a seven-year-old girl in Port Harcourt, who was reported to have

been raped by a neighbour, told Amnesty International in February 2006 how he had gone to the police with a non-governmental organization to report the case:

*“The police arraigned the man, but no medical examination was performed on my daughter. When the NGO asked the police to perform a medical examination, the doctor responded that it was too late since it was one week after the alleged incident. The NGO then organized for a medical report to be done; two days later that report was sent to the Director for Public Prosecutions but the medical examination said there was no penetration, nothing else to report.”*

Such experiences may deter victims from reporting rape and obtaining medical reports, and therefore prevent successful prosecution of rape cases.

### **5.3 Discrimination under Sharia penal laws**

#### **5.3.1 Punishing the victim, not the perpetrator**

Kano *Sharia* Penal Code Law in Section 127 lists conditions that must be fulfilled in order to prove rape or *zina* (extramarital sexual relations) in respect of a married person: Islam; maturity; sanity; liberty; valid marriage; consummation of the marriage; four witnesses; or confession.<sup>52</sup> If a woman who alleges that she has been raped fails to establish any of these conditions, she is liable to imprisonment for one year and up to 100 lashes.

Lawyers to whom Amnesty International spoke explained that these stringent conditions were put in place in order to ensure that it would be difficult to impose the penalty of death by stoning of the perpetrator. In January/February 2006 Amnesty International met members of the Kano State Law Reform Committee – comprised of six men and one woman – which in December 2005 began a review of legislation in force in Kano State (where the Penal Code is applicable) in order to assess conformity with the Constitution and federal laws and to propose legislative reform to the state Attorney General. When questioned by Amnesty International delegates about legislation that condones marital rape – which violates Nigeria’s obligations under CEDAW and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa – they laughed and insisted that by consenting to marriage, a woman had also consented to sexual relations with her husband: *“if you are married rape is not an issue”*.

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<sup>52</sup> Section 127 adds: *“Explanation: The conditions for proving the offences of zina (fornication or adultery) or rape in respect of a married person are as follows: (a) Islam; (b) maturity; (c) sanity; (d) liberty; (e) valid marriage; (f) consummation of marriage; (g) four witnesses; or (h) confession. If any of the above conditions has not been proved by the person alleging zina or rape there is no punishment for stoning to death; the person alleging such offence shall be imprisoned for one year and shall also be liable to caning which may extend to one hundred lashes.”*

Fulfilment of these conditions, however, is almost impossible. The virtual impossibility of proving an allegation of rape has a discriminating effect against women with potentially very serious consequences. Where there are not four (male) witnesses to support her allegations, there can be no conviction. In such cases the perpetrator enjoys impunity, while the victim is punished for making unproved allegations. A victim of alleged rape could be accused of having allegedly consented to extramarital sexual relations and could therefore face a possible sentence of death by stoning. The contrast between the difficulty of securing a conviction of rape in a *Sharia* court and the ease with which women (and less frequently men) can be charged with *zina* for consensual sexual relations is stark.

Some human rights defenders working on cases under *Sharia* penal legislation have claimed that there have been a number of false allegations of rape under *Sharia* penal legislation because women try to avoid being accused of the offence of *zina*, which carries a sentence of death by stoning; others, however, denied the existence of any such cases.

Bariya Ibrahim Magazu, aged 17 years at the time, was sentenced to 180 strokes of the cane by a lower *Sharia* court of Tsafe, Zamfara State, in early September 2000: 100 strokes for having had sexual relations outside marriage (*zina*) and 80 strokes for allegedly falsely accusing three men of raping her.<sup>53</sup> She had no legal representation at the trial and failed to produce the required witnesses to prove her allegation of rape. Although an application for leave to appeal by Nigerian human rights organizations was pending in the courts, a reduced sentence of 100 strokes for *zina* was carried out on 19 January 2001 at the Higher *Sharia* Court of Tsafe. According to reports, the three men were not prosecuted because of lack of evidence against them.

Haruna Dutsi and Aishat Dutsi, husband and wife, were sentenced to 80 lashes each by a lower *Sharia* court in Zamfara State and subsequently publicly flogged on 22 September 2000, after failing to prove allegations that their daughter had been sexually assaulted. They were sentenced after being convicted of allegedly falsely accusing a village leader of having had sexual relations with their daughter.<sup>54</sup> The Dutsi claimed their daughter had been raped.

Amnesty International is seriously concerned that current *Sharia* legislation, including strict rules of evidence, not only seriously limits the possibility of Muslim women obtaining redress in cases of rape, but also exposes them to the possibility of severe punishment if allegations of rape are not substantiated according to these rules.

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<sup>53</sup> Amnesty International, *Nigeria: Fear of ill-treatment/legal and medical concern* (AI Index: AFR 44/011/2000), 27 September 2000; *Nigeria: Further information on fear of ill-treatment/legal and medical concern* (AI Index: AFR 44/13/2000), 14 December 2000; *Nigeria: further information on fear of ill-treatment/legal and medical concern* (AI Index: 44/002 /2001), 23 January 2001; *Nigeria: BAOBAB for Women's Human Rights and Amnesty International Joint Statement on the implementation of new Sharia-based penal codes in northern Nigeria* (AI Index: AFR 44/008/2002), 25 March 2002; *The Guardian* (Lagos), *Challenges of the 21st century female lawyer*, 15 March 2006.

<sup>54</sup> Amnesty International, *Nigeria: Fear of ill-treatment/legal and medical concern* (AI Index: AFR 44/011/2000), 27 September 2000.

### 5.3.2 Failure to acknowledge lack of consent

In some cases, a woman's failure to consent has not been considered in criminal proceedings. Umaru Tori Gwaram was charged under Section 136 of the *Sharia* Penal Code Law, Bauchi State 2001, with having committed *zina* with his step-daughter who was then under-age and who became pregnant as a result. She was pregnant with this child during the trial before the Upper *Sharia* Court in Alkaleri. According to transcripts of the court proceedings, when asked her reaction when she realized that he intended to have sexual relations with her, she is reported to have said that "*she asked not to commit sexual relation with anybody but he ignored that and he committed adultery with her*".<sup>55</sup> In making its judgment, however, the court failed to refer to lack of consent or rape. Umaru Tori Gwaram was convicted of *zina* and sentenced to death by stoning on 6 January 2004.<sup>56</sup>

However, the court did not consider the victim to be blameless; the court did not consider that she did not consent and instead ruled that she had committed adultery. The court ruled that his step-daughter should receive "*100 lashes after your delivery just like what Allah says in suratul mur-verse 2. For an adulterer and adulteress should receive 100 lashes each and also in minhajal-muslim page 451 and adulterer who has not married before shall receive 100 lashes.*" Not only did the court fail to acknowledge that this case may have constituted rape, but it also sentenced the alleged victim to cruel, inhuman and degrading punishment. Amnesty International has not received any information on whether the sentence has been carried out.

## 6 RECOMMENDATIONS

Amnesty International is making specific recommendations to the Nigerian authorities, judicial and legal officials, civil society groups and the international community to initiate and support reforms of policy, law and practice in Nigeria in order to protect women and girls from rape and other forms of violence perpetrated by state actors.

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<sup>55</sup> Court transcript of judgment in case number 69/2003 from the Upper *Sharia* Court of Alkaleri, Bauchi State.

<sup>56</sup> A coalition of NGO's appealed the case on his behalf with the intention of testing the constitutionality of the sentence death by stoning. On 25 May 2005 LEDAP reported that the Bauchi State *Sharia* Court of Appeal had upheld the appeal filed by Umar Tori Gwaram on 24 May 2005 against his conviction and sentence. The court however ordered that his case be retried afresh before another Upper *Sharia* Court in the state. The case will be retried before the Upper *Sharia* Court in Kobi, Bauchi. No date has been fixed for the hearing.

### **6.1 The Federal Government should:**

- state unambiguously that violence against women, including rape, is prohibited by law, and initiate public education programmes on ending violence against women;
- convey to all state actors that rape is a crime, which may amount to torture;
- systematically and comprehensively document violence against women, including rape, and make this information publicly available;
- ensure that all women who have been subjected to violence, including rape, have access to redress in the form of access to justice; and to reparations including compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- bring all perpetrators of gender-based violence, including rape, to justice in trials that conform to international fair trial standards and exclude the death penalty; and facilitate private criminal prosecutions (*fiat*) by non-governmental organizations and others in cases of rape;
- incorporate urgently into domestic law the UN Convention on the Elimination of All Forms of Discrimination against Women, which Nigeria ratified in 1985, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, ratified in 2005, and the Rome Statute of the International Criminal Court, ratified in 2001;
- reform legislation to incorporate, at a minimum, the definition of rape in the Elements of Crime to the Rome Statute of the International Criminal Court;
- urgently make public the report and the recommendations of the Committee on the Review of Discriminatory Laws Against Women and make public a plan for how to implement the recommendations;
- ensure that punishments prescribed for rape are commensurate with the gravity of the crime, and exclude the death penalty. If necessary, amend sentencing guidelines for judges;
- urgently reform discriminatory legislation and ensure that all legislation complies fully with Nigeria's obligations under international human rights law;
- repeal the Public Officers Protection Act in order to ensure that it does not prevent or hinder prosecution of state actors alleged to have committed rape;
- provide gender-sensitivity training to the police and security forces, judges and other officials in the criminal justice system, and lawyers; such training should include protection of women from rape; investigation of reports of rape; prosecution of such cases, including protection of victims and witnesses;

- ensure that women and girls are able to report to women police officers when reporting gender-based violence;
- ensure effective separation of men and women in prisons, police stations and all other places of detention, and that detention facilities for women are staffed by women officers;
- provide adequate resources for a sufficient number of appropriate shelters for women, in cooperation with non-governmental organizations working to protect women from violence;
- invite the United Nations Special Rapporteur on violence against women, its causes and consequences, and African Commission on Human and Peoples' Rights Special Rapporteur on the Rights of Women in Africa to Nigeria;
- address factors contributing to the prevalence of violence against women by taking measures to promote equality of women, and counter women's impoverishment by ensuring equal access to economic and social rights, including education, freedom of movement, property, employment and social entitlements and by political participation;
- ensure that women human rights defenders are able to freely exercise their work without harassment, intimidation or hindrance;
- ensure that organizations working on sexual and gender-based violence are involved in the drawing up of programs, services, policy and management tools and the monitoring and evaluation of government action to address the needs of the survivors;
- join international and national efforts to stop the proliferation of weapons used to commit human rights violations, including gender-based violence, including by fulfilling commitments under the ECOWAS Convention on Small Arms, ratified by Nigeria in June 2006.

## **6.2 State authorities should:**

- systematically and comprehensively document violence against women, including rape, and make this information publicly available;
- urgently reform discriminatory legislation and ensure that all state legislation complies fully with Nigeria's obligations under international human rights law;
- ensure that all women who have been subjected to violence, including rape, have access to redress, including compensation, rehabilitation and guarantees of non-repetition;
- bring all perpetrators of gender-based violence, including rape, to justice in trials that conform

to international fair trial standards and exclude the death penalty;

- ensure that punishments prescribed for rape are commensurate with the gravity of the crime and exclude the death penalty. If necessary, amend sentencing guidelines for judges;
- provide gender-sensitivity training to judges and other officials in the criminal justice system; such training should include investigation of reports of rape and prosecution of such cases, including protection of victims and witnesses;
- initiate and support measures to protect women from rape and other forms of violence such as public education programmes, including dissemination and display of advice on reporting rape at hospitals, primary health care centres, pharmacies, community centres, courts and on relevant websites;
- implement education programs aimed at public and community leaders on the importance of not stigmatizing victims of sexual and gender-based violence and take action to empower women and girls to enable them to seek help and adequate support;
- provide specific training to medical students and practitioners on responding to rape cases, including medical examination and reporting, and preservation of evidence;
- ensure adequate funding for hospitals and other health care facilities for treatment of victims of rape, including free provision of medical reports, which may be used as forensic evidence in criminal proceedings;
- ensure that women who have been raped are able to choose to consult women doctors and other medical staff at hospitals and other health care facilities; and ensure that all medical facilities are able to refer victims of rape to appropriate welfare and legal services;
- ensure access to reliable and appropriate services that can provide victims with psychological help and social support for their rehabilitation and reintegration;
- provide adequate resources for a sufficient number of appropriate shelters for women, in cooperation with non-governmental organizations working to protect women from violence;
- join international and national efforts to stop the proliferation of weapons used to commit human rights violations, including gender-based violence.

### **6.3 *Inspector General of Police of the Nigerian Police Force and heads of the security forces should:***

- systematically and comprehensively document all reports of gender-based violence, including rape, make this information publicly available, and submit it to both Federal and State

governments, as well as the National Human Rights Commission;

- promptly investigate all complaints of gender-based violence, including rape, and refer cases to the appropriate judicial authority for prosecution;
- immediately suspend from duty any police officer or member of other security forces alleged to have perpetrated a gender-based crime;
- provide gender-sensitivity training to police officers and members of the security forces; such training should include protection of women from rape; investigation of reports of rape; prosecution of such cases, including protection of victims and witnesses;
- ensure that victims of gender-based violence, including rape, are able to report to women police officers;
- ensure dissemination and display of advice on reporting rape at police stations and other security force facilities, and on relevant websites;
- ensure effective separation of men and women detainees in police stations, and that detention facilities for women are staffed by women officers.

#### **6.4 The judiciary and legal system should:**

- ensure that all cases of rape, in particular when the victim is a minor, are heard behind closed doors;
- accept as forensic evidence medical reports from all qualified medical professionals, from both state-run and private hospitals and other health care facilities.

#### **6.5 Civil society groups should:**

- work to create an environment that supports women and addresses violence against women, including by raising awareness through the media; building community structures and processes to protect women; and providing assistance to victims of violence;
- demand that women be treated as equal members of the community, including having equal participation in decision-making in local government, customary legal systems and community structures;
- call on religious bodies and traditional authorities to respect women's human rights, and to denounce and desist from any action that encourages or tolerates violence against women in general and in the family specifically;

- combat negative images of women and work to challenge discriminatory attitudes that foster violence against women and girls, for example in the mass media, advertisements or school curricula;
- call on communities to work with those most affected to develop and implement local strategies to confront violence against women.

**6.6 *The international community, including the United Nations and African Union should:***

- encourage and support Nigeria to implement fully all international and regional treaties, declarations, resolutions and recommendations aimed at condemning, prohibiting and preventing all acts of violence against women, investigating all cases of violence and bringing perpetrators to justice in accordance with international standards of fair trial and without recourse to the death penalty, and providing reparations for victims;
- support and encourage initiatives by the Nigerian authorities, women's groups and human rights organizations in Nigeria to prevent rape and other forms of violence against women, including training and exchange of information for police officers, members of the security forces, lawyers, judges and other judicial officials.