

NIGERIA

Human Rights in Perspective

*Amnesty International
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**AMNESTY
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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Nigeria in October-November 2013, Amnesty International assesses the progress made in the implementation of recommendations accepted by Nigeria in its previous review in 2009. This assessment relates to reform of the justice system, detention without trial, the right to freedom of expression, extrajudicial executions by the police, and amendments to the Human Rights Commission Act.

Amnesty International further highlights shortcomings around the justiciability of economic, social and cultural rights, the domestication of international human rights treaties, and the overly broad legal provisions and guidelines governing the use of lethal force by the police.

In respect of the human rights situation on the ground, Amnesty International raises concerns about human rights abuses by armed groups in northern and central Nigeria, human rights violations by the security forces, enforced disappearances, unlawful detention, LGBTI rights, the death penalty, forced evictions, and oil pollution in the Niger Delta.

FOLLOW UP TO THE PREVIOUS REVIEW

Following Nigeria's first UPR in 2009 several recommendations were accepted by Nigeria including the following:

- *To address the dysfunction of the judicial system, to introduce reform of the justice system including penitentiary centres and national police, and to improve the criminal justice system:*¹ The process of implementation of these recommendations has been slow. The recommendations by the Committee on the Implementation of the Justice Sector Reforms, set up in August 2011, and the recommendations of the Presidential Committee on Police Reform, submitted to the President in August 2012, are yet to be implemented.² Bills to amend the Police and Prisons Act are still pending before the federal legislature. The court system continues to be plagued by delays in proceedings with many cases taking several years to complete, and the appeals process is long, bureaucratic and expensive.
- *To tackle the backlog of prisoners detained without trial or beyond the end of their sentence, including by trying them without delay or freeing them:*³ The backlog of prisoners detained without trial persists. Large numbers of inmates in Nigerian prisons have not been convicted of any crime and are awaiting trial. As at 31 October 2012, figures from the prisons service show that of the 54,156 prison population 38,352 are Awaiting Trial Persons.
- *To ensure that freedom of expression is respected, including the rights of journalists to report, comment on and criticize government policy without suffering harassment:*⁴ Section 39 of the Nigerian Constitution guarantees the right to freedom of expression and in May 2011 the President signed

into law the Freedom of Information Act; however, journalists continue to suffer harassment at the hands of the police, the Joint Task Force (JTF)⁵ and the State Security Services (SSS). As the government attempts to counter Islamist armed groups in the north of the country harassment and arrests of journalists who report negatively on the operations by the military has increased. In one such case, Musa Muhammad Awwal, a journalist with *Al-Mizan*, who published allegations of unlawful detention by the military was harassed on several occasions and detained by the security forces in December 2012 and February 2013. Amnesty International is concerned that no concrete steps have been taken by the government to protect freedom of expression of journalists.

- *To end extrajudicial executions, including by adopting comprehensive legislation with regard to extrajudicial executions and torture by the police and measures assuring its application:*⁶ The Constitution guarantees the right to freedom from torture; however, existing Criminal Code provisions on assault and murder are rarely applied to the police due to overbroad defences for police use of force and/or unwillingness by the state to prosecute. In September 2009, the President inaugurated a National Committee on Torture, designated as Nigeria's national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture. The Committee is yet to be given an adequate budget to carry out its mandate. Police continue to carry out extrajudicial executions and torture with impunity.
- *To expedite amendments to the Human Rights Commission Act, including to ensure its independence and to enable it to regain "A" rating in compliance with the Paris Principles:*⁷ Nigeria has implemented these recommendations by amending the Human Rights Commission Act in 2010 with provisions granting the National Human Rights Commission (NHRC) financial autonomy and independence. The Commission has now regained "A" rating in compliance with the Paris Principles and has been granted accreditation to the International Coordination Committee of National Human Rights Institutions. However, despite this amendment the funding of the NHRC continues to be insufficient and there are several capacity gaps in respect of its work force and institutions. The Governing Council, the highest policy body of the NHRC, was sworn in by the government in December 2012, one year after the Senate had confirmed the nomination of its members. The delay had a negative impact on the effectiveness of NHRC in 2012.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Chapter 4 of Nigeria's Constitution provides for fundamental human rights and these are enforceable in the courts through the mechanism provided for under the Fundamental Rights (Enforcements Procedure) Rules 2009. Economic, social and cultural rights, however, are not guaranteed as fundamental human rights under the Constitution but are provided for in Chapter 2 as Fundamental Objectives and Directive Principles of State Policy. No mechanism exists for their enforcement, because economic, social and cultural rights are treated as not justiciable and

therefore unenforceable in the courts. This presents an impediment to Nigeria respecting, protecting and fulfilling economic, social and cultural rights and to fulfilling its obligations under the International Covenant on Economic, Social and Cultural Rights.

Nigeria is a party to several international human rights treaties; however, the Constitution prevents the implementation of an international treaty until it is domesticated.⁸ The few treaties that Nigeria has domesticated include the African Charter on Human and Peoples' Rights and the UN Convention on the Rights of the Child.

Section 33 of the Constitution and the Police Force Order 237 (Rules for guidance in use of firearms by the police) provide for much broader grounds for the use of lethal force than is permissible under international law and standards, including permitting police officers to shoot suspects and detainees who attempt to escape or avoid arrest “provided the offence is such that the accused may be punished with death or imprisonment for seven years or more”.⁹ Amnesty International is concerned that, as such, the Constitution and the Police Force Order 237 allow police officers to shoot with impunity.

HUMAN RIGHTS SITUATION ON THE GROUND

BOKO HARAM

Since 2009, acts of violence by the Islamist armed group known as Boko Haram have been carried out across northern and central Nigeria with increasing sophistication and deadliness. Grave human rights abuses have been committed by Boko Haram, including attacks on police stations, military barracks, churches, school buildings and newspaper offices and killings of clerics and worshippers, politicians and journalists, and police and soldiers. In 2012, the Office of the Prosecutor of the International Criminal Court announced there was a reasonable basis to believe that Boko Haram have been committing crimes against humanity since July 2009.

Nigeria's security forces have committed serious human rights violations in their response to Boko Haram, including enforced disappearances, extrajudicial executions, house burning and unlawful detention. Scores of people have been unlawfully killed or subjected to enforced disappearance by the Joint Task Force (JTF) or the police. People in at least five communities in Maiduguri have had their houses burnt down by the JTF, often following raids and arrests in the areas and in some cases seemingly as a punitive measure. Hundreds of people accused of having links to Boko Haram have been arbitrarily detained by the JTF. Many have been detained incommunicado for lengthy periods without charge or trial, without proper notification of family members, without being brought before a judicial authority, and without access to a lawyer. Hundreds of people have been detained without charge or trial at Giwa barracks, 21 Armoured Brigade, Maiduguri, in conditions that may amount to inhuman or degrading treatment. Independent and impartial investigations are rarely carried out into allegations of violations by the security forces, and when they are, the findings have not been made public.

ENFORCED DISAPPEARANCES, EXTRAJUDICIAL KILLINGS AND UNLAWFUL DETENTION

Unlawful killings continue to be carried out by the police across Nigeria and torture and other forms of inhuman or degrading treatment of criminal suspects and detainees, perpetrated by the security forces, remain widespread. In March 2012, the Chairman of the Governing Council of the National Human Rights Commission stated that an estimated 2,500 detainees are summarily killed by the police every year.

According to Amnesty International's research many victims have been unlawfully killed during arrest, while others have been tortured to death in police custody. A large proportion of these unlawful killings may constitute extrajudicial executions. In some cases, people have disappeared after being taken into police custody. Such killings by police and deaths in police custody are rarely adequately investigated and police officers are often not held to account leading to almost total impunity.

Widespread corruption and disregard for due process and the rule of law continue to blight Nigeria's criminal justice system. The police continue to demand money from people to release them from detention, a practice that is illegal in Nigeria. Court processes are slow and largely distrusted and court orders are often ignored by police and security forces.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

Human rights abuses continue to be committed against people suspected of engaging in same-sex relations or for having a non-conventional gender identity. The Same Sex Marriage (Prohibition) Bill was approved by the Senate in November 2011 and the House of Representatives in May 2013. The bill imposes a 14-year prison sentence on anyone who "[enters] into a same sex marriage contract or civil union".

THE DEATH PENALTY

The death penalty remains mandatory in Nigeria's penal laws for a wide range of crimes. By the end of 2012, there were approximately 1,000 inmates on death row, including people who were juveniles at the time of committing the crime. Many were sentenced following blatantly unfair trials or after spending more than a decade in prison awaiting trial. In 2012, the Federal Government said that the moratorium on executions in place in 2011 was "voluntary". However, courts have continued to hand down death sentences.

FORCED EVICTIONS

Since 2009, Amnesty International has documented several cases of forced evictions in the three major cities of Port Harcourt, Abuja and Lagos. Large-scale evictions and demolition of the homes of thousands of people have taken place in the absence of legal and procedural safeguards, including opportunities for genuine consultation, adequate notice, access to legal remedies, and provision of adequate compensation and adequate alternative housing. Those forcibly evicted have been rendered homeless and vulnerable to other human rights violations.

In Port Harcourt over 25,000 people were forcibly evicted from the waterfront communities of Njemanze and Abonnema Wharf in August 2009 and June 2012,

respectively. In both instances, the residents did not have sufficient time to pack their belongings, but were forced to flee their homes with the few items they could carry. Some of those forcibly evicted from Abonnema Wharf had been victims of earlier forced evictions in Njemanze.

At least 12 people were shot at and seriously injured in Bundu waterfront community, Port Harcourt, in October 2009, when security forces opened fire on a crowd of people peacefully protesting against the proposed demolition of their homes.

In 2011, Amnesty International documented the forced eviction of hundreds of people from their homes in the Panteka settlement and market in Abuja. At least one person died when the Task Force on Environmental Sanitation, accompanied by armed police and soldiers, burnt down structures in Panteka.

In Lagos over 2,000 people were forcibly evicted and rendered homeless in Makoko and Badia East settlements in 2012 and 2013, respectively. A Makoko community leader was shot dead by security forces during a protest against the forced evictions.

OIL POLLUTION IN THE NIGER DELTA

Hundreds of oil spills have occurred in Nigeria since 2009, with devastating impact on the economic, social and cultural rights of people living in the Niger Delta. Oil pollution has destroyed fisheries and farm land on which people depend for their food and livelihood. The water that people use for drinking and other domestic purposes has been contaminated, with serious health risks as a consequence; however, despite these risks no health monitoring is being carried out by either the government or the oil companies.

The regulation of the oil industry in Nigeria is weak and under-resourced, as confirmed in a 2011 UN report which found that regulators were “are at the mercy of oil companies when it comes to conducting site inspections”.¹⁰ The National Oil Spill Detection and Response Agency (NOSDRA) does not have the resources to carry out independent investigations.

In August 2011, the United Nations Environment Programme (UNEP) issued a landmark report on the impacts of oil pollution in the Ogoniland region of the Niger Delta. The report - a peer reviewed, scientific study – described the oil contamination as “widespread and severely impacting [...] the environment” and stated that most of the Ogoni people “live with chronic oil pollution throughout their lives”. The main recommendation in the UNEP report – a full clean up of Ogoniland - has yet to be implemented, and the government has neither published a plan of action nor set up the Clean up Fund, as recommended by UNEP.

In December 2012, a judgment by the Economic Community of West African States (ECOWAS) Court of Justice found the Nigerian government responsible for failing to prevent and address abuses by oil companies and made it clear that the government must hold the companies and other perpetrators to account.¹¹ The Court ruled that the government's failure to enact effective laws or to establish effective institutions to regulate the activities of the companies, coupled with its failure to bring perpetrators of pollution "to book", amounted to a breach of Nigeria's international human rights obligations and commitments.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Nigeria:

The national human rights framework

- To amend the Constitution to guarantee economic, social and cultural rights as human rights and to make them enforceable in court;
- To amend Section 12 of the Constitution to allow for easy domestication of international treaties.

Enforced disappearance, extrajudicial executions and unlawful detention

- To amend Section 33(2) of the Constitution and the Police Force Order 237 to ensure that these can not be read as permitting the use of lethal force in circumstances broader than those permitted by international human rights law, including by narrowing their application to the circumstances contemplated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- To ensure that all detainees suspected of a crime are brought before a court of law as soon as possible, and in any case within 24 or 48 hours where so required by Article 35 of the Nigerian Constitution, and in all cases within no more than a few days as required under Article 9(3) of the International Covenant on Civil and Political Rights, as interpreted by the Human Rights Committee;
- To ensure that the right of detainees to communicate with and receive visits from lawyers, family members and others is respected in accordance with international human rights standards;
- To ensure that those suspected of human rights abuses that may constitute crimes under international or national law, including crimes against humanity, are brought to justice, in line with Nigeria's obligations under international human rights law;
- To enact a Coroner's law to require an investigation into every unnatural, sudden or violent death, including all deaths in custody.

Rights of lesbian, gay, bisexual, transgender and intersex people

- To refrain from signing into law the Same Sex Marriage (Prohibition) Bill and to repeal all legislation that discriminates on the basis of gender or sexual orientation.

The death penalty

- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at abolishing the death penalty;
- To establish an official moratorium on executions, binding on all levels of government and publicised in the legally appropriate manner, with a view to abolishing the death penalty; as provided by four UN General Assembly resolutions, including most recent resolution 67/176 of 20 December 2012.

Forced evictions

- To introduce legislation that explicitly prohibits forced evictions and to issue guidelines to ensure that evictions are carried out in compliance with international human rights standards, including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement;
- To adopt a federal moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international human rights standards;
- To provide effective remedies, including adequate alternative housing and compensation for any loss or damage to property for persons who have been the victims of forced eviction;
- To develop a national housing policy to protect and fulfil the right to adequate housing for all.

Oil pollution in the Niger Delta

- To take immediate and decisive action to implement the ECOWAS court decision on the environmental impact of the oil industry on human rights in the Niger Delta;
- To ensure that the National Oil Spill Detection and Response Agency is provided with the resources necessary to investigate oil spills independently of the oil companies, and to ensure that all oil spill investigation reports are made publicly available;
- To establish a Clean Up Fund, with a transparent oversight mechanism, as recommended by the United Nations Environment Programme, to support the clean up of all oil polluted areas of the Niger Delta;
- To ensure that the Petroleum Industries Bill is amended to reflect the ECOWAS court decision and in particular to ensure that this legislation includes specific protections for the rights of oil-affected communities.

ENDNOTES

¹ Report of the Working Group on the Universal Periodic Review, Nigeria, A/HRC/11/26, paragraph 103.21 (recommendations made by Belgium, Mexico and Slovakia).

² The recommendations of past Presidential Committees and working groups, including the National Working Group on Prison Reform and Decongestion, Inter-Ministerial Summit on the State of Remand Inmates in Nigeria's Prisons, Presidential Committee on Prison Reform and Rehabilitation, Presidential Commission on the Reform of the Administration of Justice, and the Committee on the Harmonization of Reports of Presidential Committees Working on Justice Sector Reform, are yet to be implemented.

³ A/HRC/11/26, paragraph 103.25 (recommendation made by the United Kingdom).

⁴ A/HRC/11/26, paragraph 103.26 (recommendations made by France and Canada).

⁵ Joint Task Force (JTF) is a combined forces group of the police, military and State Security Services.

⁶ A/HRC/11/26, paragraph 103.14 (recommendations made by Benin and Germany).

⁷ A/HRC/11/26, paragraph 4 (recommendations by Finland, New Zealand and Portugal).

⁸ Section 12 of the Constitution provides that before an international treaty can have a force of law in Nigeria it needs to be enacted by the federal legislature after ratification by a majority of 36 state houses of assembly.

⁹ The recommendations of past Presidential Committees and working groups, including the National Working Group on Prison Reform and Decongestion, Inter-Ministerial Summit on the State of Remand Inmates in Nigeria's Prisons, Presidential Committee on Prison Reform and Rehabilitation, Presidential Commission on the Reform of the Administration of Justice, and the Committee on the Harmonization of Reports of Presidential Committees Working on Justice Sector Reform, are yet to be implemented.

¹⁰ UNEP, Environmental Impact Study of Ogoniland, August 2011.

¹¹ The ECOWAS decision ordered Nigeria to: i. Take all effective measures, within the shortest possible time, to ensure restoration of the environment of the Niger Delta; ii. Take all measures that are necessary to prevent the occurrence of damage to the environment; iii. Take all measures to hold the perpetrators of the environmental damage accountable.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Nigeria: No justice for the dead (AFR 44/001/2013)

Nigeria: Trapped in the cycle of violence (AFR 44/043/2012)

Nigeria: Oil spill investigations in the Niger Delta: Amnesty International memorandum (AFR 44/042/2012)

Nigeria: Another Bodo oil spill: Another flawed oil spill investigation in the Niger Delta (AFR 44/037/2012)

Nigeria: Forced eviction of Abonnema Wharf waterfront: "Pack and go!" (AFR 44/034/2012)

Nigeria: The true 'tragedy': Delays and failures in tackling oil spills in the Niger Delta (AFR 44/018/2011)

Nigeria: 'Same Gender Marriage (Prohibition) Bill, 2011' violates Constitution (AFR 44/023/2011)

Nigeria: 'Just move them': Forced evictions in Port Harcourt, Nigeria (AFR 44/017/2010)

Nigeria: Port Harcourt demolitions: Excessive use of force against demonstrators (AFR 44/022/2010)

Nigeria: Killing at will: Extrajudicial executions and other unlawful killings by the police in Nigeria (AFR 44/038/2009)

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/nigeria>