

NIGERIA



HUMAN RIGHTS AGENDA 2011-2015

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Cover image: Nigerians proudly show their voter's cards during the Nigerian National Assembly election, April 2011.
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Electors wait in line to vote in the Nigerian National Assembly election, April 2011.

INTRODUCTION

Amnesty International urges members of the Nigerian National Assembly, the highest law making body in the country, to use their election to public office to improve Nigeria's national human rights record and to demonstrate Nigeria's strong commitment to promoting and protecting human rights within Nigeria and beyond.

Amnesty International calls on the National Assembly to take steps to make human rights a reality for all Nigerians. These steps should include measures to:

1. Reform the police to stop extrajudicial executions, torture and enforced disappearances.
2. Reform the justice sector to improve access to justice.
3. Impose an official moratorium on executions, with a view to ultimately abolishing the death penalty; and commute all death sentences.
4. Protect the right to life and security of persons and ensure accountability for human rights violations and abuses.
5. End forced evictions and realize the right to adequate housing.
6. Protect human rights in the Niger Delta and ensure stronger regulation of the oil industry, including effective enforcement and appropriate sanctions.
7. Eliminate discrimination against women, end violence against women.
8. Protect the rights of the child.
9. Protect freedom of expression, association and peaceful assembly.
10. Amend legislation to prohibit and eliminate prejudicial treatment on the basis of sexual orientation, consensual sexual relations or gender identity.

NIGERIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Nigeria has international legal obligations to respect, protect and fulfil human rights for everyone within its jurisdiction, without discrimination on the basis of gender, ethnicity, social origin, political opinion or other prohibited grounds. The human rights that Nigeria is obliged to protect include the right to life, the right not to be subjected to torture or to other cruel, inhuman or degrading treatment or punishment, the right to a fair trial, the right to freedom of expression, including freedom to seek, receive and impart information and ideas, and the right to an adequate standard of living.

Since independence, Nigeria has explicitly accepted human rights obligations through the international and regional human rights treaties which it has ratified. In 2009, Nigeria became the second country in Africa to deposit a National Plan of Action at the UN Human Rights Council.

Nigeria continues to play an important role in international and African affairs. The Nigerian government played a critical role in ending apartheid and defending the human rights of oppressed peoples in southern Africa; and in the peaceful resolution of conflict through the offices of the Organization of African Unity.¹ Nigeria played an important role in the establishment of the African Union (AU) and its various organs; and continues to play an important role in peace-keeping missions. Currently, Nigeria is a non permanent member of the United Nations (UN) Security Council until December 2011. Nigeria has also been elected to a three-year term to the AU Peace and Security Council, a seat which Nigeria assumed on 1 April 2010; Nigeria's representative to the UN Human Rights Council was President of the Council between 2008 and 2009; and Nigeria is currently chairing the Africa Group at the UN Human Rights Council.

Nigeria is one of the leading contenders to secure a seat representing the Africa region in the event that the UN Security Council is reformed.

INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Nigeria became a member of the UN in 1960 and is obliged to comply with the Universal Declaration of Human Rights (UDHR), which sets out the fundamental human rights to be universally respected, including the right to life, liberty and security, freedom from torture and other ill-treatment, and fair trial rights.²

Nigeria is a state party to nine major international human rights treaties, but has not yet ratified all optional protocols to these treaties. These treaties are legally binding on Nigeria, imposing obligations to respect, protect and fulfil human rights. Nigeria has domesticated none of the treaties. Even where the treaties are yet to be domesticated, they are binding on Nigeria.

■ **International Convention on the Elimination of All forms of Racial Discrimination (CERD):** CERD aims to eliminate discrimination based on race, colour, descent, or national or ethnic origin and to prevent and combat racism.³ Nigeria acceded to CERD on 4 January 1969; CERD has not been domesticated yet.

■ **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):** CEDAW guarantees the right of all women to be free from discrimination. By ratifying CEDAW, Nigeria agreed to eliminate discrimination against women including by adopting legislation prohibiting such discrimination and amending discriminatory legislation. Nigeria must ensure the full enjoyment by women of all human rights on an equal basis with men. Nigeria must take effective action to prevent violations of these rights and freedoms.⁴ Nigeria ratified CEDAW on 13 June 1985 and its Optional Protocol on 22 November 2004. Neither has been domesticated yet.

■ **Convention on the Rights of the Child (CRC):** the CRC focuses on protection of the human rights of children under the age of 18. The CRC includes a wide range of rights, such as the right to life, liberty, freedom of expression, association and peaceful assembly, the right of access to health care services, and the right to an adequate standard of living and to education.⁵ Nigeria ratified the CRC on 19 April 1991; it is yet to be domesticated. In 2003 the Child's Rights Act (2003) was adopted. However, the Act is yet to be enacted in

12 of the 36 states of the Federation. Nigeria signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 8 September 2000 and ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 27 October 2010.

■ **International Covenant on Civil and Political Rights (ICCPR):** as a state party to the ICCPR, Nigeria must guarantee civil and political rights, including the rights to life, liberty and security of person, the right to a fair trial, the rights to freedom of association, expression and of peaceful assembly, freedom from torture, and the rights to freedom of thought, conscience and religion. The ICCPR also guarantees equality before the law and the right without any discrimination to equal protection of the law.⁶ Nigeria acceded to the ICCPR on 29 October 1993. Nigeria has not yet ratified the first Optional Protocol (on establishing an individual complaints mechanism) and Second Optional Protocol (on abolition of the death penalty). The ICCPR is yet to be domesticated.

■ **International Covenant on Economic, Social and Cultural Rights (ICESCR):** the ICESCR requires Nigeria to protect economic, social and cultural rights. It recognizes the rights to work, to social security, to an adequate standard of living, to health, to water and food, and to education.⁷ Nigeria acceded to the ICESCR on 29 October 1993; it has not yet been domesticated. Nigeria has not yet ratified the Optional Protocol.

■ **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):** Nigeria, as a state party to the CAT and its Optional Protocol, must prevent torture, criminalize it, and where there is reasonable ground to believe torture took place, investigate and bring to justice those responsible. Victims of torture are entitled to redress, and statements obtained by torture may not be used as evidence in court. The Optional Protocol requires the establishment of an independent review body to visit places of detention, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.⁸ The Optional Protocol to CAT established an independent committee (the UN Subcommittee on Prevention of Torture) which has unrestricted access to places of detention. Nigeria must also establish an independent national body for the prevention of torture and other ill-treatment.

Nigeria ratified the CAT on 28 July 2001 and acceded to the Optional Protocol on 27 August 2009. Neither has yet been domesticated.

■ **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;** with its accession, Nigeria agreed to respect and to ensure the human rights of all migrant workers and members of their families without discrimination, including the right to life, freedom from torture, freedom of thought, conscience and religion, right to liberty and security of person and the right to equality before the law.⁹ Nigeria acceded to the Convention on 27 July 2009. The Convention has not yet been domesticated.

■ **International Convention for the Protection of All Persons from Enforced Disappearance:** this Convention prohibits enforced disappearances and requires the Nigerian authorities to ensure that enforced disappearance constitutes an offence under its criminal law, punishable by appropriate penalties which take into account its extreme seriousness, and to investigate all cases of disappearances and bring those responsible to justice.¹⁰ Nigeria acceded to the Convention on 27 July 2009; the Convention is yet to be domesticated.

■ **Convention on the Rights of Persons with Disabilities:** the goal of this Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Countries that ratify this Convention guarantee equal rights for people with disabilities and commit to abolishing laws and policies that constitute discrimination.¹¹ Nigeria ratified the Convention and its Optional Protocol on 24 September 2010. They are yet to be domesticated.

■ Nigeria has also ratified the Convention on the Prevention and Punishment of the Crime of Genocide, on 27 July 2009; the Convention is yet to be domesticated.

In addition, several other comprehensive human rights instruments set standards that Nigeria should abide by, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN

Standard Minimum Rules for the Treatment of Prisoners, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and the UN Basic principles and guidelines on development-based evictions and displacement.

The obligations of states under international human rights law have three main aspects:

- states must respect human rights by ensuring that laws, official bodies and state agents and officials do not violate human rights;
- states must exercise due diligence to protect individuals from human rights abuses by non-state actors by taking reasonable steps to prevent such abuses and, if serious abuses occur, by ensuring that perpetrators are brought to justice and that victims are able to obtain redress;
- states must fulfil human rights by taking all necessary measures to ensure that all individuals have opportunities to exercise those rights.

The concept of due diligence describes the level of action and effort which a state must take in order to comply with its obligations to prevent and, where appropriate, investigate and punish acts which impair any of the rights recognized under international human rights law, and to restore the right violated and ensure that those whose rights have been violated obtain redress and reparation.

The UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor states' compliance with their obligations under that treaty, has elaborated on these various inter-related levels of states' obligations: "the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities... States are also reminded of the interrelationship between the positive obligations imposed under article 2 of the ICCPR and the need to provide effective remedies in the event of a breach."¹²

The Human Rights Committee has also stressed that "The obligations of the Covenant... are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party." It has also drawn attention to Article 50 of the ICCPR which explicitly states that its provisions "extend to all parts of federal States without any limitations or exceptions."¹³

UN HUMAN RIGHTS COUNCIL, SPECIAL PROCEDURES AND UNIVERSAL PERIODIC REVIEW WORKING GROUP

The UN Human Rights Council was set up in 2006 to strengthen human rights protection and promotion worldwide.¹⁴ As one of its 47 members, Nigeria has shown its commitment to the Human Rights Council. The Human Rights Council works closely with the Special Procedures, a mechanism to address specific country and thematic concerns. There are Special Rapporteurs and independent experts, including on adequate housing, extrajudicial, summary or arbitrary executions, on torture and on violence against women. They can request an invitation to visit a state party, investigate the human rights situation and present recommendations to the government.

Recent reports on Nigeria have been produced by the Special Rapporteurs on torture, on extrajudicial, summary or arbitrary executions and on freedom of religion or belief. Visits by the Special Rapporteurs on the independence of judges and lawyers, on violence against women, on internally displaced persons and on trafficking in persons have been agreed in principle. The Nigerian government is yet to accept requests for visits from the Special Rapporteurs on housing rights, minority issues, and the sale of children, and the independent expert on access to safe drinking water and sanitation.¹⁵

The Human Rights Council set up the Universal Periodic Review (UPR) in 2006, the first-ever UN mechanism to look at the human rights records of all countries. In February 2009, Nigeria's human rights situation was examined by the UPR Working Group. Nigeria accepted 30 of the 32 recommendations made by the UPR Working Group and pledged to implement these. In 2013, Nigeria will be up for the second review by the UPR Working Group.

REGIONAL HUMAN RIGHTS OBLIGATIONS

In addition to Nigeria's international obligations, Nigeria has obligations at the regional level. The African Commission on Human and Peoples' Rights is responsible for the protection and promotion of human rights in Africa and the interpretation of the African Charter on Human and Peoples' Rights.

■ **African Charter on Human and Peoples' Rights (African Charter):** the African Charter sets out fundamental rights and freedoms, including the rights to life, dignity and liberty, fair trial rights, freedom of expression, association, assembly and movement, the right to peace and security.¹⁶ Nigeria ratified the African Charter on 22 June 1983 and domesticated it in 1983 in the African Charter on Human and Peoples' Rights (ratification and enforcement) Act Cap 10 Laws of the Federation of Nigeria.

■ **African Charter on the Rights and Welfare of the Child:** this charter guarantees the promotion and protection of the rights and welfare of the child. State parties are obliged to guarantee the child's rights to life, to health, to education, to freedom of expression, association and assembly. Children must be protected from torture and other ill-treatment. States must also ensure fair trial guarantees. Nigeria ratified this charter on 23 July 2001; it is yet to be domesticated. In 2003 the Child's Rights Act (2003) was adopted. However, it is yet to be enacted in 12 of the 36 states of the Federation.

■ **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:** state parties to the Protocol are required to eliminate discrimination against women, and to guarantee the rights to life, integrity and security of the person, and the rights to dignity, to health, to adequate housing and to clean drinking water and food. State parties are to eliminate harmful practices and guarantee equality before the law.¹⁷ The Protocol was ratified by Nigeria in 2004; it was not domesticated.

1 See, Amnesty International Report 1977, (Index: POL 10/006/1977).

2 See: <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>

3 See: <http://www2.ohchr.org/english/law/cerd.htm>

4 See: <http://www2.ohchr.org/english/law/cedaw.htm>

5 See: <http://www2.ohchr.org/english/law/crc.htm>

6 See: <http://www2.ohchr.org/english/law/ccpr.htm>

7 See: <http://www2.ohchr.org/english/law/cescr.htm>

8 See: <http://www2.ohchr.org/english/law/cat.htm>

9 See: <http://www2.ohchr.org/english/law/cmw.htm>

10 See: <http://www2.ohchr.org/english/law/disappearance-convention.htm>

11 See <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>

12 Human Rights Committee, General Comment 31: The nature of the general legal obligation imposed on states parties to the Covenant, para 8, www.ohchr.org

13 General Comment 31, para 4.

14 The Human Rights Council replaced the Committee on Human Rights.

15 See: <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#nigeria>

16 See: http://www.achpr.org/english/_info/charter_en.html

17 See: http://www.achpr.org/english/_info/women_en.html



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Nigerian police in action, Abuja,
November 2006.

ONE POLICE REFORMS

POLICE REFORMS TO STOP EXTRAJUDICIAL EXECUTIONS,
ENFORCED DISAPPEARANCES AND TORTURE AND OTHER
ILL-TREATMENT

- 1.1 TORTURED AND KILLED BY THE POLICE
- 1.2 CORONER'S INQUESTS: AN OPPORTUNITY FOR JUSTICE
- 1.3 NIGERIA POLICE FORCE STRUGGLES TO FULFIL DUTIES
- 1.4 POLICE REFORMS NOT IMPLEMENTED
- 1.5 NATIONAL LAWS FAIL TO REFLECT INTERNATIONAL LAW
- 1.6 INTERNATIONAL LAW AND STANDARDS
- 1.7 RECOMMENDATIONS

“In the course of their duties, some Police officers harass and intimidate members of the public. They also go further to extort money from accused persons and complainants before they serve them. Those who do not cooperate usually suffer unlawful arrest and detention.”

Presidential Committee on the Reform of the Nigeria Police Force, 2008¹⁸

1.1 TORTURED AND KILLED BY THE POLICE

Nigeria's police have been responsible for large numbers of extrajudicial executions, deaths in custody and cases of torture and other ill-treatment of alleged criminals in custody.

The police kill hundreds of people every year with impunity. The Legal Defence and Assistance Project (LEDAP), a Nigerian NGO, estimated that in 2009 at least 1,049 people had been killed by the police.

Many are unlawfully killed before or during arrest in the street or at roadblocks. Others are tortured to death in police detention. A large proportion of these unlawful killings may constitute extrajudicial executions. In other cases, people disappear from police custody. Chika Ibeku disappeared from police custody in April 2009; the Nigerian Bar Association filed habeas corpus proceedings in May 2009. To date the police have not produced the young man, despite a court order in November 2010.

The families of the victims rarely receive justice and are often left with no answers. Few police officers are held accountable. In most cases there is no investigation into deaths in custody, extrajudicial executions or enforced disappearances.

Amnesty International receives consistent reports that police routinely torture suspects in order to extract information. Moreover, in many cases the confession extracted by torture is used as evidence in court, contrary to national and international law.¹⁹

To prevent human rights violations in police custody, a suspect should be brought promptly before a court and have the opportunity to challenge the lawfulness of their detention. However, the police do not bring suspects promptly before a judge or judicial officer. Suspects are often ill-treated in police custody, many are denied their right to contact their families or a lawyer, and in some police stations, suspects do not receive any food.

1.2 CORONER'S INQUESTS: AN OPPORTUNITY FOR JUSTICE

Police officers are required to keep records of all unnatural deaths in custody. Records must include the name of the deceased, date and cause of death, and the outcome of the Coroner's inquest.²⁰ Coroner's Laws, which are in force in most Nigerian states, oblige the state authorities to investigate and determine the circumstances of all unnatural, sudden or violent deaths through an open, public inquiry.²¹ Section 6 of the law requires a District Coroner to investigate every death in custody.²²

Amnesty International research shows that inquests occasionally take place in Lagos State, where the Coroner's Law was amended in May 2007.²³ They rarely happen elsewhere. Moreover, the police often do not accept Coroners' findings. In many cases, the police simply leave bodies at the mortuary, where no autopsies are performed or made available to the family of the deceased and thus no investigation takes place.

1.3 NIGERIA POLICE FORCE STRUGGLES TO FULFIL DUTIES

The Nigeria Police Force (NPF) has limited capacity to gather intelligence and undertake scientific investigations. Police stations lack the resources to investigate complex crimes that require specialized skills, and although all police stations are obliged to keep records, many do not adequately document their work. There is no database for fingerprints, no systematic forensic investigation methodology and insufficient budget for investigations. There are only two forensic laboratory facilities in the country and few forensic staff.

Without sufficient funding, the NPF is struggling to fulfil its duties. Most police stations are badly maintained and poorly equipped. Officers do not have enough basic equipment such as handcuffs. In many cases, the police ask the public to pay for expenses incurred during an investigation, including the cost of paper, pens and petrol. Without adequate databases and records, the police tend to rely on confessions, which form the basis for an estimated 60 per cent of prosecutions.²⁴

Despite significant salary increases in 2008, wages are still very low.

'PAY AS YOU GO': CORRUPTION IN THE NIGERIA POLICE FORCE

Corruption within the NPF is rampant. Commercial drivers pay to go through police roadblocks; suspects pay to be released from custody; and detainees pay to improve the conditions of their detention.

In 2008, the Presidential Committee acknowledged the severity of the problem. "In the course of their duties, some Police officers harass and intimidate members of the public. They also go further to extort money from accused persons and complainants before they serve them. Those who do not cooperate usually suffer unlawful arrest and detention."

Amnesty International frequently receives reports that some police officers arbitrarily arrest groups of people and then ask them to pay up to N10,000 (US\$65) to be released. Those who do not have the money risk being labelled "armed robbers". Without money, suspects are less likely to be given access to a lawyer, to family members and to receive medical treatment.

Police officers also bribe each other. Some junior police officers reportedly said that they had to pay their superiors every day in order to avoid the risk of being transferred or even being made redundant. The 2008 Presidential Committee noted: "The taking of bribes and their passage up in the rank structure has almost become institutionalized."

Policing in Nigeria is dangerous work. Police staff do not have the tools or the training to deal with the high crime rate in the country.²⁵ Around 110 police officers are killed in shoot-outs with criminals every year.

1.4 POLICE REFORMS NOT IMPLEMENTED

Various governments have made attempts to reform the police; in 2006 and 2008 two Presidential Committees made recommendations on how to reform the NPF.²⁶ The 2008 Presidential Committee concluded that "various efforts made by successive governments to find out the causes of the inefficiencies of the Force have not been successful because the same governments failed to implement the recommendations of their own Panels and Committees."²⁷

The Federal government adopted a White Paper in the 2008 in which it accepted the recommendation to set up an Implementation Task Force to implement all recommendations and prioritize and allocate the funds needed. President Goodluck Jonathan reiterated his commitment to police reform in October 2010, saying that the government had earmarked N71billion. He asked the NPF to double their efforts "by demonstrating high level of integrity and commitment in the discharge of their duties."

A review of the Police Act (1990) began in 2004, but the draft bill has been pending since October 2006. Laws, regulations and codes of conduct to protect human rights are not enforced.

In March 2010, the Minister of Justice and Attorney General of the Federation established a National Committee on Torture "to investigate allegations of torture, extra-judicial executions and other unlawful killings." He also said the Federal Government would criminalize torture and extrajudicial executions. The Minister of Justice and Attorney General of the Federation tasked the National Committee on Torture with investigating reports of extrajudicial executions. The National Committee on Torture is yet to be given any budget for their tasks.



1.5 NATIONAL LAWS FAIL TO REFLECT INTERNATIONAL LAW

The Constitution of the Federal Republic of Nigeria (1999) recognizes the right to life (section 33) and personal liberty (section 35), freedom from torture (34.1.a), and the presumption of innocence (section 36.5). While the Constitution prohibits extrajudicial executions, other unlawful killings and torture, they are not criminalized.

The Police Act and regulations (1990) describe the function, structure and operation of the NPF. The Act was originally drafted in 1943, and was last reviewed in 1967. The President has the power to make regulations and standing orders, such as the Police Force Orders.

Nigeria's Constitution and the Nigeria Police Force Order 237 (Rules for guidance in use of firearms by the police) provide much broader grounds for the use of lethal force than is permissible under international law and standards, 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 7 years or more". Escaping custody or resisting arrest is punishable with seven years' imprisonment under Nigerian legislation. As such, the Constitution and Police Force Order 237 allow police officers to shoot with impunity anyone who flees.

Section 6 of Force Order 237 instructs police officers that in situations of "riot", "[a]ny ring-leaders in the forefront of the mob should be singled out and fired on". Intentional use of lethal force against particular individuals in a public order situation, based on suspicion of their role in organizing or co-ordinating public disorder, violates the right to life as guaranteed by Nigeria's Constitution, the ICCPR and the African Charter.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions urged Nigeria to amend Force Order 237 in his report in January 2006: "These rules practically provide the police carte blanche to shoot and kill at will."

1.6 INTERNATIONAL LAW AND STANDARDS

Nigeria has ratified several international and regional human rights instruments that contain human rights standards relevant to policing. These include the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture (CAT) and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance and the African Charter on Human and Peoples' Rights. In addition to the broad provisions of general human rights treaties, the UN and other intergovernmental organizations have developed comprehensive standards including on the use of force, torture and extrajudicial executions. Such standards include the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which prohibits all extra-legal, arbitrary and summary executions and requires the criminalization of such executions. It also requires the prevention and investigation of such executions and prosecution of perpetrators.

- The ICCPR provides that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life" (Article 6.1). Further, as provided by Article 4 of the ICCPR, states cannot derogate from their obligations under this provision, even "in time of public emergency which threatens the life of the nation". Every person whose rights or freedoms are violated has the right to a remedy (Article 2.3.a).
- The CAT explicitly requires Nigeria to prevent acts of torture or other ill-treatment by state agents (article 2); to ensure that there is a prompt and impartial investigation into such acts (article 12); and specifically, to ensure that acts of torture or complicity or participation in torture are punishable by criminal penalties which take into account their grave nature (article 4). The Optional Protocol requires that Nigeria establishes an independent national body for the prevention of torture and other ill-treatment (article 3). This body should have full and open access to all places of detention (article 4).
- The International Convention for the Protection of All Persons from Enforced Disappearance prohibits enforced disappearances and obliges the Nigerian authorities to ensure that enforced disappearances



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Nigerian police stand guard, April 2007.

constitute an offence under its criminal law (article 4), punishable by appropriate penalties which take into account its extreme seriousness (article 7), and to

investigate all cases of disappearances and bring those responsible to justice (article 12). As a state party, Nigeria must take measures to hold responsible persons who commit, order, solicit, or induce an enforced disappearance; people who attempt to do so; and people who are accomplice to or participate in enforced disappearance. In addition, superiors are responsible if they knew or could have known that officers under their authority were committing an enforced disappearance; or if they failed to take measures to prevent an enforced disappearance or report to competent authorities (article 6).

- The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions prohibit all extra-legal, arbitrary and summary executions and requires the criminalization of such executions. They also require the prevention and investigation of such executions and prosecution of perpetrators.²⁸
- The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials include the obligation to use firearms only as a last resort when there is an imminent threat to life.²⁹
- The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law include the rights to remedy, reparation and access to justice.
- The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment require that all complaints of torture are investigated; that victims, witnesses and those conducting the investigation receive protection; that suspected perpetrators are suspended pending investigation; and that reports are made public.³⁰



- The African Charter on Human and Peoples' Rights, ratified in June 1983, also includes the right to life (article 4). In addition, the Charter prohibits torture and other ill-treatment (article 5) and provides the right to liberty and security of person (article 6).

1.7 RECOMMENDATIONS

Amnesty International calls on the National Assembly to:

- Amend section 33(2)(b) of the Nigerian Constitution which allows the use of lethal force on grounds broader than those permitted by international human rights law.
- Domesticate the International Covenant on Civil and Political Rights.
- Domesticate the International Convention for the Protection of All Persons from Enforced Disappearance.
- Adopt a motion to urge the President to amend the law and regulations governing the use of force by police, including Sections 3(d) and 3(e) and 6 of Force Order 237, which allow police officers to shoot rioters and suspects who attempt to escape or avoid arrest. All law and regulations, including the Force Orders, must be in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
- Start a review of the Police Act and draft an amendment bill to ensure the Police Act is in line with Nigeria's international human rights obligations. The treatment of detainees must be in conformity with the Nigerian Constitution as well as with international human rights law and standards, including the provisions of the ICCPR, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners.
- Draft and adopt a bill for a Coroner's law to require an investigation into every unnatural, sudden or violent death including all deaths in custody.
- Draft and adopt a bill for a law criminalizing torture, extrajudicial executions and enforced disappearances, punishable by sanctions commensurate with the gravity of the practice and in line with Nigeria's obligations under the Convention against Torture and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, and without recourse to the death penalty.
- Draft and adopt a bill for a law to set up an effective and independent complaints system for extrajudicial executions, enforced disappearances, torture and other ill-treatment.
- Amend the Tribunals of inquiry act (cap. 447 I.f.n. 1990 act cap. T21 I.f.n. 2004) and ensure that it is in line with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Members of a Commission of inquiry should be impartial, competent and independent of any institution, agency or person that may be the subject of the inquiry. The Commission should have access to all information necessary and make public its report.
- Adopt a motion urging the Minister of Justice and Attorney General of the Federation to prioritize the proposed reforms of the criminal justice system and bring them into line with Nigeria's international obligations.
- Invite the UN Subcommittee on Prevention of Torture to advise and assist the Nigerian government in strengthening the National Committee on Torture.
- Appoint a commission to investigate extrajudicial executions, enforced disappearances and torture by the police and make public its findings.
- Request the President to publish the White Paper on police reform.
- Ensure adequate systems and mechanisms are put in place alongside training and regulations on policing and human rights to make sure that police officers apply the relevant UN standards in their daily work.
- Make adequate resources available to the Nigeria Police Force, including funding, to ensure the police can carry out their duty in line with international human rights law and standards.
- Ensure that the recommendations of the UN Special Rapporteur on extrajudicial, summary or arbitrary

executions (published in his report of January 2006) and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (published in his report of November 2007) are implemented.

- Adopt a motion calling on the President to sign and accede to the first and second Optional Protocol to the International Covenant on Civil and Political Rights.
- Adopt a motion to urge the President to ratify the Protocol on the Statute of the African Court of Justice and Human Rights, and make a declaration that would allow direct access to the court by individuals and NGOs.

18 Presidential Committee, 2008, para 5.10.1

19 CAT, article 15

20 Police Act, Form 3, Sudden and unnatural deaths register.

21 In the Southwest for example, the Coroner's Laws are based on the Laws of the Western Region of Nigeria, 1959 Cap 27; in the North, it is based on the Coroner's Law, Cap 27, Laws of Northern Nigeria, 1963.

22 Coroner's Law, CAP 36, The Laws of Oyo State of Nigeria, 2000.

23 The law now requires that all cases of death in custody should be reported by the police, and investigated by a medical examiner. After the post mortem is concluded, the body must be released for burial.

24 Civil And Political Rights, Including The Question Of Disappearances And Summary Executions, Report of the Special Rapporteur, Philip Alston, UN Doc: E/CN.4/2006/53/Add.4, January 2006.

25 The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require that law enforcement officials

are provided with "various types of weapons and ammunition that would allow for a differentiated use of force and firearms", including incapacitating weapons to reduce the necessary use of lethal force, and protective equipment such as shields, helmets, bullet-proof vests and vehicles, both to protect and to decrease the need to use weapons of any kind.

26 The Presidential Committee on Police Reform published its report (Danmadami Committee's Report) in 2006; the Presidential Committee on Reforms of the Nigeria Police Force published its report, the Yusuf Report, in 2008, following which the government issued a White Paper.

27 Presidential Committee on the Reform of the Nigeria Police Force, 2008, summary 2.0

28 <http://www2.ohchr.org/english/law/executions.htm>

29 <http://www2.ohchr.org/english/law/firearms.htm>

30 <http://www2.ohchr.org/english/law/investigation.htm>





Inmates awaiting trial in a Nigerian prison, 2007.

TWO

JUSTICE SECTOR REFORMS

JUSTICE SECTOR REFORMS TO GUARANTEE A FAIR TRIAL

2.1 JUSTICE SYSTEM IN URGENT NEED OF REFORM

2.2 POOR PEOPLE AT RISK OF UNFAIR TRIALS

2.3 PRISONS STRUGGLING TO MEET UN STANDARDS

2.4 GOVERNMENT RECOMMENDATIONS NOT IMPLEMENTED

2.5 NATIONAL LEGISLATION NEEDS AMENDMENT

2.6 INTERNATIONAL LAW AND STANDARDS

2.7 RECOMMENDATIONS

“Limited legal protection, unequal access to justice perpetuate a situation in which the poor and other vulnerable groups are highly susceptible to arrest and subsequent imprisonment... this phenomenon, the criminalisation of poverty, should have no place in the administration of justice in Nigeria.”

Presidential Commission on Reform of the Administration of Justice in Nigeria, 2006

2.1 JUSTICE SYSTEM IN URGENT NEED OF REFORM

Nigeria has a weak criminal justice system. It is under-resourced, blighted by corruption and struggles to earn the trust of the population. The police resort too easily to the use of lethal force. Investigations into crimes, if they occur, are often cursory and not intelligence-led. The security forces often resort to dragnet arrests, rather than arresting people on the basis of a reasonable suspicion that they committed an offence. Suspects are regularly detained in cells that violate their right not to be subjected to inhuman and degrading treatment. Court processes are slow, with the result that most detainees, especially the poor, are kept in pre-trial detention for many years.³¹

Human rights violations are prevalent in Nigeria's justice system. Arbitrary arrest and detention, torture and failure to hold trials within a reasonable time are features of many inmates' experience. Seven out of ten people held behind bars in Nigeria's prisons have not been convicted of any offence. They are waiting, in appalling conditions, to be tried. Most wait two, three or four years, and some more than seven, with no idea how long they will be held.

2.2 POOR PEOPLE AT RISK OF UNFAIR TRIALS

The majority of prisoners are languishing in prison because they are too poor to afford a lawyer and Nigeria's criminal justice system is too broken to help them. According to Nigeria's Ministry of Interior, the total prison population is 46,000, of whom some 30,000 are awaiting trial. Few can afford a lawyer and the government-funded Legal Aid Council is unable to provide assistance for everyone who needs it. The Legal Aid Council lacks both the capacity and the resources to fulfil its constitutional task. It has approximately 100 lawyers for the whole country. Its scope is limited to a number of specific crimes and it does not cover (armed) robbery, the crime most people awaiting trial are suspected of.

Many convicted prisoners in Nigerian jails did not have a fair trial. For example, Patrick Obinna Okoroafor continues to be held in Aba prison, Abia State, despite a High Court judgement on 18 October 2001 which pronounced his death sentence to be illegal, null and void. He was only 16 when he was sentenced to death by a Robbery and Firearms Tribunal in Imo State on 30 May 1997. He did not have the right to appeal and said he was tortured while in police detention. His co-defendants were all executed in 1997.

The use of holding charges to detain suspects for protracted periods is widespread. Over the years, the Nigerian police have systematically sent people suspected of capital offences, such as armed robbery or murder, to a Magistrate Court instead of following the statutory procedure of sending the case to the prosecutor of the Ministry of Justice for a decision about whether or not to take the case to the High Court. Magistrates do not have jurisdiction over capital offences, nor can they grant bail in such cases. They usually remand suspects to prison pending a police investigation. In many cases, this takes several years.

Many court cases are repeatedly adjourned. Witnesses often fail to appear because police lack the funds to bring investigating police officers or witnesses to court. Some judges or magistrates even pay the costs of fuel to ensure that police officers or witnesses turn up in court. Inmates with means may pay for these costs. Those who cannot afford to pay remain in prison untried and without remedy.

Amnesty International's research shows that the judiciary, police and prisons breach Nigeria's Constitution. The Nigerian Constitution guarantees the right to be free from torture (section 34(1)a), the right to liberty (Section 35(1)) and the right to be brought before a court of law within a reasonable time. If there is a court of competent jurisdiction within 40km, a reasonable time is defined as one day; in all other cases "reasonable" is considered to be two days or longer, depending on the distances and circumstances. In capital cases, suspects may be detained by the police for longer than 48 hours before being brought before a court of law (Section 35(7)). However, defendants must still be brought before a court within a reasonable time. Section 36 guarantees the right to a fair trial, including the right to be presumed innocent until proved guilty (36(5)).

Section 28 of the Evidence Act, Laws of the Federal Republic of Nigeria, is clear on the prohibition of using information extracted from the suspect by means of threats, promises or force, stating: "A confession made by

an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise...”

2.3 PRISONS STRUGGLING TO MEET UN STANDARDS

Four out of every five Nigerian prisons were built before 1950. Many are in need of renovation: the infrastructure is old, many buildings can no longer be used, ceilings in others have collapsed, the buildings in use as workshops are inadequate, and sanitary facilities have broken down. Many prisoners have no beds but sleep on the floor. Overcrowding is a serious problem. Disease is widespread. In many prisons, juvenile inmates share large dormitories with adults.

Prison staff in Nigeria operate in difficult circumstances, working long hours for low wages under stress because there is a high ratio of prisoners to security staff. Insufficient staffing creates obvious security risks, and efforts to manage those risks can result in cruel detention practices such as limiting the time prisoners spent out of their cells. In some prisons, those who are awaiting trial are let out of their cells at intervals ranging from every other day to once a week or less. In some prisons, as a result of staff shortages, inmates are relied on to govern themselves.

2.4 GOVERNMENT RECOMMENDATIONS NOT IMPLEMENTED

The Nigerian government has frequently expressed willingness to improve prison conditions and access to justice for those in pre-trial detention. In the past 10 years, at least five Presidential Committees and working groups have been set up to make recommendations on reforming the criminal justice system.³² However, recommendations made by these study groups, and by national and international organizations, have failed to lead to any action by the government.

In 2008, the Federal Ministry of Justice said it had arranged for lawyers to take up the cases of prisoners without legal representation. However, the impact of the scheme is not evident. Moreover, the scheme did not address the causes of delays in the criminal justice system.

2.5 NATIONAL LEGISLATION NEEDS AMENDMENT

The Nigerian Constitution (Section 35) guarantees the right to be brought before a court of law within a reasonable time. If there is a court of competent jurisdiction within 40km, a reasonable time is defined as one day; in all other cases “reasonable” is considered to be two days or longer, depending on the distances and circumstances. Contrary to international human rights law and standards, subsection 7 states that this right is not applicable for “a person arrested or detained upon reasonable suspicion of having committed a capital offence”.

The Police Act (1990) and regulations describe the function, structure and operation of the NPF.

In 2006 a Legal Aid Act Amendment Bill was drafted to empower the Legal Aid Council to review cases of prisoners awaiting trial and to liaise with all stakeholders in the criminal justice system.³³ The bill was finally signed into law in June 2010.

The Prison Act (CAP. 366 LFN 1990) and regulations were last reviewed in 1972. Many sections are not in line with international human rights laws and standards. A draft prison bill was presented to the National Assembly in 2004. This bill emphasized the rights of prisoners and aimed at providing education and training for all prison inmates. However, this bill has still not been passed into law.

There are several other criminal justice sector bills pending, including the Administration of Criminal Justice Bill, designed to harmonize and consolidate criminal procedure laws, reduce delay and provide better treatment for accused persons; the Legal Education (Amendment) Bill designed to overhaul and modernize the legal training system; the Victims of Crime Remedies Bill; and the Evidence Act (Reform) Draft Bill.



The National Human Rights Commission Act (2010) gives the National Human Rights Commission the power to investigate human rights violations and visit police stations and other places of detention.

2.6 INTERNATIONAL LAW AND STANDARDS

Nigeria's human rights obligations extend to those who are in its prisons and detention facilities. Being deprived of one's liberty does not mean forfeiting other human rights.

- The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to liberty, freedom from arbitrary arrest or detention and the right to be brought before a judge promptly (Article 9) and the right to a fair trial (Article 14), including the right to be presumed innocent until proved guilty. These legal provisions should be enforced to prevent arbitrary arrests and detention, and to safeguard the right to liberty. They enable the judge or judicial officer to assess whether an arrest is lawful and if pre-trial detention is necessary, as well as providing an opportunity to investigate whether torture has been used, and find out if the suspect has a lawyer. For the suspect, this is the first opportunity to challenge the lawfulness of the detention, which is an ongoing right: according to the ICCPR, anyone deprived of their liberty should have their case reviewed by a court or other authority at reasonable intervals. The judge is tasked with preventing violations of the fundamental rights of the suspect, including torture, ill-treatment and arbitrary arrest.
- For prisoners, as for everyone, the right to life and the prohibition of torture and ill-treatment must be respected at all times. Furthermore, Article 10(1) of the ICCPR states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."
- In 1955 the UN Standard Minimum Rules for the Treatment of Prisoners were adopted, representing "as a whole, the minimum conditions which are accepted as suitable by the United Nations" (para 2). Most of the rules apply not only to convicted prisoners but also to people in pre-trial detention and people held without charge (para 4(2) and Rule 95).
- The Basic Principles on the Role of Lawyers require the Nigerian government to provide sufficient funding for legal services for the poor (principle 3); to ensure everyone who is detained has access to a lawyer within 48 hours (principle 7); and to ensure that lawyers can do their work without intimidation (principle 16).

2.7 RECOMMENDATIONS

Amnesty International calls on the National Assembly to:

- Amend Section 35(7) of the Constitution and bring it into line with international human rights law and standards.
- Domesticate the International Covenant on Civil and Political Rights.
- Domesticate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Prioritize criminal justice sector reform bills currently pending before the National Assembly and bring them into line with Nigeria's international human rights obligations.
- Review the Prison Act and the Police Act and bring them into line with Nigeria's Constitution and obligations under international human rights law and standards, including the provisions of the ICCPR, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Standard Minimum Rules for the Administration of Juvenile Justice.
- Draft and adopt a bill to establish an independent detention inspectorate to carry out inspection visits to prisons, police stations and state Criminal Investigation Departments (CIDs), and other places of detention, and publish their findings.

- Ensure that the Nigerian Prison Service and individual prison directors receive adequate resources, including funding to improve living conditions and access to health care in Nigerian prisons.
- Adopt a motion to urge the Ministers of Police Affairs, of Interior and of Justice to improve the conditions of service of the police, prison service and judiciary.
- Adopt a motion to urge the Minister of Justice and Attorney General of the Federation to ensure that criminal suspects are able to exercise their right to promptly challenge the lawfulness of their detention in court, and to have a prompt and fair trial in compliance with international standards for fair trial.
- Adopt a motion to urge the President to publish the White Paper on the National Commission for the Reform of Administration of Criminal Justice in Nigeria.
- Adopt a motion to urge the Minister of Justice and Attorney General of the Federation to improve access to legal aid, including by providing adequate resources to the Legal Aid Council to enable it to hire more lawyers.
- Adopt a motion to urge the Minister of Justice and Attorney General of the Federation to implement the recommendations of previous governmental commissions on improving access to justice.
- Adopt a motion to urge the President to ratify, without reservations, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.
- Adopt a motion to urge the President to ratify the Protocol on the Statute of the African Court of Justice and Human Rights, and make a declaration that would allow direct access to the court by individuals and NGOs.

31 For further information, see Amnesty International, *Killing at Will: Extrajudicial executions and other unlawful killings by the Nigeria Police Force*, (Index: AFR44/038/2009) and Amnesty International, *Nigeria: Prisoners' rights systematically flouted*, (Index: AFR 44/001/2008).

32 These include: 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. In August 2011, the Committee on the implementation of the Justice Sector reforms was set up.

33 Until June 2010, the legal Aid Council Act CAP 205 L.F.N. 1990 dated from 1977.





Drawing by a former death row inmate, Arthur Judah Angel, showing a hang-man awaiting the condemned criminal's arrival at the gallows in Enugu prison.

THREE ABOLISH THE DEATH PENALTY

IMPOSE AN OFFICIAL MORATORIUM ON EXECUTIONS, WITH A VIEW TO ABOLISHING THE DEATH PENALTY, AND COMMUTE ALL DEATH SENTENCES

3.1 THE USE OF THE DEATH PENALTY IN NIGERIA

3.2 EFFORTS TO ABOLISH THE DEATH PENALTY IN NIGERIA

3.3 GLOBAL TRENDS TOWARDS ABOLITION

3.4 NATIONAL LEGISLATION

3.5 INTERNATIONAL LAW AND STANDARDS

3.6 RECOMMENDATIONS

“The call for an official moratorium on all executions is borne out of the conviction that the Federal Government can no longer ignore the systemic problems that long have existed in the criminal justice system.”

National Study Group on Death Penalty, 2004

3.1 THE USE OF THE DEATH PENALTY IN NIGERIA

Between 1970 and 1999, more than 2,600 death row prisoners were executed in Nigeria. The high number of executions in those years did not lead to a decrease in the crime rate in the country, showing that the death penalty does not have a unique deterrent effect on crime.

Currently, approximately 920 people are languishing on death row in Nigeria, including women and juvenile offenders. Research carried out by Amnesty International and the Legal Defence and Assistance Project (LEDAP) indicates that hundreds of death row prisoners in Nigeria may be innocent.³⁴ The endemic failures in the Nigerian criminal justice system result in people being sentenced to death after trials that violate international human rights law and standards. If they are executed, their executions violate the right to life as recognized in Article 3 of the Universal Declaration of Human Rights.

Suspects in capital offences and death row prisoners are regularly denied their right to a fair trial and appeal process. The violation of an individual's legal rights often starts at the point of arrest. Police routinely use torture to extract "confessions" as a substitute for thorough and impartial investigation of the crime. As a result, the majority of the prisoners currently on death row were sentenced to death based on "confessions", many of which were unlawfully obtained by torture.

Most death row prisoners have waited between five and 10 years for their trial to be concluded; some were denied their right to legal representation. Such is the chaos within the Nigerian criminal justice system that other death row prisoners were unable to appeal because their case file had been lost, or because they had no lawyer to represent them as they fought for their lives.

Many prisoners currently on death row were denied the right to appeal because they were sentenced to death by tribunals under the military government that denied the right of appeal. The Robbery and Firearms Tribunals, established under the Robbery and Firearms (Special Provisions) Decree No. 5 of 1984, denied defendants the right to appeal and their composition contradicted fair trial standards, being made up of two people with a military or police background and one presiding civilian judge. Each of the three members of the tribunal had an equal vote. In 1999, jurisdiction was restored to the state-level High Courts, with a right of appeal to the Court of Appeal and Supreme Court. However, it is unclear how this relates to those who were convicted and sentenced to death by Robbery and Firearms Tribunals.

Furthermore, more than 20 juvenile offenders are currently on death row, in clear violation of international human rights law prohibiting the use of the death penalty against people who were below 18 years of age when the crime was committed.

Although a Nigerian representative at the Third Committee of the UN General Assembly said on 15 November 2007 that "we have not carried out any capital punishment in recent years in Nigeria", at least seven men, all sentenced to death in Kano State, were in fact hanged in 2006 in Kaduna, Jos and Enugu prisons. After Amnesty International revealed its findings, a Kano state official confirmed to the BBC that the executions had taken place.

Judicial killings brutalize society and violate the right to life. As long as the death penalty remains in the statute books, the risk of executing the innocent can never be eradicated.

3.2 EFFORTS TO ABOLISH THE DEATH PENALTY IN NIGERIA

The 2004 National Study Group on Death Penalty and the 2007 Presidential Commission on the Administration of Justice both stressed that the Nigerian criminal justice system cannot guarantee a fair trial. The National Study Group concluded: "We must consider whether the death penalty has succeeded in lowering the tempo and rampage of crime in Nigeria or whether it has contributed to violent crimes. We must consider whether Nigerians can continue to cling to the death penalty when other countries are gradually retreating from the death penalty and are building more humane societies for their people. We must therefore impose at least a five-year moratorium on the death penalty". In 2007, the Presidential Commission



reiterated the call for a moratorium on the death penalty. Their recommendations have never been implemented.

On 9 February 2009, at the 4th Session of the UPR, Nigeria's Minister of Foreign Affairs stated that "Nigeria continues to exercise a self-imposed moratorium [on the death penalty]." However, in June 2010, at a meeting of the National Economic Council (NEC), chaired by the Vice President of Nigeria and attended by Nigeria's state governors, the Council asked the Nigerian state governors to review all cases of death row inmates and to sign execution warrants as a means of decongesting the country's prisons.³⁵ A similar decision was taken in April 2010 at a meeting of the Council of States.³⁶

Two applications filed by the Legal Resource Consortium (LRC) and LEDAP before Federal High Courts on behalf of all death row inmates in Nigeria resulted in an interim injunction, which compels the 36 Nigerian states to refrain from carrying out executions pending the hearing and determination of the court proceedings.

3.3 GLOBAL TRENDS TOWARDS ABOLITION

The global trend towards abolition of the death penalty could not be clearer. The number of countries that are abolitionist in law or practice has substantially increased over the past decade, rising from 108 to 139. Gabon removed the death penalty from its legislation in 2010 and in January 2010 the President of Mongolia announced an official moratorium on executions. The 1992 Angolan Constitution had already prohibited the death penalty and in 2010 this was reinforced in the new Constitution. On 14 April 2010 the Parliament of Djibouti adopted an amendment to the Constitution to abolish the death penalty. In August 2011, the National Assembly of Benin voted in favour of ratifying the Second Optional protocol to the ICCPR, aiming at abolition of the death penalty.

Even in countries where support for the death penalty remains strong, positive steps towards restricting the use of the death penalty were recorded in 2010. The mandatory imposition of the death penalty was ruled unconstitutional in Bangladesh on 20 March 2010. In a landmark judgement, the Court of Appeal of Kenya ruled on 30 July 2010 that the mandatory death penalty for murder was "inconsistent with the spirit and letter of the constitution".

3.4 NATIONAL LEGISLATION

The death penalty is allowed in Nigeria under several sets of federal and state laws which operate alongside each other:

- the Penal Code and accompanying Criminal Procedure Code (CPC), applicable in the 16 northern states;
- the Criminal Code and accompanying Criminal Procedure Act (CPA), applicable in southern states;
- the Robbery and Firearms (Special Provisions) Act, applicable in the Federation;
- Shari'a penal legislation in 12 northern states.

The Criminal Code and Penal Code were enacted as federal laws and each state has re-enacted their provisions as state laws. Most offences fall under state jurisdiction. Under Nigeria's penal legislation, the following crimes carry a mandatory death sentence: treason; homicide; murder and culpable homicide punishable with death; and armed robbery. Under the Robbery and Firearms Act, anyone found guilty of robbery and armed with firearms, in the presence of an armed person, or causing violence or wounds, will be sentenced to death. In addition, under the Shari'a penal codes, rape, sodomy and adultery are also punishable with death.

Article 33(1) of the Nigerian Constitution allows for judicial executions but there is no provision making the death penalty mandatory for specific crimes. The Constitution does not require Nigeria to carry out executions.

Under Nigerian law, children younger than 17 at the time of the crime can not be sentenced to death. Instead however, they are to be detained "during the pleasure of the President" or state governor. Amnesty International considers that this constitutes indefinite detention.



Contrary to the definition of a child under the Child's Rights Act as a person under the age of 18, the Nigerian Criminal Procedure Act defines a child as "any person who has not attained the age of 14 years" and a juvenile offender is defined as "an offender who has not attained the age of 17 years". If the alleged crime is a capital offence, and the suspect cannot prove that he or she was under the age of 14 at the time it was committed, it is common practice to assume that the accused is an adult.

3.5 INTERNATIONAL LAW AND STANDARDS

As a state party to the International Covenant on Civil and Political Rights (ICCPR), Nigeria has the obligation to ensure that the death penalty is imposed only for the most serious crimes. Article 6 of the ICCPR, which guarantees the right to life, states that in countries which have not abolished the death penalty, it should only be imposed for the most serious crimes.³⁷ The UN Human Rights Committee has stated that the following offences cannot be characterized as the "most serious crimes": economic offences, including embezzlement by officials, drug-related offences, political offences, robbery, abduction not resulting in death, and "apostasy, committing a third homosexual act, illicit sex [...] and theft by force". The Committee has also raised concerns about death sentencing for a range of crimes vaguely or subjectively defined relating to internal and external security and political offences.

- One of the clearest prohibitions in international law on the use of the death penalty is in relation to juvenile offenders. According to article 6(5) of the ICCPR, "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." Article 37(a) of the UN Convention on the Rights of the Child states: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". The African Charter on the Rights and Welfare of the Child also states that children should not be sentenced to death. Article 2 of this treaty specifies that the term "child" refers to anyone under the age of 18.
- The death penalty should not be used against mentally ill people. In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution". In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person".
- The mandatory imposition of the death penalty breaches international human rights law. The UN Human Rights Committee has said that "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence". In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty to ensure "that the death penalty is not imposed... as a mandatory sentence".
- The imposition of a death sentence after an unfair trial constitutes a violation of the right to life. Article 14 of the ICCPR sets out standards of fair trial.³⁸ The African Charter on Human and Peoples' Rights (Article 7) also sets out standards for fair trial. The UN Human Rights Committee has stated that the imposition of a death sentence after a trial in which the provisions of the ICCPR have not been respected constitutes a violation of the right to life. Among the features of cases in which the Committee has found violations of the right to life after unfair trials are inadequate legal representation, undue delay in bringing a case to trial, trial before a military court, refusal to allow the defendant to call witnesses, and the defendant being compelled to confess guilt.



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■ The right of appeal to a higher court is guaranteed under Article 14(5) of the ICCPR, which states:

“Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.” Safeguard 6 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in 1984, states: “Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.”

■ In 1999 the African Commission on Human and Peoples’ Rights adopted a resolution which called upon all states that still maintain the death penalty to consider establishing a moratorium on executions.

A statue representing justice.



■ The UN reaffirmed and strengthened its position against the death penalty in December 2007, when the General Assembly adopted resolution 62/149 calling on all UN member states to establish a moratorium on executions with a view to abolishing the death penalty. This call was reiterated in December 2008 and again on 21 December 2010, when the plenary session of the UN General Assembly adopted a third resolution on a moratorium on the use of the death penalty. The resolution, which enjoyed more support than ever before and was adopted with 109 votes in favour, 41 against and 35 abstentions, including Nigeria, calls upon all states to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty; make available relevant information with regard to their use of the death penalty; progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed; and establish a moratorium on executions with a view to abolishing the death penalty.

3.6 RECOMMENDATIONS

Amnesty International is urging the National Assembly to:

- Adopt a motion calling on the President to declare a moratorium on executions with a view to abolishing the death penalty. A moratorium should be binding on all authorities in the country for all cases, without exceptions, and should not be limited to a specific time frame. It should apply to those who were sentenced to death both before and after the moratorium has been introduced. All existing death sentences should be commuted without delay to terms of imprisonment and the commutations shall be irreversible. A moratorium on executions would eliminate the risk of executing the innocent.
- Adopt a motion calling on the President to commute all death sentences.
- Adopt a motion urging the President to ratify, without reservations, the two Optional Protocols to the International Covenant on Civil and Political Rights.
- Remove all provisions in legislation allowing for the use of the death penalty against people who were under the age of 18 at the time of the alleged crime.
- Remove all provisions in legislation allowing for the mandatory imposition of the death penalty.
- Adopt a motion calling on the Minister of Justice and Attorney General of the Federation to urgently review all cases of death row inmates who were under the age of 18 at the time of commission of the alleged crime, who were sentenced to death by military tribunals, or who are seriously ill – including the mentally ill and elderly – with a view to commuting their death sentences.
- Restrict the imposition of the death penalty only to the most serious crimes, and refrain from extending the scope of the death penalty.
- Adopt a motion to urge the Minister of Justice and Attorney General of the Federation to implement the recommendations of the National Study Group on Death Penalty and the Presidential Commission on Reform of the Administration of Justice, in particular the establishment of a moratorium on executions and the commutation of all death sentences.
- Adopt a bill to amend the Robbery and Firearms Act to remove all provisions which provide for mandatory death sentences.



© Arthur Judah Angel



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A prisoner being led to execution. Drawings depicting life on death row in Enugu prison, Nigeria, by former inmate Arthur Judah Angel.

- 34 Amnesty International and LEDAP, *Nigeria: Waiting for the hangman*, (Index: AFR 44/020/2008); Amnesty International, *Nigeria: Prisoners' Rights systematically flouted*, (Index: AFR 44/001/2008).
- 35 See Amnesty International public statement: *Nigeria: Amnesty International, Human Rights Watch and Nigerian civil society groups call on state governments not to resume the execution of prisoners* (Index: AFR 44/010/2010).
- 36 See: <http://www.amnesty.org/en/news-and-updates/nigerian-governor-%E2%80%98threatens-execute-inmates%E2%80%99-ease-prison-congestion-2010-04-22>
- 37 Article 6 of the ICCPR states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime This penalty

can only be carried out pursuant to a final judgement rendered by a competent court."

- 38 These include the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proved guilty; the right to be informed promptly and in detail in a language which they understand of the nature and cause of the charges against them; the right to adequate time and facilities to prepare a defence; the right to communicate with counsel of the defendant's choosing; the right to free legal assistance for defendants unable to pay for it; the right to examine witnesses for the prosecution and to present witnesses for the defence; the right to free assistance of an interpreter if necessary; the right not to be compelled to testify against themselves or to confess guilt; and the right to appeal to a higher court.





The bodies of people killed in July 2009 in the northern city of Maiduguri during fighting between soldiers and armed opponents.

Politically-related, communal and sectarian violence continues in Nigeria – tens of thousands of people have lost their lives since 1999.

FOUR VIOLENCE AND IMPUNITY

PROTECT THE RIGHT TO LIFE AND SECURITY OF PERSONS AND
ENSURE ACCOUNTABILITY FOR HUMAN RIGHTS ABUSES

4.1 POLITICAL, RELIGIOUS AND ETHNIC VIOLENCE

4.2 BOKO HARAM

4.3 VIOLENCE IN PLATEAU STATE

4.4 ELECTION-RELATED VIOLENCE

4.5 IMPUNITY AND LACK OF ACCOUNTABILITY

4.6 NATIONAL LEGISLATION

4.7 INTERNATIONAL LAW AND STANDARDS

4.8 RECOMMENDATIONS

“The Commission found that at the root of these recurring clashes is the issue of economic strife although other elements, such as religion, politics and ethnicity are easily used as a smoke screen.”

**Report of the Commission of Inquiry into the crisis in Jos in November 2008
led by Bola Ajibola, 2008**

4.1 POLITICAL, RELIGIOUS AND ETHNIC VIOLENCE

Tens of thousands of people have been killed across Nigeria in politically motivated, ethnic or religious violence since 1999. Tensions over land and political influence have existed for years but the authorities have failed to take measures to prevent violent clashes and to protect the right to life. Many of the deaths could have been prevented if the authorities had responded appropriately.

Following incidents of religious or ethnic violence, hundreds of people continue to be rounded up by the police and security forces, but in many cases without sufficient evidence to try them. Criminal investigation has been inadequate, with serious doubts over the quality of evidence against those arrested. Few perpetrators have been brought to justice and victims of abuses by both state and non-state actors have not received redress. The population is at the mercy of violent armed groups and a security and criminal justice system that provide little protection.

4.2 BOKO HARAM

Since July 2010, attacks by people believed to be members of the religious sect Boko Haram have increased. More than 250 people have been killed in such attacks, many of which have targeted police officers and government officials. Several religious leaders have been killed and churches have also been targeted. Since June 2011, Boko Haram has also attacked bars and beer gardens, killing scores of the city's residents. The attacks by Boko Haram constitute human rights abuses. The group must stop these reprehensible and senseless attacks, which often lead to civilian casualties.

In June 2011, a statement reportedly published by members of Boko Haram claimed responsibility for several attacks, including the bombing at the swearing in of President Goodluck Jonathan on 29 May 2011, which killed approximately 16 people, and the killing of the All Nigeria Peoples Party (ANPP) candidate for governor in Borno State.

In response to the Boko Haram threat, the Federal Government set up a Special Military Task Force in Maiduguri in June 2011, which consists of the army, navy, air force, Department of State Security and the Nigeria Police Force. Since its establishment, reports have increased of the security forces in Borno state resorting to unlawful killings, dragnet arrests, arbitrary and unlawful detentions, extortion and intimidation. Investigations do not seem to be intelligence-led; the Joint Military Task Force (JTF) simply cordon off areas and carry out house to house searches, arresting and at times shooting young men.

After the bombing at Kaleri Ngomari Custain area in Maiduguri on 9 July 2011 by Boko Haram, the intensity of these practices increased. The Nigerian security forces cordoned off the area, went from house to house and used brutal and unlawful tactics against the population. At least 25 people are believed to have been shot dead by the JTF. Many more men and boys have been reported missing. According to eyewitnesses, the JTF burnt down several houses, forcing their occupants to flee. The JTF also beat many people, including women and children. At least 45 people were reportedly wounded by these actions. Amnesty International also received reports that women were raped by the security forces.

In August 2011, the UN headquarters in Abuja were bombed, killing 23 people and injuring 81. Boko Haram claimed responsibility.

4.3 VIOLENCE IN PLATEAU STATE

Since December 2010, sectarian and communal violence in Plateau state have left more than 200 people dead. Long-standing tensions, unresolved disputes between Plateau state's different ethnic groups and conflict over land have led to a cycle of violence.

Over 2,000 people have been killed in Plateau state since 1994 in repeated cycles of violence. There were violent crises in 1994, 2001, 2004, 2008, 2010 and 2011 but after each crisis the authorities failed to take

BOKO HARAM ATTACKS

Boko Haram was established in the early 2000s. In July 2009, Boko Haram attacked a police station, killed scores of people, and in the process set free some of its members who were in detention. More than 800 people, including 24 police officers, died in the following week in clashes between members of Boko Haram and security forces in Borno state. Mohammed Yusuf, believed to be the leader of Boko Haram, was killed in police detention on 30 July 2009.

A committee set up in August 2009 to “investigate the circumstances leading to the crisis including the alleged killing of the leader of Boko Haram and the slaughter or killing of over 17 Police officers,”³⁹ has not made its findings public. In September 2010, people reported to be members of Boko Haram attacked Bauchi prison and freed inmates detained there, some of whom were believed to be members of Boko Haram.

At least three bombs exploded on 24 December 2010 in Jos, the state capital of Plateau state, killing an estimated 80 people and injuring many more. Boko Haram claimed responsibility for the bombs. Dozens of people were killed in gun and machete attacks in a wave of reprisal violence that followed. Scores of buildings were burnt down and businesses were shut for days. Several residents told Amnesty International that they had heard of subsequent bomb attacks around the city in the following days. The explosions triggered further violence in the days and weeks that followed.

In the run-up to the April 2011 elections, the group reportedly put up posters around Maiduguri threatening to kill people who gave information to security operatives or who voted for the former governor. Security forces apparently removed the posters almost immediately.

On 16 June 2011, a bomb exploded in the car park of the headquarters of the Nigeria Police Force; at least three people were killed. On 26 June 2011, at least 30 people were killed when suspected Boko Haram members threw bombs at people sitting in a bar in Maiduguri. Five neighbouring houses were burned as well. The following day, two more bombs exploded in different parts of the city.

On 2 July 2011, four men were reported to have been killed in their houses by suspected Boko Haram members. The following day, a bomb exploded at a market in Maiduguri, Wulari Spot. On both sides of the market, there are police barracks. Fifteen people were reported to have been killed and many more wounded. An hour later, another bomb exploded near Kano motor park in Maiduguri.

In August 2011, the UN headquarters in Abuja were bombed, killing 23 people and injuring 81. Boko Haram claimed responsibility.

adequate measures to prevent future violent clashes and to protect the right to life of the people. The authorities have not addressed the history of human rights abuses which reinforces the cycle of violence and have failed to use law enforcement to deter violent confrontations, or to use the criminal justice system to bring those who commit human rights abuses to justice.

On 18 January 2010, the Commander of the Special Military Task Force in Plateau State was reported to have issued orders to soldiers to shoot on sight. Such orders, even if accompanied by restrictions on shooting to kill, may give the impression that it is acceptable to resort to lethal force as a first resort. Orders for soldiers to shoot on sight are a violation of Nigeria’s Constitution and the country’s international human rights obligations.

In Nigeria, “ownership” of an area is accorded to the ethnic group(s) considered to be the original inhabitants or “indigenes” of that area. Non-indigenes are considered settlers, although they may have lived there for generations.⁴⁰ Intended to ensure the rights and interests of minority ethnic groups, in practice the indigene-settler distinction has often resulted in the exclusion of “non-indigenes” (or “settlers”) from accessing rights and services, for example in education, employment, property ownership and participation in political affairs. In Plateau state, where one of the major sources of employment is the state government, the distinction acts to exclude certain ethnic groups from already limited resources and opportunities.



The broad overlap of ethnicity and religion enables ethnic and political conflict to become reinterpreted along religious lines. This facilitates its expansion by allowing for easy identification of opponents and is actively exploited or manipulated by some religious leaders on both sides.⁴¹

Many witnesses of the violence in Plateau state told Amnesty International that the security forces were not there to protect them. Some alleged that the security forces did not react in time or at all, even when they warned them of a threatened attack. Amnesty International heard many allegations that some attacks are carried out by people in military uniforms.

4.4 ELECTION-RELATED VIOLENCE

Hundreds of people were killed in politically motivated, communal and sectarian violence across Nigeria before, during and after the elections in April 2011. Supporters of rival political parties clashed violently in the run-up to Nigeria's national parliamentary, presidential and state elections held between 9 and 28 April. Politically motivated killings, threats and intimidation also took place. On polling day on 9 April, two bombs killed several people and injured more near polling stations in Maiduguri, Borno state. Hundreds of people were killed in rioting and violent attacks in the north and centre of the country following the Presidential elections. According to the Inspector General of Police, 520 people were killed in Kaduna and Niger states alone.

Nigeria has a history of election-related violence: the elections in 1999, 2003 and 2007 were marred by widespread political violence, including political killings, with allegations that political candidates hired armed gangs to instigate political violence and target rivals. The security forces failed to take adequate steps to protect human rights. Most of the past acts of violence, including political assassinations, unlawful killings, beatings, destruction of property, harassment and coercion were either poorly, or not, investigated. In 2007 more than 200 people were killed in election-related violence. The role of politicians – both candidates and those holding political office – in instigating, encouraging or perpetuating election-related violence was widely acknowledged by officials, civil society organizations and the media. However, the government did not take any effective action to stop the violence.

4.5 IMPUNITY AND LACK OF ACCOUNTABILITY

Several inquiries into communal and sectarian violence, both at state and federal level, have been established but their findings and recommendations have never been made public.⁴² Criminal investigation has been inadequate, with serious doubts over the quality of evidence against those arrested.

Very few people have been convicted of crimes related to the ongoing violence. Following previous incidents of communal and sectarian violence, scores of people were rounded up by the police and security forces but few have been successfully prosecuted.⁴³ According to information received by Amnesty International, previous commissions of inquiry into the Plateau state violence have named suspected perpetrators, yet no criminal investigation has started.

Victims of violence have not received redress or reparation, including compensation, leaving people destitute and further stoking feelings of resentment and desperation. Victims and their families have a right to know the truth about the violence, including the identities of individuals or groups responsible for carrying it out or ordering it.

4.6 NATIONAL LEGISLATION

Section 33 of the Nigerian Constitution guarantees the right to life.⁴⁴ Section 34 recognizes the right to personal dignity, including freedom from torture (34.1.a), and section 35 the right to personal liberty. Section 36 guarantees the right to a fair trial.

Section 42(1) of the Nigerian Constitution guarantees freedom from discrimination on the grounds of “community, ethnic group, place of origin, sex, religion or political opinion”.

The Constitution provides much broader grounds for the use of lethal force than is permissible under international law and standards. Section 33 (2) allows for the use of lethal force for the defence of property, to arrest or prevent the escape of a detainee, and to suppress a riot, insurrection or mutiny.⁴⁵

4.7 INTERNATIONAL LAW AND STANDARDS

Under international human rights law, Nigeria must exercise due diligence to protect individuals from human rights abuses by non-state actors by taking reasonable steps to prevent such abuses and, if serious abuses occur, by ensuring that perpetrators are brought to justice and that victims are able to obtain redress.

Nigeria, as a party to the International Covenant on Civil and Political Rights (ICCPR), is obliged to guarantee the prohibition of discrimination, the prohibition of torture and other ill-treatment, the prohibition of enforced disappearance, and the prohibition of arbitrary detention.

Article 6(1) of the ICCPR states: “no one shall be arbitrarily deprived of his/her life”. Even in case of a public emergency no derogation is possible from this provision.

The ICCPR also requires that all allegations of human rights violations are promptly, independently, impartially and thoroughly investigated.

States are required to make violations such as torture, enforced disappearance and unlawful killings a criminal offence in domestic legislation. States are also obliged to bring to justice those responsible for these and other serious crimes, including summary and arbitrary killings

The African Charter on Human and Peoples’ Rights also recognizes the rights to life, dignity and liberty. Article 4 states: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” Article 6 states “Every individual shall have the right to liberty and to the security of his person. Article 23 gives people the right to “national and international peace and security”.

4.8 RECOMMENDATIONS

Amnesty International urges the National Assembly to:

- Adopt a motion urging the President to take all measures to protect the right to life.
- Adopt a motion calling on the President to investigate all cases of serious human rights abuses committed as part of religious, inter-ethnic and communal violence promptly, independently and impartially and to bring to justice those responsible in accordance with international standards for fair trial without recourse to the death penalty;
- Make public the findings of previous commissions of inquiry into the crises in Plateau state and the 2009 Boko Haram violence, and urge the Attorney General of the Federation and Minister of Justice to investigate those implicated in serious human rights abuses and hold those responsible accountable in a court of law in accordance with international standards of fair trial without recourse to the death penalty.
- Draft a bill for a law criminalizing torture, extrajudicial executions and enforced disappearances, punishable by sanctions commensurate with the gravity of the practice and in line with Nigeria’s obligations under the Convention against Torture and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance and in line with the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.
- Adopt a motion urging the President to ensure that adequate systems and mechanisms are put in place alongside training and regulations on the use of force and firearms to make sure that security forces apply the relevant UN standards in their daily work. This includes ensuring that army and police officers have access to a



differentiated range of equipment, including adequate self-protective equipment; and that they have adequate training on the use of a range of equipment for the differentiated use of force, and other tactical methods, including open hand techniques (using no equipment), to apply the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

- Adopt a motion urging the Attorney General of the Federation and Minister of Justice to ensure full implementation of comprehensive witness protection programmes for the protection of individuals involved in investigations or other proceedings against those accused of human rights abuses.
- Adopt a motion urging the President and the Minister of Police Affairs to establish procedures, develop expertise and procure equipment to facilitate policing of political, communal and sectarian violence, including for securing and examining crime scenes, ballistics and other forensic tests, and autopsies or medical examinations.
- Ensure that the courts are adequately resourced to expeditiously adjudicate criminal cases relating to election-related and communal and sectarian violence and that they do so.
- Ensure that the history of human rights abuses which underlies the recurrent violence is addressed.
- Set up a commission of inquiry into the human rights violations committed by the Joint Military Task Force in Maiduguri.
- Adopt a motion to urge the President to ratify the Protocol on the Statute of the African Court of Justice and Human Rights, and make a declaration that would allow direct access to the court by individuals and NGOs.

39 Statement by the Attorney General of the Federation and Minister of Justice, Michael Kaase Aondoaka, at the Human Rights Council, Geneva, 13 August 2009.

40 There is a legal distinction between "indigenes" and "settlers," commonly attributed to Federal Character Principle, enshrined in section 147 (3) of the Constitution of the Federal Republic of Nigeria, 1999.

41 The Lar Commission of Inquiry found that "religion was not the main cause of the January 17th, 2010 crisis in Jos but it was rather exploited by some individuals and groups to gain political popularity and support. It also discovered that some religious preachers incite hate and violence." p5, para 2.081

42 There have been numerous Commissions of Inquiry into the Plateau state violence, including the 2008 Prince Bola Ajibola Commission of Inquiry; the 2009 Abisoye Panel of Inquiry; and the 2010 Solomon Lar Presidential Administrative Panel. The findings of the 2008 Prince Bola Ajibola Commission of Inquiry were never published or implemented. The 2009 Abisoye Panel of Inquiry is yet to submit its final report. In August 2010, President Jonathan pledged to implement the recommendations of the Solomon Lar Presidential Advisory Committee, established on 1 February 2010 to investigate the violence in the state, however, no further action seems to have been taken and neither the report nor the recommendations have been made public.

There were also Commissions of Inquiry into the 1994 violence and the 2001 violence; their recommendations were never implemented. Following the Boko Haram violence in 2009, a commission of inquiry was set up. The report is yet to be published.

43 Over 200 people remained in pretrial detention in Jos prison, in connection with the 2010 violence in Plateau state. Only 63 of them have been charged and only 17 people have been convicted of crimes.

44 33. (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

45 33 (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

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Rescue workers carry the body of a victim of sectarian violence in Kurujantar, south of Jos, January 2010. At least 200 people died in several days of fighting.





The Task Force on Environmental Sanitation demolishes a community in Abuja, Nigeria's capital. Residents were forcibly evicted on 25 June 2011.

FIVE END FORCED EVICTIONS

REALIZE HOUSING RIGHTS AND END FORCED EVICTIONS

5.1 VIOLATIONS OF HOUSING RIGHTS

5.2 LAGOS

5.3 FEDERAL CAPITAL TERRITORY

5.4 PORT HARCOURT WATERFRONTS

5.5 NATIONAL REFORMS

5.6 NATIONAL LAW

5.7 INTERNATIONAL LAW AND STANDARDS

5.8 RECOMMENDATIONS

“The power of Governors and the Local Governments to revoke any right of occupancy over land ‘for overriding public interest’ has been used arbitrarily in the past and helps to underscore the fragility of the rights conferred by the Certificate.”

A. L. Mabogunje, *Land reform in Nigeria: Progress, problems and prospects*, 2010

5.1 VIOLATIONS OF HOUSING RIGHTS

Nigeria's total population is estimated to be 158,259,000 (UN Population Division, 2010), with 74,519,000 children under 18 years old (2008 UNICEF) and an urban population of 49.8 per cent of the total. Almost two-thirds of urban dwellers, that is one in three of all Nigerians, live in slums.⁴⁶ Slums, as defined by UN-HABITAT, are characterized by poor housing; overcrowding; inadequate access to safe water; inadequate access to sanitation and other infrastructure; and insecure residential status. Slum-dwellers often lack security of tenure and face eviction from their homes.

Countrywide, only half of Nigeria's households have access to safe water; the percentage is higher in urban areas (73 per cent) than in rural areas (40 per cent). In poor areas however, these percentages are considerably lower: 53 per cent in urban areas and 19 per cent in rural areas.⁴⁷

Forty per cent of Nigeria's households do not have security of tenure. People living in poor areas are worse off: six in 10 rural households and four in 10 urban households do not have secure housing tenure.⁴⁸

Since 2000, more than 2 million people have been forcibly evicted from their homes in different parts of Nigeria.⁴⁹ Hundreds of thousands more continue to be at risk. Such evictions generally target marginalized people and slum-dwellers, many of whom have lived for years without access to clean water, sanitation, adequate health care or education. Forced evictions are carried out without adequate prior consultation, adequate notice and compensation or alternative accommodation. In some instances excessive force is used.

In 2006, the Centre on Housing Rights and Evictions, an international NGO which monitors violations of housing rights, named Nigeria one of the three worst violators of housing rights "for its extensive record of government-sanctioned mass forced evictions and ongoing disregard for the human right to adequate housing".⁵⁰

5.2 LAGOS

According to the Social and Economic Rights Action Center (SERAC), an NGO, between May and July 2008 forced evictions took place on an almost weekly basis in Lagos, with some communities facing their third forced eviction.

On 23 December 2010, one person died and several others were injured when armed police officers opened fire during a forced eviction in Makoko community in Lagos. The police were accompanying Lagos state's Environmental Task Force, the Kick Against Indiscipline (KAI) Brigade, to demolish structures in the area. This was the second time in 2010 that Makoko residents had faced eviction from their homes. In April, the KAI had forcibly evicted hundreds of people from their homes in Makoko.

5.3 FEDERAL CAPITAL TERRITORY

In Abuja, according to SERAC and the Centre on Housing Rights and Evictions, 800,000 people were removed from their houses between 2003 and 2007.⁵¹ Hundreds of thousands remain at risk.

Hundreds of people were forcibly evicted from their homes and at least one person died on 25 June 2011 when the Task Force on Environmental Sanitation, accompanied by armed police and soldiers, burnt down structures in Panteka settlement and market, commonly referred to as Tora Bora. According to residents, police shot in the air, set fire to the buildings and arrested people as they tried to run away. Residents claim they were not given adequate prior notice of the operation and were not given time to pack their belongings.

The Task Force on Environmental Sanitation is a joint task force established by the permanent secretary of the Federal Capital Territory Administration (FCTA). The members include the Abuja Environmental Protection Board; Department of Development Control; National Drugs Law Enforcement Agency; the police; and the military. It was set up "to rid Abuja of slums and prevent unlawful activities and traffic congestion, street begging, hawking as well as illegal structures within the Abuja metropolis".

The Federal Capital Territory is a fast growing area; according to the 2006 Census it contained 1.4 million people. According to a 2006 report by Nigerian NGO Social Economic Rights Advocacy Centre, more than 70 per cent of Abuja's residents live in informal settlements due to the high cost of rent in the central areas.

5.4 PORT HARCOURT WATERFRONTS

On 28 August 2009, Njemanze informal settlement in Port Harcourt, Rivers State, was demolished as part of the state authorities' urban renewal programme for the city. It is estimated that up to 17,000 people⁵² were forcibly evicted from their homes. These evictions were carried out without prior and genuine consultation with residents and without the provision of adequate notice, compensation or alternative accommodation and legal remedies. Thousands of people, including children, women and the elderly were left homeless and vulnerable to other human rights violations. Two years later many of the evicted residents are still struggling. Some remain homeless, including young boys who now live under a flyover. Others have found a place in a neighbouring waterfront but are struggling to earn a living after losing their livelihood.

Widespread demolitions are planned along the Port Harcourt's waterfronts, despite earlier state government promises that no evictions would take place. The Rivers State government claims the demolition of the

FORCED EVICTIONS

The practice of forced evictions constitutes a violation of human rights, in particular the right to adequate housing. In addition to depriving people of their homes, forced evictions are often associated with violations of other human rights including the rights to health, to education and to earn a living, the right to privacy and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Women, children and the elderly often suffer disproportionately from the effects of forced evictions.

The UN Committee on Economic, Social and Cultural Rights defines a forced eviction as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." The Committee has emphasized in its general comment No. 7 that evictions may be carried out only as a last resort, once all other feasible alternatives to eviction have been explored and all procedural protections are in place. These include an opportunity for genuine consultation with those affected; adequate and reasonable notice for affected persons prior to the eviction; information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected... government officials or their representatives to be present during an eviction; all persons carrying out the eviction to be properly identified; evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Adequate alternative housing and compensation for all losses must be made available to those affected, regardless of whether they rent, own, occupy or lease the land or housing in question. Evictions must not "render individuals homeless or vulnerable to the violation of other human rights". The prohibition on forced evictions does not, however, apply to evictions carried out in accordance with the law and in conformity with the provisions of the international covenants on human rights.

The prohibition on forced evictions does not apply to evictions carried out in accordance with the law and in conformity with the provisions of international human rights standards. If a government has put into place processes such as genuine consultation to explore all feasible alternatives, provided adequate notice, remedies, adequate alternative housing and compensation and put in place all other procedural requirements, the eviction or if necessary, use of force in a proportionate and reasonable manner to carry out the eviction, would not amount to a forced eviction.



waterfronts is necessary to implement the Greater Port Harcourt Master Plan, the main strategy document for the city's redevelopment programme. But the plan has been developed without consultation with the communities affected. The state governor has also repeatedly stated that "the demolition exercise [will] sanitize and check criminal activities"⁵³ in the city. Thousands of people have already been forcibly evicted from their homes, and over 200,000 more remain at risk.

In addition, the enumeration (the collection of detailed information about a community, including buildings and residents) and valuation of Port Harcourt's waterfront properties have been conducted with considerable irregularities. In one settlement, these preparatory stages for demolition have been accompanied by excessive use of force by Nigerian security forces. At least 12 people were shot and seriously injured in Bundu waterfront on 12 October 2009 when armed security forces opened fire on a crowd of people peacefully protesting against the proposed demolition of their homes. Witnesses told Amnesty International they saw six dead bodies piled in the back of a police truck. One body was traced to a morgue by a relative. The total number of dead remains unknown. Almost two years later, no investigation has been carried out.⁵⁴

5.5 NATIONAL REFORMS

On 2 April 2009, former President Yar'Adua established a Presidential Technical Committee on Land Reform. The Committee submitted an interim report to the President in 2009. However, the report has not been made public. The Chairman of the Committee, Professor Akin L. Mabogunje, has stated elsewhere that "the power of Governors and the Local Governments to revoke any right of occupancy over land for overriding public interest has been used arbitrarily in the past and helps to underscore the fragility of the rights conferred by the Certificate."⁵⁵

5.6 NATIONAL LAW

Statutory law in Nigeria does not expressly prohibit forced evictions, although it is unlawful under the common law to forcibly evict another without a court order. The right to adequate housing is not enshrined in law.

Chapter 2 of Nigeria's 1999 Constitution, Section 16 (2) (d), directs the state to ensure that suitable, adequate shelter is provided for all citizens: "The State shall direct its policy towards ensuring (d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens." However, as with other provisions on social and economic rights, this falls within the Constitution's "directive principles". As such, it is not justiciable and therefore remains unenforceable in Nigeria's courts.

Several provisions of Chapter 4 of the Constitution do guarantee the right to acquire a home and the right to privacy of the home. Article 43 of the Constitution states: "Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria." Article 37 states: "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected".

The Federal Land Use Act 1978, incorporated by the 1999 Constitution, places all urban land under the control and management of the state governor, who in turn allocates land to individuals and organizations. Under this act, it is lawful for the governor to revoke a right of occupancy where it serves the greater public interest. The Act provides for the payment of compensation and, in the case of residential buildings, for the option of relocation.

5.7 INTERNATIONAL LAW AND STANDARDS

Nigeria is obliged to guarantee adequate housing and to refrain from and prevent forced evictions:

- Article 11 (1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) states: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”
- Article 27(3) of the Convention on the Rights of the Child obliges state parties to: “take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.” Article 4 of the Convention specifies that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”
- Article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination guarantees the right to housing.
- Forced evictions violate a range of human rights, in particular the right to adequate housing.⁵⁶ Under Article 17 of the International Covenant on Civil and Political Rights (ICCPR), forced evictions also violate the right to the protection of the law against arbitrary or unlawful interference with a person’s privacy, family or home.⁵⁷
- The African Commission on Human and Peoples’ Rights has also affirmed in the case of SERAC and the Centre for Economic and Social Rights, that forced evictions contravene the African Charter on Human and People’s Rights to which Nigeria is a party, in particular, Articles 14 and 16 on the right to property and the right to health, and Article 18 (1) on the state’s duty to protect the family.
- The UN Basic principles and guidelines on development-based evictions and displacement (Basic principles), as developed by the UN Special Rapporteur on adequate housing, reflect existing standards and jurisprudence on the issue of forced eviction. They include detailed guidance on the steps that should be taken prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law. The Basic principles provide that “States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider”.⁵⁸
- The Basic principles provide that “Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.”⁵⁹
- The UN Committee on Economic, Social and Cultural Rights has emphasized that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head, or which views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”⁶⁰ The Committee has identified seven elements to determine the adequacy of housing: 1) legal security of tenure; 2) availability of services, materials, facilities and infrastructure; 3) location; 4) habitability; 5) affordability; 6) accessibility; and 7) cultural adequacy.⁶¹ It has also stated that “Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”⁶²



5.8 RECOMMENDATIONS

Amnesty International calls on the National Assembly to:

- Amend the Nigerian Constitution to ensure that the rights contained in Chapter 2 are enforceable in Nigeria's courts, including Article 2 (d) which directs the state to ensure that suitable, adequate shelter is provided for all citizens.
- Enshrine in law the right to adequate housing.
- Confer a minimum degree of security of tenure on all people living in informal settlements who currently lack it and undertake genuine consultations with affected communities on measures to increase security of tenure
- Legislate and enforce a clear prohibition on forced evictions.
- Domesticate the International Covenant on Economic Social and Cultural Rights.
- Develop and adopt concrete and effective measures to ensure to the entire population a minimum degree of security of tenure, sufficient, at least, to protect them from forced evictions.
- Ensure that all victims of forced evictions have access to effective remedies and the right to reparations, which includes restitution, compensation, rehabilitation, compensation, satisfaction and guarantees of non-repetition
- Develop and adopt legal guidelines for evictions which should be based on the Basic principles and guidelines on development-based evictions and displacement and must comply with international human rights law.
- Adopt a motion to urge the President to set up an independent commission of inquiry to investigate the way in which forced evictions in Nigeria have been carried out and whether they complied with requirements in national law and international human rights law and standards. The findings of the commission of inquiry must be made public.
- Adopt a motion to urge the President to set up an independent commission of inquiry into the use of force and firearms by the police and the Joint Task Force (JTF) at Bundu waterfront on 12 October 2009, including an investigation into all resulting deaths or injuries. The findings of the commission of inquiry must be made public. Those suspected of excessive use of force should be prosecuted in fair trials, in accordance with international standards and without recourse to the death penalty.
- Adopt a motion to urge the President to make public the interim report of the Presidential Technical Committee on Land Reform.
- Adopt a motion to urge the President to sign and ratify the Optional Protocol of the International Covenant on Economic Social and Cultural Rights.
- Adopt a motion to urge the President to ratify the Protocol on the Statute of the African Court of Justice and Human Rights, and make a declaration that would allow direct access to the court by individuals and NGOs.
- Ensure that adequate alternative housing and compensation for all losses is made available to those affected by evictions.

46 UN Millenium Development Goals Indicators, 2010.

47 Data from 2006; Nigeria Statistics.

48 National Bureau of Statistics.

49 Centre on Housing Rights and Evictions (COHRE) and the Social and Economic Rights Action Center (SERAC).

50 COHRE/SERAC, Joint media release, Nigeria named a 2006 Housing Rights Violator for persistent, widespread forced evictions, December 2006.

51 COHRE and SERAC, *The Myth of the Abuja Master Plan: Forced evictions as urban planning in Abuja, Nigeria*, 2008

52 UN-HABITAT estimates that there are 276 structures in Njemanze waterfront, with 10 rooms per structure and five-six occupants per room, making a total population of 13,800. (UN-HABITAT, *Evictions and Demolitions in Port Harcourt*, Report of Fact-Finding Mission to Port Harcourt City, Federal Republic of Nigeria, 12-16 March, p26). Max Lock Consultancy, who

conducted a study of the waterfronts in 2009, estimate that in high-density waterfront areas, such as Njemanze, there are 3,445 people per hectare, and Njemanze, at 5.57 hectares, had a population of 19,200 people (Port Harcourt Waterfront Urban Regeneration Scoping Study, December 2009, Max Lock Consultancy Nigeria Ltd, pp. 24-26).

53 Rivers State government press release, 14 July 2009.

54 See Amnesty International, *Nigeria: Port Harcourt demolitions: Excessive use of force against demonstrations* (Index: AFR44/022/2010).

55 Mabogunje, A.L., *Land reform in Nigeria: Progress, problems and prospects*, 2010, p. 8, viii.

56 UN Commission on Human Rights Resolution 1993/77, para. 1.

57 See Concluding Observations on Kenya, Report of the Human Rights Committee, UN Doc. CCPR/CO/83/KEN (29 April 2005).



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FIVE

Austine Onwe shows photos of himself when he was shot during a 2009 attack by the Joint Task Force on his settlement. Residents were protesting against the proposed demolition of Bundu waterfront in Port Harcourt Nigeria.

58 Para. 38. of the Basic principles: "In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate."

59 Principle 42, UN Basic principles and guidelines on development-based evictions and displacement, 2007.

60 UN Committee on Economic, Social and Cultural Rights, General Comment No. 4, para. 7.

61 General Comment No. 4, para. 8.

62 General Comment No. 4, para. 8 (a).





A man stands on an oil pipeline, Oruma, Bayelsa state, January 2008.

SIX PROTECT HUMAN RIGHTS IN THE NIGER DELTA

ENFORCE AND STRENGTHEN REGULATIONS OF THE OIL
INDUSTRY TO PROTECT HUMAN RIGHTS IN THE NIGER DELTA

6.1 OIL EXTRACTION AND THE NIGER DELTA

6.2 POLLUTION BY THE OIL INDUSTRY IN THE NIGER DELTA

6.3 HEALTH IMPLICATIONS

6.4 REGULATORY SYSTEM NOT ENFORCED

6.5 REPEATED INVESTIGATIONS BUT NO ACTION

6.6 NATIONAL LAWS AND REGULATIONS

6.7 INTERNATIONAL LAW AND STANDARDS

6.8 RECOMMENDATIONS

**“Oil production goes hand in hand with massive
destruction of the fragile ecosystem of the Region,
further destroying livelihoods.”**

Report of the Technical Committee on the Niger Delta, 2008

6.1 OIL EXTRACTION AND THE NIGER DELTA

Fifty years of commercial oil extraction in the Niger Delta have brought impoverishment, conflict, human rights abuses and despair to many. Pollution and environmental damage caused by the oil industry have resulted in violations of the rights to health and a healthy environment, the right to an adequate standard of living, including the right to food and water, and the right to livelihood for hundreds of thousands of people living in the Niger Delta.⁶³ The massive oil deposits have generated billions of dollars in revenues for the country yet the vast majority of people living in the oil producing areas live in poverty.

A lack of accountability and access to justice has sustained a context where the same human rights violations occur again and again. Impunity for abuses of the environment and human rights remains entrenched. People are frequently denied access to the information they need to participate in decisions that affect their lives.

6.2 POLLUTION BY THE OIL INDUSTRY IN THE NIGER DELTA

The oil industry is highly visible in the Niger Delta and has control over vast areas of land. Shell Petroleum Development Company (SPDC) alone operates over 30,000 square kilometres. The area is crisscrossed by thousands of kilometres of pipeline, punctuated by wells and flow stations. Much of the oil infrastructure is located close to the homes, farms and water sources of communities. At night often the only light visible for miles is from flares burning unwanted gas. The oil and gas sector represents approximately 90 per cent of Nigeria's foreign exchange revenues and contributes approximately 80 per cent of government revenues.

The oil industry, which involves both the government of Nigeria and subsidiaries of multinational companies, is responsible for widespread pollution in the Niger Delta. Oil spills, waste dumping, and gas flaring are notorious and endemic. Oil spills result from corrosion of oil pipes, poor maintenance of infrastructure, leaks, human error and as a consequence of vandalism, theft of oil or sabotage. The scale of pollution and environmental damage has never been properly assessed. The figures that do exist vary considerably depending on sources, but hundreds of spills occur each year. According to the UN Development Programme (UNDP), more than 6,800 spills were recorded between 1976 and 2001. According to the National Oil Spill Detection and Response Agency (NOSDRA), in March 2008 there were at least 2,000 sites in the Niger Delta that required treatment because of oil-related pollution. The true figure may be far higher. In August 2011, the United Nations Environmental Programme (UNEP) confirmed the devastating human and environmental impacts of decades of oil spills in Ogoniland. President Goodluck Jonathan set up a Special Committee to review the report.

For many years, residents of the Niger Delta have complained that gas flares seriously damage their quality of life and pose a risk to their health. Flares, which continue for 24 hours a day in several areas, create noise pollution and local communities live with permanent light. Often when gas is flared, not all the oil is burned off so oil droplets fall on waterways, crops, houses and people.

Clean-up of oil spills in the Niger Delta is often slow and inadequate, leaving communities to cope with the ongoing impact of pollution on their livelihoods and health. Accessing compensation for oil spill damage is fraught with problems.

More than 60 per cent of people in the region depend on the natural environment for their livelihood. Pollution by the oil industry has damaged the soil, water and air, contributing to violations of the right to health and a healthy environment, the right to an adequate standard of living (including the right to food and water) and the right to gain a living through work. Hundreds of thousands of people are affected, particularly the poorest.

Oil pollution in the Niger Delta kills fish, their food sources and fish larvae, and damages the ability of fish to reproduce, causing both immediate damage and long-term harm to fish stocks. It also damages fishing equipment. Oil spills and waste dumping have seriously damaged agricultural land. The long-term effects

SABOTAGE: NO REASON NOT TO CLEAN UP

Under Nigerian regulations, all oil spills must be cleaned up by the operator. If the spill is caused by sabotage, the authorities have to pay for the clean-up and no compensation will be awarded; if the spill is caused by equipment failure, the company has to pay for the clean-up and compensation.

While the proportion of current oil spills that are caused by sabotage is disputed, it is generally acknowledged that the majority of the oil spills before the 1990s were due to infrastructure problems and human error. Since the mid-1990s, Shell Petroleum Development Company (SPDC) has claimed that sabotage is the main cause of oil spills.

There is no doubt that sabotage, vandalism of oil infrastructure and theft of oil are serious problems in the Niger Delta. Oil companies claim that communities cause oil spills to get compensation. Communities, and many NGOs, strongly disagree with the oil industry over the number of spills that are attributed to sabotage, and accuse companies of designating controllable spills as sabotage in order to avoid liability for compensation. Communities where oil spills have occurred claim that oil companies describe spills as sabotage in order to avoid paying compensation.

include damage to soil fertility and agricultural productivity, which in some cases can last for decades. In numerous cases, the long-term effects of oil spills on soil have undermined a family's only source of livelihood.

6.3 HEALTH IMPLICATIONS

Even after oil spills the government and oil companies rarely take steps to monitor health, drinking water quality or food safety. Failure to monitor the health implications of pollution may mean that a government fails to deal with the risks posed to the population, leaving people exposed to significant harm.

People have a right to information on how oil industry operations will affect them. However, communities in the Niger Delta often lack access to basic information on oil projects – even when they are the “host” community. The lack of published data on how oil operations can impact on health has fed community fears and anxieties, which are factors that significantly undermine people's quality of life.

6.4 REGULATORY SYSTEM NOT ENFORCED

The regulatory system in the Niger Delta is deeply flawed. Nigeria has laws and regulations that require companies to comply with internationally recognized standards of “good oil field practice”, and laws and regulations to protect the environment. These laws and regulations are poorly enforced. The government agencies responsible for enforcement are under-resourced, ineffective and, in some cases, compromised by conflicts of interest. Moreover, the government of Nigeria has given the oil companies the authority to deal with matters that have a direct bearing on human rights with little or no oversight, and no effective safeguards.

Nigeria has prohibited gas flaring since 1984, unless Ministerial consent is issued. Although the government has announced various deadlines for the cessation of gas flaring, it still continues. On 14 November 2005 the Federal High Court of Nigeria ruled that gas flaring in the Iwerekhan community in Delta State was a violation of the constitutionally guaranteed rights to life and dignity, which include the right to a “clean, poison-free, pollution-free, healthy environment”.

The Nigerian government is both the regulator and a partner in, and major financial beneficiary of, the oil projects. While this is not uncommon, it is essential to have in place robust, independent regulatory and oversight mechanisms to ensure conflicts of interest do not result in violations of human rights.

The penalties for pollution and environmental damage are frequently financial and relatively low. For example, the fine for failing to report an oil spill to NOSDRA is 500,000 naira (approximately US\$3,500). The fine for failure to clean



up the impacted site “to all practical extent, including remediation” incurs a fine of one million naira (approximately US\$7,000). These fines are inadequate to ensure compliance with the law and to prevent damaging practices.

The Department of Petroleum Resources supervises all petroleum industry operations, including enforcing safety and environmental regulations. The Federal Ministry of Environment is involved in the Environmental Impact Assessment process and in investigating oil spills and certification of clean-up of spills. NOSDRA was established in 2006 to address oil spill issues, including implementation of a national oil spill contingency plan, prevention of future oil spills and cleaning up of past oil spill damage.

6.5 REPEATED INVESTIGATIONS BUT NO ACTION

Over the decades the Nigerian government has established a range of institutions and initiatives to address the poverty, conflict and under-development of the Niger Delta region. As early as 1961, the post-independence government set up the Niger Delta Development Board. Subsequent bodies included the Niger Delta Basin Development Authority (NDBDA), set up in 1976, and the Oil Mineral Producing Areas Development Commission (OMPADEC), set up in 1992. Each of these bodies was plagued by a myriad of problems, from a lack of resources, capacity and legitimacy, to corruption and mismanagement.

In 1999, with the return to civilian rule in Nigeria, President Olusegun Obasanjo established the Niger Delta Development Commission (NDDC) to replace OMPADEC. However, the NDDC has suffered from many of the same problems as its predecessors, including a lack of capacity and accountability.

The 2008 report of the Technical Committee on the Niger Delta looked at nine reports that covered environmental harm and made a wide range of recommendations to the government. Its recommendations on the environment included enforcement of regulations, ensuring that Environmental Impact Assessments are conducted in line with international standards, and conducting an environmental audit of the Niger Delta.

6.6 NATIONAL LAWS AND REGULATIONS

Economic, social and cultural rights are reflected in Chapter 2 of Nigeria’s Constitution – Fundamental Objectives and Directive Principles of State Policy – and are as such not legally enforceable. The Constitution provides that “the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria” (Section 20) and that “the State shall direct its policy towards ensuring ... that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens”(Section 2(d)). The Constitution also provides that “exploitation of ... natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented”(Section 17 (2) (d)) and that the state should direct its policy to ensure all citizens have adequate means of livelihood (17 (3) (a)).

The oil industry is subject to a number of specific federal laws, including the Oil Pipelines Act (1956), the Petroleum (Drilling and Production) Regulations (1969), and the Petroleum Act (1969). In addition there are several regulations, such as the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) (revised 2002).

Provisions within the Petroleum Act and the Oil Pipelines Act empower the Federal government to grant access and use rights in relation to land for the purposes of oil prospecting and mining. Once a company has been given a permit, licence or lease, the state government has to give access to the land. The communities are compensated according to a formula that primarily assesses value based on “surface goods” lost. These are buildings, crops, economic trees and access to fishing grounds. The compensation calculations do not appear to consider the long-term implications of loss of access to critical livelihood resources. Moreover, the Land Use Act bars courts from addressing any concerns about the amount or adequacy of compensation paid to people who lose access to their land under the terms of the Act.



The Associated Gas Re-Injection Act CAP 26 L.F.N. 1990 prohibits gas flaring unless Ministerial approval is given: Section 3(1) states: “no company engaged in the production of oil or gas shall after 1st January 1984 flare gas produced in association with oil without the permission in writing of the Minister.”

The Petroleum Industry Bill, sent to the National Assembly in 2009, reflects the most comprehensive review of the legal framework for the oil and gas sector in Nigeria since the industry began commercial operations in the 1960s. However, although this bill could provide an important opportunity to ensure that the social and human rights impacts of the oil industry are adequately addressed, in the current version of the bill these issues are missing.

6.7 INTERNATIONAL LAW AND STANDARDS

The African Charter on Human and Peoples’ Rights recognizes, in Article 24, the right of all peoples to a “general satisfactory environment favourable to their development”. This right is more widely known as the right to a healthy environment and it requires state parties to prevent pollution and ecological degradation.

Article 16 of the African Charter recognizes the right to health. It obliges state parties to take measures to protect the health of their people.

The right to health guaranteed by article 12 of the International Covenant on Economic, Social and Cultural Rights extends to the underlying determinants of health, including “a healthy environment”.

Article 11 of the International Covenant on Economic Social and Cultural Rights establishes “the right of everyone to an adequate standard of living ... including adequate food”. Article 6 recognizes the right to work.

Under international human rights law, people whose rights are violated should have access to effective remedy. The right to effective reparation includes: restitution, measures to restore the victim to the original situation; compensation for economically assessable damage; rehabilitation; satisfaction, which should include effective measures aimed at the verification of the facts and full and public disclosure of the truth.

6.8 RECOMMENDATIONS

Amnesty International calls on the National Assembly to:

- Domesticate the International Covenant on Economic Social and Cultural Rights.
- Amend laws on compensation to ensure that sums awarded are fair and adequate, and cover long-term impacts, health issues and all other reasonable damages.
- Ensure that companies are required by law to pay damages both to individuals and for communal losses and that women are not discriminated against in the compensation process.
- Amend the laws on land use to ensure that they are consistent with Nigeria’s international human rights obligations, and do not undermine the human right to an adequate standard of living, including housing, food and water.
- Ensure that the regulation of the petroleum industry addresses the social and human rights impacts of the oil industry. This should include a mandatory assessment of the potential impacts on human health, access to clean water and livelihoods and official consultation with communities, and greater transparency and access to information for affected communities.
- Amend the Constitution to ensure that economic, social and cultural rights can be enforced by the courts.
- Adopt a motion to urge the Ministers of Environment and Petroleum to strengthen the regulation of the oil industry, including with effective enforcement and appropriate sanctions.
- Adopt a motion to urge the President to prioritize reforms to end poverty and the under-development of the Niger Delta region, as recommended in the 2008 report of the Technical Committee on the Niger Delta.
- Adopt a motion to urge the President to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.



- Adopt a motion calling on the President to set up a Commission of Inquiry to investigate the social and human rights impacts of oil operations, including impact on fisheries, agriculture, health and livelihoods. The inquiry should include the health risks associated with oil pollution and the safety of food, water and air in areas affected by pollution. The report of the commission must be made public.
- Set up a committee to monitor the environmental and social impact of the oil industry.
- Adopt a motion calling on the President to implement the UNEP report recommendations in full.
- Strengthen the role of the National Oil Spill Detection and Response Agency (NOSDRA) by ensuring that it has adequate staff, financial resources and equipment to carry out its functions properly and independently of the oil companies. NOSDRA should have the capacity to record all investigations into oil spills on video and should be able to call on expert advice in cases where the cause of an oil spill is disputed. NOSDRA should have the capacity and mandate to look at impacts of oil spills, including on individuals and communities, and pay particular attention to the impact on women, and on potentially marginalized groups in the community.

⁶³ See Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, (Index: AFR 44/017/2009)



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A fisherman with his canoe in Goi, Ogoniland, January 2008. Oil pollution has damaged crucial sources of livelihood for communities, including farming and fisheries.





A community meeting in Ikot Ada Udo, Akwa Ibom State, discusses the negative impacts of oil pollution on the community, January 2008.

SEVEN STOP VIOLENCE AGAINST WOMEN

INCORPORATE THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN INTO LAW, IMPLEMENT THIS LEGISLATION AND END VIOLENCE AGAINST WOMEN

7.1 VIOLENCE AGAINST WOMEN AND GIRLS IN NIGERIA

7.2 SEXUAL VIOLENCE

7.3 DOMESTIC VIOLENCE AND VIOLENCE IN THE COMMUNITY

7.4 MATERNAL MORTALITY

7.5 NATIONAL LEGISLATION NEEDS TO BE AMENDED

7.6 INTERNATIONAL LAW AND STANDARDS

7.7 RECOMMENDATIONS

“Many customary norms, religious and secular practices and laws have served to entrench the subordination and exclusion of women ... The result is that women’s rights in the civil, political, economic, social and cultural rights are inadequately protected or promoted.”

African Peer Review Mechanism, African Union Country Review Report on Nigeria, May 2008

7.1 VIOLENCE AGAINST WOMEN AND GIRLS IN NIGERIA

Violence against women remains pervasive. Domestic violence, rape and other forms of sexual violence by both state officials and private individuals are widespread, and carried out with almost total impunity. The police force lacks training and expertise to prevent and to respond effectively to violence against women.

Despite Nigeria's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) without reservation more than 25 years ago in 1985, CEDAW has not yet been incorporated into national or state legislation and its provisions are not implemented at state level.

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. The report is yet to be made public and implemented.

Despite Nigeria's National Policy on Gender, women represent less than 10 per cent of the members of the National Assembly.

7.2 SEXUAL VIOLENCE

According to a nationwide crime survey by the NGO CLEEN, 16.9 per cent of respondents who had been victim of a crime between 2006 and 2009 had suffered domestic violence; 3.7 per cent had been subjected to rape or attempted rape.

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. The police frequently raid streets known to be frequented by commercial sex workers, harassing, arresting and gang-raping them before releasing them without charge.

With the exception of a few high-profile cases, state employees alleged to have committed rape enjoy complete impunity. 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.

7.3 DOMESTIC VIOLENCE AND VIOLENCE IN THE COMMUNITY

Almost three out of 10 women have experienced physical violence by members of their family or household.⁶⁴ On a daily basis women are beaten and "punished" for supposed transgressions, raped and even murdered by members of their family. In some cases, vicious acid attacks leave them with horrific disfigurements. Girls and young women are forced into early marriage by parents and relatives. In many communities, the harmful traditional practice of female genital mutilation continues to traumatize young girls and leave women with lifelong pain and damage to their health. In most cases, the criminal justice system fails to offer protection, justice or reparation to women who have been subjected to violence in the home or community.

7.4 MATERNAL MORTALITY

With approximately 54,000 maternal deaths a year, Nigeria has one of the highest numbers of deaths in pregnancy and childbirth in the world. Nigeria's maternal mortality ratio is estimated at approximately 840 in every 100,000 live births.⁶⁵ Contributing factors to the high maternal mortality ratio include lack of access to and ineffective health services, corruption, unsafe abortions, eclampsia and malaria.



7.5 NATIONAL LEGISLATION NEEDS TO BE AMENDED

The Nigerian Constitution of 1999 provides for equality in law: “Every citizen shall have equality of rights, obligations and opportunities before the law” (Article 17(2)(a)). It also guarantees the right to be free from discrimination “either expressly by, or in the practical application of, any law” on grounds of “community, ethnic group, place of origin, sex, religion or political opinion” (Article 42(1)).

There is no federal or state legislation criminalizing violence against women, despite several bills initiated by NGOs in recent years.

The provisions relating to rape in the criminal codes are inadequate and outdated and urgent legislative reform is needed to ensure conformity with Nigeria’s obligations under international human rights law.

There are no legal provisions that prohibit marital rape. The absence of a law criminalizing marital rape in effect both gives implicit state consent and acquiescence to violence against women, and also institutionalizes discrimination against women on the basis of marital status. Having consented to marriage, a wife’s subsequent consent – or lack of it – to sex with her husband is deemed immaterial in law. In this way the legal system makes the wife a commodity of the husband, and constitutes state consent to acts of torture and ill-treatment.

No federal laws specifically criminalize violence in the family, and prosecutions for violence in the family have to rely on the law on common assault and other criminal provisions. Cases of physical and sexual abuse, including wife-battering, are subsumed under the offence of assault. The law fails to address the specific circumstances of gender-based violence in the family, when the crime takes place in the home in which both perpetrator and victim have lived and may continue to live.⁶⁶

The Penal Code, applicable in northern states, explicitly condones certain forms of violence in the family. Men have the right to “correct” their wives, children or domestic workers as long as such “correction” does not reach a threshold of severity amounting to “grievous hurt” (Section 55). Severe injuries exceeding this threshold include “emasculat[i]on, permanent loss of sight, ability to hear or speak, facial disfigurement, deprivation of any member or joint, bone fracture, tooth dislocation or any which endangers the life or which causes the sufferer to be in severe bodily pains or unable to follow her ordinary pursuits for more than 20 days” (Section 241). Any injuries below this threshold of severity, and the acts of violence that are their cause, are therefore permitted in law.

According to the Public Officers Protection Act (CAP 379), a prosecution of a public official should be initiated within three months of the alleged misconduct (Section 1). This very short span of time would appear to limit the possibility of prosecution of public officials. Should victims not bring a civil suit or complain to the police within three months, the possibilities of filing formal complaints against police or other state personnel who may have committed rape or other forms of gender-based torture or ill-treatment are significantly restricted. This is contrary to Nigeria’s obligation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14, which requires that “[e]ach State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”

7.6 INTERNATIONAL OBLIGATIONS

■ By ratifying CEDAW, Nigeria has agreed 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.”⁶⁷

Such discrimination includes acts of violence against women, according to General Recommendation 19 of the Committee on the Elimination of Discrimination against 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. The International Covenant on Civil and Political Rights provides that: “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”(article 2(1)); and “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”(article 3).

■ The African Charter on Human and Peoples’ Rights provides that states parties must “ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions” (article 18(3)). It also states that: “Every individual shall be equal before the law [and] entitled to equal protection of the law”(article 3). This includes the right not to be subjected to torture and ill-treatment, as required by Article 7 of the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Nigeria is a state party.

■ 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 to implement programmes for the rehabilitation of women victims.⁶⁸ 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”. It 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 “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. The Rome Statute also criminalizes gender-based persecution, and “outrages upon personal dignity, in particular humiliating and degrading treatment.”⁶⁹

■ The Rome Statute defines the crime against humanity of rape: “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. 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.”⁷⁰

7.7 RECOMMENDATIONS

Amnesty International urges the National Assembly to:

- Prohibit in law all forms of violence against women and girls.
- Domesticate CEDAW and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.
- Amend the sections of the Penal Code, Criminal Code, Criminal Procedure Act and the Criminal Procedure Code Act that allow violence and discrimination against women to persist.
- Ensure that laws against those who commit acts of violence against women are enforced and that victims are provided with reparations.
- Ensure that the government fully implements the provisions of CEDAW in legislation.
- Ensure that the government fully implements the provisions of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, ratified by Nigeria in 2004.
- Make public the report and the recommendations of the 2006 Committee on the Review of Discriminatory Laws Against Women and make public a plan for how to implement the recommendations.
- Amend the Public Officers Protection Act in order to ensure that it does not prevent or hinder prosecution of state personnel alleged to have committed rape.
- Invite to Nigeria the UN Special Rapporteur on violence against women and the African Commission on Human and Peoples’ Rights Special Rapporteur on the Rights of Women in Africa.
- Ensure all barriers to maternal health services are eliminated, including financial and geographical barriers, as well as third party consent requirements for sexual and reproductive related health care.

⁶⁴ Nigeria Demographic and Health Survey, 2008, National Population Commission.

⁶⁵ UN Millenium Development Goals Indicator, 2008.

⁶⁶ UN Women, Progress of the World’s Women 2011-2012: In Pursuit of Justice, p.34: “where there are laws in place for domestic violence, prevalence is lower and fewer people think that violence against women is justifiable.”

⁶⁷ CEDAW Article 2.

⁶⁸ 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.”

⁶⁹ Rome Statute of the International Criminal Court, Article 7 (1) (g) (Crimes against Humanity), or Article 8 (2) (b) (xxii); Article 7 (2) (h); Article 8 (2)(xvi).

⁷⁰ Rome Statute, Article 7(1)(g) of the Elements of Crimes.





Aniedi Bassey, who is 16 years old, used to live in Njemanze before it was demolished. He has now joined the ranks of Nigeria's street children, Port Harcourt, April 2011.

EIGHT **PROTECT** **CHILDREN**

PROTECT THE RIGHTS OF THE CHILD

8.1 WIDESPREAD ABUSE OF CHILDREN UNDER 18

8.2 CHILDREN AND THE CRIMINAL JUSTICE SYSTEM

8.3 RIGHT TO EDUCATION

8.4 NATIONAL LAWS

8.5 INTERNATIONAL LAW AND STANDARDS

8.6 RECOMMENDATIONS

“The rights of children are not yet well established in Nigeria...There are still unacceptable rates of infant and child mortality, child labour, trafficking, rape and sexual harassment, lack of quality education, gender inequality and children living on the streets.”

African Union, African Peer Review Mechanism, Country Review Report on Nigeria, May 2008

8.1 WIDESPREAD ABUSE OF CHILDREN UNDER 18

Children make up almost half on Nigeria's population, and seven out of 10 children are under the age of 12. According to UNICEF, almost 9 million are orphaned and 930,000 of these are orphaned by HIV/AIDS.

Violence against children, including child trafficking, child labour, sexual exploitation and harmful traditional practices continue to take place in Nigeria. In Akwa Ibom state, children believed to be witches continue to be subjected to torture and other cruel and degrading treatment by non-state actors, sometimes resulting in death.

The National Action Plan for the Promotion and Protection of Human Rights in Nigeria recognizes the challenge of "Protecting children from physical and sexual assaults, particularly when children are detained in police cells or Borstal institutions".

However, in practice government provisions for homeless and vulnerable children are inadequate.

8.2 CHILDREN AND THE CRIMINAL JUSTICE SYSTEM

Amnesty International research shows that the police frequently arrest and detain children unlawfully, in particular those who are vulnerable and living on the street. Nigeria has three juvenile offender institutions and several state remand homes but in most police stations and prisons, children are held in cells together with adults. The police do not separate children from adults but routinely hold children in cells with adults; nor do the police prioritize cases of children. Moreover, often the police falsely record the age of a child on the charge sheet as higher than it really is and bring them to a magistrates' court instead of a juvenile offenders court. Juveniles are also routinely detained with adults in prison custody.

Amnesty International continues to receive reports that children under the age of 18, some as young as 12, are tortured in police detention.

8.3 RIGHT TO EDUCATION

There are more than 50 million Nigerian children under the age of 12, almost half aged between 6 and 12.⁷¹ According to the 2006 National School Census, almost 20 per cent of children between 6 and 12 are not going to school.⁷²

In November 2010, the Economic Community of West African States (ECOWAS) Community Court of Justice required the government of Nigeria to ensure that the right to free and compulsory basic education was upheld. In a landmark decision, the Court also affirmed that the right to education should not be undermined by corruption. The ECOWAS Court held that Nigeria's Universal Basic Education Commission has the responsibility to ensure that funds disbursed for basic education are properly used for this purpose.⁷³

8.4 NATIONAL LAWS

Nigeria reflected the provisions of the Convention on the Rights of the Child in its Child's Rights Act (2003); however, the Act is yet to be enacted in 12 states of the Federation. Moreover, in most states, the Child's Rights Act is not fully implemented. In June 2010, the UN Committee on the Rights of the Child recommended that the Child's Rights Act should be included in the concurrent list of legislation in the Constitution to ensure that both the Federal and state authorities would have legislative powers.

In 2005, the Committee on the Rights of the Child expressed its concern that existing legislation at federal, state and local levels, in particular the religious and customary laws, did not fully comply with the principles and provisions of the Convention on the Rights of the Child.

Contrary to the definition of a child under the Child's Rights Act as a person under the age of 18, the Nigerian Criminal Procedure Act defines a child as "any person who has not attained the age of 14 years" and a

juvenile offender is defined as “an offender who has not attained the age of 17 years”. If the alleged crime is a capital offence, and the suspect cannot prove that he or she was under the age of 14 at the time it was committed, it is common practice to assume that the accused is an adult.

8.5 INTERNATIONAL LAW AND STANDARDS

International law defines a child as anyone under the age of 18. Children are entitled to the same rights as adults and because of their age they should also have additional protection, which should be based on their best interests and well-being.

The UN Convention on the Rights of the Child encompasses civil rights and freedoms, family environment, basic health and welfare, education, leisure and cultural activities and special protection measures for children. It sets out the right to family life, asserting as a guiding principle that the family is “the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children”.

Children who are in conflict with the law are entitled to the same fair trial guarantees as adults, as well as additional protection based not only on their best interests and well-being, but also on the desirability of rehabilitation. Some considerations that courts and prison authorities should take into account are:⁷⁴

- Cases involving children should be given the highest priority and handled as fast as possible;
- Arrest, detention or imprisonment of children should only be used as a measure of last resort, in conformity with the law and for the shortest appropriate time;
- The privacy of every child should be protected, and measures taken to avoid their being stigmatized; their trials and judgements, for example, should be closed to the public and the press;
- Pre-trial detention of juveniles should be avoided where possible;
- Children in pre-trial detention should be segregated from adults, except where this would not be in the best interests of the child;
- Any penalty must be proportional to the gravity of the offence and the circumstances of the young person and should promote their reintegration and the child’s assuming a constructive role in society;
- Children in prison should be allowed to maintain contact with their families and they also have a right to education.

8.6 RECOMMENDATIONS

Amnesty International calls on the National Assembly to:

- Domesticate the African Charter on the Rights and Welfare of the Child.
- Adopt a motion urging the President to ensure that the Child Rights Act (2003) is enacted and fully implemented in each of Nigeria’s 36 states.
- Adopt a motion urging the Attorney General of the Federation and Minister of Justice to immediately bring all young offenders’ institutions and other detention facilities into line with the standards recommended in the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.
- Set up a committee to review the compatibility of all legislation, including Shari’a and customary laws, with the Convention on the Rights of the Child and the Child Rights Act.
- Set up a committee to study street children in Nigeria and propose recommendations to ensure greater protection for their rights.
- Legislate to prohibit all forms of violence against children.
- Review all provisions in criminal laws and regulations relating to juvenile offenders and make sure that they



are in line with international human rights law and standards.

- Set up a permanent Child's Rights Agency, as recommended by the UN Committee on the Rights of the Child.
- Adopt a motion urging the President to ensure that the right to education is upheld as required in the judgment issued by the Economic Community of West African States (ECOWAS) Community Court of Justice.

71 CRC, Third and fourth periodic report of States parties due in 2008, Nigeria.

72 According to the National Bureau of Statistics, there are some 54,000 public primary schools, with 21 million children enrolled, almost 587,000 teachers and 320,000 class rooms. On average, there is one teacher for 36 pupils and 66 pupils per class room.

73 The case (suit number: ECW/CCJ/APP/0808) was brought by the Socio-Economic Rights and Accountability Project (SERAP)

against the Federal Government of Nigeria and the Universal Basic Education Commission (UBEC).

74 Articles 10(2), 14(4) and 24(1) of the ICCPR; Principle 2 of the Declaration of the Rights of the Child; Articles 3(1), 37 and 40 of the Convention on the Rights of the Child. Article 17 of the African Charter on the Rights and Welfare of the Child.



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Children living under threat of forced eviction walk towards their houses in Abonnema Wharf community, Port Harcourt, April 2011.



© Private



Activists at a rally on World Habitat Day in Port Harcourt, October 2009.

NINE FREEDOM OF EXPRESSION

PROTECT FREEDOM OF EXPRESSION

9.1 HUMAN RIGHTS DEFENDERS AND JOURNALISTS

9.2 NATIONAL LAWS

9.3 INTERNATIONAL LAW AND STANDARDS

9.4 RECOMMENDATIONS

“the Government has shown a persistent lack of tolerance towards defenders working in areas perceived as sensitive. As a result, harassment by State authorities of journalists, labour leaders and defenders working on issues such as democratic governance, elections, corruption and economic rights still continues.”

Report of the Special Representative of the United Nations Secretary-General on human rights defenders, Hina Jilani. January 2006

9.1 HUMAN RIGHTS DEFENDERS AND JOURNALISTS

Human rights defenders and journalists continue to face intimidation and harassment. In addition, journalists are often threatened and beaten by police and security forces.

On 29 December 2010, human rights activist Chidi Nwosu was shot dead by unidentified gunmen in his house in Abia state. He was President of the Human Rights, Justice and Peace Foundation and was known for his work against corruption and human rights abuses.

In March 2010, the Shari'a Court in Magajin Gari, Kaduna ordered the Civil Rights Congress to stop its online forum from debating the amputation of the right hand of Mallam Bello Jangebe 10 years earlier.

In April 2010, three human rights activists were assaulted by police in the city of Port Harcourt. Isaac Asume Osuoka, Celestine AkpoBari and Ken Henshaw from the NGO Social Action were stopped in their car and detained by police after leaving their office. Celestine AkpoBari said he was repeatedly hit with the butt of a gun, poked with a barrel in his arms and legs and slapped in the face.⁷⁵

Several journalists have been killed in suspicious circumstances in recent years. On 24 April 2010, Edo Sule Ugbagwu, a senior judiciary correspondent with *The Nation* newspaper, was killed in Lagos by gunmen. No one has been brought to justice for his killing. Bayo Ohu, the Assistant News Editor of *The Guardian* newspaper, based in Lagos, was shot dead in 2009. In October 2008, Eiphraim Audu, a radio journalist with the Nasarawa State Broadcasting Service, was shot by six gunmen near his home in Lafia, central Nigeria. In August 2008, Paul Abayomi Ogundeji, a member of the editorial board of the newspaper *Thisday* was killed by unidentified gunmen in Lagos. He was the second member of the *Thisday* editorial board to be murdered in two years. Godwin Agbroko, the chairman of *Thisday's* editorial board, was killed in similar circumstances in December 2006. A chief witness in the inquest to the death of Paul Abayomi Ogundeji was also killed by unidentified gunmen in her house in Ogun state in June 2009.

In failing to prevent, investigate and punish perpetrators of these attacks, the Nigerian authorities are failing in their duty under international law and standards to exercise due diligence to protect the victims' right to life and security of person, and are also failing to protect the right to freedom of expression.

9.2 NATIONAL LAWS

Section 39 of Nigeria's Constitution guarantees freedom of expression and the freedom to receive and share information. The right to freedom of peaceful association is guaranteed in section 40 of the Nigerian Constitution.

The Freedom of Information Act (2011) makes public records and information freely accessible to the public.

9.3 INTERNATIONAL LAW AND STANDARDS

- Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the rights to hold opinions and freedom of expression; "this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."
- Article 9 of the African Charter on Human and Peoples' Rights guarantees the right to receive information and to express and disseminate opinions.
- Article 5 (d) (viii) of the International Convention for the Elimination of All Forms of Racial Discrimination guarantees "The right to freedom of opinion and expression".



9.4 RECOMMENDATIONS

Amnesty International urges the National Assembly to:

- Adopt a motion urging the Attorney General of the Federation and Minister of Justice to fully and promptly investigate all acts of intimidation or violence against human rights defenders and journalists, and ensure those responsible are brought to justice.
- Commit the National Assembly explicitly and publicly to promoting respect for human rights and protecting human rights defenders; and acknowledge the legitimacy of the work of human rights defenders.
- Draft a bill to establish a comprehensive witness protection program for the protection of individuals, including human rights defenders, involved in investigations or other proceedings against those accused of human rights violations.
- Adopt a motion calling on the Attorney General of the Federation and Minister of Justice to end impunity for attacks on human rights defenders and to protect those facing intimidation, threats and harassment.

⁷⁵ See <http://www.amnesty.org/en/news-and-updates/activists-assaulted-and-illegally-detained-nigerian-police-2010-04-09>



(c) Tom Saater/Demotix



Nigeria's National Assembly in Abuja, 2011.

Nigeria's laws discriminate against individuals suspected of same-sex sexual conduct or non-conventional gender identity, in breach of the country's international obligations.

TEN IDENTITY-BASED DISCRIMINATION

END DISCRIMINATION ON GROUNDS OF GENDER IDENTITY OR
SEXUAL ORIENTATION

10.1 LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE

10.2 NATIONAL LAWS

10.3 INTERNATIONAL LAW AND STANDARDS

10.4 RECOMMENDATIONS

“Sexual minorities are not visible in Nigeria, and there is no officially registered association of gay and lesbians... the issue was brought up at the Forum, and the views of more than 90 per cent of the participants was that Gay-Lesbian relationship or same-sex marriage was not a human rights issue in Nigeria.”

Nigeria national report submitted in accordance with paragraph 15(A) of the annex to UN Human Rights Council Resolution 5/1

10.1 LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE

Human rights abuses against individuals suspected of same-sex sexual conduct or non-conventional gender identity continue to take place in Nigeria. The Nigerian government has obligations under international human rights standards to promote, respect and protect the human rights of its population without distinction of any kind, including on the basis of sexual orientation or gender identity.

Homophobia and transphobia regularly result in violence against lesbian, gay, bisexual and transgender people and the authorities have proved unable or unwilling to provide sufficient protection. In 2008, a pastor of a church in Lagos attended by many lesbian, gay, bisexual or transgender people had to flee the country after several newspapers criticized the church. The police harassed several of the church members.

On 9 February 2009, at the 4th Session of the UN Universal Periodic Review (UPR), the Nigerian government stated that it was not aware of any “Lesbian, Gay and Transgender group” in Nigeria. The government underlined however that “as citizens, all Nigerians have their fundamental rights guaranteed by the Constitution.”

The use of laws to imprison individuals for consensual same-sex relations in private or on the basis of their gender identity or expression is a violation of Nigeria’s international human rights obligations.

10.2 NATIONAL LAWS

The right to freedom from discrimination is recognized in section 42(1) of the 1999 Constitution: “A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person – (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject”.

Chapter 42, section 214 of Nigeria’s Criminal Code penalizes consensual same-sex sexual conduct between adults with 14 years’ imprisonment. Shari’a penal codes criminalize “sodomy”, in some states with the death penalty. In 2008, several adult men and women were detained on charges of engaging in consensual same-sex sexual practices. Amnesty International considers the use of “sodomy” laws to imprison individuals for consensual same-sex relations in private to be a violation of human rights, including the rights to privacy, to freedom from discrimination, to freedom of expression and association. These rights are protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The National Action Plan for the Promotion and Protection of Human Rights in Nigeria, published by the Federal Government of Nigeria in 2006, states that the Nigerian Constitution guarantees freedom from discrimination: “A citizen of Nigeria is protected against any unfair discrimination, directly or indirectly, by the state or any person on the basis of one or more grounds, including: Gender, Sex...”. It further states that: “Inequality and discrimination exists on the basis of: Physically challenged person, HIV/AIDS, Sexual orientation, Age, Youth.”

10.3 INTERNATIONAL LAW AND STANDARDS

- The UN Human Rights Committee urges states not only to repeal laws criminalizing homosexuality but also to enshrine the prohibition of discrimination based on sexual orientation into their constitutions or other fundamental laws. Discrimination on the basis of sexual orientation is also prohibited under other international human rights treaties to which Nigeria is a state party.
- The African Charter on Human and Peoples’ Rights affirms the equality of all people. Its article 2 states:



“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” Article 3 guarantees every individual equality before the law. Further, its article 26 prescribes that “Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

- The ICCPR protects the rights to freedom of expression (article 19), freedom of conscience (article 18), freedom of assembly (article 21) and freedom of association (article 22). It affirms the equality of all people before the law and the right to freedom from discrimination in articles 2 and 26. In the landmark 1994 case of *Toonen v Australia*, the UN Human Rights Committee, monitoring states’ compliance with the ICCPR, held that sexual orientation should be understood to be a status protected from discrimination under these articles. States cannot curtail the enjoyment of human rights on the basis of sexual orientation.

- The right to freedom from discrimination is also recognized in the African Charter on Human and Peoples’ Rights, ratified by Nigeria in 1983 and which has become part of Nigeria’s national laws. Article 2 of the African Charter states: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” Article 3 promises every individual equality before the law and article 26 prescribes that: “Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

- The African Commission on Human and Peoples’ Rights has said that: “Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights... The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation.”

- The ICCPR affirms the equality of all people before the law and the right to freedom from discrimination in articles 2 and 26. The UN Human Rights Committee has said that the protections afforded in articles 2 and 26 extend to freedom from discrimination on the basis of sexual orientation, saying: “in its view the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”

- The Committee on Economic, Social and Cultural Rights has repeatedly addressed the impact of sexual orientation discrimination on the enjoyment of economic, social and cultural rights. This has usually been done in consideration of Article 2 of the ICESCR, indicating that this Committee, like the Human Rights Committee, considers that “sexual orientation” can be read into the Covenant’s non-discrimination provisions. The Committee on Economic, Social and Cultural Rights has asserted: “Guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.”

- Article 17 of the ICCPR states: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

10.4 RECOMMENDATIONS

Amnesty International calls on the National Assembly to:

- Review all legislation which could result in the arrest, detention, prosecution and punishment of people solely for their sexual orientation or gender identity. This includes laws explicitly criminalizing consensual sexual conduct between people of the same sex or with transgender individuals; public order legislation used as a pretext for prosecuting and punishing people solely for their sexual orientation or gender identity; and laws



banning the “promotion” of homosexuality which can be used to imprison lesbian, gay, bisexual and transgender individuals and human rights defenders.

- Legislate to prohibit and eliminate prejudicial treatment on the basis of sexual orientation, consensual sexual relations or gender identity at every stage of the administration of justice.
- Domesticate the International Convention on the Elimination of All forms of Racial Discrimination.
- Urge the President to release immediately all individuals imprisoned solely on the basis of their sexual orientation or gender identity.



NOTES



NIGERIA: HUMAN RIGHTS AGENDA 2011-2015

Members of Nigeria's National Assembly, the highest law making body in the country, are uniquely placed to improve Nigeria's national human rights record. The human rights that Nigeria is obliged to protect include the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to a fair trial, the right to freedom of expression and the right to an adequate standard of living.

This document sets out 10 areas for action by the National Assembly. These include police and justice sector reform; an end to the death penalty, forced evictions and violence against women; action to tackle discrimination on grounds of gender or sexual orientation, greater human rights protection for children and stronger regulation of the oil industry.

Amnesty International urges the members of Nigeria's National Assembly to take steps to make human rights a reality for all people in Nigeria and to demonstrate their commitment to promoting and protecting human rights.

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