

NIGERIA

PROMOTING AND
PROTECTING HUMAN
RIGHTS:

A TEN POINT NATIONAL
AGENDA

AMNESTY
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On the eve of Nigeria's election to the United Nations (UN) Security Council as a non-permanent member, Amnesty International calls on the Nigerian government to strengthen their national human rights record and demonstrate Nigeria's strong commitment to the UN's role in promoting and protecting human rights.

In twelve months Nigeria will celebrate 50 years of independence. Following successive military regimes, efforts have been made by the Nigerian government to improve the human rights situation in the country. The Constitution that came into force in 1999 recognizes the right to life, prohibits torture and other ill treatment, and guarantees a fair trial; however, economic, social and cultural rights fall under the directive principles and are not justiciable. In addition, a wide range of human rights concerns remain.

Amnesty International is calling on the Nigerian government to improve their human rights record, which should include the implementation of the following ten points:

1. Comply with Nigeria's international and regional human rights obligations, as explicitly set out in the treaties it has ratified;
2. Prevent and prosecute acts of extrajudicial executions, enforced disappearances, torture or other ill treatment;
3. Adopt a moratorium on executions;
4. Improve access to justice;
5. Protect human rights in the Niger delta;
6. End forced evictions;
7. Respect and protect freedom of expression;
8. Stop violence against women and implement the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in all states;
9. Implement the Convention on the Rights of the Child in all states;
10. End discrimination on the basis of gender identity or sexual orientation.

1. COMPLIANCE WITH NIGERIA'S INTERNATIONAL AND REGIONAL HUMAN RIGHTS OBLIGATIONS, AS EXPLICITLY SET OUT IN THE TREATIES IT HAS RATIFIED.

Nigeria has the obligation to respect, protect and fulfil the human rights for everyone within its jurisdiction, without discrimination on the basis of gender, ethnicity, social origin, political opinion or other prohibited grounds. These human rights include the right to life, the right not to be subjected to torture or 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. Nigeria has explicitly accepted obligations with regard to these rights through the international and regional human rights treaties which it has ratified, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights. In 2009, Nigeria also ratified the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Prevention and Punishment of the Crime of Genocide; the Optional Protocol to the Convention Against Torture; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities. In 2009, Nigeria became the second country in Africa to deposit a National Plan of Action at the UN Human Rights Council.

Amnesty International commends the Nigerian government's engagement with the UN Universal Periodic Review (UPR) in 2009, and its stated commitment to cooperate in every aspect of the mandate of the Human Rights Council. The organisation also welcomes Nigeria's voluntary pledges and commitments expressed prior to Nigeria's re-election to a three year term on the Human Rights Council from 2010. As a member of the Human Rights Council, Nigeria is required to uphold the highest standards in the promotion and protection of human rights.

Amnesty International calls on the Nigerian government to:

- ensure that all international human rights obligations are fully incorporated in Nigeria's national legislation;
- take the necessary steps to ensure the prompt ratification, without reservations, of the second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR);
- ensure that Nigeria complies with its reporting obligations under international and regional human rights treaties, by presenting all overdue periodic reports to the relevant treaty monitoring bodies;
- take the necessary steps to ensure the prompt ratification of the Protocol on the Statute of the African Court of Justice and Human Rights; and make the declaration that would allow direct access to the African Court of Justice and Human Rights by individuals and non-governmental organizations, as required under Article 30 of the Court's Protocol.

2. PREVENT AND PROSECUTE ACTS OF EXTRAJUDICIAL

EXECUTIONS, ENFORCED DISAPPEARANCES, TORTURE OR OTHER ILL TREATMENT

Over the years Amnesty International has documented many cases of human rights violations by the security forces in Nigeria. There are consistent reports that the Nigeria Police Force have executed detainees and people who refuse to pay bribes or during road checks, referring to them as “criminal suspects”. In other cases suspected armed robbers are reported to have been shot during arrest, often resulting in unlawful killings. In addition, the Police Force routinely tortures suspects in order to extract confessions.¹

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

There are also consistent reports of enforced disappearances in Nigeria. Amnesty International has spoken to many family members of individuals who were arrested and detained by the Nigerian police and whose whereabouts are now unknown. The refusal of police authorities to disclose the whereabouts of these individuals or to acknowledge that they are being held in detention is deeply troubling. Amnesty International notes with great concern the history of extrajudicial executions, torture or other ill-treatment in Nigeria. Amnesty International fears that the missing individuals were tortured and may have been executed.

Enforced disappearances are crimes under international law and are a violation of Nigeria’s constitutional and international human rights obligations, including the right to security and dignity of person; the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the right to humane conditions of detention; the right to a legal personality; right to a fair trial; and when the disappeared person is killed, the right to life.

Few police officers are held accountable. In most cases there is no investigation into deaths in custody, extrajudicial executions and enforced disappearances. The Nigerian law permits the use of lethal force in circumstances broader than international guidelines permit.

Amnesty International calls on the Nigerian government to:

¹ Amnesty International publications: Nigerian police and security forces: Failure to protect and respect human rights AFR 44/006/2008 (16 May 2008); Nigeria: Prisoners’ rights systematically flouted, AFR 44/001/2008 (26 February 2008); Nigeria: Rape the silent weapon, AFR 44/020/2006 (28 November 2006); Nigeria: Abia State police kill 16 ‘armed robbers’, AFR 44/019/2006 (18 August 2006); Nigeria: Fears of human rights violations after troops deployed in Bayelsa State, Niger Delta, AFR 44/006/2005 (8 March 2006); Ten years on: injustice and violence haunt the oil Delta, AFR 44/022/2005, (3 November 2005); Nigeria: Police use of lethal force against demonstrators must be investigated, AFR 44/021/2003 (15 July 2003); Nigeria: Security forces: Serving to protect and respect human rights?, AFR 44/023/2002 (19 December 2002).

- investigate all cases of torture, enforced disappearance, and extrajudicial executions promptly, independently and impartially and bring to justice those responsible in accordance with international standards for fair trial without recourse to the death penalty;
- ensure that the relevant provisions of international and regional instruments are reflected in national legislation, including legislation criminalising torture, enforced disappearance and extrajudicial executions;
- amend 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. These sections of the Force Order are not in line with the UN Basic Principles on the Use of Force and Firearms and are being implemented arbitrarily.

3. ADOPT A MORATORIUM ON EXECUTIONS

Suspects in capital cases and death row prisoners are regularly denied their right to a fair trial and an impartial appeal process. Recent research carried out by Amnesty International and Legal Defence and Assistance Project (LEDAP) indicates that hundreds of death row prisoners in Nigeria may be innocent² and that the one thing they have in common is that they are poor. Under international human rights standards, capital punishment may only be imposed after the most exacting due process of law. However, weaknesses in the Nigerian criminal justice system may lead to breaches of international human rights law and standards. In 2006, at least six death row prisoners were executed without ever having had an opportunity to appeal their death sentence. They had been tried and convicted by Robbery and Firearms Tribunals under the jurisdiction of the military. There continues to be at least 70 prisoners on death row who were sentenced to death by these tribunals, with no right of appeal. Moreover, there are currently at least 40 juvenile offenders on death row, in violation of international and regional standards and national law which prohibit the imposition of the death penalty on juveniles.

The organisation notes that on 9 February 2009, at the 4th Session of the United Nations Universal Periodic Review (UPR) Nigeria's Minister of Foreign Affairs stated that "Nigeria continues to exercise a self-imposed moratorium [on the death penalty]."

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

Recently, several states in Nigeria have extended the scope of the death penalty to include crimes related to kidnapping. Extension of the scope of the death penalty is contrary to Nigeria's international human rights commitments as a member of the United Nations. In resolution 32/61, adopted on 8 December 1977, the UN General

2 Amnesty International and LEDAP, Nigeria: Waiting for the hangman, AFR 44/020/2008; Amnesty International, Nigeria: Prisoners' Rights systematically flouted, AFR 44/001/2008

Assembly stated: "...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment..." The UN Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights by states parties has called on states to reduce the number of crimes punishable by death, restricting them to the "most serious crimes" in accordance with Article 6(2) of the International Covenant on Civil and Political Rights, with a view to abolishing the death penalty. The UN Human Rights Committee has stated that "Extension of the scope of application of the death penalty raises questions as to the compatibility with article 6 of the International Covenant on Civil and Political Rights." Nigeria ratified the International Covenant on Civil and Political Rights (ICCPR) in 1993. In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "not to extend its application to crimes to which it does not at present apply".

Amnesty International calls on the Nigerian government to:

- establish an official moratorium on executions with an ultimate view to abolish the death penalty;
- commute all death sentences;
- 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, seriously ill inmates - including mentally ill and elderly inmates - with a view to commuting their death sentences;
- bring Nigeria into line with international and national standards by limiting the number of offences for which executions may be imposed, and refrain from extending the scope of the death penalty;
- take the necessary steps to ensure the prompt ratification, without reservations, of the second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.

4. IMPROVE ACCESS TO JUSTICE

Amnesty International research³ reveals that three out of every five inmates in Nigeria's prisons have not been convicted of any offence; they await their trial for years in appalling conditions. Few can afford a lawyer and the government-funded Legal Aid Council is unable to provide assistance for everyone who needs this. The Council has insufficient lawyers to cover the whole country. In the past years, several government-established commissions have recommended reforms to improve access to justice. The government however did not take any action to implement these recommendations.

In 2008, the Federal Ministry of Justice embarked on prison decongestion scheme, providing lawyers for detained persons. Amnesty International is yet to observe the impact of the scheme.

³ Amnesty International: Nigeria: Prisoners' rights systematically flouted, AFR 44/001/2008 (26 February 2008).

Several states set up legal aid services, such as the Ogun State Citizens' Rights Department and the Lagos State Office of the Public Defender. However, the capacity of such services is limited.

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

Amnesty International calls on the Nigerian government to:

- take effective steps to ensure persons accused of a criminal offence 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;
- improve access to legal aid and provide adequate resources to the Legal Aid Council to hire more lawyers;
- implement the recommendations to improve access to justice of past governmental commissions;
- review the Prison Act and the Police Act and bring them into line with Nigeria's obligations under international human rights law;
- prioritise criminal justice sector reform bills, which are currently pending before the National Assembly;
- immediately release from prison Patrick Obinna Okoroafor.

5. PROTECT HUMAN RIGHTS IN THE NIGER DELTA

The security forces, including the military, continue to commit human rights violations in the Niger Delta, including extrajudicial executions, torture or other ill-treatment, and destruction of homes. In the run-up to the 2007 elections, violence in the Delta increased as politicians used armed gangs to attack their opponents. After the elections, the situation deteriorated further. Armed groups and gangs kidnapped dozens of oil workers and their relatives, including children, and attacked many oil installations.

Amnesty International received reports that the Joint Task Force (JTF, combined troops of the army, navy, air force and the mobile police) frequently raids communities, particularly following clashes between the JTF and militants, often resulting in the death of bystanders. In May 2009, a clash between the JTF and armed groups in Delta State, in the South West of Nigeria, led to 2 weeks of fighting between the forces, and land and air strikes by the JTF on militant camps and communities across the Warri South and South West Local Government Areas in Delta State. The area was occupied by the JTF for several months, with residents only being able to return to the community in August 2009. Most houses were destroyed. Amnesty International has received several reports claiming that bystanders, including women and children, were

killed and many more wounded as a result of the intervention of the Joint Task Force.

In August 2008, at least four people –two elderly men, a young woman and an elderly woman - were killed when the military raided the village of Agge. According to the JTF, the action followed an attack by suspected militants on the JTF.

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.⁴

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 but these laws and regulations are poorly enforced. The government agencies responsible for enforcement are ineffective and, in some cases, compromised by conflicts of interest.

Amnesty International calls on the Nigerian government to:

- protect all people against human rights abuses by armed groups and gangs and to ensure that suspected perpetrators are brought to justice, in accordance with international standards for fair trial without recourse to the death penalty;
- ensure that the JTF comply with human rights and humanitarian law standard when using force;
- carry out a thorough, independent and impartial investigation into violations committed by the JTF and the abuses committed by armed groups;
- strengthen the regulation of the oil industry, including with effective enforcement and appropriate sanctions;
- ensure the social and human rights impact assessment of all oil and gas projects is made mandatory;
- provide information to communities on the social and human rights impacts of oil operations, including impact on fisheries, agriculture, health and livelihoods;
- provide meaningful access to regulatory and decision-making bodies for communities likely to be affected by oil operations;
- ensure all new and existing regulation of the petroleum industry addresses the social and human rights impacts of the oil industry;
- ensure adequate compensation to victims of human rights violations.

6. END FORCED EVICTIONS

Forced evictions are ongoing throughout Nigeria. Since 2000 over 2 million people have been forcibly evicted from their homes in different parts of Nigeria. Such evictions generally target marginalized people, many of whom have lived for years without

⁴ For further information see Amnesty International report “*Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*” (AFR44.017/2009)

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 2006, Nigeria was named one of the three worst violators of housing rights by the Centre on Housing Rights and Evictions.

In Port Harcourt, the capital of Rivers state and the most populous city in the Niger Delta, wide scale forced evictions are being carried out along the waterfront despite earlier state government promises that no evictions would take place. Thousands of people are likely to be affected.

Between May and July 2008 forced evictions took place on an almost weekly basis in Lagos, some people were facing their third forced eviction.

Amnesty International calls on the Nigerian government to:

- immediately cease all forced evictions;
- legislate and enforce a clear prohibition on forced evictions;
- 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;
- develop and adopt 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;
- ensure a genuine consultation with those affected, and, if any are to be evicted because there are no other feasible alternatives, to respect their rights to adequate and reasonable notice of any eviction, and adequate alternative accommodation;
- respect the rights of all victims of forced evictions to an effective remedy, including access to justice and the right to reparations including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

7. RESPECT AND PROTECT FREEDOM OF EXPRESSION

Amnesty International is concerned about the increasing intolerance towards the media. In September 2009, Bayo Olu, Assistant News Editor of The Guardian newspaper, was killed in his home in Lagos in suspicious circumstances. Apart from his mobile phone and laptop nothing was stolen. Amnesty International fears that this incident does not stand on its own; in 2008, at least two journalists were killed in suspicious circumstances.

In October 2008, a Nigerian radio journalist with the Nasarawa State Broadcasting Service, Eiphraim Audu, was shot by six unknown gunmen near his home in Lafia, Nassarawa State. No items were reported stolen from him. In August 2008, Paul Abayomi Ogundeji, a member of the editorial board of the newspaper Thisday was killed by unknown gunmen in Lagos. In January 2009, a Coroner's inquest in his death commenced. A chief witness in the inquest to the death of Mr Ogundeji was also killed by unknown gunmen in her house in Ogun state earlier this year, on Tuesday 30 June 2009. Ogundeji 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. His murder has not yet been solved.

Moreover, journalists face intimidation and harassments on a regular basis: media offices were raided, TV stations shut down and journalists were threatened and beaten by police. Between January and September 2009 alone, it was reported that at least 30 journalists were arrested, attacked or threatened.

Amnesty International calls on the Nigerian government to:

- to respect and protect freedom of expression;
- prioritise a freedom of information bill currently before the national assembly;
- to fully and impartially investigate all allegations of killings, attacks and harassments of journalists.

8. STOP VIOLENCE AGAINST WOMEN AND IMPLEMENT THE PROVISIONS OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) IN ALL STATES

Violence against women continues to be widespread in Nigeria, including domestic violence, rape and other forms of sexual violence by both state officials and private individuals.⁵ While some states in Nigeria have adopted state legislation to protect women from discrimination and violence, almost 25 years after its ratification, CEDAW has not yet been incorporated into national or state legislation and its provisions are not implemented.

Amnesty International urges the government to

- make a public commitment to prohibit all forms of violence against women and girls in law and in practice, and provide reparation and appropriate services for survivors of violence.
- repeal laws that allow violence and discrimination against women to persist, and ensure that laws against those who commit acts of violence against women are enforced.
- fully implement the provisions of CEDAW in both federal and state legislation.
- fully implement 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.

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

9. IMPLEMENT THE CONVENTION ON THE RIGHTS OF THE CHILD IN ALL STATES.

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 14 states of the federation. 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 abuse and violence by non state actors, sometimes resulting in death.

In 2005, the UN Committee on the Rights of the Child expressed their 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.

Nigeria has four young offender institutions; however, in most prisons, children are being held in cells together with adults.

Amnesty International calls on the Nigerian government to:

- ensure that the Child Rights Act (2003) is enacted and fully implemented in each of Nigeria's 36 states;
- 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;
- give cases involving juveniles the highest priority and handle them within the shortest possible timeframe;
- arrest, detain or imprison children only as a measure of last resort, in conformity with the law and for the shortest appropriate time;
- avoid pre-trial detention of children where possible;
- separate children in detention from adults, except where this would not be in the best interests of the child;
- allow children in prison to maintain contact with their families through correspondence and visits;
- ensure children have access to education whilst in detention.

10. END DISCRIMINATION ON THE BASIS OF GENDER IDENTITY OR SEXUAL ORIENTATION

Human rights abuses against individuals suspected of same-sex sexual conduct or gender identity continues 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. However, 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. 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.

Homophobia and transphobia regularly results in violence against lesbian, gay, bisexual and transgender people and the authorities 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 United Nations Universal Periodic Review (UPR), the Nigerian government stated that it was not aware of any 'Lesbian, Gay and Transgender group' in Nigeria.

Amnesty International calls on the Nigerian government 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 same-sex or 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, same-sex practicing and transgender individuals and human rights defenders.
- take all necessary legislative, administrative and other measures 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;
- release immediately all individuals imprisoned solely on the basis of their sexual orientation or gender identity;
- ensure that all allegations and reports of human rights violations based on sexual orientation, gender identity or assumptions as to individuals' engagement in consensual same-sex practices, are promptly and impartially investigated and perpetrators held accountable and brought to justice;
- ensure adequate protection of human rights defenders at risk because of their work on issues of sexual orientation and gender identity. Their work should be supported and they should be consulted on policy initiatives to respect, protect and fulfil the human rights of lesbian, gay, bisexual and transgender people.