
amnesty international

Nigeria
Submission to the UN Universal
Periodic Review
Fourth session of the UPR Working Group of the
Human Rights Council
February 2009



Executive summary

In this submission, Amnesty International provides information under sections [B, C and D] as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concern over shortcomings in national legislation and national institutions to promote and protect human rights.
- Section C highlights Amnesty International's concerns about human rights violations in the Niger Delta; extrajudicial executions, torture and other ill-treatment, including rape; the death penalty; discrimination against lesbians, gay, bisexual and transgender people; discrimination against women; and forced evictions.
- In section D, Amnesty International makes a number of recommendations for action by the government in each of the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

The Nigerian Constitution, which came into force in 1999, recognizes the right to life, prohibits torture and other ill-treatment, and guarantees a fair trial. Since 2000, several northern states have introduced new *Shari'a* penal legislation, which, contrary to Nigeria's Constitution and international human rights obligations, imposes the death penalty for private sexual acts, such as adultery and sodomy; and provides for other cruel, inhuman and degrading punishments, such as flogging and amputation.

Nigeria reflected the provisions of the Convention on the Rights of the Child (CRC) in its Child's Rights Act (2003); however, the Act has only been enacted in 16 states of the federation.²

A Freedom of Information Bill, first presented in 1999, is still pending before the National Assembly. It was passed by the previous House of Representatives in 2004 and by the Senate in November 2006, but was not signed into law by then President Obasanjo before the change of government. In 2008, the bill was reintroduced in both the Senate and the House of Representatives. However, on 3 June 2008, the bill was rejected by the House of Representatives; the bill has appeared – and has been rejected -- over five times.

A bill criminalizing domestic violence was introduced in the House of Assembly of 12 states between 1999 and 2004; it was passed in four of the states.³ At federal level, the Domestic Violence Bill failed to pass before the handover to the new government in 2007.

A bill aimed at strengthening the independence of the National Human Rights Commission, pending before the National Assembly since 2005, was reintroduced in 2008. In 2006, the Executive Secretary of the Commission was dismissed, reportedly due to his comments in defence of human rights and his critical approach to the government's human rights policy.

C. Promotion and protection of human rights on the ground

The Niger Delta

The security forces, including the military, continue to commit human rights violations in the Niger Delta, including extrajudicial executions, torture and 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 violence increased further. Armed groups and gangs kidnapped dozens of oil workers and their relatives, including children, and attacked many oil installations.

² These states include: Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers, Taraba and the Federal Capital Territory. The Child's Right Act is only applicable in the Federal Capital Territory. All 36 states have to adopt the act in their state legislation.

³ Lagos, Cross River, Ebonyi and Jigawa States.

In August 2007, rival gangs clashed in the streets of Port Harcourt, killing at least 30 people and injuring many more, including bystanders. More died when the Joint Military Taskforce (JTF) intervened using helicopters and machine-guns, and at least 32 gang members, members of the security forces and bystanders were killed. Many people with no connection to the gangs were reportedly arrested, although the commander of the JTF denied this. A curfew established by the government has been in place ever since.

Amnesty International received reports that the JTF frequently raids communities, particularly following clashes between the JTF and militants, often resulting in the death of bystanders. 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.

People living in the Delta lack adequate drinking water and electricity, and have only few functioning schools or health care centres. Widespread pollution associated with the oil industry in the Delta poses serious risks to human rights, including the right to an adequate standard of living and the right to health. Despite these risks to health and well-being, the government has failed to effectively regulate the oil industry (in which it is a major partner) and to fulfil its obligations to protect human rights. On the contrary, Amnesty International's research undertaken in March and April 2008 found that the Ministry of Environment in the Delta was constrained, both by law and a serious lack of resources, from enforcing environmental laws and standards to protect human rights.

Communities in the Delta whose human rights are negatively affected by oil operations face serious difficulties in seeking remedy and redress. The practice of gas flaring is one example. Despite a Federal High Court order to stop flaring in the Iwerekhan community and a commitment by the government to end flaring by 2008, the practice continues unabated. Communities have no means to secure an end to such practices which are harming their health and well-being.

Extra-judicial executions, torture and other ill-treatment, including rape

There are consistent reports that the Police Force executes detainees, suspected armed robbers under arrest, people who refuse to pay bribes or people stopped during road checks. On 4 September 2007, the Inspector General of Police made public that between June and August 2007, some 785 suspected armed robbers were killed in shoot-outs with the police.⁴ In 2005, former President Obasanjo acknowledged that the extra-judicial execution and killing of suspects and innocent citizens by police was widespread. In October 2007, newspapers reported that the Commissioner of Police in the Federal Capital Territory ordered his officers to shoot on sight suspected armed robbers caught in the act.⁵ Amnesty International is concerned that extra-judicial executions have become a tool of policing.

The police also frequently use torture while interrogating suspects, in violation of section 34 of the Nigerian Constitution and international human rights obligations. Amnesty International has documented many cases of suspects who were tortured by the police.⁶ The organization has seen numerous cases of scars, bruises, and dried blood, indicating beatings serious enough to require medical care, that many inmates did not receive. Prisoners also told Amnesty International that they had witnessed suspects being tortured to death or executed by the police. In general, there is no mechanism to prevent torture and other ill-treatment in police custody. Confessions extracted by torture continue to be used as evidence in court, contrary to international standards.

Amnesty International has also found that the police and security forces have committed rape in many different circumstances, both on and off duty.⁷ Rape is at times used to coerce and intimidate entire communities, including by

⁴ Nigeria Police Force, *JGP Executive summary of achievement from the month of June to August 2007: 100 Days of Pragmatic Policing in Nigeria*, 4 September 2007.

⁵ Thisday, Nigeria: *Robbers - FCT CP Orders Shoot-at -Sight*, 24 October 2007.

⁶ Amnesty International (2008), *Nigeria: Prisoners' rights systematically flouted*, AFR 44/001/2008.

⁷ Amnesty International (2006), *Nigeria: Rape the silent weapon*, AFR 44/020/2006.

security forces deployed in the Niger Delta. In some cases women were held for several weeks in sexual slavery in military barracks and repeatedly raped. Other cases include rape of female suspects by police officers in police detention. In almost every case investigated by Amnesty International, the perpetrators acted with impunity.

The government is aware of the use of torture. In a meeting with Amnesty International in July 2007, senior police officials at the federal headquarters of the Nigeria Police Force confirmed that they have received reports of torture and that they were addressing these "unconventional" ways of interviewing.⁸ In July 2008, however, the federal headquarters denied any use of torture by the police. Contrary to this, Amnesty International continues to receive information suggesting the government allows widespread torture to be carried out with impunity.

The death penalty

Approximately 735 prisoners are on death row, including 11 women. Many did not have a fair trial. Approximately 140 of them have been on death row for longer than ten years; some for over 20 years. Both the National Study Group on the Death Penalty (2004) and the Presidential Commission on Reform of the Administration of Justice (2007) have expressed concern that the Nigerian criminal justice system is unable to guarantee a fair trial, thus increasing the likelihood of executing innocent people.⁹ They have therefore recommended adopting a moratorium on executions. The Federal Government has not acted on this recommendation.

Until recently, it had been widely assumed that no executions had taken place in Nigeria since 2002; however, Amnesty International and Nigerian NGOs have uncovered evidence of at least seven executions in 2006. It is feared that more may have taken place. The seven people who were executed were all convicted in Kano state and their death warrants were signed by the current Kano state governor. Among them were Mr Kenneth Ekhone and Mr Auwalu Musa who were hanged in Kaduna Central Prison on 30 May 2006. They were tried by the Kano State Robbery and Fire Arms Tribunal No. 2; however, they were not offered the services of a lawyer, nor were they given an opportunity to appeal against the judgment.

Around 100 prisoners currently on death row were sentenced to death before 1999 under the Robbery and Firearms (Special Provisions) Decree No 5 of 1984, which denies defendants the right to appeal. 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, persons convicted by tribunal were not specifically given the right to appeal.¹⁰

Amnesty International is concerned that many prisoners who were supposed to have been released after a federal announcement in May 2007 are still on death row.¹¹ The Federal Ministry of Justice has maintained that it was not within the power of the federal authorities to release these prisoners.

Approximately 32 of the 735 prisoners currently on death row were under the age of 18 at the time of the offence and should not have been sentenced to death. Patrick Obinna Okoroafor¹² was sixteen when he was sentenced to death by a Robbery and Firearms Tribunal on 30 May 1997. He is currently incarcerated in Aba prison, Abia State, despite a High Court judgement on 18 October 2001 which pronounced the sentence of death on him to be illegal, null and

⁸ Amnesty International Interview, July 2007, Abuja.

⁹ Both commissions also noted that inmates on death row are "almost exclusively poor and without legal representation."

¹⁰ The African Commission on Human and Peoples' Rights found in two complaints that the Robbery and Firearms Tribunal and the Civil Disturbances Special Tribunal violated the right to appeal guaranteed under Article 7 (1) of the African Charter on Human and Peoples' Rights. These were Complaint 60/91 (Constitutional Rights Project v Nigeria in respect of Wahab Akamu, G. Adegba and others) and Complaint 87/93 (the Constitutional Rights Project v Nigeria in respect of Zamani Lekwot and 6 others).

¹¹ On 17 May 2007 Nigeria's Information Minister announced that Nigeria had granted an amnesty to all prisoners over 70 and to those aged 60 or over who had been on death row for 10 years or more. According to the minister they would be released before the inauguration of the new president.

¹² By mistake, the name used in court and in the prison is Patrick Okoroafor. The real surname however is Okorafor.

void.¹³ His detention is indefinite. One of Okoroafor's six co-defendants, Chidiebere Onuoha was fifteen at the time of arrest. Aged 17, Chidiebere Onuoha was shot to death, with the five other defendants, on 31 July 1997.

Criminal justice system

Since 1999, the Federal Government has claimed to be in the process of reforming the criminal justice system. In July 2007 and February 2008, Amnesty International visited prisons throughout the country to monitor the implementation of these reforms. The organization found that three out of five inmates had not been convicted of any offence and were awaiting trial in appalling conditions. Most wait two to four years, with no idea of how long they will be held. Few can afford a lawyer and the government-funded Legal Aid Council is unable to provide everyone with a lawyer, having only 91 lawyers for the whole country.¹⁴

Many inmates sleep two to a bed or underneath the beds on the bare floor. In some prisons, no beds are provided. Toilets are blocked and overflowing or simply non-existent, and there is no running water. Disease is widespread. Children as young as twelve are held together with adults. Most prison directors deny they incarcerate children; others say they are in prison because they are suspected of committing capital offences. There are hardly any rehabilitation or day-time activities. Amnesty International observed that the circumstances in the female wings are often worse.

In July 2008, both the Federal Ministry of Justice and the Prison Service assured Amnesty International that improvements had been made.¹⁵ The Federal Ministry of Justice claims to have tasked 2,000 lawyers to take up the cases of prisoners without legal representation. Amnesty International has not been able to confirm any improvements, as its access to the prisons has been denied.

Pressure on the prison staff, long delays in the justice system, appalling conditions and severe overcrowding contribute to growing despair and frustration amongst inmates. In 2007, there were riots in at least three prisons – Kuje, Kano central and Agodi – in which at least 20 inmates died and many were injured.

Discrimination against lesbian, gay, bisexual and transgender people

Amnesty International is concerned about human rights abuses against individuals on the basis of their actual or imputed consensual sexual behaviour with people of the same sex. In the past years, the organization has documented many such cases. Nigeria's Criminal Code penalizes consensual same-sex sexual conduct between adults with fourteen years' imprisonment. Furthermore, *Shari'a* penal codes continue to criminalize what is termed as "sodomy"; in some states "sodomy" carries the death penalty. In 2007, the National Assembly discussed a draft bill to punish with a five-year prison term anyone involved in a same-sex marriage, or who aided or abetted such a marriage; however, it was not passed before the change of government. A similar bill was discussed by the previous Lagos State House of Assembly; this bill also did not pass. In April 2007, five women went into hiding in Kano after being accused by the *Hisbah*, the Islamic police, of holding a lesbian marriage ceremony in a theatre. The women denied that they had married each other and emphasized that the ceremony was intended to raise money. Following this incident, the *Hisbah* demolished several theatres in the city. In August 2007, 18 men were arrested in Bauchi state and charged with belonging to an unlawful society, committing indecent acts and criminal conspiracy. In 2008, several men and women were arrested and detained on the assumption of engaging in consensual sexual practices with individuals of the same sex.

Discrimination and violence against women

¹³ He is detained under section 368 (3) of the Criminal Procedure Act permitting his imprisonment "during the pleasure of the governor".

¹⁴ Under the current Legal Aid Act, the LAC is not mandated to handle cases of armed robbery, which constitute approximately 70% cases. An amendment bill aiming to remove these restrictions has been pending before the National Assembly since 2006.

¹⁵ In addition, Lagos State recently adopted a new criminal procedure law which requires confessional statements to be recorded on video or made in attendance of the counsel of the suspect.

With approximately 59,000 maternal deaths a year, Nigeria has the second largest number on the world.¹⁶ Nigeria's maternal mortality ratio is estimated at approximately 1 in every 100 live births.¹⁷ Contributing factors to the high maternal mortality ratio include lack of access to and ineffective health services, corruption, unsafe abortions, and diseases like eclampsia and malaria.

Gender disparity in enrolment rates for basic education persists in favour of males. The ratio of girls to boys in primary education in 2005 was only 81 percent. There appears to be clear differences between the north and the south. Approximately 50 percent of the girls enrol in secondary school. Adult literacy rates are declining and there is evidence of gender disparity. In 2004, 45 percent of adult females were literate compared to 60 percent of males.¹⁸

In 2008, a 'Bill for an Act to Prohibit and Punish Public Nudity, Sexual Intimidation and Other Related Offences' passed the first and second hearings of the Senate. The bill specified the appropriate length of women's clothing and gave wide powers of enforcement to the police. In July 2008, the bill failed to pass its third reading.

Violence against women remains pervasive, including domestic violence, rape and other sexual violence by state officials and private individuals. Nearly two-thirds of women in Nigeria are believed to have experienced physical, sexual or psychological violence in the family. The authorities consistently fail to exercise due diligence in preventing and addressing sexual violence by both state and non-state actors leading to an entrenched culture of impunity.

Forced evictions

Several incidents of forced evictions continue to be reported as well as frequent threats of such evictions. In July 2007, President Yar'Adua ordered that the arbitrary demolition of houses should be stopped and due process followed. The Federal Capital Territory, however, continues to demolish houses in Abuja. By the end of 2007, there were more than 450 cases pending in the Federal Capital Territory courts objecting to demolitions.

D. Recommendations for action by the State under review

Amnesty International calls on the government to:

Torture, ill-treatment and extrajudicial executions

- Bring to justice all police officers or other law enforcement officials suspected of being responsible for acts of torture or other ill-treatment or for extrajudicial executions, in accordance with international standards for fair trial;
- Complete the process of developing and adopting legislative measures to prevent, prosecute and punish acts of torture and other ill-treatment, in line with international standards;
- Ratify the Optional Protocol to the Convention against Torture;

Human rights violations in the Niger Delta

- 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;

The death penalty

- Declare a moratorium on executions and to commute all death sentences;

Criminal justice system

- Take effective steps to ensure prompt and fair trials for those accused of a criminal offence, in compliance with international standards for fair trial and to end impunity for human rights violations;

¹⁶ WHO, UNICEF, UNFPA, World Bank, *Maternal Health in 2005*.

¹⁷ WHO, UNICEF, UNFPA, World Bank, *Maternal Health in 2005*.

¹⁸ Government of Federal Republic of Nigeria, Nigeria Millennium development goals, 2006 report.

- Take all necessary steps to ensure that those awaiting trial are able to effectively exercise their right to promptly challenge the lawfulness of their detention in court, and to have a prompt and fair trial;
- Ensure that the UN Standard Minimum Rules for the Treatment of Prisoners are respected in all prison facilities;
- Ratify the First and Second Optional Protocols to the International Covenant on Civil and Political Rights;

Discrimination and violence against women

- Implement in full its expressed commitment to prohibit all forms of violence against women and girls in law and in practice and to repeal all laws that allow violence and discrimination against women to persist;
- Incorporate the provisions of the Convention on the Elimination of All Forms of Discrimination against Women in national legislation;

Discrimination against lesbian, gay, bisexual and transgender people

- Repeal all legislation which could directly or indirectly result in the discrimination, prosecution and punishment of people solely because of their sexual orientation or gender identity;

Forced evictions

- Take effective measures to guarantee adequate standards of living throughout the country;
- Take steps to ensure that everyone has security of tenure and protection against forced eviction;
- Ensure effective access to legal remedies for those affected by forced evictions, in accordance with international human rights law and standards.

Appendix: Amnesty International documents for further reference¹⁹

Nigeria: Open Letter to His Excellency President Alhaji Umura Musa Yar'Adua, President of the Federal Republic of Nigeria, 19 June 2008 (AFR 44/007/2008)

Nigerian police and security forces: Failure to protect and respect human rights, 16 May 2008, (AFR 44/006/2008)

Nigeria: Detention "during the pleasure of the governor" – NBA, Nigerian NGOs and Amnesty International urge the immediate release of Patrick Okoroafor, 10 April 2008 (AFR 44/005/2008)

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

Nigeria: Stop executions – Adopt a moratorium, Joint Public statement by Nigerian NGOs and Amnesty International - 17 December 2007 (AFR 44/030/2007)

Nigeria: 47th Independence Day – a new opportunity to abolish the death penalty, 27 September 2007 (AFR 44/021/2007)

Nigeria: Violence in Port Harcourt escalates, 22 August 2007 (AFR 44/020/2007)

Nigeria: Amnesty International delegates say prison conditions 'appalling' 15 August 2007 (AFR 44/019/2007)

Nigeria: Are human rights on the political agenda? 29 May 2008 (AFR 44/013/2007)

Nigeria: Impunity for political violence in the run-up to the April 2007 elections, 13 April 2007 (AFR 44/004/2007)

Nigeria: Rape - the silent weapon, 28 November 2006 (AFR 44/020/2006)

Nigeria: Oil, poverty and violence, 1 August 2006 (AFR 44/017/2006)

Nigeria: Government interference with the independence of the National Human Rights Commission, 27 June 2006 (AFR 44/012/2006)

Nigeria: Same Sex Bill negates Nigeria's obligations to fundamental human rights, 3 May 2006 (AFR 44/013/2006)

Nigeria: AI statement for the public hearing on the domestic violence and related matters bill, 12 April 2006 (AFR 44/010/2006)

Nigeria: Making the destitute homeless - forced evictions in Makoko, Lagos State, 24 January 2006 (AFR 44/001/2006)

Nigeria: Ten years on: injustice and violence haunt the oil Delta, 3 November 2005 (AFR 44/022/2005)

Nigeria: Unheard voices: violence against women in the family, 31 May 2005 (AFR 44/004/2005)

Nigeria: Are human rights in the pipeline? 9 November 2004 (AFR 44/031/2004)

¹⁹ All of these documents are available on Amnesty International's website <http://www.amnesty.org/en/library>