ABOUT THE BOOK

The Special Procedures are mechanisms of the Human Rights Council mandated to monitor thematic or country specific human rights issues or concerns. They are either an individual, otherwise called Special Rapporteur, or an Independent Expert or group of individuals called Working Group. At the invitation of a State, Special Procedures visit a country to analyse the human rights situation in that country and report to the United Nations General Assembly and the Human Rights Council. Out of the 45 thematic mandates of the Special Procedure, 17 have so far conducted official missions to Nigeria. This compendium, therefore, chronicles the human rights reports and recommendations of the Special Procedures following several official missions to Nigeria.

Editors

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REPORTS AND RECOMMENDATIONS OF THE UNITED NATIONS SPECIAL PROCEDURES

NATIONAL HUMAN RIGHTS COMMISSION

HUMAN RIGHTS IN NIGERIA:

REPORTS AND RECOMMENDATIONS OF THE UNITED NATIONS SPECIAL PROCEDURES

Editors: Tony Ojukwu, Uchenna Emelonye and Obinna Nwakonye

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TONY OJUKWU, *SAN*
UCHENNA EMELONYE
&
OBINNA NWAKONYE

HUMAN RIGHTS IN NIGERIA: REPORTS AND RECOMMENDATIONS OF THE UNITED NATIONS SPECIAL PROCEDURES
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PREFACE

The Human Rights in Nigeria: "Reports and Recommendations of the United Nations Special Procedures", is produced in accordance with Section 5(d) of the National Human Rights Commission Act, 2010 (as Amended) which empowers the Commission to undertake studies on all matters pertaining to human rights and assist the federal, state and local government where it considers it appropriate to do so in the formulation of appropriate policies on the guarantee of human rights.

The book focuses on the 17 Special Procedures official visits and engagement with Nigeria and captured under different thematic mandates such as Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination; Special Rapporteur on Trafficking in Persons, Especially Women and Children. Others are the joint mission of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; On the Sale of Children, Child Prostitution and Child Pornography; and on Contemporary Forms of Slavery, including its Causes and Consequences; Special Rapporteur on the Human Rights of Internally Displaced Persons; Special Rapporteur on Minority Issues; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Special Rapporteur on Freedom of Religion or Belief and Special Rapporteur on Human Rights Defenders, etc.

This Compendium put together in one document all the Special Procedures visits, reports and recommendations on Nigeria and therefore will serve various purposes in the area of human rights advancement.

I recommend it for use by government, researchers, human rights practitioners and the general public.

Chief (Dr.) Tony Ojukwu, OFR, SAN, ficmc
Executive Secretary/CEO
National Human Rights Commission.

FOREWORD

The Federal Ministry of Justice of the Republic of Nigeria is charged with the responsibility of maintaining the highest ideals of human rights, rule of law and justice for all. As the coordinating ministry for Human Rights issues, the Federal Ministry of Justice facilitates and reinforces the mandate of the National Human Rights Commission to entrench a culture of respect for human rights and promote national values built on the principles of democracy, accountability and respect for rule of law.

Pursuant to the National Human Rights Commission Act 1995 (as amended), the NHRC shall deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter, the United Nations Charter and the Universal Declaration on Human Rights and other international treaties on human rights to which Nigeria is a signatory. The NHRC implements the foregoing mandate through inter-alia, undertaking studies on all matters relating to human rights and regularly publish reports on the state of human rights protection in Nigeria.

This book, "Human Rights in Nigeria: Report and Recommendations of the United Nations Special Procedures", is in line with the mandate of the Commission to collect data and disseminate information and materials on human rights, including such other functions as are necessary or expedient for the implementation of its mandate. It aggregates reports and recommendations of the United Nations Special Procedures mandate holders following their official visits to Nigeria.

Recognizing that these visits were facilitated by my Ministry and that of Foreign Affairs, the mandate holders that visited Nigeria and covered in this book are the Rapporteur on Extrajudicial, Summary and Arbitrary Executions; Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination; Special Rapporteur on Trafficking in Persons, especially Women and Children; Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health.

Others are Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences; Special Rapporteur on the Human Rights of Internally Displaced Persons; Special Rapporteur on Minority Issues; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Special Rapporteur

on Freedom of Religion or Belief and Special Rapporteur on Human Rights Defenders, etc.

While on their mission in Nigeria, the Ministry of Justice also took all necessary steps to grant the mandate holders free and unhindered access to examine and monitor the human rights situation in Nigeria, including access to all persons, places and institutions of interests, especially detention and interrogation centers. The commendable and robust access granted by the Federal Republic of Nigeria to these mandate holders is represented by the in-depth report and recommendations condensed in this report.

I am very confident to say that this book is an encyclopedia of the United Nations Special Procedures Reports and Recommendations on Nigeria. It is an inestimable resource for the Government of Nigeria, non-governmental organisations, research and academic institutions interested in the promotion and protection of human rights in Nigeria.

Finally, I applaud the NHRC, particularly its Human Rights Institute for this additional and invaluable contribution to knowledge.

Lateef Fagbemi SAN
Honourable Attorney-General of the Federation and
Minister of Justice

Acknowledgement

The research and production of this book would not have been possible without the resourcefulness, skilfulness and determination of the dedicated team at the Human Rights Institute (HRI) of the Human Rights Commission supervised by Mrs Ifeoma Nwakama (mni), former Director of the HRI. Other faculties of the HRI whose contributions are worthy of mention are Professor Nsongurua Udombana, Professor Uche Ewelukwa Ofodile and Dr. Kelechi Akubueze. We also grateful to staff of the HRI who contributed to this book in one form or the other, including Ngozi Okechukwu Okorie (Team Lead), Oseme Oroh and Zainab Aliyu Abubakar. We also thank Olushola A. Ajongbolo and Valentine Chahul for formatting and typesetting this book. Finally, we appreciate the painstaking efforts and thoroughness of our proofreader, Friday Inalegwu Ejilogo.

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Introduction

The Special Procedures are mechanisms established by the Human Rights Commission to monitor specific human rights issues or concerns. They are appointed to examine the general human rights situation of a specific country or to study a specific thematic aspect of human rights at the regional and international level. Special Procedures could either be an individual who is an expert in the particular subject, otherwise called the Special Rapporteur, or an Independent Expert. Special Procedures could also be more than an individual and comprise a Working Group made up of five members who are responsible for monitoring specific human rights. The mandate to establish the Special Procedures is derived from the Economic and Social Council's Resolution 1235 (XLII) of 6 June 1967, which states that "The Commission on Human Rights may, in appropriate cases make a thorough study of situations which reveal a consistent pattern of violations of human rights and report, with recommendations thereon, to the Economic and Social Council."

With the transition of the Commission on Human Rights to the Human Rights Council, Special Procedures are presently nominated pursuant to resolutions adopted by the Human Rights Council and are in charge of conducting inquiries into violations of human rights as well as intervening on specific issues or urgent situations. Special Procedures are also human rights experts saddled with the responsibility to report and offer advice on human rights from thematic or country specific views. They are not staff of the United Nations and do not receive any financial reward. They are elected for three-year mandates which are subject to renewal for a second term. As at January 2023, there are 59 mandates of the Special Procedures, including 45 with thematic focus and 14 with country mandates.

At the invitation of States, Special Procedures mandate holders visit a country to analyse the human rights situations in that particular country or on a specific theme. While some countries have issued standing invitations to the Special Procedures, which means that they are prepared to receive a visit from any thematic mandate holders at any time, others have not and merely allow a country visit on case by case basis. At the end of their visit, Special Procedures' mandate holders engage in dialogue with the state on their findings and recommendations as well as present a report to the Human Rights Council of General Assembly.

Special Procedures report to the United Nations General Assembly and to the Human Rights Council on their respective thematic issues or country mandates designated to them. In these reports, the Special

Procedures inform the Council and the General Assembly of the activities undertaken during the reporting period. They gather relevant information from all available sources, including from field visits and engagements with non-governmental organisations. Over time and through consistent engagements, Special Rapporteurs, Independent Experts or Working Groups and other such bodies that monitor and report on specific human rights issues or countries have progressively established practical rules that States must respect to guarantee the independence, objectivity and integrity of their mission on the ground.

While on mission, national governments grant freedom and ease of movement to Special Procedure mandate holders throughout the entire country under examination. Mandate holders are granted access to members of the national government and decentralised authorities required to facilitate their mission. Where required, they are granted full access to all written information that are relevant to the Rapporteur's mandate, access to detention centres and places of interrogation, including confidential contact with individuals, including persons deprived of their liberty and witnesses whom the Rapporteur wish to see. Such contacts are expected to happen without the presence of any representatives of authorities.

To facilitate the work of Special Procedure mandate holders, their country missions are predicated on the guarantee by the government of the country that no representative of the government or any other individual who has had contact with the Special Rapporteur will be subjected to threats, pressure, punishment, or judicial procedures as a result of that contact. On the other hand, while the host government guarantee's the safety of the Rapporteur and unrestricted freedom of movement and investigation, United Nations personnel assisting the Rapporteur must be granted the same guarantees and ease of movement, before, during, and after the visit.

The functions of the Special Procedures include undertaking country visits, acting on individual cases of alleged violations and concerns of a broader, structural nature by sending communications to States and others, conducting thematic studies and convening experts' consultations. Others include contributing to the development of international human rights standards, engaging in advocacy, raising public awareness as well as providing advice for technical cooperation. In addition, Special Procedures prepare thematic studies, develop human rights standards and guidelines, participate in expert consultations, seminars and conferences, organise panels during the sessions of the Human Rights Council, organise consultations with various stakeholders at the international, regional and international level. They also raise public awareness about specific human rights

situations through public statements and interaction with a wide variety of national, regional and international stakeholders.

The current thematic mandates of Special Procedures include Adequate Housing (Special Rapporteur); African Descent (Working Group); Arbitrary Detention (Working Group); Sale of Children, Child Prostitution, and Child Pornography (Special Rapporteur); Cultural Rights (Special Rapporteur); Promotion of a Democratic and Equitable International Order (Independent Expert); Right to Education (Special Rapporteur); Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment (Independent Expert); Enforced or Involuntary Disappearances (Working Group); Extrajudicial, Summary, or Arbitrary Executions (Special Rapporteur); Extreme Poverty and Human Rights (Special Rapporteur); Right to Food (Special Rapporteur); Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of Human Rights, particularly Economic, Social, and Cultural Rights (Independent Expert); Freedom of Peaceful Assembly and of Association (Special Rapporteur); Freedom of Opinion and Expression (Special Rapporteur); Freedom of Religion and Belief (Special Rapporteur); Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (Special Rapporteur); Human Rights Defenders (Special Rapporteur); Independence of Judges and Lawyers (Special Rapporteur); and Rights of Indigenous Peoples (Special Rapporteurs).

Others are Human Rights of Internally Displaced Persons (Special Rapporteur); Use of Mercenaries as a Means of Impeding the Exercise of the Right of People to Self-Determination (Working Group); Human Rights of Migrants (Special Rapporteur); Minority Issues (Independent Expert); Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence (Special Rapporteur); Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance (Special Rapporteur); Contemporary Forms of Slavery, including its Causes and Consequences (Special Rapporteur); Human Rights and International Solidarity (Independent Expert); Promotion and Protection of Human Rights while Countering Terrorism (Special Rapporteur); Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (Special Rapporteur); Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes (Special Rapporteurs); Trafficking in Persons, Especially Women and Children (Special Rapporteur); Human Rights and Transnational Corporations and other Business Enterprises (Working Group); Right to Safe Drinking Water and Sanitation (Special Rapporteur); Discrimination Against Women in Law and in Practice (Working Group); Violence Against Women, its Causes and Consequences (Special

Rapporteur); Enjoyment of Human Rights of Persons with Albinism (Special Rapporteur); Persons with Disabilities (Special Rapporteur); Unilateral Coercive Measures on the Enjoyment of Human Rights (Special Rapporteur); Right to Privacy (Special Rapporteur); and Enjoyment of all Human Rights by Older Persons (Special Rapporteur).

Out of the 45 thematic mandates of the Special Procedures, only 17 have conducted official missions to Nigeria. They include the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (2019); the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination (2019); the Special Rapporteur on Trafficking in Persons, Especially Women and Children (2018). Others are the joint mission of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; On the Sale of Children, Child Prostitution and Child Pornography; and on Contemporary Forms of Slavery, including its Causes and Consequences (2016); the Special Rapporteur on the Human Rights of Internally Displaced Persons (2016); the Special Rapporteur on Minority Issues (2014); Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2007); Special Rapporteur on Freedom of Religion or Belief (2005); and Special Rapporteur on Human Rights Defenders (2005).

Similarly, and as at January 2023, there 24 pending requests for visits to Nigeria by the Special Procedure mandate holders. These requests are from the Special Rapporteur on Independence of Judges (2008); Special Rapporteur on Internally Displaced Persons (2008); Special Rapporteur on Sale of Children (2009); Independent Expert on Access to Safe Drinking Water and Sanitation (2010); Special Rapporteur on Freedom of Assembly (2013); Special Rapporteur on Violence Against Women (2014); Independent Expert on Albinism (2016); Special Rapporteur on Human Rights and Counter Terrorism (2018); Special Rapporteur on Health, Sale of Children and Slavery (2019); Special Rapporteur on Racism (2018); Working Group on Discrimination Against Women and Girls (2019); Special Rapporteur on Freedom of Expression (2019); Special Rapporteur on Extra – Judicial, Summary or Arbitrary Execution (2019); Special Rapporteur on Rights to Water and Sanitation (2020); Special Rapporteur on Torture (2021); Independent Expert on Democratic International Order (2021) Special Rapporteur on Toxics and Human Rights (2021); Working Group on Disappearances (2022); Independent Expert on Foreign Debt and on Older Persons (2022). Others include Special Rapporteur on Leprosy (2022); Working Group on Mercenaries (2023); Special Rapporteur on Privacy (2023) and Special Rapporteur on Freedom of Religion (2023).

This Compendium, chronicles and brings together in one document all the Special Procedures visits, reports and recommendations on Nigeria.

Chapter 1

REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

1.0Introduction

The Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnès Callamard, visited Nigeria from 19 August to 2 September 2019. She examined violations to the right to life committed by State and non-State actors, and actions taken by the State to hold perpetrators accountable. She considered the Federal State Security strategy and responses at Federal and State levels to allegations of arbitrary deprivation of life. She also examined specifically the situation of women and LGBTQI persons, and as part of her gender-sensitive approach to her mandate, included a focus on Nigeria's criminalisation of abortion.

The Special Rapporteur expressed her appreciation to the Government of Nigeria for their invitation. In particular, she thanked the Ministry of Foreign Affairs and the Permanent Mission of the Federal Republic of Nigeria to the United Nations in Geneva for their cooperation before and during the visit. She also thanked the officials she met for their availability and open discussion. The Special Rapporteur further thanked the UN Human Rights Adviser in Nigeria, the UN Resident Coordinator for Nigeria and the UN country team for their invaluable support.

During her visit, the Special Rapporteur conducted meetings in Abuja, Maiduguri, Makurdi, Jos, Port Harcourt and Lagos. She also met with the Permanent Representatives of the Federal Republic of Nigeria to the United Nations Office in Geneva and in New York; the Deputy Permanent Representative of Nigeria to the African Union; and with representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Interior, the Ministry of Defence, the Ministry of Women Affairs and Social Development, the Department of Security Services, the National Commission for Refugees and IDPs, the National Security Adviser, the Director of Legal Services of the Federal Ministry of Defence, the Commander of Operation Safe Haven, the National Human Rights Commission (NHRC), and of the State Emergency Management Agency (SEMA). She further held meetings with authorities at the State level, including with the Security Adviser for the Governor of Benue State; the Commissioner for Defence; the Commissioner of Police and the Director of State Security Services of Benue State; the Attorney General

of Plateau; and the Governor of Rivers State.

She also met with the diplomatic community; international, regional and national human rights organisations; organisations working for human rights at the grassroots level; members of religious communities; media workers; activists; LGBTQI individuals; internally displaced women, men and children; victims of human rights violations and abuse and with survivors; and with eyewitnesses and family members whose relatives had been killed.

The present report sets out the situation during her visit.[1]

1.1 Historical and Political Context

Localised and country-wide patterns of violence and killings brewing crises and weak rule of law are intertwined with result from, and are on top of a nation-wide population explosion and increased rates of the extreme poverty that characterises the reality for roughly half of the Nigerian population[2]. These are further exacerbated by the spreading environmental degradation and desertification evident throughout West Africa[3]. The increasing proliferation of small and military-grade weapons, made readily available due to regional in stability and originating, according to some reports, from as far north as Libya[4] worsens the situation.

The pressures these exert on Nigeria's diverse eco-political-economic systems have produced localised and country-wide patterns of violence, which, in several places, are seemingly spinning out of control, claiming the lives of thousands, including through arbitrary killings in the context of violence by the security forces throughout the country, and a regime of impunity for that; the non-international armed conflict against Boko Haram and splinter groups in the Northeast; Local militia engaged in mining and cattle rustling in the North West, particularly in Zamfara; Violent clashes between Fulani herders and farming communities over access to resources; the oppression of the Indigenous People of Biafra (IPOB) and the Islamic Movement of Nigeria (IMN), Cultism in the oil-producing Southern States and well-organised criminal gangs; and the mass expulsion of slum dwellers in Lagos,

1 End-of-mission-statement and press release.

2 In November 2020, the World Poverty Clock reported that 51 percent of Nigerians were living in extreme poverty.

3 Nigeria faces rapid desert encroachment, affecting almost one-fifth of its land area, notably in the Northern States. But desertification is moving southwards. Official figures suggest Nigeria loses over $34.3 million every year to this, but unofficial estimates put the annual cost in the billions of dollars.

4 Conflict Armament Research Nigeria's herder–farmer conflict-Conflict Armament Research, January 2020.

Rivers States and elsewhere, resulting in killings.

There are patterns-country-wide-of failure to protect communities against attacks by armed groups resulting in wide spread in security; use of lethal force by police and military in violation of applicable international standards; lack of effective investigations; absence of meaningful prosecution, and militarisation of policing. These factors are compounded by a lack of transparency and the absence of effective public communication strategies, thereby fuelling further distrust and break down of public confidence in the authorities.

The Federal State seeks to contain these 'sub-systems of violence' by relying largely on military and securitisation strategies. In some settings, that may have helped halt insecurity's spread, at least superficially, and reduced the rates of killings in the North East, for example. However, in many other areas, such as in the farmers-herders conflicts, the security response – and lack of it – appears to have added only new grievances and fostered further distrust without either curbing the insecurity or providing better protection for the local population, particularly those living in isolated areas. The frequent involvement of the military in efforts for public order has also further undermined the police.

In yet other sub-systems of violence, the security response is dangerously quasi- prospective, with active targeting of individuals, communities and associations for what they may have done, even decades ago, or for what it is thought they may do or may become in the future. Throughout the country, local power-holders use securitisation strategies to enforce arbitrary and unlawful policies, decisions and actions, such as the mass expulsion of those living on the margins of cities to make way for money-making condominiums or other private-public developments.

Security responses in Nigeria lack fairness and justice. They exacerbate the weaknesses of the policing and judicial institutions which are unable to resist the increasing pressure of the rising criminality, conflicts and security hot-points. The results are massive violations of human rights and humanitarian law, some of which may amount to crimes against humanity. The Special Rapporteur notes that the International Criminal Court has found there to be reasonable basis to believe that members of the Nigerian Security Forces as well as members of Boko Haram have committed acts constituting crimes against humanity and war crimes. She urges the ICC to open an investigation into these crimes

without delay and calls on the Nigerian State to give its full cooperation.

1.2 Law Enforcement Agencies in Nigeria

Law enforcement in Nigeria is a federal prerogative. Under the Constitution, other legislation such as the Police Act (2020) and the various human rights and humanitarian laws to which Nigeria is a signatory, all law enforcement agencies are obliged to respect human rights. In pursuance of these obligations, the security forces have created human rights desks.[5] Law enforcement services are supposed to be provided principally by the Nigeria Police Force, which covers all 36 Nigerian states and the federal capital territory, Abuja with a Force of more than 350,000 strong, and subdivided into 12 zonal commands and 36 state commands. The Inspector-General of Police heads the Force Headquarters. There are several Special Forces, such as the paramilitary Mobile Police (MOPOL), the Special Anti-Robbery Squad (SARS, now disestablished) and the Swift Operation Squad (SOS).

In 2014, the police, with international support, published a Human Rights Practice manual, accompanied by guidance. Reportedly, all police officers received a copy of the manual and human rights were introduced into police training colleges' curriculum. The Armed Forces Act of 2004 regulates Nigeria's Armed Forces, which comprises the Nigeria Army, Nigerian Navy and Nigerian Air Force. The Armed Forces Act covers offences, punishments and accountability mechanisms – by martial court – for acts committed by armed forces officers.[6] Under the Terrorism Act, the armed forces have the power to arrest and detain suspects for up to 90 days. The Act also stipulates that suspects must be brought to court which can extend detention for another 90 days, until "the conclusion of investigation and prosecution".

1.3 A Broken Criminal Justice System

In his 2006 report, the then Special Rapporteur on extrajudicial killings drew attention to "the remarkable inadequacies of almost all levels of the Nigerian criminal justice system". Fifteen years later, the special Rapporteur found little had changed. The authorities have not implemented her predecessor's recommendations about the criminal justice system. They set up at least five Presidential Committees and working groups on reforming the criminal

5 ACHPR, Periodic Country Report: 2015-2016 On the Implementation of the African Charter on Human and Peoples' Rights in Nigeria.

6 Armed Forces Act of 2004.

justice system but most of their recommendations too have not been fully implemented.

Already in 2006, the Presidential Committee of the Reform of the Nigeria Police Force warned that lack of resources had seriously damaged police work: "the intelligence and information gathering mechanism has virtually broken". In2007, the Chair of the Presidential Commission on Reform of the Administration of Justice observed that the government "can no longer ignore the systemic problems that have long existed in our criminal justice system." In 2008, a Presidential Committee warned that "the police are today stuck with this undesirable workforce."

Likewise, in 2016, the Nigeria Military Human Rights Dialogue, organised by the National Human Rights Commission (NHRC), observed that there were "Limitations in policing, weaknesses in prosecution and the absence of an effective penal system, places unnecessary pressure on the Nigerian Military," and advised that "the Nigerian military should not be asked to take on the role of the Nigeria Police and the Prisons Service."[7] Despite accepting recommendations under Nigeria's Universal Periodic Review to reform the criminal justice system and introducing in 2015 the Administration of the Criminal Justice Act, the authorities have failed to do so.[8] Overall, law reform has been extremely slow, for example, the Police Act review took 16 years to be completed.

Instead of reforming and supporting the police so that it can improve its management of public order, the government deployed the military, undermining the role of the police. As of January 2020, the military was involved in security operations in 35 out of Nigeria's 36 states[9], often taking over civilian policing functions. Militarisation of policing has resulted in countless unlawful killings throughout the country, perpetrated often with complete impunity.

Further, thousands of people are in legal limbo, due to repeated trials adjournments, detention without charge and the possibility of bail for extensive periods. 73% of all inmates in Nigeria's overcrowded prisons are awaiting trial.[10]

7 NHRC,1st Progress Report of the Nigerian Military Human Rights Dialogue, 2016.
8 The Act is yet to be adopted by six states: Borno, Kebbi, Niger, Taraba, Yobe, and Zamfara.
9 See: https://www.sbmintel.com/2020/01/chart-of-the-week-military-exercises-in-nigeria/
10 See: http://www.corrections.gov.ng/statistics.

The Responsibilities of Armed Non-State Actors for Human Rights Violations

Many armed non-State actors are active in Nigeria. Their motivations may be political, criminal or a mixture of both. Some groups, such as Boko Haram and the Islamic State West Africa Province (ISWAP), have territorial control and exact terrible losses on the local population. Other groups seem more fluid in their composition, aims and control. These include armed groups allied to the 'Fulani herders' and farmers, and militias based around ethnic affiliation, some of whom are responsible for mass killings. A third type are the gangs or cartels, referred to as "cults" in the Niger Delta region and "bandits" in the Northwest. The widespread loss of public trust and confidence in the security forces has also led to the proliferation of vigilante self-protecting armed militias looking for revenge. The resultant gruesome killings, with impunity, of alleged criminal gang members only add to the public security challenges confronting Federal and State authorities.

As per the position set out in her June 2018 thematic report (A/HRC/38/44), the Special Rapporteur considers that armed groups may be held to account for human rights violations, depending on the context and the nature and extent of their control, governance functions and capacities. The absolute prohibition against extra judicial executions applies to all armed groups in all situations. As such, all armed groups operating in Nigeria against whom there is credible evidence of arbitrary killings and other crimes, should be held accountable for human rights violations and their leadership should be investigated accordingly.

1.4 Applicable Law

Nigeria is a state party to international human rights treaties relevant to the right to life. Among these are the International Covenant on Civil and Political Rights (ICCPR); the African Charter on Human and Peoples' Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child and the Optional Protocol there to on the involvement of children in armed conflict; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Elimination of All Forms of Discrimination against Women.

Nigeria is state party to the Geneva Conventions and the Rome Statute of the International Criminal Court. The Office of the Prosecutor of the International Criminal Court (ICC)

considers northeast Nigeria's situation to have constituted a non-international armed conflict since at least May 2013 and is due to begin investigation into war crimes and crimes against humanity perpetrated by both sides of the conflict.

Section 33(1) of the 1999 Constitution of Nigeria (as amended in 2011) guarantees the right to life, "save in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria". The Constitution guarantees the right to liberty and that, if arrested, a person will be brought before a court within reasonable time. However, article 35, sub section 7 annuls this protection for people reasonably suspected of capital offences. Section 14 (2b) states that the welfare and security of the citizens shall be the primary purpose of government.

The Constitution allows for broad use of lethal force, including in defence of property, to suppress a 'riot' and to effect an arrest. Likewise, the Police Order 237, which authorises the use of force, does not adequately restrict the nature of the force nor set out the principles of necessity or proportionality. In October 2019, the IGP announced the review of Force Order 237 but it is unclear if the resulting draft proposal[11] has been adopted.

The Terrorism (Prevention) Act, as amended in 2013, gives the State, including the armed forces, much broader powers to arrest and detain people than are allowed under international law or Nigeria's Constitution. A court can grant a detention order for 90 days that can be extended until "the conclusion of investigation and prosecution," which would allow indefinite detention. Also, law enforcement officers are allowed to "use such force as may be reasonably necessary for the exercise of the powers". The Act is also incredibly broad and vague in what it criminalises. People convicted of terrorism could face punishment of 20 years imprisonment up to the death penalty. Nothing in the Act makes exceptions for children.

1.5 Violations of the Right to Life in North East Nigeria

Since 2010, the populations of Borno, Yobe and Adamawa states have been caught between violent attacks by the armed group, Boko Haram, and its splinter groups on one side, and the military operations of the Nigerian armed forces on the other. Approximately 1.9 million people remain displaced by the conflict, while 10.6 million are in need of

11 Draft revised use of Force Order.

humanitarian assistance.[12]

There is no reliable estimation of the conflict's casualties due to inadequate documentation, but estimates are close to 40,000, at a minimum.[13] According to the UN Secretary-General's report on Children and Armed Conflict, in 2017 alone, 881 children were killed in Nigeria. 620 of the deaths were attributed to Boko Haram and 261 to the Nigerian Security Forces[14]. The actual number is likely to be much higher as the ongoing armed conflict is the biggest driver of displacement in Nigeria.

The military's current strategy involves concentrating its forces in "super camps" – fortified garrison towns run by the military – where they screen people, detain some, while housing others in consolidated IDP camps in efforts to break up Boko Haram's supply routes. But this strategy raises many concerns. For one, it leaves an estimated one million civilians in inaccessible areas[15] with little or no protection, while those remaining are assumed supporters of the armed groups. To compound matters, the military restricts aid agencies from assisting people outside government-controlled areas.[16]

It appears the number of arbitrary killings and deaths in custody by the military forces in the North-East have decreased since 2016. However, with no independent human rights monitoring in place and the military controlling access to large parts of Borno State, this claim should be independently reviewed. Reports of killings continue, possibly on a smaller scale, and there is no evidence of progress in securing accountability and reparations for the massive violations of international human rights and humanitarian law committed thus far.

Given the scale of the conflict-driven humanitarian crisis, access for international and national humanitarian agencies is crucial and without it many individuals and communities remain in danger. At the time of her visit, the United States (USA) required humanitarian agencies in receipt of US funds to certify that none of their goods or services, including food, would go to those residing outside government-controlled areas, because those people may be "terrorists". The Special

12 OCHA Nigeria.
13 Council on Foreign Relations: Nigeria Security Tracker; Boko Haram in Nigeria.
14 A/72/865–S/2018/465, para.225.
15 REACH, Situation Overview: Humanitarian Needs and Conflict Dynamics in Hard-to-Reach Areas in Borno State, April - June 2020.
16 Human Rights Watch (HRW), "Nigeria: Army Restrictions Stifling Aid Efforts", March 2020.

Rapporteur cannot emphasis strongly enough that this requirement violates established principles of international humanitarian and human rights law and could lead to populations starving and/or medical care on the grounds of association.

1.5.1 Extra Judicial and Arbitrary Killings by Military Forces

The Special Rapporteur found ample evidence of widespread and systematic targeting of young men and boys by the Nigerian security forces and that, since 2015, women and their children from Boko Haram territory travelling without husbands/fathers, have also been targeted. Those arrested have not been charged or granted due process rights. Hundreds have been extra judicially executed. Thousands have died in custody through starvation, suffocation and thirst.

1.5.2 Arbitrary Detention and Unlawful Deaths in Military Custody

The Special Rapporteur could not confirm exact numbers, but as of June 2015, the military had arbitrarily detained at least 20,000 people without ever bringing them to court.[17] Since then, thousands of civilians leaving Boko Haram territory have been arbitrarily arrested and detained. All former detainees interviewed by the Special Rapporteur reported that the military held them incommunicado, in extremely overcrowded cells where they witnessed deaths in custody as a result of poor conditions and ill-treatment. She also met several children who, along with adults, were detained when they were no more than eight years old–some for as long as 18 months.

The Special Rapporteur received numerous videos of emaciated corpses brought from Giwa Barracks military detention to a mortuary. Since 2011, some 10,000 detainees allegedly died in military detention centres as a result of starvation thirst, disease, torture and lack of medical assistance.[18]There have been no independent investigations into these deaths.

1.5.3 Extrajudicial Killings

The military has extra judicially killed hundreds of people, mostly men and boys. In one incident, on 14 March 2014, soldiers killed at least 640 recaptured detainees from Giwa

17 Amnesty International (AI), "Stars on their shoulders, blood on their hands", 2015.

18 AI, "We dried our tears", 2020.

barracks. The detainees – many of whom had been arbitrarily arrested in mass screening operations – were killed after fleeing barracks in Maiduguri, following a Boko Haram attack. Some had taken up Boko Haram's "invitation" to join them, while more sought refuge in nearby homes. The military and members of the Civilian Joint Task Force (CJTF) organised a city-wide search, rounded up hundreds of former detainees across Maiduguri and summarily executed them in broad daylight. No independent investigation has been carried out.

The Special Rapporteur received many other allegations of extrajudicial executions by the military, dating back to 2012. According to a more recent allegation, towards the end of 2018, two men were allegedly extra judicially killed near Lega Kura village in Mafa LGA. The Special Rapporteur received filmed footage of the incident, showing Nigerian soldiers accompanying, talking to, but then shooting two men and their donkeys. Activists reported that, according to people living in the area, the soldiers were based in Mafa. No investigation has been carried out.

1.5.4. Unlawful Killings in the Context of Rann Camp Bombing

On 17 January 2017, while a humanitarian food distribution was underway, the Nigerian air force bombed the Rann IDP camp set up by the Nigerian military. More than 120 people were wounded and possibly more than 160 killed, including nine humanitarian workers. Witnesses described finding countless ball bearings in the area of the bombing, while some claimed rocket fire may have been deployed, possibly with locally-made ammunition. Photos of the dead and wounded showed both massive and smaller wounds, consistent with firing of ball bearings-based ammunitions. These were extremely serious allegations which should have been independently investigated.

Army Headquarters blamed the bombing on "lack of appropriate marking" of the site, explaining that "people were not expected to amass" there and that "it appeared as a place that could equally be used for enemy activities".[19] The military presence in Rann, its role in establishing the camp and their facilitation of the humanitarian distribution on the day, raise many questions. Again, no independent investigation was carried out.

19 "Shocking: In Final Report, Nigerian Military Clears Air men Who Bombed Refugee Camp in Rann, Killing 115

1.5.5 Enforced Disappearances

During her visit in Maiduguri, the Special Rapporteur met with women, girls and boys whose children, husbands, fathers, last seen in the custody of the military, had disappeared; some for more than five years.

A group of women gave the Special Rapporteur the names of 1668 men and boys arrested between June and December 2015 during military operations in Bama (Borno State) and who remain in military custody, without access to their families or legal representatives. In 2017, the group created the KNIFAR Movement to advocate for information on the whereabouts of their loved ones' and for their immediate release from detention. Despite repeated requests to the federal government and the NHRC, the authorities are yet to provide information or release the detainees.[20]

1.5.6. Deaths by Starvation and Denial of Access to Basic Needs

Between late 2015 and mid/late 2016, thousands of internally displaced persons, disproportionately women, children and the elderly, who fled from areas previously under the control of Boko Haram, allegedly died from lack of food, water and inadequate healthcare in militarised IDP camps, which they were not allowed to leave.[21] MSF epidemiological surveys confirm deaths due to extreme malnutrition in 2016, particularly of children under five. The Special Rapporteur is not aware of any registration of deaths in the camps over the period. Because screening processes separated many families, they did not learn of their loved ones' fate until much later.

1.5.7. Arbitrary Killings by Boko Haram and Splinter Groups

Boko Haram has intentionally killed and maimed thousands of civilians in attacks throughout Borno State and parts of Adamawa and Yobe states,[22] and bombed civilian targets across Nigeria. In May 2014, they killed more than 400 people in Gamboru. In August 2014, at least 600 people were killed in Gwoza. In January 2015, they killed hundreds in Baga town.

They also killed people in Adamawa State in December 2014 and hundreds of people in Madagali. None of these cases has been investigated. Boko Haram also targeted law enforcement

20 The women shared the petitions sent to the authorities, NHRC and Presidential Investigation Panel.
21 AI, "They Betrayed Us", May 2018.
22 A/HRC/30/67, para. 22.

officials, teachers, health care workers and members of civilian self-defence groups.[23] Since 2012, hundreds of teachers, school children and students have been killed or wounded, and thousands of children abducted, including in 2021. Nigerian Union of Teachers, NUT, estimates that, from 2009 to 2016, Boko Haram assassinated 611 teachers, burned down 910 schools and forced the closure of at least 1,500 others. On 19 February 2018, 113 girls from the Government Girls' Science Technical College in Dapchi, Yobe State, were allegedly abducted by Boko Haram. The group later released 107 girls, while five reportedly died during the abduction and one remained captive.

Boko Haram has targeted civilian objects protected under international law, including mosques, churches, prisons, IDP camps, hospitals and markets, and has contaminated water installations. On 21 November 2017, an alleged Boko Haram suicide attack on a mosque in Mubi, Adamawa State, reportedly conducted by a young boy, caused the death of at least 50 persons.

The Islamic State West Africa Province, ISWAP, is responsible for the killing of many civilians, including two ICRC staff members in October 2018[24] and five humanitarian workers in July 2020.[25] On 1 March 2018, ISWAP members attacked Rann in Borno State, killing, among other victims, three humanitarian workers and abducting three female health workers, two working for the International Committee of the Red Cross (ICRC) and one for UNICEF. The ICRC health workers were then murdered in September and October 2018.

Killings in the context of the so-called Farmer-Herder conflicts in the Middle-Belt Disputes over access to land and resources in the Middle Belt, particularly in Adamawa, Bauchi, Benue, (southern) Kaduna and Plateau States, pitching herders from the traditionally nomadic and Muslim Fulani, who make up about 90% of Nigeria's pastoralists, against mostly Christian farming communities from various ethnic groups. For time immemorial, herders, from Nigeria and beyond, have migrated south, particularly during the dry season, in search of pastures for their cattle, thus competing with farmers for access to land, at times, in conflict. However, violence has

23 *Ibid*.

24 See:https://www.icrc.org/en/document/nigeria-icrc-condemns-midwifes-murder-appeals-abductors-spare-two-other-healthcare-workers, https://www.icrc.org/en/document/nigeria-health-worker-hauwa-mohammed-liman-executed-captivity.

25 https://humangle.ng/it-is-unacceptable-intl-ngos-in-nigeria-condemn-killing-of-aid-workers-by- iswap/.

sharply intensified under climate change and desertification, and due to the violence in the north and elsewhere in West Africa. That is forcing herders further south in Nigeria and for longer periods of time. The situation has been exacerbated by expansion into traditional grazing reserves of farms, settlements and other construction and over the cattle migration highway. In Plateau State, for instance, at least five gazetted cattle routes are now blocked, including Ampero, Dawaki, Farom, Farm Casa, and Mister Ali Casa. This has led to unprecedented southwards movement of herders.

The expanding farmer-herder conflicts are emerging as the gravest security challenge. Framed with inflammatory ethno religious rhetoric, they are growing and spreading. The extent of the killings is unknown. However, an estimated 11,000 persons have died as a result in Plateau State since 2001. In 2018, the conflict was said to be six times deadlier than the Boko Haram armed conflict, with over 1,300 people killed in the first half of the year alone.[26] Between January and July 2020, armed groups killed at least 366 people in multiple attacks in the south of Kaduna State.[27]

This conflict is often framed as a struggle by Christian Nigerians to preserve their indigenous lands against a religious and ethnic "invasion" – a rhetoric condoned by many in positions of authority, particularly at the Federal level. This wide spread narrative, which can be used to justify far greater violence in the region, is remarkably short-sighted, offering little prospect for effective address of what are conflicts over scarce resources.

1.5.8 Arbitrary Killings by Armed Groups

The attacks against farming and herding communities reported to the Special Rapporteur were depressingly similar: houses, crops and other property burned to the ground; seeds and fertilizers destroyed, and cattle slaughtered or stolen. Many killings within farming communities occurred when herders came looking for their stolen cattle. Various groups are responsible, referred to as Fulani herdsmen, farmers from various ethnic groups, youth groups, and others. Attacks on both sides are part of seemingly endless retaliations – a tit-for-tat with devastating economic impact, food shortages and malnutrition. Fishing communities in Benue State have also been targeted (e.g. Ebete village) as well as itinerant miners

26 International Crisis Group, "Stopping Nigeria's Spiraling Farmer-Herder Violence", July 2018.

27. https://www.amnesty.org/en/latest/news/2020/08/nigeria-government-failings-leave-rural-communities-at-the-mercy-of-gunmen/.

in Plateau State (e.g. in Jol).

In Southern Kaduna, the State Government allegedly restructured at least 46 chiefdoms and emirates into new administrations, reportedly giving the rule to Fulanis. The tensions this generated prompted clashes between communities, resulting in killings. In 2018, the Chief of the Adara people was killed. At the beginning of February 2019, 11 persons were killed in Kajuru. Thousands of persons were displaced. Elders accused of incitement were imprisoned for 100 days, but released due to lack of evidence. Authorities reportedly promised a commission of inquiry but, to date, no investigations have occurred, testimony from survivors and witnesses has not been taken and evidence was not collected.

In almost all reported cases, the military or the police were within the vicinity of attacks but only in a handful of cases did they intervene. In many cases, villagers had warned police about impending attacks and called them when the attack occurred, but the security forces routinely arrived hours late. In several cases reported to the Special Rapporteur, members of the army were allegedly present in or near the villages but had colluded with the attackers, further deteriorating public trust in the security forces.

With regards to the Mkievowro attack in Plateau State, October 2017, where 29 persons were killed while seeking refuge in a school, witnesses reported that soldiers present were bribed by Fulani herdsmen. Afterwards, soldiers were arrested and taken to the headquarters for trial. However, almost two years later, none of the survivors had been asked to provide testimonies and or to attend the trial, if trials did indeed occur.

On 4 December 2017, hundreds of herdsmen attacked at least five villages to avenge the previous month's massacre of up to 51 community members, mostly children, in Kikan.[28] Villagers complained that police and soldiers present took no action.[29] Instead, Nigeria's Air Force fired rockets at five villages of Adamawa State: Lawaru, Dong, Kodomti, Shafaron and Nzuruwei, as a "warning" in deterrence, killing an unknown number of persons. It is impossible to determine how many deaths resulted directly from the air attacks as compared to the herders' attack, but in total, villagers reported 86 deaths. At least eight villages were heavily

28 AI, Nigeria: Dozens killed as military launches air attacks on villages beset by spiraling communal violence, January 2018.

29 *Ibid*.

damaged or completely destroyed by fire.

In Jos, responding to inter-communal violence, the army is alleged to have shot and killed people randomly, including supposedly to quell inter-communal conflicts, between September and October 2018 and in May 2019. The Special Rapporteur was informed that, across the city, there are "no-go" areas for either Christians or Muslims.

In 2018, 86 persons were killed in the villages of Palang, Tisan, Nghar, Ruku, and Exlan in Plateau State. At the time there were only five soldiers in Shonong and five in Palang. It is alleged that soldiers in Nghar did not engage with the herdsmen, but in Vwak, soldiers did push back the assailants. Tanjol, on 2 October 2018, the villagers asked the sector military to reinforce their small presence in the hamlet given the fact that soldiers had declared they could not protect the villagers against an impending attack. Witnesses reported that when the attack occurred, only the mobile policeman present attempted to respond. He was killed, along with two villagers. Local civil society groups filed several complaints with various authorities at the Federal and State levels, alleging dereliction of duty, but have received only one reply, from the National Human Rights Commission.

1.5.9 Ethnic Displacement and Situation in Camps

Violence has caused massive displacement. By December 2019, 578,000 people were displaced in the north-west and north-central Nigeria. Since violence escalated in January 2018, an estimated 300,000 people have fled their homes in Benue State alone and currently live in IDP camps. Almost all IDPs in Benue and Plateau left due to communal conflicts, while in Zamfara and Sokoto, practically all fled due to banditry and kidnapping.[30]

The Special Rapporteur could not investigate claims that violence against farming communities is intended to displace them permanently so as to leave land free for cattle breeding communities. Yet, it must be highlighted that the majority of farmers interviewed in Plateau and Benue states, alleged that their former communities or lands had been taken over by herders' communities with, in some cases, permanent structures established. It is unclear whether, in the majority of cases, the herders communities currently in place will migrate again.

30https://displacement.iom.int/reports/nigeria-%E2%80%94-north-central-and-north-west-zones- displacement-report-3-december-2019?close=true.

With IDPs camps now in place for years and limited evidence of any IDPs returning home, the situation is closer to that of permanent displacement. Displaced persons interviewed during the Special Rapporteur's visit, and the NGOs working with them, reported that the humanitarian situation in the camps is extremely dire in terms of access to food, non-food items and shelter. Camp residents have limited to no information on their entitlements, disempowering them and emboldening corruption and diversion, making it impossible for displaced populations to plan ahead.

1.6 Action by Authorities

In response to the violence, the Federal Government has launched four major military operations and deployed more police and military units to the troubled states.[31] However, the personnel are still inadequate, and units are ill-equipped to respond speedily to distress calls from remote villages or deter attacks by dozens of heavily armed men.[32]

In January 2019, the Federal Government adopted a National Livestock Transformation Plan to promote ranching and eliminate grazing. In August 2019, the South-East Governors banned herders from carrying AK-47s, and announced their intention to set up a joint air operation to "flush out bandits from all forests" and put measures in place to restrain movement of herdsmen and their cattle. With the possible exception of the weapon ban, these decisions are likely to trigger further violence.

Some investigations appear to have taken place in Benue State. According to official figures, some 90 attacks have been investigated between 2017 and 2019, resulting in a total of 190 persons arrested, 179 prosecuted, 76 convicted and 103 awaiting trial. However, it is striking that no one interviewed during the visit to Benue had been part of any formal investigatory or prosecution process, nor had access to remedies or reparations for victims' loss of income.

In Plateau State, an unknown number of alleged perpetrators have been brought to Abuja for Federal level investigation and prosecution. However, neither the authorities in Plateau State nor the victims are aware of any outcomes. The handling of these cases at the Federal level, and the absence of transparency about process and out comes, feed

31 International Crisis Group, Violence in Nigeria's North West: Rolling Back the Mayhem, 2020.

32. http://saharareporters.com/2020/11/12/farmers-northern-part-nigeria-now-pay-bandits-n17m-tax-harvest-fees-avoid-attacks.

conspiracy theories and foster distrust.

Fulani herders made similar allegations of failure to investigate incidents. For instance, the 2018 attack in Jong village (Plateau) by Birom farmers resulted in 48 persons killed, 400 homes burned down, and 1627 cows rustled. The survivors recognised some of the attackers and conveyed their names to security agencies. However, allegedly no investigation or prosecution has taken place. Herders also allege that while security agencies have been active at retrieving stolen cattle in recent months – mainly to avoid further conflicts – there is almost no evidence that those responsible are prosecuted.

1.7 Violence in North West Nigeria

Thousands of people have died in Zamfara State, in the country's North West. In recent years, the situation has deteriorated due to so-called 'bandits' who engage in kidnapping for ransom, ambush travellers and loot villages.[33] Villagers claim they have to pay 'tax' to bandits to avoid attacks.[34] A committee set up by the Zamfara governor to investigate the causes of armed banditry concluded that, between 2011and 2019, bandits skilled 6,319 people and abducted 3,672 people. The committee recommended the creation of a judicial commission of inquiry.[35]

1.7.1 Cult Violence in Southern Nigeria

For almost two decades, cult violence has been associated with electoral processes in Rivers State, where most political actors reportedly rely on violence to win elections. It is alleged that, in 2019, various cult leaders and groups, which reportedly operate in Rivers States without restriction, received monthly payments under a purported surveillance contract with the State Government. Before and during election periods, politicians reportedly give cult members arms, ammunition and money to intimidate opponents, some of whom are killed.

In 2019, gangs killed at least 60 people from communities in Khana and Gokana Local Government Areas. Complaints were filed with the police, but complainants have received no information about investigations or arrest of suspects. The pattern of these attacks is strikingly similar to what people in

33 https://m.facebook.com/story.php?story_fbid=10215814776703690&id=1272915609.

34 AI, Nigeria: Rise in Cult Related killings in Rivers state, January 2020.

35tps://m.facebook.com/story.php?story_fbid=10215814776703690&id=1272915609.

other parts of the country experience. Cult members arrive early in the morning, burn houses, destroy and steal property and businesses and shoot people. The attacks usually last for hours, while security forces arrive after the attackers leave. The authorities have taken no concrete actions to protect the communities from violent gangs.

1.8 Killings during Public Order Situations

It is unknown how many people are killed annually during routine police functions. Activists reported frequent human rights violations by the police, in particular SARS, including widespread torture, in some cases leading to deaths in custody and extrajudicial killings.

1.8.1 Arbitrary Killings in the Context of #ENDSARS Campaign

The authorities have announced reform, banning or dissolution of SARS seven times since 2015.[36] Social media campaign #ENDSARS, launched in November 2017, led to countrywide street protests. In 2018, the Vice President directed the NHRC to set up a Special Panel to investigate the alleged unlawful activities of SARS.[37] Its report was presented to the President in June 2019, but has not been made public. More than a year later, the NHRC presented its report to the Attorney General and Minister of Justice and the Police Service Commission.

After circulation of footage of SARS officers beating a man to death, in October 2020, the #ENDSARS campaign gained momentum, with demands for an end to police killings and torture. However, police, shooting at peaceful demonstrators, killed at least ten people. The IGP then announced SARS would be replaced with a Special Weapons and Tactics squad and the NHRC announced yet another investigation into SARS. The Federal Government also asked each State to set up judicial commissions of inquiry into police abuses.

The #ENDSARS 2020 protests ended abruptly after the military and police shot at peaceful protesters at Lekki Tollgate in Lagos, killing at least 12 and injuring many more. CCTV cameras and street lights were switched off shortly before soldiers opened fire on the peaceful protestors,

36 In August 2015, the IGP announced "splitting" SARS; in September 2016, the IGP rebuked SARS; in December 2017, the IGP "reorganised" SARS; in August 2018, the IGP "overhauled" SARS; in January 2019, the IGP "reformed" SARS; in October 2020, the IGP first "banned" SARS and then "dissolved" SARS.

37 Acting President Orders Immediate Overhaul of SARS of the Nigeria Police" https://statehouse.gov.ng/news/acting-president-orders-immediate-overhaul-of-the-special-anti- robbery-squad-sars-of-the-nigeria-police/.

indicating a disturbing level of premeditation. Despite numerous videos of the shooting and its aftermath, the Lagos State Governor denied people were killed[38] and the Nigeria army denied soldiers had been deployed.[39]

Lagos State set up a panel of inquiry to investigate the shootings and complaints against SARS. During a hearing in November, an army representative confirmed that soldiers were indeed deployed and used both live rounds and blank ammunition. However, in January, media reported that the army had disbanded their legal team.[40]The panel then claimed they had no power to force the army to attend.[41] In February, a member of the panel withdrew, alleging the government used it for "per formative actions".[42]

1.8.2 Arbitrary Killings of Members of the Islamic Movement of Nigeria (IMN)

Since 2015, followers of the Shi'a group, Islamic Movement of Nigeria, have been targeted. Between 12 and 14 December 2015, the Nigerian army killed at least 347 followers in Zaria, Kaduna. Without identification or autopsy, Kaduna State Government buried the bodies in a mass grave near Mando Road.[43] Subsequently, the group's leader, Mr El-Zakzaky, and his wife were arrested. They remain in detention despite a judicial ruling ordering their unconditional release. In April 2018, they were charged with culpable homicide and other offences, and in September 2020, they pleaded not guilty. Their trial started in November 2020.

In January 2016, Kaduna State Government established a Judicial Commission of Inquiry to investigate the Zaria incident. The Commission found that the Nigerian Army committed serious human rights violations against IMN members, including disproportionate use of force and failure to keep record of recovered casualties. However, no further action was taken at the State or Federal level to investigate and prosecute those criminally responsible, despite the Commission's recommendations. The Special Rapporteur requested further information on this from the Federal Ministry of Justice, but to no avail.

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38. https://www.premiumtimesng.com/regional/ssouth-west/438220-lekki-shooting-again-nigerian-army-ignores-summons-at-judicial-panel.html.
39 The army called it 'fake news' https://twitter.com/HQNigerianArmy/status/1318684952146419713?s=20.
40 Premium Times, Lekki Shooting: Again, Nigerian Army ignores Summons at Judicial Panel, 23 January 2021.
41 Premium Times, #EndSARS: We can't force army to appear before us– Panel,30January2021.
42 https://twitter.com/SavvyRinu/status/1360229070072664071?s=20.
43 Kaduna state, Report of the Judicial Commission of Inquiry, July 2016.

The continued detention of Mr. E-Z and reports of his deteriorating health have prompted demonstrations by IMN members, despite the unlawful killing of scores of people during such protests by security forces. On 26 July 2019, a Federal High Court declared the IMN an unlawful group. In August, the police issued a circular directing officers to "ensure that identified leaders of the group and their structures are dismantled, and their activities contained".[44] This sets a dangerous precedent for the exercise of the right of freedom of religion or belief, and for respect of fundamental liberties and the right to life.

1.8.3 Arbitrary Killings of Members of the Indigenous People of Biafra (IPOB)

Since 2015, members of IPOB have faced arbitrary arrests, torture and extrajudicial executions, predominantly in the context of assemblies. Between 2015 and 2017, law enforcement officials reportedly killed more than 150 IPOB members and injured hundreds in Abia, Enugu, Rivers and Anambra States.[45] A number of those arrested are allegedly held incommunicado. When finally charged, they will likely face charges ranging from membership of a terrorist organisation to unlawful gathering, and, in some cases, kidnapping. Furthermore, the relatives of those held have not been informed of their whereabouts. In September 2017, the IPOB leader who was on bail, escaped and went on exile. A week later, a Federal High Court in Abuja proscribed IPOB and designated it as a terrorist group.

During her visit, the Special Rapporteur met several survivors of and witnesses to killings and received many allegations of other violations of the right to life by the military. None of these killings and disappearances had been adequately investigated nor were those criminally responsible brought to justice. People wounded during military attacks rarely received appropriate medical assistance. In addition to being without financial means to pursue care, they feared reprisals and arrest by security forces if they presented themselves at hospitals or even private clinics. As a consequence, many of the injury-related impairments have resulted in disabilities. On 8 March 2018, the African Commission on Human and Peoples' Rights issued Provisional Measures asking the Federal Government of Nigeria to rescind both its decision branding IPOB and its members as terrorists, and the

44. https://tribuneonlineng.com/breaking-ig-orders-immediate-arrest-of-shiite-leaders-nationwide/.
45 AI, 'Bullets were raining everywhere', 2017.

proscription. It also condemned the lethal military attacks, which had led to many deaths, wounding, military arrests and detentions of IPOB members. The ACHPR denounced "an atmosphere of fear that many more IPOB members could be shot at sight pursuant to having been declared terrorists." It asked the government not to take any further action, pending the decision of the ACHPR. The Special Rapporteur was not informed of any steps by the Nigerian authorities to implement the Provisional Measures.

1.8.4 Killings during COVID-19 Lockdown

The NHRC released three reports on human rights violations in the context of the corona virus pandemic lockdown. They received a total of 38 complaints about extrajudicial executions. During the first two weeks between 31 March and 13 April 2020, they received complaints about 18 extra judicial executions by the police, military and prison staff.[46] In the two weeks that followed, security forces reportedly killed 11 people.[47] Between 4 May and 21 May, after the lock down was partially eased, the NHRC received reports of another nine killings.[48] It is unclear if any suspect was prosecuted.

1.8.5 Killings during Forced Evictions

A campaign of violence and terror has accompanied the Rivers State Government's forced evictions from and unlawful takeover of Ogoni farmlands. During those evictions, hundreds of houses and businesses were looted, burned or dynamited. The entire population of Zor Sogho was forced to flee. Between June 2011 and May 2012, at least 31 persons from Sogho community in Rivers State that opposed the forceful takeover of their farmlands, have been killed or disappeared, with the alleged complicity of Nigerian Security forces. The NHRC commenced an investigation process, but no report was ever made public.

Lagos State has adopted a strategy of militarisation to deal with slums. Three main patterns have been identified: police killings during raids and evictions (some committed by the "Special Task Force" of Lagos State); indiscriminate shooting in informal settlements; and, when vigilantes or traditional ruling families "arrest" persons (after an incident or with no

46 NHRC, Report on human rights violations following the implementation of COVID-19 Regulations 2020 and directives issued by Federal and State governments from31st March to 13th April 2020.

47 NHRC, Report of alleged human rights violations recorded between 13th April to 4th May, 2020.

48 NHRC, Report of alleged human rights violations recorded between 4th to 21st May 2020.

apparent reason) and take them to police stations. There are no official records of the arrests, making it impossible to take legal action against police officers or vigilantes. Those detained are released only when payments are made to the police, parts of which are given to the vigilantes for "their work".

In Otodo Gbame community in 2016 and 2017, 15 persons were killed, and at least five others disappeared. For instance, on 9 April 2017, Mr. Daniel Aya was shot in the neck and killed by police officers from the Lagos State Task Force who invaded Otodo Gbame to demolish the community. The authorities have not investigated these killings.

1.9 Other Violations of the Right to Life

The Special Rapporteur welcomes Nigeria's adoption of its Violence against Persons (Prohibition) Act of 2015, dealing with, among other things, gender-based violence. However, she regretfully notes that it applies only in the Federal Capital Territory and the 13 states that have adopted the law. Several states are without specific laws prohibiting sexual and gender-based violence, even though domestic violence and femicide are prevalent and vastly under-reported across Nigeria. This also gives the impression that there are no nation-wide figures on rates of femicide.

1.9.1 Violence against Women and Femicide

Maternal mortality rates in Nigeria are among the highest in the world. In 2017, 67,000 women and girls died[49]. Unsafe abortion and lack of post-abortion care remain leading causes of preventable maternal mortality and are estimated to account for 20 to 40 percent of the country's maternal deaths.[50] Since the start of the Boko Haram conflict, abortions have reportedly surged in northern Nigeria. Most are clandestine and unsafe due to highly restrictive laws that permit abortion only to save a pregnant woman's life and criminalises it in all other circumstances[51]. In 2017, CEDAW recommended that Nigeria intensify efforts to reduce preventable maternal mortality by legalising and decriminalising abortion.[52] No such steps have been taken. The Special Rapporteur considers all deaths associated with

49 Maternal mortality in 2000-2017 Internationally comparable MMR.

50 CRR, LEDAP, and WARDC Submission to the United Nations UPR of Nigeria, 2018. https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=5643&file=English Translation.

51 Penal Code (Northern States) Federal Provisions Act, Chapter 345 of the Laws of the Federation of Nigeria (Reviseded.1990), Articles232-236; Criminal Code Act (Southern States, Chapter77ofthe Laws of the Federation of Nigeria (Revised ed. 1990), Articles 228-230, 297, 309, 328.

52 CEDAW/C/NGA/CO/7-8,para.38 (a).

unsafe abortion where abortion is criminalised, to constitute an arbitrary deprivation of life by the State.

1.9.2 Arbitrary Killings Based on Alleged Sexual Orientation

The Same-Sex Marriage (Prohibition) Act 2013 (SSMPA), which took effect in Nigeria in January 2014, has allegedly led to an increase in extortion and violence against LGBTI persons and imposed restrictions on non-governmental organisations providing essential services to them.[53] Sharia laws in 12 states of Northern Nigeria impose capital punishment for the 'crime of homosexuality', which poses a direct threat to the right to life of LGBTI persons. Federal and State authorities should urgently take necessary steps to repeal these laws.

Members of the LGBTI community live in constant fear. In some cases, reported to the Special Rapporteur, LGTBI persons have been subjected to humiliating treatment or mob attack, both in private households and on the streets. Three alleged killings of individuals because of their perceived sexual orientation were reported, with the individuals being beaten to death. In general, victims and families do not file complaints about these cases. The Special Rapporteur reminds the authorities that a formal complaint is not a prerequisite for initiating an investigation into an unlawful death.

1.9.3 Death Penalty

The Special Rapporteur welcomes the country's informal moratorium on the death penalty, noting that Nigeria had not executed any one since 2016.[54] However, in August 2017, the Ogun State Government announced that it would no longer refrain from executions. In 2019, 54 persons were sentenced to death.[55] At the end of that year, Nigeria had a total of 2,745 people on death row, the highest number in sub-Saharan Africa.[56] An estimated 300 Nigerians abroad have been sentenced to death, including in Saudi Arabia, Indonesia and Malaysia. The Special Rapporteur has received multiple allegations that Nigeria's consular officers fail to provide the consular services to which their citizens are entitled, with a few notable exceptions.

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53 HRW, "Nigeria: Harsh Law's Severe Impact on LGBT Community", 2016.

54 From May 1999 to 2006, Amnesty estimates that at least 22 people were executed. Aftera7-year hiatus without executions, four death row inmates were executed in 2013https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Nigeria#f7-1.

55 https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF.

56. https://tribuneonlineng.com/2745-inmates-on-death-row-difficult-to-control-%E2%80%95- correctional-service/.

In January 2021, a court ordered a retrial for a musician who was sentenced to death by a Kano Sharia court for blasphemy. Since 2015, there have been at least two more cases where ten people were sentenced to death for blasphemy. It is unclear if they have appealed. Nigeria has abstained from voting on the last seven UN General Assembly resolutions to implement a global moratorium on capital punishment. Each time, it signed a diplomatic note disputing the legitimacy of the vote.

1.9.4 Accountability Crisis and Impunity

The Special Rapporteur found in Nigeria an entrenched culture of impunity and flagrant disregard for the rule of law. In most cases, the often severely traumatised victims and relatives have no access to justice, being left without a remedy. That contributes to the lack of public trust in the authorities. Publicly, the authorities promise investigations into all allegations of violations made against the military and police.[57] But in practice, most cases are never independently investigated. The authorities appear only to investigate cases that receive intense publicity, or which are pursued vigorously by relatives or civil society. Even then, most findings are not made public, and prosecutions rarely result. Apart from the work done by investigative panels, there is no systematic documentation of arbitrary killings; the country lacks a strategy to preserve evidence and, particularly in the context of conflict, to manage mass graves. The listing of missing people is left to NGOs.

For killings by armed groups and security forces alike, the government uses commissions of inquiry and investigative panels to replace both criminal investigations and prosecutions of those who organised or carried out mass murder. Yet, that rarely leads to accountability. For instance, in the context of communal violence in Plateau and Kaduna states over the past decades, the authorities set up at least three presidential inquiries and several state and federal legislative inquiries. Yet, the government has never implemented the panels' recommendations. One of the 2010 Presidential Advisory Committee findings was that "the non-implementation of past reports of the Judicial Commissions of Inquiries is a factor in the recurrence of the crises."[58]

This pattern was highlighted in 2006 by the then Special Rapporteur. Sadly, his conclusions (that the various initiatives

57 Periodic report, 2015-2016, implementation of the African Charter on Human and Peoples' Rights in Nigeria.
58 Presidential Advisory Committee report, 2010, para 2.0161.

appear to be mostly for white washing purposes or to facilitate a "cooling of the political temperature") are still accurate 15 years later. They are not aimed at identifying lines of responsibility, delivering accountability and justice, providing remedies and reparations, or at determining and implementing structural or systemic changes.

In response to the repeated and well-documented allegations of violations in north east Nigeria, at least 22 commissions of inquiry, panels, and fact-finding exercises have been established by the Federal Government, State Governments, and the military, with at least four under the NHRC. To the best of this Special Rapporteur's knowledge, none – apart from the NHRC investigations[59]–was mandated to recommend investigations and prosecutions of members of military, police, civilian authorities or the Civilian Joint Task Force. In most cases, the main findings and outcomes are not made public.

The Special Rapporteur's conclusion is that for decades, the Federal Government has demonstrated a shocking disregard for its own investigations into human rights violations; failing both to make findings public and to implement recommendations. In so doing, it has contributed to the perpetuation of conflict and violations. For instance, the Galtimari Committee urged the government to "consider the imperative of implementing White Paper Reports of various committees" which had "submitted useful recommendations in the past, but yet to be acted upon."[60] While the government accepted this recommendation, no implementation has occurred. In the following years, the 2013 Turaki Committee[61] and 2016 Kaduna State Judicial Commission of Inquiry[62] repeated the same recommendation.

The complete impunity for extrajudicial killings has created a climate in which everyone – state and non-state perpetrators alike – knows they can get away with murder. Victims know there is little they can do, especially if they are poor. Even in

59 Section 5 (p) of NHRC Act 1995(as amended) gives the commission the power to refer individuals to the Federal or state Attorney General for prosecution.

60 Report of the 2012 Presidential Committee on the Security Challenge sin the North-East Zone of Nigeria, para 175.

61 2013 Presidential Committee on Dialogue and Peaceful Resolution of Security Challenges in the North (the Turaki Committee) was given the mandate to: "constructively engage "key members of Boko Haram; define a framework for resolving insecurity in the country; develop a framework for granting amnesty; set up a disarmament framework; develop a victims' support programme; and develop mechanisms for addressing underlying causes of the insurgency.

62 The "Zaria Commission" set up to investigate the clash between the Nigerian army and members of Islamic Movement of Nigeria (IMN).

the few instances where investigations appear to have taken place, such as in Benue State, it is striking that none of the persons interviewed during the Special Rapporteur's visit in Benue had been part of any formal investigatory or prosecution process. Similarly, none had been given access to remedies or reparations for their loss of income. The repeated failure to involve survivors and families in investigations and prosecutions, and the failure to report back to the affected communities, further fuel toxic dehumanising narratives that also worsen the breakdown of the public trust and confidence necessary for an effective response.

1.10 Conclusions

The state of the administration of justice in Nigeria gives rise to extreme concern. The Federal authorities and their international partners preside over an injustice-pressure cooker. A number of the specific contexts examined are truly simmering. Functional accountability is absent on such a scale, and resentments spread so widely, that pretending otherwise is a major mistake, as is ignoring this crisis.

Nigeria's broken criminal justice system; the widespread loss of public trust and confidence; corruption and rampant impunity are all root causes of the widespread unlawful killings perpetrated by security forces, armed groups and gangs alike. At virtually every level of government, the system is failing. Authorities further undermine the justice system, including the judiciary's independence, by failing to implement court orders pertaining to security agencies. Besides this, there is a total lack of access to remedy, and total absence of victim/survivor-centred approaches to addressing widespread and repeated human rights violations.

With only a few notable exceptions, killings have increased over the last ten years as have criminality and insecurity. There is widespread failure by the Federal authorities to investigate and hold perpetrators accountable even for mass killings. Victims and their relatives are absent from the government response; being left without any hope of securing the justice for which they long.

Nigeria may be a middle-income country according to economic indicators, but it is spiralling into a human rights and humanitarian crisis that requires urgent action by both the Nigerian authorities and the international community. Rising poverty, deepening inequality, expanding environmental disasters contribute to the multiplication and durability of hotbeds of violence, pointing to a pressing need for the country and its partners to adopt integrated, multi-

dimensional approaches to tackle killings and impunity.

1.11 Recommendations

On Systemic Impunity and Accountability, it is recommended that the Federal Government of Nigeria should:

(a) Issue public statements condemning all extrajudicial executions, other unlawful killings and express commitment to pursue accountability for these crimes.
(b) Create an inter-ministerial working group, headed by the Vice President, to implement an integrated multi-dimensional justice and accountability road map. The Working Group should include experts on desertification and climate change and should work hand in hand with experts in justice reform and criminal accountability.
(c) Establish a commission with national and international experts to examine the failure of past (inconclusive) investigations into extrajudicial killings and make recommendations on structural reform, including to the inter-ministerial working group.
(d) Create a long-term international unit embedded within the judicial system[63] to advise and support investigations into extrajudicial killings and implementation of the roadmap against the impunity.
(e) Develop a transitional justice strategy identifying priorities and mechanisms for investigation, prosecution and reparation
(f) Implement a victim/survivor-centred methodology for courts, including actively soliciting for victim and witness participation in trials, supporting their participation, ensuring confidentiality, and providing witness protection where necessary
(g) Make public the findings of all investigations into human rights violations set up over the past ten years
(h) Establish a victim/survivor-centred reparations programme, in consultation with civil society and affected communities
(i) Implement the recommendations of Nigeria's 2013 and 2018 Universal Periodic Review
(j) Protect and ensure the full independence of the National Human Rights Commission and provide all required resources so that it can work to the full extent of its mandate

Domestication and Implementation of Human Rights Treaties:

(k) Amend the Terrorism (Prevention) Act including, repealing

63 The model envisaged hereisak into Guatemala's UN-backed International Commission Against Impunity in Guatemala. (CICIG).

the death penalty; providing that an individual may only be arrested on reasonable suspicion of having committed a criminal offence; providing that all individuals must be promptly brought before a court and charged with a recognisable criminal offence; providing that law enforcement officers (including the military when exercising such a function) may only use force when strictly necessary and to the minimum extent required

(l) Domesticate and implement the State obligations under the Rome Statute of the International Criminal Court.

(m) Domesticate CEDAW and legalise and decriminalise abortion. Take steps to formally abolish the death penalty, including by ratifying the Second optional protocol to the International Covenant on Civil and Political Rights. (n) Repeal laws that impose capital punishment, in particular for the 'crime of homosexuality', 'blasphemy' and rape.

Security Sector Reform:

(o) Ensure that use-of-force guidelines are in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

(p) Finance and provide the Nigeria Police Force with adequate equipment and training and with rules for conduct that are in line with international human rights law and standards. Without delay, establish professionally staffed and appropriately equipped forensic laboratories in key regional centres;

(q) End all use of the military in public order situations and ensure that police officers are adequately trained and equipped to deal with crowd-control situations with the minimum use of force, in line with international law and standards

(r) Develop, enact and regularly update a national action plan to guide the management of public assemblies and seek technical assistance from the Office of the United Nations High Commissioner for Human Rights or other specialized agencies as appropriate.

International Actors Should:

(s) Ensure development assistance strategies and implementation plans for Nigeria and its states, and take full account of the inter linkages between insecurity, impunity, poverty, climate change and armed groups' activities; pay specific attention to understanding and responding to the conflicts over resources in the context of desertification, including those between nomadic cattle-breeding and sedentary farming communities, and develop projects relevant to each of the regions

concerned

(t) Endorse the recommendations in the present report and advocate with Nigeria authorities for their implementation by the Federal Government

(u) Provide technical, financial and strategic support to Nigerian authorities for the implementation of recommendations related to criminal justice reforms, and accountability for crimes committed by all parties to the conflict. (v) The ICC Prosecutor should urgently open an investigation into the situation in Nigeria.

Appendix

Incidents of Violations of Human Rights and Humanitarian Law

Human rights and humanitarian law violations in Northeast Nigeria: Death in military custody: The Special Rapporteur met several former detainees who alleged that since 2011, thousands of people died in military detention. Several human rights organisations have also reported on the mass deaths of detainees in military-run facilities. Most detainees died in Giwa Barracks, but the Rapporteur also received information about deaths in military detention in Damaturu, Potiskum, Yola and Kainji.

In Giwa Barracks, more than 10,000 people were allegedly killed by gunshots wounds, starvation, torture, overcrowding in cells and outbreaks of diseases. The detainees were held in horrific conditions. In particular, between 2012 and 2013, hundreds of detainees died every month. According to former detainees, who gave detailed accounts, the deaths in military custody were caused by lack of food, water or medical treatment. While unlawful deaths decreased from 2014 onwards, survivors of military detention said that countless people, including children and babies, died in 2016 due to a measles epidemic.

The Special Rapporteur also obtained numerous photos and videos of corpses of mostly men but also babies and toddlers, brought from Giwa Barracks to a mortuary in Maiduguri. These images show extremely malnourished bodies, wearing not much more than shorts. From January 2017, the corpses were brought in black bags. In April 2017, an air-conditioned container was placed to store the bodies. A video shared with the Special Rapporteur shows the container packed with corpses. There is no indication that the relatives of those who died were ever informed of the deaths of their loved ones.

The Special Rapporteur met mothers of those detained before 2014 who claim their sons were mostly picked up during raids and mass arrests. Some had not seen their sons for up to nine years after the military arrested them. Witnesses told the Special Rapporteur that the majority of people arrested by the military during screenings and mass arrests were civilians who were not taking part in hostilities, not carrying arms, and not wearing uniforms, insignia or other indications that they were members of Boko Haram. As detainees in military detention were never charged to court, they had no opportunity to challenge the lawfulness of their arrest and detention.

In one such incident, the military allegedly arrested 298 people on 29 May 2013 at Bag, a road motor park in Maiduguri. They were all told to lie on the ground, then beaten and taken to Giwa Barracks. Video footage of that day shows soldiers beating the men and taking away large groups of them. The Special Rapporteur has received a list of 298 men arrested. They have not been seen since their arrest.

The Special Rapporteur has met with countless women who told her that their husbands and sons were arrested after they escaped Boko Haram territory and were detained in Giwa Barracks. Sometimes the military detained whole families. In one such incident in Gumche Village (Mafa local authority), around 40 individuals, including men, women, boys and girls, were arrested. These included at least five boys. Of these 40 persons, one child and one adult died. The military released the women and children after 18 months. They sent the children to a hospital before their release. All the men were allegedly transferred to Kainji Barrack in Niger state.

The Special Rapporteur was informed that in Kainji military detention facility in Niger state, approximately 500 people died between April and July 2014 due to starvation and thirst. Former detainees say that people drank urine to survive. They were held there for years, without access to a court or the outside world. As far as the Special Rapporteur could confirm, the authorities have never independently investigated death in custody, despite frequent requests by several human rights organisations. The National Human Rights Committee does not routinely visit military detention centres, and lawyers generally have no access to military detention. Nigeria coroner's laws require authorities to investigate every death in custody. But this is not done, and relatives are not informed of the deaths.

The military forces have frequently announced investigations

into allegations of human rights violations, but such reports are never made public.[64] The authorities should ensure that all such reports and registers of arrests and death in custody since 2011 are handed over to a judicial body for review.

Extrajudicial Executions Following Boko Haram's Giwa Barracks Attack: On 14 March 2014, Boko Haram fighters attacked Giwa Barracks in Maiduguri in broad daylight and released hundreds of emaciated detainees from their cells. Some detainees took the group's offer to join them, while the majority sought refuge in nearby homes. A video released by Boko Haram[65] shows fighters entering the Giwa barracks, setting ablaze scores of vehicles in the compound. They met no resistance. Hundreds of frail-looking people, including women and children, ran away from the barracks, most on bare feet.

Maiduguri residents gave these former detainees shelter, food and clothes. After the Boko Haram fighters had left, the military and members of the Civilian Joint Task Force (CJTF) organised a city-wide search. Hundreds of former detainees were assembled in various locations across Maiduguri and summarily executed in broad daylight. The Special Rapporteur has received several videos, verified to have been taken on that day, showing hundreds of corpses. It includes videos taken at a mortuary in Maiduguri and across the city, showing piles of corpses and mutilation of dead bodies. According to Amnesty International, the security forced killed at least 640 men and boys.[66] Their bodies were buried in mass graves across Maiduguri.

Two videos given to the Special Rapporteur show soldiers and CJTF members executing recaptured detainees by cutting their throat and shooting them. One shows 16 young men and boys sitting on the ground, and one by one, they are called forward and told by the military commander to lie down in front of a pit. Armed soldiers and Civilian JTF members cut the men's throats with a blade and dumped them into an open mass grave. All the men killed had reportedly been rearrested after they escaped from Giwa Barracks. According to activists, the military took them to the Jidari Polo area, from where soldiers loaded them into vehicles and took them, according to activists, to the outskirts of Maiduguri, along the road

64 See for example: https://defenceinfo.mil.ng/nigerian-military-react-to-amnesty-international-report- of-human rights-abuse/.

65 The video was published on youtube but later removed. A copy was provided to the Special Rapporteur.

66 Amnesty International, "Stars on their shoulders, blood on their hands", June 2015, pp 42-45.

between Jidari and Mule. The videos show the faces of the perpetrators. Activists told the Special Rapporteur that some of the CJTF members seen in the video were known in Maiduguri. According to eye witnesses, no forensic investigation was carried out. To date, there has been no independent investigation into these mass killings. None of the relatives has been informed about what happened to their loved ones.

Other Extra Judicial Executions: The Special Rapporteur received allegations of various other extra judicial executions by the military. For instance, towards the end of 2018, two men were allegedly extra judicially killed near Lega Kura, a village in Mafa LGA. The Special Rapporteur has received a disturbing video of this incident, which shows Nigerian soldiers accompany two men with their donkeys. The soldiers tell the men that they should have listened and not roam around. They then shot the men and their donkeys. No investigation has been carried out. On 1 March 2018, the military brought the corpses of 28 men to a mortuary in Maiduguri. Their bodies showed evidence of gunshot wounds. Soldiers had allegedly shot the men after a screening in Bama LGA. No investigation has been carried out.

Less recent incidents include the killing of up to 200 civilians and the destruction of Duguri village (in Kukawa LGA, Borno State) by the Multinational Joint Task Force (MJTF) on 15 February 2012, two days after Boko Haram had killed two soldiers of the MNJTF. The MNJTF reportedly instructed the residents to produce the attackers responsible for the killings. The next day, in what appears to be a revenge attack, the soldiers opened fire on the villagers and burned all houses. They killed up to 200 people.

Another apparent revenge attack happened in Baga on 17 April 2013, after Boko Haram killed a soldier in Baga. Soldiers of the MNJTF killed approximately 200 people and destroyed more than 3000 houses. The commander of the MNJTF reportedly denied any wrongdoing and claimed that Boko Haram had burned 30 homes. The NHRC investigated the incident, although they could not travel to Baga, and released a report confirming that killings by MNJTF had been committed without giving any number of victims. The local government established a list of those who died in the Duguri and Baga attacks. No one was held to account for the killings and the survivors received no remedy.

The Special Rapporteur also met with relatives of 35 men killed by the military in Bama after being arrested during a

military screening in Bama (Borno State) on 23 July 2013. During the screening, the military instructed all men to undress and line up before a man in an army truck who ordered them to either go left or right. Thirty-five men were accused of being Boko Haram members. Videos of this screening show that the soldiers and CJTF placed the 35 on the floor and started beating them, then put them in a military truck which drove off. On 29 July, in the afternoon, all 35 men were found dead in different parts of the town. There has been no investigation into these extrajudicial executions.

There is multiple evidence of extrajudicial executions by the military after victims had been arrested during military operations and screenings. In none of the cases presented to the special rapporteur did the men seemingly present any danger or threat to life. Independent, impartial and thorough investigations have not been carried out to clarify the circumstances of their killings.

Rann Bombing: On 17 January 2017, the Nigerian air force bombed an IDP camp in Rann, Borno State. On that day, humanitarian organisations visited the highly militarised IDP camp to repair a borehole and distribute food. Witnesses told the Special Rapporteur that they saw a surveillance jet circling above the camp around 11 a.m., followed by another jet that bombed the area where the borehole was. It circled again and dropped another bomb on the tents of the IDPs.

The exact number of people killed is not confirmed. The Special Rapporteur received a list with 127 names of victims – two-third of whom were children. Witnesses who assisted the burial say they buried 167 people at Rann cemetery by 18 January. A witness claimed many bodies had body parts stripped off, and that there were round ball bearings everywhere in the camp on the ground. On 24 January 2017, the Chairman of Kala-Balge Local Government Area of Borno State said 234 persons were buried in Rann.

More than 110 people were seriously injured; 91 victims were taken to Maiduguri for medical treatment. They had broken limbs, severe burns and flesh wounds caused by small ball bearings. Survivors told the Special Rapporteur that soldiers ordered the people in Rann to clean up and return all ordnance and countless ball bearings spread in the area of the bombing. It was further alleged that the jet may have used rocket fire, possibly with locally made ammunition.

Satellite images of Rann just after the bombing show two impact sites, and "at least 35 structures were destroyed in

the attack, including shelters for displaced people". The tents were visible from the air, as was the military base.[67]

Many international organisations, including the UN High Commissioner for Human Rights, and the UN Security Council, have called on Nigeria to investigate this incident. The Nigerian Air Force immediately said it was an accident. Both the Air Force and Defence Headquarters set up an investigation, but the reports were never made public. The survivors of the bombing in Rann claim they did not see any investigators and were not asked for their testimony. Furthermore, none of the survivors received appropriate reparation or remedy. To the best of the Special Rapporteur's knowledge, no independent investigation has been carried out.

In July 2017, Army Headquarters released a statement[68] blaming the bombing on a "lack of appropriate marking", explaining that "people were not expected to amass at that location "and that" it appeared as a place that could equally be used for enemy activities". It did not explain who ordered the bombing or how this could happen, considering that the military was in charge of the camp and had facilitated the humanitarian aid that was going to be distributed that day.

Starvation in Militarised IDP Camps: Thousands of people, mostly women and children, are alleged to have died in military-run IDP camps across Borno State in 2015 and 2016. These camps reportedly held women, older people and children, in horrific conditions. They were initially only given food once a day, and there was not enough water. If they wanted more food, they had to pay the Civilian JTF members or soldiers who guarded the camp. The women were not allowed to leave the camp to search for food. Witnesses have given detailed testimonies of the starvation and sexual violence in these camps.

Satellite images of the cemetery in Bama Hospital camp from 2015 and 2016 indicate large number of deaths in this camp. Data published by humanitarian agencies confirm the alarming levels of acute malnutrition in these military-run camps in 2016.[69] The Special Rapporteur is not aware of any

67 Human Rights Watch, Nigeria: Satellite Imagery Shows Strikes on Settlement, 2017. https://www.hrw.org/news/2017/01/19/nigeria-satellite-imagery-shows-strikes-settlement.

68 "Shocking: In Final Report, Nigerian Military Clears Air men Who Bombed Refugee Camp In Rann, Killing115 Boko Haram Victims", available at: https://todaynewsafrica.com/shocking-final-report- nigerian-military-clears-airmen-bombed-refugee-camp-rann-killing-115-bokoharam-victims/.

69 FEWSNET, "A Famine likely occurred in Bama LGA and may be ongoing in inaccessible areas of Borno State", 13 December 2016, at:

registration of those who died in displacement camps in 2015 and 2016. As the screening processes separated many families, relatives often only found out much later what happened to their loved ones. Survivor groups called Knifar (displaced women mostly from Bama LGA whose husbands are in military detention) have documented almost 900 deaths in Bama Hospital Camp.[70] Displaced people from other military-run camps, such as Banki, Dikwa, or Monguno, also reported daily deaths in 2015 and 2016.

While the situation has improved since late 2016, IDPs in many of the camps are still subject to restrictions on their movement, particularly outside of Maiduguri, while assistance provided inside the camp is not always adequate, leading to ongoing hunger-and sickness-related deaths. The fate of those currently living in inaccessible areas with little to no assistance remains unknown.

The people held in militarised camps for displaced persons were arbitrarily deprived of their right to liberty and freedom of movement, thus violating Nigeria's Constitution and international human rights law. International law allows for restrictions to freedom of movement to protect national security, but they must be provided for in law, proportionate, non-discriminatory and consistent with other human rights. To the best of the Special Rapporteurs knowledge, these restrictions were not provided for in law. The ongoing armed conflict in these areas may have been a legitimate reason to restrict movements, but confining IDPs to camps for months without adequate access to the basic necessities of life, including food, water, health and medicine, is unlawful. Moreover, the authorities knew or should have known that thousands of civilians were held in these camps under dire circumstances, but they failed to improve the situation or remove movement restrictions.

Killings During Public Order Situations - Killings of #End SARS Protesters: In the last week of October 2020, an unknown number of people were killed during a joint military/police operation in Oyigbo, Rivers state, in what appears to be a revenge operation for killing six soldiers and four police officers. The military operation was reportedly triggered by an End Sars protest that had become violent. It is also alleged that IPOB members killed the police and soldiers. A 24-hour curfew followed and journalists and

www.fews.net/sites/default/files/documents/reports/FEWS%20NET%20Borno%20%20Analysis_201 61213release.pdf.

70 They shared the list with names with the Special Rapporteur.

human rights defenders reported they could not reach the area for days. Witnesses and human rights defenders who investigated said that soldiers shot the residents at will.[71] The Special Rapporteur also received numerous photos and videos showing the aftermath of the shootings in Oyigbo. Investigative journalists described "war-grade violence by the military on unarmed people".[72] No independent investigation has been carried out.

Attacks by the Nigerian Army on Members of the Islamic Movement of Nigeria (IMN): The crackdown against the Islamic Movement of Nigeria (IMN) started at the beginning of the 1990s and continues until now. The most remarkable incident happened in Zaria, Kaduna, between 12 and 14 December 2015. On 12 December2015, IMN blocked the Chief of Army Staff's convoy in Zaria, Kaduna State. This resulted in soldiers firing with live ammunition, killing at least seven IMN members in the procession and injuring several others. The military claimed that IMN attacked them, but there appears to be no evidence supporting this allegation.[73] Later that night, soldiers surrounded the organisation's headquarters and other locations where IMN protesters were gathered, such as the compound of IMN leader, Ibrahim Al-Zakzaky. The soldiers shot intermittently at the headquarters and Ibrahim Al-Zakzaky's compound throughout the night, setting some buildings on fire and killing and wounding hundreds of IMN supporters. On the night of 14 December 2015, Kaduna State officials buried hundreds of bodies secretly in a mass grave in the Mando area of Zaria. It is alleged that at least 347 followers of the Shi'a group were killed by the Nigerian Army.

After the incident, the military meticulously destroyed most of the evidence at the scenes of the clashes. Approximately 200 people were arrested; some of whom were charged with offences such as criminal conspiracy, attempted culpable homicide, and unlawful assembly, disturbance of the peace, unlawful and wrongful restraint and unlawful possession of firearms. In 2020, 100 of them were discharged and released. It is unclear why the military was deployed as it was a law-and-order situation the police should have handled. It is also unclear why the army resorted to live ammunition against

71 The Special Rapporteur received one complaint regarding this incident from the NGOHURSDEF and relatives of four people who were killed: Chidi Nwanaje; Mrs Gift Moses Ogolo; Chinwendu Rufus Adiele; and Queen Nwazuo.

72 Premium Times, INVESTIGATION: Inside the horrific bloodshed and massive extrajudicial killings in Nigeria's Oyigbo community, 23 November 2020.

73 See: Amnesty International, Nigeria: "Unearthing the truth": Unlawful killings and mass cover-up in Zaria, April 2016, p. 10.

mostly unarmed protesters without making any attempt to de-escalate and use non-lethal crowd-control means. Under the circumstances as described by witnesses, the situation did not warrant the use of lethal force.

Following the killings, the IMN leader, Mr. El-Zakzaky, and his wife were arrested and are still in detention, despite a judicial ruling ordering their unconditional release from detention. On 22 January 2019, the Kaduna State High Court ordered the Kaduna State Government to avail the IMN leader and his wife access to medical care. He allegedly sought medical care in India in August 2019 but was re-arrested upon his return. On 5 December 2019, the Kaduna Federal High Court ordered that Mr El-Zakzaky and his wife be transferred to the Kaduna Central prison, despite their precarious health conditions.

In January 2016, the Kaduna State established a Judicial Commission of Inquiry to investigate the Zaria incident. The Commission found that the Nigerian Army committed serious human rights violations against IMN members, including disproportionate use of force and failure to keep record of recovered casualties. However, no, further action was taken at the State or Federal level to investigate and prosecute those criminally responsible for the killings, one of the crucial recommendations of the Commission. The Special Rapporteur has requested for further information about this from the Federal Ministry of Justice in 2019, but none had been received by the time of this report.

The continued detention of Mr. El-Zakzaky and the allegations of deterioration of his health have prompted demonstrations by IMN members. On 29 October 2018, soldiers from the 7th Battalion, part of the Presidential Guard Brigade, shot at peaceful IMN members as they marched in Abuja, killing and injuring scores. The military claimed it was in self-defence, but a review of videos taken of the incident shows that the protesters were not armed or any threat at all. The soldiers can be seen shooting at the crowd indiscriminately and from close range and continued to shoot as the protesters retreated. They used battlefield weapons, including an armoured vehicle with high-calibre weapons.

In Abuja, on 9 and 22 July 2019, two demonstrations were violently repressed by the police. The authorities have alleged that these demonstrations were violent and that the participants were armed. During the 22 July demonstration, fatalities were reported, including that of a Deputy Commissioner of Police, as well as a journalist and an unknown number of IMN members. The police officer was

reportedly facing the demonstrators and trying to pacify them when he was shot on the back of his head. The Police claim the officer was shot by the protestors but no forensic evidence has been made public up to date. After this demonstration, about nine IMN members are alleged to have died in custody. A total of 12 of the 60 IMN members that remain in detention, have gunshots wounds and fractures and are under the strict custody of the Police. After the demonstration, three IMN members allegedly died in custody.

On 26 July 2019, the Federal High Court no 11 in Abuja declared the IMN to be an unlawful group. In August, the Nigerian Police issued a circular that directs police officers to 'ensure that identified leaders of the group and their structures are dismantled, and their activities contained'. This sets a dangerous precedent for the exercise of the right of freedom of religion and belief, and respect of fundamental liberties and to the right to life. On 10 September 2019, despite the proscription ruled by the Federal High Court, the IMN convened the annual *Ashura* Processions. The processions were held in all the state capitals of Northern Nigeria and in Abuja. In several cities processions took place peacefully. However, in other places, the police resorted to force, which leading to numerous casualties. Fifteen individuals have been killed and several others injured after police officers allegedly used excessive force against peaceful mourners. The victims were buried on the following day and no post-mortem examinations were conducted. Some of the individuals injured were arrested and have since remained in detention without access to medical care.

Attacks on Members of IPOB: Since 2015, members of IPOB have faced arbitrary arrests, torture and extrajudicial executions, predominantly in the context of demonstrations. Between 2015 and 2020, it is alleged that law enforcement officials killed more than 400 IPOB members and injured at least 500 in different events in Abia and Anambra states. On 9 February 2016, soldiers killed at least ten persons in the Aba National High School prayer rally. Video footage of these shootings show IPOB supporters gathered in a field at the school premises, unarmed and not violent. They were dancing and singing.

Approximately 50 soldiers and police officers ran into the field where the IPOB members had assembled and surrounded them. The soldiers established a perimeter and crouched down, aiming their firearms. The police showed no intent to control the crowd and withdrew. First, teargas was fired into the crowd and seconds later, the soldiers fired live

ammunition. As people ran away, the soldiers continued to shoot at the fleeing crowd. The video evidence indicates that the intent of this operation was to use lethal force.

According to witnesses, soldiers of the 144 Battalion took some of the bodies to unknown locations; among them were those found on 13 February 2016 inside a borrow pit located along the Aba-Port Harcourt Road, in Abia State. Some of the victims had their hands tied behind their back, and others were blind folded. Two weeks later, the bodies were burned. Despite the serious allegations, backed up by video evidence, no investigation was carried out.

On 29 and 30 May 2016, at least 60 IPOB members were killed and 70 injured during the Biafra Remembrance Day rallies in Asaba, Nkpor, Ogidi and Onitsha. IPOB members had gathered at different locations to march to Onitsha and were stopped by soldiers. Soldiers shot at the unarmed and peaceful protesters, including in the back. The exact number of deaths remains unknown as some of the bodies were allegedly taken away by soldiers and buried in one of the cemeteries located inside Onitsha Army Barracks, while others were dumped inside Asaba swamps or abandoned in clinics, the FMC in Asaba included.

On 14 September 2017, a military operation was carried out at the family home of the IPOB leader, Nnamdi Kanu, in Afara-Ukwu (Abia State), where IPOB followers had gathered to take part in a peaceful vigil. Heavily armed soldiers reportedly surrounded the compound and shot live ammunition, reportedly about 10 persons (number of dead vary). A human rights activist who visited the compound after the incident said they counted 48 bullet holes in the house. Four cars parked in the compound were also riddled with bullets. Immediately after the incident, the IPOB leader went on exile. Some of his followers on remand have not been seen since then. A week later, a Federal High Court in Abuja proscribed IPOB and designated it as a terrorist group.

Accountability Crisis and Impunity: Since his election in 2015, President Buhari has frequently stated that he would ensure accountability for human rights violations, but to date, the government has not fulfilled this promise. His administration has been continuing the decades long and country-wide pattern of establishing commissions of inquiry

which do not have the appropriate mandate or resources[74] to investigate and prosecute. The reports and outcomes of panels and commissions of inquiry remain too often hidden from the public. Military panels remained 'internal', and Presidential reports are not made public after the presentation to the President. Further, when reports have been made public, the authorities have largely failed to implement their recommendations. In most cases, they did not even publish a policy response[75].

The Special Rapporteur is concerned that by failing to make public the reports and implementing the recommendations, the government is contributing to the perpetuation of violations throughout the country. This was also the finding of the 2012 Presidential Committee on the Security Challenges in the North-East Zone of Nigeria where the Galtimari Committee, set up to analyse the crisis in northeast Nigeria and review operations by security forces, urged the government to "consider the imperative of implementing White Paper Reports of various committees" which had "submitted useful recommendations in the past, but yet to be acted upon."[76] While the government accepted this recommendation, they did not implement it. In the following years, the 2013 Turaki committee[77] and 2016 Kaduna State Judicial Commission of Inquiry[78] repeated the same recommendation.

Long History of Investigations: The use of investigations and inquiries has a long history in Nigeria. For example, in 1999, after the country's return to civilian rule, the new administration established a Human Rights Violations Investigation Commission (the "Oputa Panel").This panel of inquiry had wide-ranging powers to investigate the causes, nature and extent of human rights abuses between 1966 and 1999, to identify perpetrators and 'redress the injustices of

74 They have limited capacity to conduct thorough forensic investigations, including into photographic and video evidence. Instead, panels primarily rely on victims and witnesses to submit memoranda or testify in person.

75 Presidential Advisory Committee report, 2010, para 2.0161.

76 Report of the 2012 Presidential committee on the security challenges in the North- East Zone of Nigeria para, .175

77 2013 Presidential Committee on Dialogue and Peaceful Resolution of Security Challenges in the North (the Turaki Committee). The Turaki Committee was given the mandate to "constructively engage "key members of Boko Haram; define a framework for resolving insecurity in the country; develop a framework for granting amnesty; set up a disarmament framework; develop a victims' support programme; and develop mechanisms for addressing underlying causes of the insurgency.

78 The "Zaria Commission", set up to investigate the clash between the Nigerian army and members of Islamic Movement of Nigeria (IMN).

the past' and 'prevent and forestall future violations'.[79] But the Oputa Panel lacked the judicial power to compel testimony and could not act when three former heads of state refused to cooperate. After the Oputa Panel presented its report to the government in 2002, the government failed to implement it. The then-Attorney General was quoted as describing the panel "illegal and unconstitutional".[80] The panel's recommendations, especially those relating to criminal prosecutions and compensation of victims, were not adopted and implemented by the government.

In 2008, a court ordered the Inspector General of Police (IGP) to investigate former President, Olusegun Obasanjo, to determine his role in the November 1999 military reprisal attack on the village of Odi, Bayelsa state, in which at least 200 people died, and the whole village was burned down. The government refused to prosecute those responsible. The IGP disregarded the court order to investigate the former President's role, and to date, no individual has been prosecuted for the Odi killings.[81]

A similar pattern can be seen in the case of the judicial commission of inquiry into the Zaki Biam massacre in Benue state, where soldiers in a carefully planned attack killed up to 200 people on 22 October2001, in response to the murder of 19 soldiers in the area ten days earlier.[82] Despite international pressure on the Nigerian government to conduct "rapid, impartial and effective investigations" into the issue,[83] President Obasanjo set up a commission of inquiry focusing on the inter-community conflict that preceded the soldiers' actions, thus avoiding to investigate the reprisal attack. The report was never made public.

As highlighted by the then Special Rapporteur in 2006, the Nigerian authorities use inquiries to present a façade of official action, which never results in a criminal justice process. This is evident from the series of investigations around the Plateau State crises between 2001 and 2010. In response to the thousands of deaths in inter-communal violence, the authorities set up at least three presidential

79 Report of the Oputa Panel. Available at: https://www.dawodu.com/oputa1.htm.The report was made available online by civil society.

81 Victims obtained a court-ordered compensation against the government, but they were paid half of the sum and only after the judgment had been registered in a UK court.
para 61.

83 Human Rights Watch, Nigeria: Military revenge in Benue: A population under attack, 2001p.23.

inquiries and several state and federal legislative inquiries. Yet, the government never implemented the recommendations of these panels on criminal prosecution. One of the 2010 Presidential Advisory Committee findings was that "the non-implementation of past reports of the Judicial Commissions of Inquiries is a factor in the recurrence of the crises."

Commissions of Inquiries and other Panels in North-Eastern Nigeria: Between 2009 and 2018, the Nigerian authorities have set up at least 22 commissions and panels of inquiry into allegations of crimes under international law in northeast Nigeria, including the Federal Government, State Government, the military and the Senate. The National Human Rights Commission (NHRC) has set up at least four inquiries between 2013 and 2018.

None of the commissions of inquiry appeared to have had the mandate to identify perpetrators by name and recommend them for prosecution by the justice ministry. The one exception is the prosecution of hundreds of suspected "Boko Haram members" held in Kainji military detention. Most of them were reportedly civilians caught in the conflict, charged with minor offences such as membership of a terrorist organisation or failure to report information to the authorities. Human rights organisations allege that these trials were sham proceedings," organised to establish legal cover for the thousands of people who had already spent years in unlawful and arbitrary detention, and to hide the Nigerian authorities' failure to investigate and prosecute individuals who bear the greatest responsibility for Boko Haram's crimes against civilians." [84]

Military Investigating Itself: The authorities have frequently relied on military investigations into allegations of human rights violations by the armed forces. The most significant is the Special Board of Investigation (SBOI), set up in 2017 by the Chief of Army Staff under the armed forces act and tasked to investigate a wide range of allegations of human rights violations across the country.[85] The Terms of Reference of the SBOI did not include the mandate to identify and recommend individuals for investigation or prosecution or to recommend a remedy for survivors and relatives. Rather, it tasked the board to "Determine the veracity of the report by human right groups in relation to the allegations

84. Amnesty International, Willingly unable, 2018, p.5.
85. https://www.vanguardngr.com/2017/03/army-sets-panel-investigate-alleged-ex-judicial-killings-rights-violations-personnel/.

against some retired senior officers".[86]

In June 2017, the SBOI presented its findings to the media and made public a summary. It "cleared" the officers against whom there were allegations of war crimes or their potential command responsibility for crimes committed by their subordinates. The SBOI found that the detention facilities were overcrowded and unsanitary, and it did find evidence of deaths in custody. It stated that the delay in the trials and denial of access to lawyers was unacceptable and violated human rights. However, the SBOI found no evidence of arbitrary arrests or extrajudicial executions of detainees. This conclusion runs contrary to the many allegations that the Special Rapporteur received, some of which have been well documented by others.[87]

Another major inquiry was the 2017 "Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement" (PIP), tasked to investigate the armed forces' compliance with human rights obligations in the whole of Nigeria.[88] Its mandate indicates that the PIP was meant to be an inquiry into systemic issues and not an investigation into specific allegations with the intent of collecting evidence for criminal prosecution.[89]

The panel invited witnesses and victims to submit memoranda and present these during 27 public hearings in courts. Witnesses testified under oath and were cross-examined by a counsel for the Panel and military. There was no pro bono legal representation to protect the interests of victims and witnesses or cross-examine or challenge witnesses or "evidence" presented by the military. The panel presented their report to the presidency in February 2018. The report has to date not been made public, and it is not clear what steps the government has taken to implement any of the recommendations.

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86 Amnesty International, "Willingly unable: ICC preliminary examination and Nigeria's failure to address impunity for international crimes", 2018, pp. 21-22.

87. https://www.army.mil.ng/full-text-of-media-briefing-by-maj-gen-ne-angbazo-on-report-of-special-board-of-inquiry-to-investigate-alleged-human-rights-violations/.

88 ICC,"ReportonPreliminaryExaminationActivities2017"https://www.icc-cpi.int/items Documents/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

89 Terms of Reference: "review the rules of engagement of the Armed Forces of Nigeria and the extent of compliance with these; investigate alleged acts of violations of international humanitarian law and international human rights law (under the Nigerian Constitution, the Geneva Convention Act, the African Charter Act and other laws) by the Armed Forces in local conflicts and insurgencies; investigate the conduct and discipline of the Armed Forces in local conflicts and insurgencies;

The Special Rapporteur heard from many victims who presented their cases to the PIP but never heard about the outcome. They said they felt frustrated that time and again, the government asked them to take the risk to speak out without seeing any tangible change in their situation.

Kaduna State Judicial Commission of Inquiry: The Kaduna State Judicial Commission of Inquiry, set up in 2016 to investigate the clash between the Nigerian Army and members of the Islamic Movement of Nigeria (IMN), concluded that the Nigerian army used "excessive and disproportionate force", which resulted in "the large loss of lives" and did not comply with its own Rules of engagement.[90] Moreover, the order for the operation did not comply with the armed forces act.[91] As all evidence had been destroyed, the Commission could not do a forensic investigation of the crime scene. However, they did not order to exhume the bodies for forensic investigation and identification but only visited the mass graves location and interviewed witnesses of the mass burial.

One of the commission's main recommendations was that both the Nigerian Army members suspected of being responsible for killing the 347 IMN members and the IMN members suspected of having killed one soldier should be brought to trial.[92] The commission did not name individuals who should be prosecuted but instead recommended that the Federal Government set up an independent body to identify the soldiers who participated in the killings with a view to prosecution. In its white paper, the Kaduna State Government accepted all recommendations around the investigation and prosecution of IMN members but limited itself to "note" the recommendation that members of the Nigerian Army should be prosecuted.

The Federal Government has been silent about the investigation and the many recommendations that required their response. In August 2016, President Buhari released a statement in which he promised an appropriate response.[93] However, no further action has been taken, and the commander of the 1st Division, who is suspected of giving the

90 Report of the Judicial Commission of Inquiry into the clashes between the Islamic Movement in Nigeria (IMN) and the Nigerian Army (NA) in Zaria, Kaduna state between Saturday 12th and Monday14thDecember 2015. The commission presented its final report on 15July 2016 to the Kaduna State governor. Available at: https://kdsg.gov.ng/kdsg-releases-zaria-inquiry-report/.

91 *Ibid*, para2.2.1.

92 *Ibid*. Chapter 4.3.

93. https://www.premiumtimesng.com/news/headlines/208701-zaria-massacre-months-silence-buhari-promises-appropriate-response.html

order for the cordon and search operation, was promoted. To date, no person has been charged or prosecuted for the killings of IMN members in Zaria.

Failure to Prosecute: The lack of prosecutions of members of the security forces suspected of grave human rights violations fits in a country-wide pattern. To date, not a single military official has been tried before a civilian court for crimes under international law. The Nigerian authorities fail to transparently investigate and prosecute the allegations of grave human rights violations committed by the security forces before civilian courts, even in cases where there is clear evidence of atrocities and the name of the unit and individual perpetrators are known.[94]

Authorities have been unable to ensure that perpetrators are investigated and prosecuted. Instead, the authorities have allowed the military to self-investigate serious crimes under international law. For example, the authorities admitted that Boko Haram's leader Mohammed Yusuf was "killed in police custody" in 2009, and promising that "as soon as the investigative process is completed, those found wanting will be sanctioned accordingly".[95] Photos of his dead body show he was handcuffed. A committee was set up in August 2009 to investigate the killing, but its findings were never made public. However, five police officers, including two Assistant Commissioners of Police, were charged in July 2011 with committing a "terrorist act" for the unlawful killing of Mohammed Yusuf. In December 2015, a court discharged the five accused because the prosecution failed to establish a prima facie case against them.[96]

Between 2014 and 2015, it has been reported that hundreds of soldiers and officers have been court-martialled in secret, mostly for refusing to take orders or cowardice, and on rare occasions, on charges of murder and rape. However, these trials have been held in secret, under circumstances that raise significant concerns regarding fair trial guarantees for both the suspects and their victims.

Country-wide, there is a pattern that even the perpetrators of well documented extrajudicial executions are never brought

94 Inaugural Speech by Justice BA George Will, Chairman of the Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement, 11 September 2017.

95 Statement by Attorney General of the Federation and Minister of Justice, United Nations Human Rights Council, Geneva, Switzerland, August 13, 2009.

96 Federal Government of Nigeria v ACPJBA bang and or (Suit No. FHC/KD/10C/2011).

to justice, even where there appeared to be evidence against them. For example, a well-documented case of extrajudicial executions by the police, the "Apo 6" case, highlighted in detail in 2006 by the then Special Rapporteur in his mission report only came to prosecution through a private prosecutor. Junior officers had testified that they had acted on the orders of their commander. Five of the six officers involved were charged with criminal conspiracy and culpable homicide. After a decade long trial, in March 2017, only two junior officers were found guilty of culpable homicide. The other accused persons, including the commander, were acquitted on the grounds of contradictory testimony and insufficient evidence. In November 2017, the police reinstated the commander with his rank and accumulated salaries restored, and in March 2018, he was promoted.[97]

Likewise, the Special Rapporteur received many reports of extrajudicial executions in SARS, Awkuzu in Anambra state. For years, civil society has asked the authorities to investigate and prosecute the officer in charge of this station. As far as the Special Rapporteur could confirm, this never happened. Instead, to avoid scrutiny, the police transferred him to Bauchi state in 2016. After his retirement in 2018, he returned as the Anambra State governor's security advisor. In July 2020, the NHRC announced an investigation following a complaint about an extrajudicial execution in SARS, Awkuzu, under his leadership. The governor dismissed him in October 2020.[98] He was summoned to appear before a judicial panel in December 2020 but did not attend.

Trials of Boko Haram Fighters: Since 2017, three 'mass trial' sessions have taken place before the Federal High Court of Abuja sitting in Wawa Military Cantonment in Kainji, Niger State. These trials were characterised by severe shortcomings and raised concerns that many of the suspects may have been civilians against whom there was no evidence. The judges discharged hundreds of suspects, but they were reportedly not released from detention but held – for years in some cases – before they were handed over for rehabilitation and release. No high-ranking Boko Haram commanders were prosecuted nor were victims and witnesses of Boko Haram crimes invited to testify.

According to Amnesty International, only around ten Boko Haram suspects have been convicted of serious crimes such

97 https://www.premiumtimesng.com/news/top-news/250646-apo-six-reinstated-officer-charged-murder-abuja-traders-police.html.
98 Sahara Reporters, Awkuzu: Un told Stories of SARS' Deadliest Den, October2020.

as 'terrorist acts', killings, or hostage-taking since the Boko Haram conflict started in 2009. Hundreds of people charged under the flawed Terrorism Prevention Act have been found guilty of membership, or supporting Boko Haram, for example, by providing or selling goods or logistical support or not providing information on Boko Haram members or activities to the Nigerian authorities.[99] Due to the opaque military screening in northeast Nigeria, mass arrests, and frequent arrests and detention of civilians escaping Boko Haram territory, a high percentage of people in military detention may never have been affiliated with Boko Haram.

On the other hand, fighters who hand down their arms go through a demobilisation, disassociation, reintegration, and reconciliation (DDRR) programme coordinated by the Defence Headquarters' Operation Safe Corridor. Hundreds of suspected Boko Haram fighters have been deradicalised without being charged for any crime.[100] Nigeria has offered amnesty and rehabilitation for "repentant" members of the group[101] without defining "repentance" or deciding who could go for rehabilitation. Such an unregulated and opaque process of amnesty creates an opportunity for impunity for the perpetrators of international crimes.

None of these initiatives seems to include the voice of survivors of serious human rights violations and crimes under international law. The authorities are yet to develop a strategy to offer thousands of survivors and victims of human rights abuses access to justice and transformational reparations.

99 Amnesty International "Willingly unable",2018.

100 https://www.icirnigeria.org/repentant-boko-haram-a-look-at-operation-safe-corridor-deradicalisation-and-rehabilitation-camp/

101 http://www.army.mil.ng/operation-lafia-dole-troops-arrest-3-boko-haram-terrorists/.

Chapter 2

REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING AND ON THE RIGHT TO NON-DISCRIMINATION

2.0 Executive Summary

The report reviews the situation in Nigeria with regard to the right to housing on the basis of information received by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, during her visit to the country between 13 and 27 September 2019. The Special Rapporteur notes that, despite considerable economic growth, poverty is acute, inequality is increasing and housing conditions remain grossly inadequate for the millions of Nigerians who are excluded from the formal housing sector. As a result, informal settlements are growing, with inhabitants lacking the most basic services and facing forced evictions. Meanwhile, luxury developments remain vacant.

The Special Rapporteur pays particular attention to the discrimination and criminalisation of certain groups, including women, lesbian, gay, bisexual and transgender persons, persons with disabilities and persons living with HIV/AIDS. The Special Rapporteur calls for the cessation of forced evictions, an ambitious tax reform that will increase public revenue and tackle inequality, and the creation of a rights-based housing strategy that focuses on the most vulnerable groups of society.

2.1 Introduction

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, visited Nigeria from 13 to 27 September 2019, at the invitation of the Government. The purpose of her visit was to examine the realisation of the right to adequate housing through legislation, policies and programmes and to identify positive outcomes and challenges for the enjoyment of the right to adequate housing.

The Special Rapporteur had the opportunity to visit three major cities: Abuja, Lagos and Port Harcourt. She visited a social housing project and numerous informal settlements where she met community representatives, women, indigenous persons, persons in homelessness, persons with disabilities and internally displaced persons, among others. She also met government officials, academics, representatives of civil society

organisations, representatives of the private and financial sector and other experts.

Nigeria is a lower-middle income country[102] that has experienced significant economic growth in recent decades. However, housing conditions in Nigeria, particularly for those living in poverty, are grossly inadequate. The Special Rapporteur observed inhumane and insufferable housing conditions, which are unacceptable in the twenty-first century, particularly in an oil-producing country that has consistently shown strong economic growth.

Generally, reliable data on the housing situation is scarce and outdated. In 2009, the Federal Ministry of Power, Works and Housing estimated that 69 percent of the urban population of Nigeria live in "slums" (hereinafter referred to as informal settlements)[103] many of which lack basic services like potable water, sanitation, electricity, garbage collection and paved roads. According to the World Bank, 57 million Nigerians lacked access to safe water and over 130 million were without access to adequate sanitation.[104]

2.2 Legal Framework

Nigeria acceded to the International Covenant on Economic, Social and Cultural Rights on 29 July 1993. In its article 11 (1), the Covenant proclaims the right to housing as a component of the right to an adequate standard of living, and the right to housing is now understood as a free-standing right. The right to adequate housing under international human rights law entails more than four walls and a roof and must be understood to mean the right to live in a place that provides security, peace and dignity.[105] Nigeria, as a party to the Covenant, must also ensure that all components of the right to adequate housing are enjoyed by all, including in respect of security of tenure, access to services and infrastructure, affordability, habitability, accessibility, location in proximity to services such as health care, schools and employment options, and cultural adequacy.[106]

Nigeria has not ratified the Optional Protocol to the Covenant, which provides a mechanism for those who believe their right to housing has been violated to submit individual complaints to the Committee on Economic, Social and Cultural Rights once having

102 https://data.worldbank.org/country/nigeria
103 Cited in United Nations Human Settlements Programme (UN-Habitant), "Habitant country programme document Nigeria 2017-2021", p.14.
104 World Bank, A Wake Up Call: Nigeria Water Supply, Sanitation, and Hygiene Poverty Diagnostic (Washington, DC, 2017), P.1.
105 Committee on Economic, Social and Cultural Rights, general comment No.4 (1991) on the right to adequate housing, para.7.
106 *Ibid*.

exhausted domestic remedies. Nigeria ratified the African Charter on Human and Peoples' Rights on 22 July 1983. The Charter does not contain an explicit reference to the right to adequate housing, but the jurisprudence of the African Commission on Human and Peoples' Rights and the African Court on Human and People's Rights has protected it indirectly through cases related to other human rights contained in the Charter, such as the right to privacy, the right to property and peaceful enjoyment of possessions and the right to protection of the family.[107]

Nigeria is party to the Revised Treaty of the Economic Community of West African States which established the Community Court of Justice. Since 2005, the Court's jurisdiction has extended to human rights cases.[108] Numerous cases of forced evictions in Nigeria have reached the Court based on violations of the African Charter on Human and Peoples' Rights. The Constitution of Nigeria provides, in section 16 (2) (d) that the State shall direct its policy towards ensuring that suitable and adequate shelter is provided for all citizens. In section 6 (6) (c), however, the Constitution states that the provision is not justiciable, unlike the civil and political rights contained therein. As a result, the constitutional protection of the right to housing has developed through other human rights, such as the prohibition against inhumane and degrading treatment.[109] National legislation that is particularly relevant for the right to housing includes the 1978 Land Use Act, the 2019 National Housing Fund Act and state-level legislation regulating tenancy.

2.3 Economic Growth, Corruption and Inequality

Nigeria has the biggest economy in Africa and its gross domestic product (GDP) is ranked twenty-ninth in the world, placing Nigeria between Austria and the United Arab Emirates.[110] Its GDP per capita (2,366 US$) is similar to that of India (2,309 US$) and higher than that of most African countries.[111] However, due to extreme levels of inequality and insufficient distribution polices, economic growth has not reduced poverty levels in Nigeria.

The Brookings Institute estimated in October 2019 that almost 95 million people (48 percent of the population) are living in extreme poverty (with an income of 1.9 US$ per day or less), a number that is bigger than in any other country and growing by

107 Office of the United Nations High Commissioner for Human Rights (OHCHR) and UN-Habitat, "The right to adequate housing", fact sheet No. 21/Rev.1,p.12.
108 http://prod.courtecowas.org/wp-content/uploads/2018/11/supplementary
109 See paras. 26-30 below on forced evictions
110 http://worldpopulationreview.com/countries/countries-by-gdp
111 *Ibid*.

four persons every minute.[112] According to World Bank data, the number of persons with a daily income of less than 1.9 US$ grew from 57.2 million in 1992 to 84.8 million in 2009.[113] While poverty continues to grow, the number of very wealthy persons has also increased. Between 2004 and 2010, the number of millionaires in the country rose by 44 percent.[114]

Oxfam calculated in 2017 that the wealth of the five richest Nigerians could end extreme poverty in Nigeria.[115] Among the main causes of extreme inequality are misallocation of public resources; a pervasive culture of corruption (an estimated 20 trillion US$ was stolen from the treasury between 1960 and 2005 by public officials);[116] the "astronomical" cost of public administration due to excessive staff, salaries and benefits; and, generally, the lack of political commitment to fighting poverty.[117] The impact of corruption is such that reducing it to the levels of "other peer countries" would boost annual economic growth by 0.5 to 1.5 percent.[118] Social expenditure – key to tackling inequality – is among the lowest in the world and, with only 6 percent of registered corporate taxpayers currently active, tax revenue is far too small to address the critical needs of the country's population.[119] The Government's announced budget to be spent on housing projects for 2020, 60 billion Naira (165 million US$),[120] amounts to approximately 0.04 percent of GDP. Large amounts of illicit funds are widely reported to be diverted to the real estate sector as a means of money-laundering, despite prevention initiatives by the developers' association and government agencies.[121]

The Government has taken steps to strengthen tax enforcement and combat corruption in tax offices, including by launching the Strategic Revenue Growth Initiative. However, a more ambitious and comprehensive reform is required according to the International Monetary Fund (IMF), which recommends increasing the tax-to-GDP ratio by at least 8 percent in order to

112 https://worldpoverty.io/index.html
113 http://povertydata.worldbank.org/poverty/country/NGA
114 www.oxfam.org/en/press-releases /wealth-five-richest-men-nigeria-could-end-extreme-poverty country-yet-5-million-face.
115 *Ibid*
116 Olusola Samuel Faboyede, Chinonye Okafor and Maxwell Prosper Onochie, "Economic and Financial Crimes Commission (EFCC) as a strategy for managing Nigerian external reserves for sustainable development", IOSR Journal of Economic and Finance, Vol.1, No.2, pp.48-54.
117 OXFAM, Inequality in Nigeria: Exploring the Drivers (2017), pp.5-6.
118 International Monetary Fund (IMF), "Nigeria: selected issues", IMF Country Report No. 19/93 (April 2019, p.5.
119 IMF, "Nigeria: mobilising resources to invest in people"(3 April 2019)
120. http://africahousing news.com/2019/10/24/housing-sector-to-get-n60-87-bilion-allocation-in-2020-budget/.
121 www.pressreader.com/nigeria/the-guardian-nigeria/20191014/281895037524.

augment social spending.[122]
Under its international human rights law obligations, Nigeria is obliged to spend the maximum of its available resources towards the progressive realisation of economic, social and cultural rights,[123] including the right to housing. This means, among other things, collecting and imposing taxes and preventing money gained through corrupt practices from landing in residential real estate or other assets held either domestically or internationally. Until Nigeria can multiply its public revenue through tax reform and greatly increase its social spending, it is not meeting this standard.

2.4 A Housing Sector in Crisis

The housing sector in Nigeria is in complete crisis. The Federal Mortgage Bank of Nigeria estimated in October 2018 that the country had a deficit of 22 million housing units.[124] This figure is steadily rising as urban populations continue to grow at alarming rates. According to the World Bank, the need for housing is increasing by 700,000 units every year, with the formal market providing only around 100,000 units per year.[125] Even if the unrealistic commitment to building 1 million housing units per year was fulfilled by the Government,[126] with housing needs growing at the current rate it would take 55 years to tackle the housing deficit.

There is currently no national housing action plan or strategy. According to interviews held with government officials during the visit, there is insufficient coordination and communication between federal and state governments. One of the greatest challenges for the implementation of the right to housing is the extreme shortage of affordable housing. The cheapest houses built by private developers cost about 31,250 US$ in Lagos and 15,600 US$ outside Lagos (13 and 6 times the country's GDP per capita). Instead of catering for the needs of the majority of the population, a large part of housing supply is concentrated in luxury houses.[127]

Not only is purchasing a home in the private market unaffordable for most Nigerians, there are many other barriers hindering access to rented accommodation. These include scarce supply,

122 IMF, "Nigeria: mobilizing resources to invest in people
123 International Covenant on Economic, Social and Cultural Rights, art.2(1)
124 http://thenationonlineng.net/housing-deficit-now-22-million-says-fmbn/.
125 http://documents.worldbank .org/curated/en/278041531299329812/pdf/Concept-Project-Information-Document-Integrated-Safeguards-Data-Sheet-Nigeria-Affordable-Housing-Project-P165296.pdf
126 https://constructionreviewonline.com/2019/08/nigeria--to-deliver-one-million-affordable-houses-every-year/.
127 World Bank, Nigeria: Developing Housing Finance (Washington, DC., 2016, p. 34

the demand by landlords that tenants pay one to two years' rent in advance, discrimination by landlords against single women, lesbian, gay, bisexual and transgender persons, persons living with HIV/AIDS and others, and ineffective rent control or non-implementation of caps. Landlord-tenant relations are loosely governed and state-level rent control laws and other legislation protecting the rights of tenants are frequently violated.[128]

Private sector housing developers target upper-income households; middle-, lower- and no-income households depend on government initiatives to build social or affordable housing. However, public efforts in this regard are manifestly insufficient given the ever-growing needs, with the housing deficit increasing by approximately 600,000 units per year.[129] On 23 October 2019, the Ministry of Power, Works and Housing announced that its budget would increase from ₦35 billion (96 million US$) in 2019 to ₦60 billion (165 million US$) in 2020. This will allow for the construction of 2,383 housing units as part of the National Housing Programme in the nation's 36 states and the capital. This represents less than 0.5 percent of the actual yearly increase in housing need and around 0.01 percent of the current total housing deficit of 22 million units. Even when adding the yearly production of 100,000 housing units by private investors (which mostly target the upper-income minority in the country), the deficit will keep growing at a rate of almost half a million homes per year.

Another concern is that no government housing programme targets persons with no income or living in homelessness. The housing projects that were presented to the Special Rapporteur were aimed at public sector employees. While providing housing for government workers is commendable, a human rights-based approach to housing policy cannot ignore the needs of those who are unemployed (27 percent of the population and 37 percent of youth) [130]or those working in the informal sector (over 60 percent of the economy).[131]

There is a consensus that the legal framework for land administration, especially the 1978 Land Use Act, is exacerbating the pressures on the housing sector. The Act vests excessive powers in state Governors, making it necessary for landholders to obtain the Governor's permission to transfer their landholding

128 Nasir Imam, "Nigeria: ineffective rent control laws in country", Daily Trust (2 May2012)

129 http://documents.worldbank.org/curated/en/278041531299329812/pdf/Concept-Project-Information-Document-Integrated-Safeguards-Data-Sheet-Nigeria-Affordable-Housing-Project-P165292.pdf

130 https://tradingeconomics.com/nigeria/unemployment-rate

131 Vivian Maita and others, "Informality and gender gaps going hand in hand", IMF Working paper (May 2019)

rights and creating bureaucratic obstacles and delays. Some of the Act's provisions are also incompatible with international standards. Section 28, for example, gives Governors broad powers to grant a right of occupancy, but also to revoke it on the basis of "public purposes", which include the construction of oil pipelines, mining and the extraction of materials for use in building. The manner in which the Land Use Act has been used and implemented has had severe consequences for the enjoyment of the right to housing.

The Special Rapporteur received many reports of Governors abusing their land administration powers, including by granting occupancy rights to family and friends and by defining "public purpose" in such a manner as to result in the forced eviction of impoverished communities in violation of international human rights law, including for luxury developments that often stand vacant. The Act also makes land title registration cumbersome and onerous. It is well established that in Nigeria, real estate is used as a convenient place to launder money gained through corrupt practices, to park excess capital and to provide financial security for the wealthy. Some argue that evidence of this can be found in the ongoing development of luxury units throughout the country, thousands of which sit empty. The Special Rapporteur is not convinced that the federal and state governments fully appreciate the nature and extent of the crisis at hand.

While the Government provided information on some new housing programmes, they are market-driven, based on public private partnerships, depend on private investment and are often abandoned midway or left vacant. Without robust public funding, transparency, the participation of rights holders and accountability mechanisms, housing programmes are unlikely to meet the needs of individuals and families with no or little income. Given their modest scale, existing programmes will hardly make a dent in the ever-growing housing needs. While officials agreed with the Special Rapporteur's overall assessment of the Nigerian housing sector, the urgency of this human rights crisis, which is resulting in human suffering and premature death due to grossly inadequate housing conditions for many Nigerians, seemed not to have registered. Many officials were at a loss over what steps to take to resolve the housing crisis, stating that only international assistance would make a difference.[132]

2.5 Issues in Focus

One of the core obligations that States have regarding the right to housing, which they must fulfil immediately, is to ascertain the full extent of homelessness and inadequate housing.[133] Nevertheless, the Government acknowledges that it has no data regarding its homeless population, the number of persons living in informal settlements or the number of those lacking the basic conditions of adequate housing.

2.5.1 Lack of Data

The Government has also admitted that the lack of data is an impediment to the development and implementation of an effective housing policy. Without this information, there can be no accurate measure of progress or implementation of effective housing policies, or public accountability for the implementation of the right to housing at the local, state and federal levels. The last census dates to 2006 and is outdated. While the National Bureau of Statistics collects data every two to three years in conjunction with the World Bank, it does not compile housing statistics.

2.5.2 Forced Evictions

Under international law, forced evictions constitute a gross violation of human rights, including the right to housing. Evictions should be carried out only as a last resort, once all feasible alternatives have been explored, and those affected must be genuinely and meaningfully consulted at all stages. Legal remedies and legal aid should be provided to affected people who are seeking redress in court.[134] Where eviction is unavoidable, persons evicted should be given adequate notice and receive adequate compensation or adequate alternative housing. Evictions are contrary to human rights law where they render individuals homeless.[135] Although prohibited under international human rights law which is binding on Nigeria, forced evictions have been practised systematically in the country. While the total number of individuals affected is difficult to calculate, the United Nations Human Settlements Programme (UN-Habitat) has estimated that over 2.3 million persons were evicted in Nigeria between 1995 and 2005,[136] and mass evictions have continued ever since.

Domestic jurisprudence has concluded that forced eviction – at

133 Committee on Economic, Social and Cultural Rights, general comment No.4(1991) on the right to adequate housing, para.13

134 *Ibid*., general commentNo.7(1997) on forced evictions.

135 Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I, para.43).

136 UN-Habitat, Forced Evictions-Towards Solutions?: Second Report of the Advisory Group on Forced Evictions to the Executive Director if UN-Habitat, (Nairobi, 2007, p.9

least in the context of waterfront communities – is unconstitutional. The High Court of Lagos State held in 2017 that, in the absence of adequate notice or provision of alternative shelter, forced evictions violate the fundamental right to dignity and constitute cruel and inhuman treatment contrary to section 34 of the Constitution.

Despite this, hundreds of thousands of Nigerians, most of them women and children, have been evicted from their homes, often experiencing brutal force (including the lethal use of firearms, arson, arbitrary arrest and assault), which have resulted in deaths, injuries, miscarriages and stillbirths and inflicted unimaginable suffering and trauma among the most vulnerable parts of Nigerian society. Most evictions occur with little or no notice, with no consultation with the communities, inadequate or no compensation and/or resettlement and consistently result in homelessness and further impoverishment.

In many instances, evictees relocate to other informal settlements, where they are evicted a second or third time, and then still face the continual threat of eviction.[137] A resident of an informal settlement in Port Harcourt told the Special Rapporteur, "If you remove the roof over my head, you do not need to kill me, I am already dead." Forced evictions reinforce a cycle of social and economic vulnerability. The urban poor who are subjected to evictions often lose all of their belongings and are forced to relocate, sometimes to distant areas, losing access to their livelihoods, families, churches, mosques and other support networks. Even though evictions are often justified by the Government as "slum upgrading" or "development" projects, they consistently fail to benefit vulnerable Nigerians and seem to serve mainly the interests of private investors.

The Special Rapporteur met with members of communities who had undergone forced evictions, some of them repeatedly:
(a) In Lagos: Ilasan, Ikota (where Maroko residents have been displaced), Makoko and Oniru Estate, including Otodo Gbame evictees, the Agoegun in Bariga;
(b) In Port Harcourt: Agip/UST Waterfront, Nejmanze, Abonnema Wharf, Ogoniland, Echue and Darick Polo; and
(c) In the Federal Capital Territory: Karamajiji.
She was touched not only by their suffering, but also by their resilience and their capacity to organise themselves and defend their human rights, including the right to housing. The role of the non-governmental organisations (NGOs) who assist them through legal aid, litigation, capacity-building, mentoring and

137 Amnesty International, The Human Cost of Megacity: Forced Evictions of the Urban Poor in Lagos, Nigeria (London, 2017), p.15.

fundraising is truly commendable. The Special Rapporteur encourages them to continue their critical work. She recommends that the Government and the international community support them with funding and by furthering their participation in public affairs.

2.5.3 Inhumane Living Conditions in Informal Settlements

Owing to the colossal gap between the housing needs of the population and the housing supplied by entities in the private and public sectors, informal settlements continue to expand at very rapid rates. According to UN-Habitat, 69 percent of the urban population of Nigeria lives in informal settlements[138] and according to the state government of Lagos, the country's largest urban area, there is a housing deficit of 2.5 million units.

The Special Rapporteur visited informal settlements in Abuja, Lagos and Port Harcourt and observed living conditions that constitute an assault on human dignity, perhaps the most severe she has witnessed during her mandate. The Committee on Economic, Social and Cultural Rights, in paragraph 8 of its general comment No. 4 (1991) on the right to adequate housing, set out the international standards that housing must meet in order to be considered "adequate" according to international law. As far as the Special Rapporteur could observe during her visit, most of those standards had not been met, confirming the data gathered by UN-Habitat and the United Nations Children's Fund (UNICEF) in the absence of official government data.[139]

The first condition for housing to be adequate is legal security of tenure. However, millions of Nigerians live in informal settlements without security of tenure, which makes them vulnerable to forced evictions. The Special Rapporteur witnessed the great levels of anxiety this causes to families, many of whom are repeatedly subjected to forced evictions and live in constant fear that a new eviction could come with little or no notice. General comment No. 4 also requires that appropriate services, materials, facilities and infrastructure be made available for housing to fulfil the adequacy standard.

The homes that the Special Rapporteur visited offered very little protection from the heat and the heavy rainfall that characterise the tropical climate in Nigeria. The availability of energy for cooking, heating and lighting, washing facilities, drainage systems, means of food storage and refuse disposal were severely lacking in all the communities visited. In many houses,

138 UN-Habitat, "Habitat country programme document Nigeria 2017-2021",p.3
139 *Ibid*.

open fires were used for cooking, affecting the quality of air that residents breathe. The Special Rapporteur also witnessed stagnant floodwater, which she learned was responsible for the proliferation of mosquitos and malaria. Although her visit did not take place during the height of the rainy season, many communities were flooded and houses inaccessible as unpaved streets were flooded or full of mud, making them impassable. The majority of the streets the Special Rapporteur saw in informal settlements were completely inaccessible for older, less agile persons and for persons using wheelchairs or other walking aids, even when assisted.

None of the homes that the Special Rapporteur visited had running water, boreholes or potable water, which meant that most families had to pay to access drinking water. As those living in informal settlements are often without income or earn very low incomes, such costs are prohibitive. Those who cannot afford fresh water must use contaminated flood water, which results in cholera and other health issues.

The Special Rapporteur observed that few houses had latrines. According to UNICEF, poor access to improved water and sanitation in Nigeria causes high morbidity and mortality rates among children, and severely hampers their education as a result of absenteeism due to disease. Contaminated drinking water and lack of sanitation exposes the population to preventable water-borne diseases, including diarrhoea, which kills more than 70,000 children under 5 annually. Only 26.5 percent of the population uses improved drinking water sources and sanitation facilities, and 23.5 percent of the population defecates in the open.[140]

In some of the settlements visited by the Special Rapporteur, inhabitants were exposed to serious hazards. Badia East in Lagos is located on very narrow strip of land between shipping containers and a railroad track. The continuous passing of cargo trains exposes the settlement's inhabitants to a high risk of accidents, as there is virtually no separation between the houses and the track. Similarly, in several informal settlements, the lack of pedestrian crossings for roads with fast and heavy traffic results in frequent accidents, including deaths. The Special Rapporteur received information that pedestrian bridges were only being built in more affluent areas. The Special Rapporteur stresses that these communities are situated in such places not by choice, but by necessity, and that their hazardous locations do not warrant forced eviction, which is contrary to the international human rights obligations of Nigeria. None of the

140 www.unicef.org/nigeria/water-sanitation-and-hygiene.

communities visited by the Special Rapporteur had public squares, playgrounds for children or any other safe public space for social interaction except for one football field.

The Special Rapporteur also observed a case where the construction of luxury residential housing violated the rights to work and to food of a community living in an informal waterfront settlement in Bariga, Lagos. The dredging and sand-filling undertaken to construct the luxury housing increasingly jeopardised the ability of residents upriver to access fishing resources, which serve both as an essential part of their diet and their main source of income. As a result, the Special Rapporteur observed local women smoking frozen fish imported from the Faroe Islands, in Denmark, to sell at market. The Special Rapporteur was appalled that the construction of luxury homes would deprive some of the poorest communities in the country from their ancestral economic activity, absurdly forcing them to buy frozen fish imported from one of the richest countries in Europe. This demonstrates the critical need for consultation with communities on any project that may affect their human rights, before the projects are approved, and to ensure that any adverse impacts on their rights are prevented and mitigated.

In her meetings with government officials, the Special Rapporteur noted that incremental in-situ upgrades – now fairly standard in other jurisdictions – are not seen as a viable option for improving the lives of the inhabitants of informal settlements no matter how vibrant, organised and well-structured their community is. Many officials claimed that Nigeria lacked the resources for improving the material conditions of those communities.

However, such a position fails to acknowledge the human capital at hand. Residents of informal settlements who met with the Special Rapporteur said they were willing and able to take up the task themselves if provided with modest materials, or even loans to help finance upgrading and a guarantee of security of tenure from the Government. This option, which would prevent forced evictions, offers an opportunity to improve living conditions in informal settlements and, generally, would ensure that affected residents have improved access to housing, water and sanitation, health, education and other services, and thus be able to enjoy a life of dignity that is in conformity with the right to adequate housing and other fundamental human rights.

2.5.4 Homelessness

During the Special Rapporteur's visit, government officials and civil society organisations acknowledged homelessness as a growing problem, although no statistics had been collected to

quantify its extent. The Special Rapporteur observed people living under bridges in Lagos and many others in informal settlements in conditions equivalent to homelessness. In most cities, few or no emergency shelters were available. Homelessness is the failure of the State to implement the right to housing and is considered an egregious violation. The Human Rights Committee has acknowledged that failing to address the problem of homelessness can amount to a violation of the right to life.[141]

The Government is failing to uphold its human rights obligations in relation to homeless persons.[142] First, it does not have any information on the number of homeless persons in Nigeria and, second, it lacks a strategy to eliminate homelessness, with clear goals, targets and timelines. By failing to prevent forced evictions, the Government is directly contributing to homelessness. Although in their meetings with the Special Rapporteur government officials generally rejected the notion that they engaged in forced evictions, many communities were under threat of forced eviction because the fundamental legislative and policy reforms that are required to prevent them did not exist. As discussed below (see paras. 45–50), homeless persons and other persons in poverty suffer discrimination, stigma, criminalisation and negative stereotyping in Nigeria.

The capacity of homeless persons to seek remedies for the human rights violations they suffer is hindered by the right to housing not being fully justiciable in court, and also by the lack of legal aid that could assist them in protecting their rights. The Government is also failing to prevent abuses by third-party actors rendering persons homeless. In many forced evictions, the Nigerian security forces cooperate with groups of armed men in brutal attacks against residents, and public institutions fail to hold them accountable.[143]

2.5.5 Criminalisation and Stigmatisation of the Poor

The Special Rapporteur was appalled to observe that those who have the greatest need to be protected and assisted by the State are instead stigmatised, persecuted, extorted and even arrested and jailed without having committed a crime. In Lagos, the Special Rapporteur was informed that a police "task force" conducted "raids" and carried out "mass arrests" of poor people found walking in the streets. These people were put in trucks and delivered to a "mobile court" and encouraged to plead guilty to the offence of "wandering without evident means of

141 CCCPR/C/79/Add.105,para.12.
142 A/HRC/31/54.
143 Amnesty International, The Human Cost of Megacity, pp.7-8, 24-25, 27,43 and 53-54

livelihood", a defunct criminal offence, and forced to pay a fine of approximately 15,000 Naira (42 US$). Those who could show a company identification document, had some money on them or were well dressed might be released. The poorest, who could not afford to pay the fine, could face imprisonment. Some civil society organisations claim that the "mobile courts" were in fact "set up to exploit the urban poor and scare them out of the city".[144]

Vagrancy laws criminalising the poor were introduced in Nigeria during the British colonial regime and abolished by the military junta in 1989, after a long campaign by the human rights movement. The 1989 Minor Offences (Miscellaneous Provisions) Act, section 1, states that a person shall not be accused of or charged with the offence of wandering (by whatever name it is called) or with any other offence by reason only of being found wandering (by whatever name it is called) and, accordingly, that any person accused of or charged with such offence shall be released or discharged.

The Special Rapporteur is extremely concerned about the blatant disregard of the rule of law shown by the arrest and fining of poor people, a practice documented by NGOs and directly observed by the Special Rapporteur during her visit to a "mobile court". The Special Rapporteur regrets that her concern was met with scepticism by government and judicial officials. Officials who admitted that the practice may be taking place suggested that lawyers should challenge in court the imposition of a law that was abolished decades ago. The Special Rapporteur notes, however, that, first and foremost, resolute action by the Government is required to immediately suspend the unlawful, discriminatory and exploitive behaviour of the police and the "mobile courts".

Often, people living in informal settlements resort to hawking, the informal sale on the streets of low-value items, to make a living. This practice is seen as a nuisance by the Government and is therefore banned in many areas, resulting in arrests and extortion by the police. The Special Rapporteur understands the need to regulate economic practices in urban areas but sees no reason why the poorest inhabitants should be penalised for their attempts to make a living through street trade in a country where 60 percent of the economy remains informal.[145]

Another worrying aspect of the criminalisation and

144 Urban Resilience Hub, "The crackdown on the informal poor: a problem or solution?" (25 September 2018)

145 Vivian Malta and others, "Informality and gender gaps going hand in hand", p. 18.

stigmatisation of people living in poverty was reflected in the views expressed by some government officials during meetings with the Special Rapporteur. An informal settlement was referred to as "a den of kidnappers and criminals", and others jokingly doubted whether their inhabitants were "actually human". While forced evictions are mainly carried out for economic interests, the stigmatisation and dehumanization of inhabitants of informal settlements also provides pretexts for forced evictions and the brutal use of force with which they are often conducted. Demolishing entire communities based on the alleged criminal activities of some of their inhabitants is not only discriminatory, but also constitutes collective punishment.

2.5.6 Conflict-related Displacement

The Special Rapporteur is alarmed by the critical housing situation of those affected by the internal armed conflict, including internally displaced persons. According to the Office for the Coordination of Humanitarian Affairs, since the conflict started in 2009, 1.8 million persons have fled their homes and remain displaced, while 3.5 million persons need shelter, including 412,000 persons who need emergency shelter. In September 2019, of the 60.5 million US$ required to cover housing- and shelter-related needs for internally displaced persons, only 5.2 million US$ had been received (8.6 percent of the total) from donors.[146]

The Special Rapporteur met with internally displaced persons living in an informal settlement in the Federal Capital Territory and witnessed their appalling living conditions. The Special Rapporteur was told that, four years after their arrival in the capital, the only assistance they had received from the Government was the initial permission to stay on the land they were occupying, which had been granted only informally and without guaranteeing security of tenure. Some of the houses had been marked with red Xs, indicating their upcoming demolition. Lack of security of tenure and the threat of forced evictions affect the majority of internally displaced persons in the country. Instead of providing durable housing solutions, the Government is prioritising securing their return to their communities of origin, where conditions may not be suitable.

The Special Rapporteur is concerned about the vulnerability experienced by internally displaced persons because they lack security of tenure. Should they be forcibly evicted after having fled conflict and persecution, the additional trauma would be unimaginable. As many as 80 percent of displaced persons are

146 Office for the Coordination of Humanitarian Affairs, North-East Nigeria: Humanitarian Situation (September 2019)

women and children.[147] The visit to the community of internally displaced persons included the school that displaced children attended – a tiny, overcrowded school with over 100 children occupying a single space, run with few resources by an NGO. Being an unofficial school, the children attending it will not receive official certificates for the education received.

The Special Rapporteur noted that these appalling conditions, which undermine the right to education of the displaced children, are not found in a remote area of the country with difficult access, but in the outskirts of Abuja, a 30-minute drive away from the city centre and the Federal Ministry of Education. Currently, only 20 percent of the children affected by the humanitarian situation attend school.[148] The inadequate provision of shelter and housing to internally displaced persons has had negative impacts, particularly on women and girls. Sexual and gender-based violence is prevalent in camps for internally displaced persons and instances of sexual exploitation in exchange for aid by security forces, influential community members and humanitarian workers have been reported.[149]

The Special Rapporteur notes with appreciation that the 2012 National Policy on Internally Displaced Persons in Nigeria refers to the right to housing and other economic, social and cultural rights, including the rights to an adequate standard of living, food and water, basic shelter and housing, appropriate clothing and essential medical services and sanitation[150] for internally displaced persons, and that it specifically mentions that women should be full participants in the distribution of supplies.[151] However, she regrets that those rights, which are also included in the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, ratified by Nigeria in 2012, are currently not enforceable in domestic courts. The Special Rapporteur encourages the Government to enshrine the rights contained in the Convention into national law, as a positive step in the protection of the right to housing of internally displaced persons in the country. The urgent allocation of the necessary resources, both by the Government and the international community, is also critical in order to address the housing and shelter needs of internally displaced persons. Funds available to the humanitarian community only covered 8.6 percent of the needs in September 2019.[152]

147 *Ibid*., p.18
148 *Ibid*., p.15
149 Submission by the Center for Reproductive Rights.
150 www.refworld.org/pdfid/5a7ae2324.pdf
151 *Ibid*.
152 Office for the Coordination of Humanitarian Affairs, North-East Nigeria: Humanitarian Situation Update, p 12.

2.6 Discrimination of Vulnerable Groups

Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights provides that the right to housing should be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Special Rapporteur met with members and representatives of vulnerable groups who suffer discrimination impeding their enjoyment of the right to housing.

2.6.1 Women

Women experience sex and gender-based discrimination in almost every aspect of life in Nigeria. A particularly concerning manifestation of such discrimination is domestic violence. Although data is scant, one study found that close to a third of all of Nigerian women had experienced physical violence at the hands of their intimate partners.[153] Violence seems to remain prevalent despite the enactment of the 2015 Violence against Persons (Prohibition) Act.

Inadequate housing can also cause violations of women's right to sexual and reproductive health. The Committee on Economic, Social and Cultural Rights has stated that those rights extend beyond sexual and reproductive health care to the underlying determinants of sexual and reproductive health, including access to safe and potable water, adequate sanitation, adequate food and nutrition and adequate housing.[154]

The Special Rapporteur heard testimonies of women in informal settlements who had been raped when fetching water and when going to the toilet. In informal settlements, women facing domestic violence lack support structures and resources to flee to safety. As part of a practice that has been condemned by the Community Court of Justice of the Economic Community of West African States (ECOWAS), women walking alone at night are indiscriminately subjected to arbitrary arrest and sometimes even to sexual violence at the hands of the police, merely because they are suspected of being sex workers.[155]

The number of emergency shelters available across the country is clearly insufficient. According to civil society organisations, the

153 World Health Organisation, World Report on Violence and Health 2002 (Geneva, 2002), p.90.

154 Committee on Economic, Social and Cultural Rights, general comment No.22 (2016) on the right to sexual and reproductive health, para. 7.

155 In one case brought before the Community Court of Justice, Dorothy Chioma Njemanze and others v. the Federal Republic of Nigeria, four women were abducted and assaulted sexually, physically and verbally by Nigerian law enforcement officers who accused them of engaging in prostitution because they were in the street at night.

availability of shelters is better in Lagos and in Abuja than in the rest of the country,[156] which is troubling considering that, in 2014, only one government-run shelter was available for female victims of violence in Lagos (a city with over 20 million inhabitants), in addition to two NGO-run shelters. Even women fleeing violence who have the resources to rent accommodation are often discriminated against by landlords who refuse to rent to single or unaccompanied women for "decency" reasons.[157]

Women living with HIV/AIDS also experience discrimination. Although 1.5 percent of the adult population in Nigeria lives with HIV/AIDS (55 percent of whom are women), and despite the 2017–2021 National HIV/AIDS Strategic Framework acknowledging that stigma and discrimination are major issues, there is no national legislation explicitly banning discrimination based on someone's actual or perceived HIV status. The Special Rapporteur received reports of extreme cases of discrimination in relation to the right to housing. HIV-positive women had been evicted from their homes and communities and left homeless as a result of the absence of emergency shelters or housing options. Female HIV-positive students had been expelled from university accommodation after reporting their status to the university's health services.

2.6.2 Lesbian, Gay, Bisexual and Transgender Persons

Lesbian, gay, bisexual, and transgender persons experience extreme discrimination in Nigeria. The 2013 Same-Sex Marriage (Prohibition) Act imposes a 14-year prison sentence for entering into a same-sex "marriage contract or civil union" and a 10-year prison sentence for those who witness, abet and aid the solemnisation of a same-sex marriage or union. It also imposes a 10-year prison sentence on persons who directly or indirectly make public show of same-sex amorous relationships. Twelve states in northern Nigeria apply sharia law and penalise homosexuality with death. Although the Special Rapporteur did not receive evidence of the Act having been implemented, it creates a climate of oppression.

The Act also violates the right to privacy in the home, as the terms "same-sex marriage" and "civil union" are defined vaguely and could include any form of same-sex cohabitation. While so far there have been no prosecutions under the Act, the law contributes to a social climate that provides justification for discrimination and violence against lesbian, gay, bisexual and transgender persons, including in their own homes. Human

156 Canada, Immigration and Refugee Board of Canada, "Nigeria: domestic violence, including in Lagos State; legislation, recourse, state protection and services available to victims (2011-October 2014)" (10 November 2014)

157 www.bbc.com/news/world-africa-45169688.

Rights Watch reported that in 2014, in Gishiri village, Abuja, a group of approximately 50 persons armed with machetes, clubs and whips dragged people from their homes and severely beat at least 14 men whom they suspected of being gay. The victims told Human Rights Watch that their attackers chanted, "We are doing [President Goodluck] Jonathan's work: cleansing the community of gays." The impact on the right to housing is clear in their testimonies: "The mob was going from house to house looking for gay people, and they had police officers with them. We could not sleep in our house that night; we had to sleep under a bridge."[158]

The Special Rapporteur received reports of landlords evicting or refusing to rent to tenants suspected of being lesbian, gay, bisexual or transgender. A deeply disturbing case of a landlord recruiting a group of men to repeatedly rape his tenants, a lesbian couple, in his presence, was also brought to the Special Rapporteur's attention. The Initiative for Equal Rights, an NGO based in Nigeria, receives four to five complaints each month alleging the eviction of people from their apartments because of their gender identity or sexual orientation.[159]

Many lesbian, gay, bisexual and transgender persons in Nigeria are forced into gender conformity and isolation, not only publicly, but also in their own homes, which is incompatible with the enjoyment of the right to housing. The Committee on Economic, Social and Cultural Rights has stated that the right not to be subjected to arbitrary or unlawful interference with one's home and privacy constitutes an essential dimension of the right to adequate housing.[160] Friends and family members of lesbian, gay, bisexual or transgender persons may find themselves in violation of the Same-Sex Marriage (Prohibition) Act if they associate with their lesbian, gay, bisexual or transgender relative. Lesbian, gay, bisexual and transgender persons are also forced to limit visits to their own domicile by friends who could be suspected of being lesbian, gay, bisexual or transgender for fear that their landlord or neighbours may report them to the police. As a consequence, not even their home offers a safe space for socialisation.

2.6.3 Indigenous Peoples

Nigeria did not support the adoption of the United Nations

158 www.hrw.org/report/2016/10/20/tell-me-where-i-can-be-safe/nigerias-same-sex-marriage-prohibited-act

159 Canada, Immigration and Refugee Board of Canada, "Nigeria: information on how bisexuality is understood and perceived in Nigeria; whether bisexuality is distinguished from both male and female homosexuality (2014-June 2015", (9 September 2015).

160 Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 17.

Declaration on the Rights of Indigenous Persons.[161] Its internal legislation is not in line with international standards on indigenous peoples' land rights.[162] The Committee on the Elimination of Racial Discrimination has expressed deep concern regarding the failure of Nigeria to engage in meaningful consultations with indigenous peoples, including the Ogoni, and has stated that the Land Use Act and the Petroleum Decree are contrary to the International Convention on the Elimination of all Forms of Racial Discrimination in relation to indigenous peoples' rights.[163] The Committee was also alarmed by the assaults, the summary executions and other abuses carried out against local communities by police and security personnel employed by oil companies in Rivers and Delta States. It called upon the Government to conduct full and impartial investigations into alleged violations committed by police and private security personnel and to provide redress to victims.[164]

The Special Rapporteur met with representatives of the Ogoni tribe in Rivers State, who complained of forced evictions contrary to article 10 of the United Nations Declaration on the Rights of Indigenous Peoples and article 11 (1) of the International Covenant on Economic, Social and Cultural Rights. They recounted their ongoing struggle to maintain control over their lands and resources. The Special Rapporteur also met with the Gbagyi community in the Federal Capital Territory. Although the Gbagyi agreed to have their lands expropriated for the creation of a new national capital in Abuja in 1991, they have not been afforded adequate compensation and resettlement, violating articles 8 and 10 of the Declaration.

As established in the basic principles and guidelines on development-based evictions and displacement, compensation for all evictions need to be fair and just for both women and men and cover, among other things, lost opportunities, including employment, loss of earnings and the costs of legal assistance. Loss of land should be compensated with land commensurate in quality, size and value, or better.[165] The Gbagyi continue to live in informal settlements dispossessed of their land, without security of tenure and under the threat of forced eviction contrary to the provisions in the Committee on Economic, Social and Cultural Rights' general comments No. 4 and No. 7 (1997) on forced evictions.

161 https://unpo.org/article/6763
162 Sylvanus Barnabas, "The role of international law in protecting land rights of indigenous people in Nigeria and Kenya: a comparative perspective", in indigenous, Aboriginal, Fugitive and Ethnic Groups Around the Globe, Liat Klain-Gabbay, ed.(2019)
163 CERD/C/NGA/CO/18,para.19.
164 *Ibid*.
165 A/HRC/4/18, annex I, para.60.

2.6.4 Persons with Disabilities

The Special Rapporteur notes positively that Nigeria ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2010 and adopted the 2018 Discrimination against Persons with Disabilities (Prohibition) Act. The Act prohibits discrimination on the basis of disability and imposes fines and prison sentences on those who contravene it. It also stipulates a five-year transitional period for modifying public buildings, structures and motorised vehicles to make them accessible to and usable by persons with disabilities. The Act also establishes the National Commission for Persons with Disabilities, which is responsible for ensuring that persons with disabilities have access to housing, education and health care. The Commission will be empowered to receive complaints of violations and support victims to seek legal redress.

Despite normative progress, persons with disabilities still face arbitrary arrests and imprisonment, stigma, violence and discrimination in most aspects of life, including health care, housing and education.[166] The Special Rapporteur heard appalling testimonies of inhumane disregard for the dignity of persons with disabilities. According to a number of accounts, persons with disabilities are commonly arrested indiscriminately and transferred to "rehabilitation centres" that are tantamount to the poorest prisons, with overcrowded rooms, deplorable conditions, lack of access to showers and insufficient food. The Special Rapporteur was informed that residents contract preventable diseases such as tuberculosis and often die prematurely while in the centres. Witnesses claimed that they were being discarded "like waste". One victim told the Special Rapporteur that he had been sent to a rehabilitation centre in 1980. He had been denied regular access to showers, had been provided with limited quantities of food and had been physically restrained with chains for an entire year. As he had no money to bribe officials in order to leave, he had to escape. Between 2003 and 2007, persons with disabilities begging on the streets of Abuja were forced to leave the centre and were "evacuated" to Karamajiji, in the outskirts of the city. The forced eviction led to the creation of a colony, home to hundreds of persons with physical, intellectual and psychosocial disabilities.

When the Special Rapporteur visited the colony, the housing conditions were utterly inadequate, comparable to other informal settlements. Improvised shacks offered little protection from the elements and their inhabitants lived on dirt floors and had no access to running water or electricity. The lack of paved roads and properly graded ramps made it particularly difficult for

166 www.hrw.org/news/2019/01/25/nigeria-passes-disability-rights-law.

residents in wheelchairs or on crutches to move around. Despite the deplorable housing conditions, the community was vibrant, benefiting from an internal atmosphere of acceptance, and seemed cohesive in terms of residents' attempts to assist each other, although most indicated that they could not earn a livelihood and thus could not upgrade their own housing conditions. Access to education and health care was severely limited.

2.6.5 Access to Justice

According to the Committee on Economic, Social and Cultural Rights, States must offer an accessible, affordable, timely and effective remedy, either judicial or administrative, to persons whose right to housing has been violated.[167] The Committee has also stated that a rigid classification of economic, social and cultural rights, putting them beyond the reach of the courts, is arbitrary and incompatible with the indivisibility and interdependence of human rights. It also hinders the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.[168]

In Nigeria, however, the Constitution creates a hierarchy of rights privileging civil and political rights over socioeconomic rights, which renders the latter non-justiciable in court. Although section 16 (2) (d) of the Constitution mandates the State to provide adequate shelter for all, section 6 (6) (c) restricts the courts from adjudicating on those matters. While the constitutional protection of the right to housing is inadequate, forced evictions often violate a wide array of other rights protected in the Constitution, such as the right to physical security and to freedom from cruel, inhuman and degrading treatment.[169] This has allowed victims of forced evictions to successfully claim in court that forced evictions in which no alternative accommodation is provided violate the Constitution. In 2017, the High Court of Lagos State ruled in A. A. and others vs. the Attorney General of Lagos State and others that the eviction/threat of forcible eviction of any citizen from his home at short notice and without any immediate alternative accommodation or sufficient opportunity to arrange for such alternative accommodation before being evicted from his current abode was totally undignifying and certainly inhuman, cruel and degrading. The Court also ruled that forced evictions that left evictees homeless violated the prohibition of inhuman and degrading treatment enshrined in section 34 of the Constitution, a justiciable constitutional provision.

167 Committee on Economic, Social and Cultural Rights, genera comment No. 9 (1998) on the domestic application of the Covenant, para. 9.
168 *Ibid*, para. 10.
169 A/HRC/4/18, annex I, para.6.

The Special Rapporteur was alarmed to learn that governments in Nigeria often ignore the rule of law in a manner that violates the right to housing. This was confirmed to the Special Rapporteur in meetings with officials of the executive branch and the judiciary. One senior judge exclaimed, "We do not have guns!", in frustration regarding his court's inability to enforce its judgments when political and economic interests were at stake. Amnesty International and Justice and Empowerment Initiatives have documented this issue extensively. For example, on 7 November 2016, the High Court of Lagos State issued an injunction restraining the Government and the police from conducting the previously announced demolition of the Otodo Gbame waterfront community. Ignoring the order, only two days later, on 9 and 10 November 2016, the Otodo Gbame community was demolished and 30,000 persons were forcibly evicted. The arsons and the use of bulldozers commenced during the night, while residents were sleeping. After the Court ruled that the eviction of the Otodo Gbame community residents amounted to cruel and inhuman treatment contrary to Constitutional provisions in section 34 (mentioned above), the Court ordered mediation between the parties. The Lagos State government abandoned the mediation and continued to brutally evict members of the community.

The Court was unable to hold the Governor in contempt of court due to the executive immunity he enjoyed. In another example, the demolition of the homes of between 10,000 and 20,000 persons in an informal settlement in Abonnema Wharf, Port Harcourt, was carried out in June 2012 despite a Rivers State High Court order in November 2011 restraining the Government from evicting residents and demolishing the community. Such disregard for high court orders and judgments suggests that State governments believe that their conduct is not subject to the law, or that human rights do not extend to the indigent. Engaging judicial processes to protect one's home requires courage and resources. In a democracy, it is reasonable to expect States to respect the judiciary.

Advocates in Nigeria have also used regional mechanisms to protect the right to housing. The African Charter on Human and Peoples' Rights was successfully used to claim the right to be free from forced eviction by referring to the rights to property, family and health.[170] In another example of successful international litigation, the Community Court of Justice of ECOWAS ruled that the Government had violated the right to peaceful assembly when security forces shot at unarmed

170 African Commission on Human and Peoples' Rights, Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria (2002).

protesters in Bundu Ama, an informal settlement in Port Harcourt, killing at least 1 person and injuring 12 others in 2009.[171] Protesters were marching against an attempted forced eviction.

The Nigerian National Human Rights Commission has been another important institution and mechanism for the implementation of the right to housing. The Commission's Economic, Social and Cultural Rights Department has housing as one of its focus areas. The Commission takes on individual complaints, also on housing issues and forced evictions. Although it does not hold hearings on individual cases, it can play a mediation role.

The National Human Rights Commission created a special panel in 2013 with the task of travelling across the country and collecting testimonies of victims of forced evictions and forceful acquisition of land and property. The aim of the panel was to document the extent of forced evictions and associated human rights violations, with the overarching goal of developing policy recommendations for the Government. The panel travelled to Lagos, Port Harcourt and other cities, and produced an interim report. However, the panel was suspended prior to completing its work when the President, Muhammadu Buhari, dissolved the Commission's Governing Council in 2015. Seventeen communities are currently arguing before the Community Court of Justice that their rights to an effective remedy and to be heard without undue delay were violated as a result of the panel's suspension.[172]

The National Human Rights Commission's work to protect the right to housing has been constrained by the suspension of its policymaking and decision-making body, the Governing Council, since 2015. The Special Rapporteur was told that the appointment of its members was imminent.

2.7 Conclusions and Recommendations

In order to tackle the housing crisis in Nigeria, it is crucial that reliable data be obtained. To facilitate this, Government should immediately commence the collection of impartial census data. The National Population Commission of Nigeria should ensure that the next census includes human rights-based indicators relevant to the right to housing, such as the size of the population living in informal settlements and the situation of those living in homelessness, measurements of housing

171 Community Court of Justice, Socioeconomic Rights and accountability Project v. Nigeria (2010)

172 *Ibid*., *Edwin Lenyie and others v Nigeria*

adequacy and affordability, the number of vacant homes, housing and land ownership rates and information on security of tenure.

The federal Government should declare a national-level end to forced evictions and establish legal and procedural safeguards to ensure that if an eviction occurs, it is in compliance with international human rights law. All court orders preventing forced evictions must be strictly respected and past instances of government officials disobeying court orders must be investigated and perpetrators held accountable.

Federal and state governments must recognise housing as a fundamental human right, residents of both formal and informal housing as rights-holders and housing as a social good. Legislation recognising the right to housing as a fundamental human right should be enacted alongside rights-based housing strategies and mechanisms for claiming this right. They must meaningfully engage communities in the development of both. Rights-based strategies should include measurable goals and timelines, and monitoring and accountability mechanisms. They should be multisectoral in approach and aim to enhance federal-state coordination. Strategies must address structural barriers to adequate housing for the most vulnerable populations, including viable housing options for those with no income. Guidance on how to ensure that housing strategies conform to international human rights law is contained in the Special Rapporteur's report to the Human Rights Council at its Thirty-Seventh Session (A/HRC/37/53).

The Land Use Act should be updated to address present-day challenges and reduce bureaucratic obstacles to the transfer of land rights. Most importantly, the wide powers that the Act grants to Governors to revoke occupancy rights must be restricted and aligned with international human rights standards, including the prohibition of forced evictions and the rights of indigenous peoples over their lands and resources.

A national commission should be established to investigate gross and systematic human rights violations that have occurred during past forced evictions, provide access to remedies, including compensation and restitution, and hold perpetrators accountable. Due to the scale of the violations, a truth commission may be advisable.

The Government of Nigeria should urgently pursue a comprehensive tax reform in order to increase non-oil revenues, prevent tax evasion, enhance tax justice and reduce the country's extreme economic inequality. Specific measures must

be put in place to curb real estate investment for money-laundering, including public disclosure of assets, particularly for public officials; regulation of real estate transactions by banks; and maintenance of national and state land registers.

A strategy for dealing with vacant homes should be developed, including by giving consideration to the imposition of a prohibitive level of tax on vacant homes, to curb speculation. The revenues from such a strategy could be used to generate genuinely affordable housing. In addition, the expropriation of vacant homes for public purposes to address urgent housing needs should be considered. The President should immediately appoint the Governing Council of the National Human Rights Commission and ensure that it continues to comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Commission must also be provided with adequate resources.

The Government should prioritise in-situ upgrading of informal settlements, beginning by ensuring that each community has access to affordable potable water and sanitation services and is afforded long-term security of tenure. In-situ upgrading must not result in displacement and must conform to the principles laid out in the Special Rapporteur's report on this topic (A/73/310/Rev.1). If it is determined, after exploring all options, that in-situ upgrading is not possible and that communities are to be relocated, applicable international human rights law and standards must be strictly adhered to as specified by the Committee on Economic, Social and Cultural Rights in its general comment No. 7 (1997) on forced evictions and the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).

Government should address homelessness on an urgent and priority basis as a human rights crisis, and as part of the country's housing strategy. As a first step, and at a minimum, the number of available emergency shelters for different populations at risk, such as women and children fleeing violence, lesbian, gay, bisexual and transgender persons and those living with HIV/AIDS, should be increased significantly. The Government should verify how many persons are homeless and disaggregate relevant data by gender, age, disability and other factors. Homeless persons must be consulted in the process, in order to understand the socioeconomic factors causing homelessness and the best long-term solutions to their situation.[173]

173 See also A/HRC/31/54.

Mass arrests and the extortion of vulnerable groups, including single women, persons with a low income and those living in homelessness, persons with disabilities, inhabitants of informal settlements and unemployed persons, must be immediately discontinued. The federal Government must undertake a systematic review of those policing these vulnerable groups and the judicial practices adopted in the process. Provisions 249 and 250 of the Criminal Code and any other piece of legislation that discriminates and criminalises persons because they are poor or homeless must be immediately repealed.

The Government should urgently establish the National Commission for Persons with Disabilities mandated under the Discrimination against Persons with Disabilities (Prohibition) Act, and address inhumane conditions in rehabilitation centres with a view to closing them as soon as possible. The forced reclusion of persons with disabilities must immediately cease. The Government must ensure that community resources are available to facilitate the successful independent living of persons with disabilities in communities and within their families by providing social and medical support, livelihood resources, employment opportunities, education and adequate housing.

The Government should enshrine the provisions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa into national law and make the rights of internally displaced persons set out in the Convention directly enforceable in court. In the management of the humanitarian situation and the internal displacement situation, durable solutions addressing the housing needs and security of tenure of internally displaced persons should be prioritised. The security of internally displaced women must be guaranteed.

The National Assembly and state-level legislatures must adopt comprehensive legislation (including by amending the federal and state tenant legislation) banning discrimination in the housing sector by public and private actors of any group, including women (irrespective of civil status), HIV-positive persons, lesbian, gay, bisexual and transgender persons and persons with disabilities. The Same-Sex Marriage (Prohibition) Act, as well as all other pieces of legislation that discriminate and criminalise on the basis of a person’s sexual orientation and gender identity, must be repealed. The right to privacy of lesbian, gay, bisexual and transgender persons in their own homes is an essential element of the right to housing and must be protected.
The federal Government should consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Chapter 3

REPORT OF THE SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

3.0 Executive Summary:

During her visit to Nigeria from 3 to 10 September 2018, the Special Rapporteur on Trafficking in Persons, especially women and children, examined the main forms of trafficking in persons, at both the domestic and international levels. In her report, she commends the comprehensive anti-trafficking legislative and institutional framework and advocates for better enforcement and increased funding to its specialised agency for combating trafficking in order to achieve better results regarding the identification of and support for trafficked persons.

The Special Rapporteur welcomes the establishment of 10 government shelters for victims of trafficking but is deeply concerned about their "closed" nature, which infringes the human rights of victims and survivors. She therefore recommends that the policy be urgently reviewed. She also welcomes the establishment of the Edo State task force against human trafficking, commends the work of civil society organisations and advocates for a dedicated government fund to finance their projects. She emphasises that, especially in the context of forced or voluntary returns, long-term measures aimed at social inclusion are needed to provide survivors with viable alternatives and prevent retrafficking. Prevention measures solely aimed at raising awareness of the risks of migration have proven ineffective and should be coupled with meaningful economic empowerment measures, such as job creation, business skills training and extensive tutorship during the start-up phase of a business.

3.1 Introduction

The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Nigeria from 3 to 10 September 2018, at the invitation of the Government. The objectives of the visit, which included meetings in Abuja, Lagos and Benin City, were to examine the prevalent forms of trafficking in persons and to assess the effectiveness of measures taken by the Government to prevent and combat trafficking and protect the human rights of trafficked persons.

The Special Rapporteur expresses her sincere gratitude to the Government for its invitation and for the full cooperation

extended to her prior to and during her visit. She met with representatives of the Ministry of Foreign Affairs, the Federal Ministry of Justice, the Federal Ministry of Labour, the Ministry of the Interior, the National Emergency Management Agency and the Office of the National Security Adviser. She also held meetings with the National Agency for the Prohibition of Trafficking in Persons, the National Human Rights Commission, the National Commission for Refugees, Migrants and Internally Displaced Persons and the Office of the Inspector-General of Police. She exchanged views with the delegation of the European Union and with the United Nations country team. She also visited a shelter for victims of trafficking in Abuja run by the National Agency for the Prohibition of Trafficking in Persons, and other shelters run by civil society organisations, such as the Women Trafficking and Child Labour Eradication Foundation, the Committee for the Support of the Dignity of Women and the Society for the Empowerment of Young People in Abuja, Lagos and Benin City respectively. She is grateful to the resilient survivors who courageously shared their experiences and aspirations in the hope of effectively preventing and combating trafficking in persons.

3.2 Main findings

Nigeria remains a source, transit and destination country for victims of trafficking. Victims are trafficked to Europe through the central Mediterranean route, but also to Gulf States, the Russian Federation and West and Southern African countries for the purpose of both sexual and labour exploitation. Some are already recruited by their traffickers in the country of origin while others may start their migration journey voluntarily. However, owing to the absence of safe and regular migration channels, the vast majority of them fall prey to traffickers in transit countries like Libya, and are subject to all forms of human rights violations, including torture, rape, extortion, forced labour, sexual and labour exploitation amounting to trafficking and contemporary forms of slavery.

A. Forms and Manifestations of Trafficking in Persons

Internal trafficking, mainly from rural to urban areas is also reportedly rampant in Nigeria, although this is often overlooked. It mainly affects women and girls for the purpose of domestic servitude and sexual exploitation and men and boys for the purpose of child begging, and labour exploitation in street vending, mining and stone quarrying, agriculture and textile manufacturing.

According to the National Agency for the Prohibition of Trafficking in Persons, in 2017, 1,890 victims were rescued, of whom 23.7 percent were men and boys and 75.3 percent women

and girls. The majority of Nigerian victims came from Edo State and, to a lesser extent, Delta and Benue States.[174] Of the 1,890 victims rescued in 2017, according to the Agency, 89 of them originated from outside Nigeria, mainly from Republic of Benin and Togo.[175]

Poverty, displacement, economic hardship and unemployment, especially among young people, and restrictive European migratory policies, gender inequality, discrimination and stereotyping, coupled with strong traditional practices and beliefs, are identified as the main root causes of trafficking in persons in Nigeria. There are multiple factors contributing to this phenomenon, but on top of the list is the disruption of family and community support systems. However, the large profits generated for the traffickers in Nigeria, coupled with the high level of impunity and the well-structured and adaptable nature of the Nigerian trafficking networks, are among the reasons for its endurance.

3.2.1 International Forms of Trafficking in Person

The phenomenon of trafficking of Nigerians, especially women and girls, to Europe for the purpose of sexual exploitation has been going on since the late 1980s. During the 1990s, Benin City in Edo State, in particular, evolved into a hub for international organised crime, where "sponsors" and "madams" covered women's travel from Nigeria to Europe in exchange for them being exploited through prostitution after their arrival.

According to a report by the International Organisation for Migration (IOM) in 2017, an estimated 80 percent of girls arriving in Italy from Nigeria, most of whom are between 13 and 24 years old, are potential victims of trafficking for sexual exploitation. The majority of them come from Edo State but some also from other parts of the country. Victims are reluctant, at least at first, to access the protection programmes provided by IOM and local institutions in destination countries, mainly owing to the physical or psychological control held by traffickers over their victims or the fear of retaliation by traffickers against the victim's family members in their country of origin.[176]

A widespread characteristic of the Nigerian trafficking system is the use by traffickers of threats of "voodoo curses" (*juju* in

174 Following her visit, the Special Rapporteur was informed of the Agency's efforts to identify a large number of Nigerian women and girls, allegedly trafficked to Mali for sexual exploitation, and to repatriate about 40 of them in cooperation with the International Organisation for Migration (IOM) in January 2019.

175 National Agency for the Prohibition of Trafficking in Persons, "2017 Data analysis final report" (June 2018).

176 IOM, "Human trafficking through the central Mediterranean route: data, stories and information collected by the International Organisation for Migration" (2017).

Nigeria) to manipulate victims, especially women and girls, and force them into exploitative situations. Once arrangements for the victims' trips abroad are completed, traffickers seal the deal by taking the victims to the shrines of voodoo priests for a traditional ceremony of oath-taking. During the ritual, in which body parts such as fingernails, blood and/or pubic hair are collected, the woman is made to swear an oath to repay her debt, never to report her situation to the police or reveal the identities of her traffickers. Fear of breaking the oath is so strong that it creates a powerful hold over the victims and impedes them from seeking help or cooperating with law enforcement. About 90 percent of the girls trafficked to Europe are reportedly taken to shrines for "oaths of secrecy".

Nigerian women and girls are also widely exploited in Libya by traffickers, who keep them in so-called connection houses, where they are sexually exploited and raped by up to 20 men a day without receiving any contraception, often become pregnant and are forced to pay for unsafe abortions. Men and boys are also increasingly subjected to rape and other forms of sexual abuse, as demonstrated by a rise in 2018 in cases of men and boys receiving treatment and support for the physical and psychological consequences of sexual abuse.[177]

Trafficking destinations also include countries in North Africa, the Middle East, including Saudi Arabia and the United Arab Emirates, the Russian Federation (including in relation to the 2018 World Cup, during which at least 10 trafficked victims were identified by the National Agency for the Prohibition of Trafficking in Persons) and Central Asia, where victims are held in exploitative conditions, in most cases undergoing sexual exploitation, debt bondage and domestic servitude. Cases of trafficking by sea have also been reported in Cameroon, Côte d'Ivoire, Gabon, Guinea and Mali, where victims are recruited under false promises and end up being forced to work on farm plantations, or as hawkers or salespersons, usually to lift heavy loads at warehouses or stores, and as domestic servants.

3.2.2 Internal Forms of Trafficking in Persons

An increasing number of people are trafficked from rural communities in Oyo, Osun and Ogun States in the south-west, Akwa-Ibom, Cross River and Bayelsa States in the south, Ebonyi and Imo States in the south-east and Benue, Niger and Kwara States in the middle belt to cities such as Lagos, Abeokuta, Ibadan, Kano, Kaduna, Calabar and Port Harcourt. This type of

177 See United Nations Support Mission in Libya and OHCHR, "Desperate and dangerous: report on the human rights situations of migrants and refugees in Libya", (December 2018), p. 33.

trafficking regions are predominantly for exploitative domestic work, farm labour and prostitution, with incidents of forced labour particularly prevalent in Lagos.

3.2.3 Child Trafficking

While the Special Rapporteur did not receive any official data on the magnitude of child trafficking during her visit, she was informed that it is still prevalent in Nigeria, including in the form of exploitative child labour. Such forms of labour include domestic servitude, begging, farm labour and work in illegal mining sites and quarries. Other forms of child trafficking include forced marriage, trafficking for the purpose of organ removal, suicide bombing and the use of child soldiers. It also came to the attention of the Special Rapporteur that children, particularly in northern Nigeria, are increasingly subject to internal trafficking in the form of child begging. Most child beggars from the north-western and north-eastern regions come from the Islamic Qur'anic Schools. This is an informal school system, known as *almajiri*, which dates back to the eleventh century and applies the concept of educating young children in Qur'anic studies away from home. Children, including unaccompanied, separated or orphaned children, are increasingly given into the care of religious teachers (*mallams*) who run such informal schools. The use of children by religious teachers for child labour has been widely reported.

In Nigerian society as a whole, child begging is widespread. Victims of child begging also include children with disabilities, who are lured into the major cities. Poverty, conflict and displacement in the north, as well as reluctance or sheer negligence by the Federal Government to act on this issue, are other contributory factors.

3.2.4 Trafficking in Camps for Internally Displaced Persons and in Host Communities

Following extremely violent attacks by Boko Haram, hundreds of women and girls from north-eastern states were abducted. Some of them were subjected to domestic servitude, forced labour and sexual slavery through forced marriages to Boko Haram militants. To date, the whereabouts of many of the victims are unknown.

As of June 2018, the United Nations reported that there were 1.7 million displaced persons in Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe States.[178] Lack of livelihood opportunities has forced many families to send children as young as 5 years old to

178 United Nations Office for the Coordination of Humanitarian Affairs, "North-east Nigeria: humanitarian situation update" (June 2018).

hawk items in the streets or beg in order to have money to buy food, and both boys and girls are reportedly engaged in "survival sex". Internally displaced persons, especially in the northeast, face severe protection problems, including the widespread sexual abuse of women and girls.

Civil society organisations have widely reported cases of trafficking for the sexual exploitation of women, including by government officials, security forces and members of the Civilian Joint Task Force, in State-run camps for internally displaced persons, informal camps and local communities in and around Maiduguri and across the north-east of the country.[179] They have also reported the lack of resources available to internally displaced victims of sexual exploitation and gender-based violence, who have limited access to safe spaces, confidential psychosocial counselling and medical services. Women and girls abducted by Boko Haram and babies born as a result of rape, face stigmatisation and community isolation.

3.2.5 Other Forms of Exploitation that could Amount to Trafficking in Persons

"Baby Factories" and "Money Wives"

During her visit, the Special Rapporteur was informed of the existence of "baby factories", often disguised as orphanages, maternity homes or religious centres, where women are held against their will, raped and forced to carry and deliver a child. The children are then sold, sometimes with the intent to exploit them in forced labour and sex trafficking. In February 2017, the special task force of the Nigerian Army in Plateau State arrested 12 suspects for allegedly running a baby trafficking ring in Jos.

The Special Rapporteur was also told about the traditional practice of "money wives" within the Becheve tribe in the northern area of Cross River State, according to which women and girls are sold into marriage without or against their consent to older men, in exchange for food or to pay off a debt. Like other forms of trafficking, "money marriage" is contracted in a shrine and during the process, the spirit of the girl child or the woman is invoked and handed over to the man, after which it is believed that he can kill or harm her whenever he wishes. The Special Rapporteur acknowledges that the Federal and state Governments have taken steps to criminalise activities against persons, institutions or organisations associated with baby factories and money wives, with stiff punishments under the Child Rights Act.

179 Amnesty International, "'They betrayed us'. Women who survived Boko Haram raped, starved and detained in Nigeria" (2018).

3.3.1 Trafficking for the Purpose of Organ Removal

While the phenomenon of trafficking for the purpose of organ removal was raised by civil society organisations during the visit through anecdotal evidence, the Special Rapporteur also received first-hand information on this practice through a Nigerian investigative journalist, who had infiltrated some of the trafficking networks. She reported having been recruited for the purpose of sexual exploitation in Europe but that, when in the hands of "*juju* priests" in a boot camp in a remote location, exploitation took a different dimension. She reported that some girls who were travelling with her were singled out and beheaded in her presence with a machete.

Before managing to escape to save her life, she witnessed the arrival of "influential visitors", who came to take "the products they had been promised", referring to body parts of the victims who had just been killed. While the source could not confirm with certainty that such body parts included organs, the Special Rapporteur is concerned that trafficking for sexual exploitation may, in some cases, deteriorate into some of the worst forms of exploitation, including trafficking for the purpose of organ removal, although the magnitude of the phenomenon is unknown at present. The journalist also reported that, despite having shared this information both with the National Agency for the Prohibition of Trafficking in Persons and the police, the traffickers were never identified or prosecuted. Cases of trafficking for the purpose of organ removal have also been confirmed by the Agency, including in relation to migration flows towards North Africa and the Middle East. However, the Agency reported having received only one case in 2017, which was not investigated.[180]

3.3.2 Nigeria as a Transit and Destination Country

As a transit country, Nigeria is a hub for victims of trafficking from West African countries. Trafficked women transit Nigeria en route to Europe and the Middle East, where they are often trafficked for sexual exploitation. The ports and waterways around Calabar also serve as a point of transit for trafficked children to Cameroon, Equatorial Guinea and Gabon. The country also remains a destination point for victims of forced labour. Nigeria receives women and children from other Western and Central African countries.

3.4 Legal, Policy and Institutional Frameworks for Combating Trafficking in Persons

180 National Agency for the Prohibition of Trafficking in Persons, "2017 Data analysis final report".

3.4.1 International Legal Framework

Nigeria is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime, as well as to a number of international human rights instruments, including the Slavery Convention (1927); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949); the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); and the Worst Forms of Child Labour Convention, 1999 (No. 182).

Regrettably, Nigeria has not yet ratified the Protocol of 2014 to the Forced Labour Convention, 1930; the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203); and the Domestic Workers Convention, 2011 (No. 189).

3.4.2 Domestic Legal Framework: Federal Level

Nigeria has a solid legal foundation to combat trafficking, starting from the Constitution, which prohibits slavery or servitude and forced or compulsory labour (act. 34.1). In addition, the federal Child Rights Act, adopted in 2003 and ratified so far by 24 states, codifies the rights of children, including with regard to trafficking, forced labour and other harmful practices. Sections 21–23 of the Act prohibits child marriage and prescribes penalties; sections 28–30 prohibits forced labour, including child trafficking; and sections 30–32 prohibits the commercial sexual exploitation of children. Although the Act criminalises using, procuring and offering a child in the production and trafficking of drugs, the remaining 12 states in northern Nigeria that have not yet ratified it have no legislation in place to criminalise that crime.

The most comprehensive framework is provided by the Trafficking in Persons (Prohibition) and Enforcement Administration Act, adopted in 2003, amended in 2005 and re-enacted in 2015. This Act provides for a definition of trafficking in accordance with the Trafficking in Persons Protocol and established the National Agency for the Prohibition of Trafficking in Persons.

3.4.3 Prohibition of Trafficking in Persons

The State has taken laudable steps towards strengthening the legislative framework to address human trafficking in Nigeria by the passage of the Trafficking in Persons Act. It has also taken an innovative approach to criminalising commercial carriers who use their vessel, or whose vessels are used, to transport potentially trafficked persons and has instituted stiffer penalties by restricting the ability of judges to penalise human trafficking

offenders with fines in lieu of prison time. In addition, the amended Act criminalises the employment of children under age 12 for domestic work.

Nonetheless, the Special Rapporteur notes that the legislation is more oriented towards the prosecution of traffickers than to the prevention of trafficking and the protection of trafficked persons, and it mainly focuses on trafficking for sexual purposes at the expense of trafficking for labour and other forms of exploitation.

3.4.4 Domestic Legal Framework: State Level

Both the Nigerian Criminal Code, covering the southern states of Nigeria, and the Penal Code that applies in the northern states, cover trafficking in persons. The Criminal Code outlaws a number of conducts and acts that may amount to trafficking, such as the procurement of women and girls for prostitution (section 223), and it also specifically criminalises "ordeal, witchcraft, *juju* and criminal charms", which are intrinsically related to trafficking (sections 207–2013).

The Penal Code recognises trafficking in women as an offence, with special provisions according to the age of the victim. In general, there are stronger provisions against offences related to human trafficking in the Penal Code than in the Criminal Code and while the latter treats some of those offences as mere misdemeanours, the Penal Code categorises them as felonies and provides for stricter punishments. For example, under section 276 of the Penal Code, a maximum penalty of 10 years in prison and a fine exist for anyone convicted of encouraging the prostitution of women and children and it is an offence to import into northern Nigeria a girl under the age of 21 for prostitution.

The Penal Code prohibits the trafficking of women into Nigeria, but does not deal with the trafficking of women from Nigeria abroad. It also prohibits forced labour and imposes a penalty of imprisonment for a term that may extend to one year or a fine, which might not be a sufficient deterrent for this lucrative crime.

At State level, another noteworthy recent development is the Edo State Trafficking in Persons Prohibition Law. Adopted in May 2018, it criminalises, among other acts, the procurement or recruitment of persons for sexual exploitation or forced labour and the employment of children under the age of 12 years as domestic workers. The Special Rapporteur also commends the criminalisation of the procurement and recruitment of persons for the purpose of organ removal.

The fact that Nigeria is one of the first African countries to enact

specific anti trafficking legislation is noticeable. Yet even the most innovative legislation remains a dead letter if it is not seriously and strongly enforced. Throughout her visit, the Special Rapporteur noted that key challenges remained in the implementation of the law. Implementation and enforcement are proportionally linked to the capacity of the various institutions, including law enforcement agencies and the judiciary, to exercise their mandate and functions in relation to the fight against trafficking. In that regard, the Special Rapporteur is convinced that a lack of resources, training and equipment for the various public offices involved in the fight against trafficking are important obstacles to robust implementation and enforcement.

3.5 Policy Framework

The Federal Government of Nigeria has established policies related to trafficking and child labour, including its worst forms, such as the national policy on protection and assistance to trafficked persons (developed by the National Agency for the Prohibition of Trafficking in Persons and approved by the Federal Government in 2008), the national referral mechanism for protection and assistance to trafficked persons and its guidelines (launched in August 2017 by the Agency with support from the United Nations Office on Drugs and Crime) and the strategic plan for the period 2012–2017 of the Agency, which provides a framework for mobilising it and all the stakeholders involved in combating human trafficking within Nigeria and internationally. Other initiatives in that regard include the national policy on child labour, the national action plan for the elimination of child labour (2013–2017), the national framework for the development and integration of *almajiri* education into the universal basic education scheme and the action plan for ending violence against children, implemented by the Ministry of Women Affairs and Social Development, which focuses on eliminating sexual and physical violence against children and encourages more states to adopt and enforce the Child Rights Act.

3.5.1 Institutional Framework

At the federal level, the Anti-Trafficking Act established the National Agency for the Prohibition of Trafficking in Persons, operating under the Federal Ministry of Justice. The Special Rapporteur welcomes the establishment of the Agency as a unique model of specialised public entity, with the primary responsibility for arresting, investigating and prosecuting perpetrators of trafficking in persons, as well as providing protection and assistance to victims. The Agency is also tasked, among other things, with the prevention of trafficking in persons, capacity-building and awareness-raising aimed at educating the public about the dangers of trafficking and conducting joint operations with relevant law enforcement and security agencies,

international authorities and other relevant partners. During the visit, the Agency stated that it worked in close cooperation with the Nigerian Immigration Service and the police, both operating under the Federal Ministry of Interior. However, the Special Rapporteur notes that coordination might be challenging in practice, especially considering that the Agency does not yet have offices in the border areas.

Throughout her visit, the Special Rapporteur also noted that, despite the Agency operating amidst shrinking resources and underfunding, there was a general perception in the country that it was the sole agency responsible for providing anti-trafficking responses. The Special Rapporteur is concerned that this may run the risk of other federal governmental departments, such as the Ministry of Women and Social Affairs, the Ministry of Labour and Employment and the Ministry of Education and Youth Development, delegating all anti-trafficking responses to the Agency instead of putting their joint efforts into strengthening coordination and cooperation with the Agency.

At state level, the Special Rapporteur also commends the creation, through the Edo State Trafficking in Persons Prohibition Law, of the Edo State task force against human trafficking, which was inaugurated in August 2017 by the Executive Governor of Edo State and is chaired by the State Attorney-General and Commissioner of Justice. The main activities of the task force include the investigation and prosecution of traffickers, prevention and awareness-raising campaigns, including by tackling the root causes of trafficking and gender-based discrimination and stereotyping, offering protection through psychosocial support, providing short and long-term accommodation for victims, the vocational training of survivors and support for the return and reintegration of victims of trafficking. While it might be challenging to measure the impact of the task force at present, owing to its recent creation, the Special Rapporteur was positively impressed by the stated commitment and sense of initiative of the members of the task force with whom she met, especially with regard to their active involvement of and coordination with civil society organisations offering long-term protection and assistance to survivors.

3.6 Protection of Trafficked Persons

Trafficking in persons cannot be eradicated without paying attention to the rights and needs of victims and survivors. Overall, the Special Rapporteur found that trafficking in Nigeria was still addressed through strong law enforcement and repressive approach and that the protection and promotion of victims' rights were not given the same level of consideration. Lack of official data presents a major challenge in ensuring that

all victims of trafficking are protected. In that regard, the Special Rapporteur welcomes the initiative of the National Human Rights Commission in the management of a database of missing persons in Nigeria, which is triggered by complaints from families and which, although not necessarily aimed at detecting victims of trafficking, can be linked to trafficking in persons since in some cases victims could be reported missing before being identified as trafficked. The Special Rapporteur encourages the Commission to take a more active role in the prevention of trafficking in persons and the protection of its victims, in cooperation with the National Agency for the Prohibition of Trafficking in Persons, including by addressing its root causes, through its Economic, Social and Cultural Rights Division.

3.6.1 Identification of Victims or Potential Victims of Trafficking

The Special Rapporteur recognises the positive development of establishing a federal specialised agency in the country and a related formal referral system. However, in practice, the fact that only the National Agency for the Prohibition of Trafficking in Persons is designated with the power of identification of victims can be a limitation, if effective coordination between border control guards, law enforcement agents and other relevant stakeholders is not strengthened. Lack of funding has also been identified as a major challenge in ensuring efficient coordination between the Agency and service providers. In addition, the absence of a national database and a poor national identity system further hamper the identification of victims. Lack of standard operating procedures, corruption among border guards and lack of political will and government funding to recover, empower and rehabilitate victims are other obstacles to the identification of and support for trafficked persons.

The displacement affecting the north-eastern and other parts of the country has also exponentially increased the vulnerability of the affected populations to a number of risks, including the risks of exploitation and trafficking. While the Special Rapporteur did not visit areas affected by displacement, all her interlocutors acknowledged that anti-trafficking responses have so far been insufficient from both the Government and the international community, despite the fact that internally displaced persons are at heightened risk of being trafficked, owing to the inherent vulnerabilities attached to their status. It has been reported that victims of trafficking are not being appropriately screened and identified but receive the same services as internally displaced persons living in camps and host communities. More training on screening and identification and on the special needs of trafficking victims is needed. That is also related to the fact that women and children forcibly recruited by Boko Haram for the purposes of sexual exploitation, child labour and forced fighting

are not considered as victims of trafficking by government officials. While acknowledging the practical challenges related to such identification, especially in areas in which radicalisation has been promoted by Boko Haram, the Special Rapporteur notes that increased joint efforts are needed for prompt identification of victims of trafficking, especially children, and refer them to appropriate protection services.

It has also been reported that boys and young men forcibly recruited by Boko Haram and rescued by the Nigerian army are very difficult to access and protect, as they remain with the military for a period of deradicalisation. No service provider interviewed by civil society organisations with whom the Special Rapporteur met was able to explain this process, nor when or how such boys and men are reintegrated back into their communities. The Special Rapporteur reiterates that children abducted and exploited by Boko Haram are deeply traumatised and need specialised rehabilitation after they escape or are liberated from Boko Haram by the Nigerian military. Their detention in appalling conditions, which has been reported by civil society organisations, constitutes a violation of children's rights and should be avoided at all times (see A/HRC/32/32/Add.2, paras. 46–48).

Despite recognition of existing vulnerabilities and the high risk of both sexual and labour exploitation, lack of identification of trafficking cases among the internally displaced population, especially in host communities, has also been reported by the National Commission for Refugees, Migrants and Internally Displaced Persons.

3.6.2 Services Provided to Victims

The Special Rapporteur notes with appreciation the efforts made by the National. Agency for the Prohibition of Trafficking in Persons in setting up 10 shelters in Abuja, Lagos, Benin City, Uyo, Enugu, Kano, Maiduguri, Makurdi and Osogbo, and in establishing a dedicated team of social workers in charge of psychosocial support and the reintegration of victims. She is also pleased to note that since 2004, the Agency has rescued 11,529 victims of trafficking and received and counselled a total of 13,186 persons, of whom 1,890 were in 2017 and 826 in 2018.

However, after visiting the shelter in Abuja, the Special Rapporteur is extremely concerned that these are "closed shelters", infringing on the freedom of movement of survivors, who also face limitations in terms of access to health care and education, as they often have to be accompanied to school or hospital by a social worker. That approach also perpetuates the false assumption that victims of trafficking have to be locked up

for their own security, even though they have not committed a crime. In that regard, the Special Rapporteur stresses that shelters managed by civil society organisations are open and the National Agency for the Prohibition of Trafficking in Persons itself refers victims to such shelters after the permitted six-week period of stay in its own shelters has expired. This shows that operating open shelters for victims of trafficking with the necessary security guarantees in place is possible.

On the other hand, sheltering survivors of trafficking for six weeks, as is the case for the Agency shelters, is a very short period compared to the intensive counselling required to ensure their rehabilitation. Survivors who decided to share their painful experience with the Special Rapporteur reported suffering long-term posttraumatic stress disorder and depression and from which they were only starting to recover five years after their traumatic trafficking experience. They also complained that they often received only short term counselling from Agency social workers and that there was no long-term psychosocial support, which is often necessary for proper healing from the trauma caused by trafficking. In particular, they reported that there was lack of coordination and standard operating procedures between the Agency and public health-care services, such as the Lagos State University Teaching Hospital, despite its psychiatric unit being reportedly free of charge.

In addition, insufficient resources to manage and maintain shelters run by the Agency has had detrimental consequences on the quality of the services provided, in particular with regard to the social reintegration of trafficked victims. For instance, the Special Rapporteur heard that an assessment by a civil society organisation of the Agency shelter in Borno State in June 2018 found that the facility was empty, despite being overcrowded in the past, and that the staff were poorly trained in protection measures for victims, who were often sent back to camps for internally displaced persons or onto the streets, where they were at risk of being retrafficked.

The Special Rapporteur welcomes the good cooperation between the Agency and civil society organisations in providing accommodation, psychosocial support and assistance to victims. However, under Article 6 of the Trafficking in Persons Protocol, the primary responsibility lies with the State. The mere fact that a specialised government agency relies on the work of civil society organisations for the long-term protection of and assistance to victims of trafficking clearly shows the need for appropriate sustained funding of civil society organisations by government authorities.

The Special Rapporteur was very impressed by the role that civil society organisations have played in the fight against trafficking in Nigeria. With extremely limited funds, they have been operating shelters and providing psychosocial, medical, legal and material assistance to survivors of trafficking, including returnees from Libya and other countries. However, they often work in isolation and their efforts have been frustrated as a consequence of the generally short-term vision of policymakers both in Nigeria and abroad. The Special Rapporteur was taken aback to learn that the Government, while valuing the contribution of civil society organisations to its anti-trafficking work, has not been providing any financial support to ensure the sustainability of that contribution. Civil society organisations have had to scramble for funding from private entities and international donors. Cooperation with such organisations must be seen as a thoroughly desirable response to trafficking, whereby State institutions benefit from their expertise and flexibility and civil society organisations in turn are given the means for solid long-term planning, which will eventually lead to alternative and sustainable programmes for people vulnerable to trafficking.

The Special Rapporteur also notes that in Abuja and Lagos, the National Agency for the Prohibition of Trafficking in Persons has been mandated to provide assistance both to victims of trafficking under the 2015 Trafficking in Persons Act and to victims of other forms of abuse covered by the Violence against Persons (Prohibition) Act of 2015. In that regard, while visiting the Agency shelter in Abuja, she noted that of 43 persons and four babies being accommodated, only three or four were victims of trafficking. The Agency, in cooperation with its partners, may want to consider assessing how to carry out the mandate given by the Act in a way that does not have negative repercussions for the specialised services for trafficked persons.

While visiting shelters run by both the Government and civil society organisations, the Special Rapporteur also noted with grave concern that significant protection gaps existed with regard to the protection of and assistance to men above the age of 18, many of whom had recently been rescued from appalling exploitative conditions in Libya. According to disaggregated data compiled by the National Agency for the Prohibition of Trafficking in Persons, since 2004, 9,344 females and 3,842 males have been counselled and rehabilitated. However, on visiting the shelters, it was clear that the male data referred almost exclusively to male children, despite the data not being disaggregated by age. Civil society organisations also expressed concerns regarding the inability to provide for adult male victims of trafficking, especially returnees from Libya, who often refused

to be sheltered, owing to the additional stigma associated with their victim status and related stereotypes around masculinity. It has also been reported that male returnees often need specialised medical rehabilitation, as about 60 percent of them come back from Libya on heavy drug addiction and civil society organisations are not equipped to deal with the magnitude of such this phenomenon. The Ministry of Health needs to step up to ensure that appropriate medical services, including psychiatric and psychosocial support, are guaranteed for all survivors.

3.6.3 Return and Reintegration

Reintegration and rehabilitation of trafficked victims in Nigeria has proven to be particularly challenging. On 10 March 2016, IOM started the voluntary humanitarian returns programme to bring back migrants from Libya. From 13 April 2017, returns have been implemented in cooperation with the European Union under the EU-IOM Joint Initiative for Migrant Protection and Reintegration, for an expected duration of three years. From its inception through to 28 August 2018, 9,695 migrants had been received and assisted through the programme and 440 of them had been identified by IOM, in collaboration with the National Agency for the Prohibition of Trafficking in Persons, as victims of trafficking. Disaggregated data on returnees show that 59 percent are male, 41 percent female and 83 percent are between 18 and 35 years old. Data also show that 90 percent of them were returned from Libya and 50 percent of them were originally from Edo State. Considering the inhumane conditions in which migrants find themselves in Libya, which include sexual and labour exploitation, being sold in slave markets and other widespread and systematic human rights violations, as documented by several United Nations sources, the Special Rapporteur is concerned that the number of victims of trafficking among returnees might be much higher than those identified as such.

Through the EU-IOM Joint Initiative, IOM provides reception and post-arrival assistance to returned migrants in partnership with the Nigerian Immigration Service, the National Commission for Refugees, Migrants and Internally Displaced Persons, the National Agency for the Prohibition of Trafficking in Persons, the National Emergency Management Agency, the Nigerian Port Health Services and the Edo State task force against human trafficking. The basic services provided to the returnees upon arrival include onward transportation, telephones for further communication and food (for all 9,695), temporary accommodation (for 6,503), medical support (for 1,018), protection (for 551) and referral (for 549). Additional services to migrants with special needs also included referrals to clinics, psychosocial first aid, provision of "dignity kits", referral to

shelters, counselling and family tracing and reunification.

According to information received, the Federal Government also brought back from Libya a considerable number of Nigerians. Although the Federal Government did not provide the Special Rapporteur with any statistics regarding the number of returnees under its reintegration plan, the United Nations estimates that it brought back 2,130 Nigerian migrants from Libya through Port Harcourt in January 2018. During her visit, the Special Rapporteur noted that returnees through the federal reintegration plan had not yet received any type of support. Many of them had been rejected by their families and had no place to go. Some were sheltered by civil society organisations, whose capacity to support them is very limited. However, after the visit, the Special Rapporteur was informed that, with support from the Government of the United Kingdom of Great Britain and Northern Ireland, IOM, in collaboration with the Federal Government of Nigeria, recently commenced a project aimed at providing rehabilitation and reintegration assistance to returnees.

The Special Rapporteur commends government efforts to deal with the challenges related to return and reintegration; however, more concerted efforts should be dedicated to protection and referral to the appropriate services.

In addition, attention should be paid to providing returnees with valuable job opportunities in the long term, over and above life-skill or vocational training in the short term. For instance, while visiting shelters, the Special Rapporteur noted that women returnees were often offered very limited options for work, mainly in occupations traditionally associated with women's role in society, such as sewing, tailoring and hairdressing. In order to ensure the effective economic empowerment of returnees and prevent further trafficking, partnerships with the private sector may represent promising experiences, which could be replicated on a larger scale.

For instance, the Special Rapporteur was informed that IOM, in partnership with the Ministry of Labour and Employment and the Lagos Chamber of Commerce and Industry and following sensitisation sessions with relevant private sector stakeholders, will organise a job fair, where returnees will have the opportunity to meet leaders of the private sector in Nigeria and search for job opportunities to match their skills.

The Special Rapporteur also commends the IOM community-based reintegration programmes, implemented by civil society organisations, such as the Committee for the Support of the

Dignity of Women and the Society for the Empowerment of Young People, in areas largely affected by returns, whereby, in consultation with the community, a mapping of the business opportunities available is conducted and community businesses, such as pineapple and fruit juice producers and palm oil, vegetable oil and cassava processors are being set up in Edo and Delta States. Such projects, each of which is currently expected to create employment opportunities for up to 40 individuals, are mainly targeting returnees from the central Mediterranean route, including Libya, and unemployed youth. These initiatives are likely to reduce the stigma associated with returnees by enriching entire communities at risk and providing socioeconomic reintegration opportunities.

The Special Rapporteur also encourages projects, such as the youth resource centre of the local NGO, Idia Renaissance, in Benin City, which provides not only skill acquisition programmes but also health and social counselling, including in relation to HIV/AIDS, in safe and confidential settings, as well as facilities such as indoor games. The innovative aspect of such projects is that they function on the basis of mixed groups of young people composed of both returnees, including victims of trafficking, and those who are willing to migrate and could become potential victims. The aim is not only to boost youth economic empowerment but also aid prevention and awareness-raising by avoiding stigma and discrimination through peer-to-peer sharing of experiences.

The Special Rapporteur also appreciates the work of the Edo State task force in receiving and welcoming returnees and assisting their reintegration into society. She particularly commends the decision by the Governor to pay three months' salary to 3,211 returnees from Libya, following a monitoring and evaluation phase aimed at assessing the progress of returnee resettlement, in collaboration with the Edo State task force. She looks forward to the implementation of that decision and encourages more of such initiatives by other states and the Federal Government.

3.7 Investigation, Prosecution and Access to Justice

In terms of prosecution, the Special Rapporteur notes with appreciation that since 2004, the National Agency for the Prohibition of Trafficking in Persons has obtained 362 convictions of individuals, of which 21 were in 2018. However, considering the magnitude of the phenomenon, investigation and prosecution need serious and robust improvement. The main challenges identified by civil society organisations and survivors relate to corruption; lack of confidence in the judicial system; lack of training on and specialised knowledge of trafficking in

persons among law enforcement officials, police departments, judges and prosecutors; lack of will to prosecute high-level perpetrators; and lengthy judicial proceedings leading to delayed, and hence denied, justice.

Coordination between the Agency and law enforcement officials should be improved to ensure better synergy between investigators, prosecutors and counsellors at the investigation phase, in order to tackle trafficking in a holistic manner. Better coordination, including with regard to investigation and prosecution, should be ensured between the Agency and state initiatives, such as the Edo State task force, to avoid overlapping functions and maximise cooperation in the interest of the victims.

Another major challenge is that investigation and prosecution still rely heavily on the testimony of victims, often resulting in cases being dropped for lack of evidence and, in some instances, pressure from family members to withdraw the complaint, especially when they are operating in connivance with the traffickers. In 2011, the Evidence Act was re-enacted and section 84 provides the option of producing electronic evidence in courts by, for instance, video-linked interviews. That is a positive development that should be encouraged, together with other ways of securing and corroborating evidence not requiring the physical presence of a victim.

Another promising initiative that the Special Rapporteur was pleased to learn about is the Joint Border Task Force, a project that was initiated by the Government of the United Kingdom in 2015, in cooperation with the National Agency for the Prohibition of Trafficking in Persons, and is aimed at building the capacity of Nigerian law enforcement officers in investigating and prosecuting traffickers, building confidence among cross border law enforcement agencies and creating an environment conducive to joint investigations. Through the experience of the Joint Border Task Force, the Special Rapporteur was pleased to note that, when provided with the necessary equipment, funding and training, investigators from the Agency could be credible and reliable interlocutors in the fight against trafficking in persons.

Notwithstanding these promising initiatives, the Special Rapporteur notes that the Nigerian authorities and the general public continue to see trafficking as being exclusively perpetrated for sexual exploitation. In addition, victims suffer from a lack of empathy, especially those who started their journey voluntarily in search of a better life and became exploited in transit and destination countries. The mere fact that they started their journey voluntarily is often considered a free

choice rather than the result of the sophisticated modus operandi of organised crime networks.

Furthermore, in the narratives of victims and survivors, the role of corrupt law enforcement officers has often been highlighted. Special attention should be paid by the investigative authorities to the possible involvement or collusion of public officials with trafficking rings. Access to justice for victims of trafficking has been fraught with challenges. The establishment of the Victims of Trafficking Trust Fund is a welcome step; however, 10 years after its establishment, it is time that the Fund is effectively implemented and funded for the benefits of victims. Throughout her discussions with various stakeholders, the Special Rapporteur did not receive any information on compensation being awarded so far to victims of trafficking.

3.7.1 Prevention

Prevention of trafficking in persons was identified as one of the main priorities during the visit. For strategies aimed at preventing trafficking, the factors that increase vulnerability to trafficking, including displacement, economic and gender inequality, poverty and unemployment, should be analysed. For instance, during her discussions with communities, faith-based organisations, civil society and local academics, the Special Rapporteur was informed that in many communities and ethnic groups in Edo State, inheritance is mainly from father to son and, in some cases, the eldest son inherits the bulk of the property. As a consequence, when the husband in a polygamous marriage and low income family dies and has just one property to be inherited by his first son, many women are left to look for alternative ways of surviving, one of which is for their daughters to migrate abroad and be trafficked for sexual exploitation. The same happens to daughters in monogamous marriages. Discrimination against women regarding the right to inherit land and property is one of the most prominent root causes of trafficking, while international remittances sent to families in Benin City by women and girls trafficked to Europe have also been identified as a factor perpetuating human trafficking there.[181]

Madams operating a trafficking ring and returning with their fortune to their communities to invest in expensive properties have been seen as major examples of success and have contributed to fostering the false perception that life abroad is always better than in Nigeria. Poverty, gender inequality,

181 See Clementina A. Osezua, "Changing status of women and the phenomenon trafficking of women for transactional sex in Nigeria: a qualitative analysis", *Journal of International Women's Studies*, vol. 14, No. 3 (July 2013).

discrimination and stereotypes are also coupled with strong traditional practices and beliefs, particularly entrenched in certain regions. Other than the well-known practice of *juju*, which has been condemning victims of trafficking to the "oath of secrecy", families also tend to see children as an investment for the family and even push them into the hands of traffickers and later tolerate their exploitation, insofar as they are able to lift their families out of poverty and improve the economic status of the household.[182]

Engaging with traditional rulers and community and religious leaders is paramount for ensuring effective preventive anti-trafficking actions. The initiative of Oba Ewuare II of Benin, who released victims of trafficking from their oath of secrecy and placed a curse on traffickers, has produced unprecedented results and proven to have a great impact on the lives of thousands of women and girls in Nigeria and abroad. The Special Rapporteur encourages the Government to continue to engage with traditional and religious leaders and make use of their positive influence by replicating such initiatives across all regions affected by trafficking in persons.

The Special Rapporteur commends the efforts of the National Agency for the Prohibition of Trafficking in Persons in putting emphasis on prevention by, inter alia, carrying out awareness-raising programmes in partnership with civil society organisations. She also particularly welcomes the success of the Agency in advocating for the integration of anti-trafficking education into the curricula for primary and secondary schools. Instrumental in that regard have been the invaluable commitment of survivors, who have been carrying out awareness-raising campaigns in schools, churches and mosques, and the publication of the first anthology on human trafficking consisting of poems by secondary school pupils.[183]

During her visit, the Special Rapporteur also noted with appreciation several initiatives, including many sponsored by the European Union and its member States, aimed at supporting awareness-raising campaigns on the risks of human trafficking and "irregular migration". However, given the very limited existing channels for safe and regular migration, especially to Europe, awareness-raising has proved to be insufficient if not coupled with the development of programmes offering education, vocational training and literacy, and also long-term

182 See K.A. Eghafona, "The bane of female trafficking in Nigeria: an examination of the role of the family in Benin society" in *Towards a Sane Society*, A. Awaritefe, ed. (Benin City, Nigeria, Roma publications, 2009).

183 See *I am Not to Be Sold*, Tobore Ighofume Ovuorie, ed. (Parrésia Publishers, Lagos, 2016.)

interventions resulting in real economic empowerment.

While trafficking in persons cuts across all social classes and ages, those who are willing to attempt perilous journeys, even before becoming victims of trafficking, are affected by poverty and inequality, especially when forcibly repatriated. When that happens, they often return to the same conditions of vulnerability that pushed them to resort to traffickers. It is therefore important to find better ways to address the issue of prevention. That should not only entail increasing dedicated resources for joint projects and operations, which is absolutely necessary, but also a shift in the approach to such projects. For example, projects should integrate a long-term perspective for the social inclusion of victims and survivors by investing in education and job creation, which could offer a real and meaningful alternative to trafficking.

3.7.2 Cooperation and Partnership

During the visit, members of the Government emphasised on several occasions that strengthening international cooperation, including by regulating the demand for sexual and labour exploitation in countries of transit and destination, was urgent. The Special Rapporteur agrees that political will and commitment domestically must go hand in hand with the strong commitment of international partners to cooperate in the fight against trafficking, including with regard to joint investigation and prosecution.

The Joint Border Task Force represents an effective example of international cooperation in the fight against trafficking in persons. The project, which is currently composed of a small anti-trafficking team of 19 officers, representing about 10 percent of the total investigation cadre of the National Agency for the Prohibition of Trafficking in Persons, and 3 lawyers, has proved that building national capacity and establishing joint investigation teams for organised crimes can be more successful than bilateral or multilateral agreements when based on information-sharing among credible and well-trained interlocutors. The Special Rapporteur had the opportunity to visit the Joint Border Task Force in Lagos and to learn that the Government of the United Kingdom is currently facilitating the delivery of training on serious organised crime to seven specialised High Court judges in Lagos and one in Benin City, and is embedding a prosecutor from the Crown Prosecution Service in the Joint Border Task Force.

The Special Rapporteur finds that encouraging prosecutors to work more closely with investigators from the start is crucial for bridging the gap between the investigation and prosecutorial

phases, ensuring better coordination and, consequently, swifter prosecutions. One tangible success of this cooperation was the recent case of Josephine Iyamu, whereby a British female trafficker was sentenced to 18 years in jail for trafficking five Nigerian women into Germany for sexual exploitation after subjecting them to *juju* rituals. She was the first trafficker prosecuted under the British Modern Slavery Act in relation to trafficking victims outside the United Kingdom. She was also convicted of perverting the course of justice.

3.8 Conclusions

The Special Rapporteur commends the Federal Government of Nigeria for its legal and institutional framework which, with the establishment of the National Agency for the Prohibition of Trafficking in Persons under the 2015 Trafficking in Persons Act, provides for a comprehensive anti-trafficking response in the country. At state level, she equally commends the enactment of the Edo State Trafficking in Persons Prohibition Law and the creation of the Edo State task force against human trafficking, whose progress she will be keen to follow. Nonetheless, Nigeria remains a source, transit and destination country for victims of trafficking, for the purpose of both sexual and labour exploitation, as well as other forms of exploitation, including organ removal. Internal trafficking is also present in the country.

Despite the progress made, the Special Rapporteur notes that key challenges remain in terms of implementation, which is proportionally linked to the capacity of State institutions, including law enforcement officials and the judiciary, to exercise their mandate. In that regard, the lack of resources, training and equipment for public officials committed to the fight against trafficking represents a considerable obstacle to robust implementation and enforcement.

While the Special Rapporteur acknowledges the declaration by the Government of its political commitment to combating trafficking in persons, she emphasises that the first indicator of such commitment lies in allocating adequate resources to specialised agencies and programmes dedicated to the fight against trafficking, which, at present, appear significantly underfunded and rely heavily on civil society organisations. Revived political will and better coordination across relevant federal government departments, such as the Ministry of Labour and Employment and the Ministry of Women Affairs and Social Development, as well as between the National Agency for the Prohibition of Trafficking in Persons and State initiatives, is needed to put in place dedicated actions and holistic anti-trafficking responses that effectively address the needs of victims and survivors. A shift from law enforcement and prosecution to the prevention of trafficking and the protection of victims is also needed, as well as more attention paid and

concerted efforts made to combat trafficking for the purposes of labour exploitation, slavery and servitude, exploitation in begging and other forms of exploitation, including domestic forms of trafficking.

In terms of protection, while it is commendable that identification is institutionalised through a formal referral system, better coordination is needed between the National Agency for the Prohibition of Trafficking in Persons and service providers, border guards and law enforcement. With regard to the massive displacement affecting the north-east of the country following the Boko Haram insurgency and displacement in other parts of the country, increased joint efforts are necessary, including in cooperation with the international community, to identify and refer to the appropriate protection services victims and potential victims of trafficking in camps for internally displaced persons and in host communities, and to integrate anti-trafficking responses into asylum procedures.

The Special Rapporteur also notes with appreciation the existence of 10 government shelters for victims of trafficking, but is concerned that they are closed shelters, infringing on the freedom of movement of survivors. She urges the Nigerian authorities to stop this practice. She is positively impressed by the work of civil society organisations running open shelters for victims of trafficking and struggling to guarantee their long-term social inclusion, but with very limited resources. Rehabilitation and full social inclusion of trafficked persons in Nigeria has proven to be particularly challenging. More concerted efforts should be put in place to provide returnees, including adult males and those returned outside the EU-IOM Joint Initiative for Migrant Protection and Reintegration, with valuable job opportunities, as a form of prevention of re-trafficking.

In terms of investigation and prosecution, better coordination and synergies between investigators, prosecutors and counsellors at the investigation phase is needed, in order to tackle trafficking in a holistic manner. The Special Rapporteur also commends the good practice of the Joint Border Task Force as a promising model of international cooperation in the fight against organised crime. Prevention strategies aimed at addressing the root causes of trafficking, such as poverty and unemployment, gender inequality and discrimination, and factors that increase vulnerability to trafficking, should also be strengthened, in collaboration with the international community and traditional and religious leaders, following the successful initiative of Oba Ewuare II of Benin.

3.8.1 Recommendations

With regard to the international and national legal and institutional framework, the Special Rapporteur recommends that the Government:

(a) Ratify, without delay, the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) and the Domestic Workers Convention, 2011 (No. 189);

(b) Ensure universal ratification and enforcement of the Federal Child

Rights Act Across all States;

(c) Ensure the effective implementation and enforcement of anti-trafficking legislation by strengthening the capacity of the relevant governmental agencies, such as the National Agency for the Prohibition of Trafficking in Persons, law enforcement, border guards and the judiciary, through increased funding, adequate equipment and specialised training on trafficking in persons;

(d) Provide the Agency with adequate resources to enable it to fully carry out its role;

(e) Strengthen the coordination and cooperation between the Agency and relevant governmental departments, such as the Federal Ministry of Women and Social Affairs, the Federal Ministry of Labour and Employment and the Federal Ministry of Education and Youth Development, which should have a more proactive role in preventing and combating trafficking in persons, by, inter alia, addressing youth unemployment and gender discrimination and stereotyping; and

(f) Ensure coordination between federal and state-level initiatives, by improving cooperation between the Agency and the Edo State task force against human trafficking.

With regard to the protection of victims of trafficking and their identification, the Special Rapporteur recommends that the Government:

(a) Improve data collection through the establishment of a national database on trafficking cases in cooperation with the National Agency for the Prohibition of Trafficking in Persons and the National Human Rights Commission;

(b) Improve the identification of victims of forced labour and labour exploitation as well as other forms of trafficking such as child begging or organ removal;

(c) Improve the identification of victims of trafficking and their referral to appropriate protection services in areas affected by displacement, such as the northeast of the country, by providing specialised training on screening and identification

of vulnerability to trafficking in camps for internally displaced persons and host communities;

(d) Integrate anti-trafficking responses in asylum procedures and increase the existing cooperation between the National Agency for the Prohibition of Trafficking in Persons and the National Commission for Refugees, Migrants and Internally Displaced Persons, as well as with United Nations specialised agencies such as the Office of the United Nations High Commissioner for Refugees and IOM, including by training staff on indicators of vulnerability to trafficking in persons, especially among internally displaced communities affected by Boko Haram attacks; and

(e) Increase the presence of the National Agency for the Prohibition of Trafficking in Persons in border areas and airports as a means of strengthening cooperation with border control guards and law enforcement officials in identifying trafficking cases.

With regard to the protection of victims of trafficking and the provision of services to them, the Special Rapporteur recommends that the Government:

(a) Shift from a law enforcement paradigm to a victim-centred and human rights-based approach to trafficking in persons, which puts victims and survivors at the forefront of all anti-trafficking measures;

(b) Reconsider the policy of closed shelters for victims of trafficking, by replicating the experience of civil society organisations in running open shelters;

(c) Bearing in mind that the primary responsibility in terms of protection of trafficked persons lies with the State, provide adequate funding to the shelters to improve the quality of services provided, especially in relation to the protection and economic empowerment of trafficked persons;

(d) Establish a dedicated budget at the federal and state levels to provide for appropriate resources to civil society organisations that are de facto in charge of long-term accommodation, psychosocial support for and social inclusion of victims of trafficking in order for them to run shelters properly and provide adequate services to victims;

(e) Improve coordination and cooperation between the National Agency for the Prohibition of Trafficking in Persons and service providers through the establishment of standard operating procedures with public and affordable health care, such as psychiatric services, which are vital for victims of trafficking in overcoming post-traumatic stress and other types of trauma;

(f) Ensure access to appropriate protection services, such as health care and accommodation, for all victims of trafficking,

including adult males, especially those forcibly or voluntarily returned from Libya, by taking into account their specific needs, in cooperation with the Ministry of Health;

On rehabilitation and reintegration, the Special Rapporteur recommends that the Government:

(g) Continue cooperation, at both federal and state levels, with the international community through the EU-IOM Joint Initiative, to ensure the safe and voluntary return of Nigerian migrants held in inhumane and exploitative conditions in Libya;

(h) Ensure that returnees under the reintegration plan of the Federal Government have equal access to appropriate protection services and reintegration programmes, similar to those returned under the EU-IOM Joint Initiative;

(i) Dedicate special attention to reintegration programmes addressing trafficked women after their return, which are often designed according to traditional gender roles and have proved not sustainable in the medium and long term. Undertake transformative actions empowering women and, in general terms, trafficked persons, following an innovative approach based on the acquisition of new skills, especially aimed at boosting entrepreneurship;

(j) Provide returnees with a wider range of valuable job opportunities which could enhance their social inclusion in the long term, by cooperating with the National Agency for the Prohibition of Trafficking in Persons, civil society organisations and relevant ministries, at both federal and state level; and

(k) Replicate the positive initiatives highlighted in the present report, such as those carried out by civil society organisations and the Edo State task force to pay three months' salaries to 3,211 returnees from Libya, following a monitoring and evaluation phase.

With regard to the prevention of trafficking in persons, the Special Rapporteur recommends that the Government:

(l) Identify and tackle the root causes and factors increasing vulnerability to trafficking, such as displacement, economic and gender inequality, poverty, unemployment and the disruption of support systems;

(m) Continue to engage with traditional and religious leaders to halt the practice of *juju* and the oath of secrecy and any other form of collusion with traffickers, following the successful initiative of Oba Ewuare II of Benin; and extend similar initiatives to other states and other forms of exploitation, such as that of money wives in Cross River State;

(n) Invest in prevention and awareness-raising campaigns aimed at combating gender discrimination and stereotyping, and the tendency to see children as an investment to lift the family out of poverty by placing them in the hands of traffickers to seek their fortunes abroad; and
(o) Invest in long-term projects offering viable alternatives to stay in the country, including in terms of education opportunities and job creation, in cooperation with the international community, as a means to prevent re-trafficking.

With regard to investigation and prosecution of trafficking cases, the Special Rapporteur recommends that the Government:

(p) Tackle corruption and the possible collusion of State officials in trafficking in persons as a means of fostering confidence in the judicial system;
(q) Provide specialised training on trafficking in persons to law enforcement officials and the judiciary to improve their capacity to target high-level perpetrators;
(r) Put in place standard operating procedures to enhance cooperation between the National Agency for the Prohibition of Trafficking in Persons and ordinary law enforcement officials and ensure better synergies between investigators, prosecutors and counsellors at the investigation phase;
(s) Increase the use of electronic evidence in courts and any other ways of securing and corroborating evidence not requiring the physical presence of the victim;
(t) Improve the investigation and prosecution of trafficking for the purpose of labour exploitation, including in relation to domestic servitude within the country;
(u) Increase the use of financial investigation as a means to investigate and prosecute sophisticated organised crime networks and not simply low-level perpetrators;
(v) Ensure access to justice and compensation to victims of trafficking, as part of their right to an effective remedy, by implementing the Victims of Trafficking Trust Fund.

On international cooperation and partnership, the Special Rapporteur recommends that the Government:

(w) Improve cooperation on information-sharing with countriesof destination by increasing the capacity of the National Agency for the Prohibition of Trafficking in Persons, other law enforcement officials and judges in dealing with complex transnational investigations and prosecutions; and
(x) Replicate successful initiatives, such as the Joint Border Task Force, to build confidence among cross-border law enforcement and create an environment conducive to joint investigations.

Chapter 4

REPORT OF SPECIAL RAPPORTEURS ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH; THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY; AND ON CONTEMPORARY FORMS OF SLAVERY, INCLUDING ITS CAUSES AND CONSEQUENCES

4.0 Executive Summary:

Dainius Puras, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Rapporteur on the sale of children, child pornography and child prostitution, Maud de Boer-Buquicchio, and the Rapporteur on contemporary forms of slavery, including its causes and consequences, conducted a joint visit to Nigeria from 18 to 22 January 2016 at the invitation of the Government.

The aim of the visit was to examine measures taken by the Government and other actors to rehabilitate and reintegrate women and children who escaped or were liberated from Boko Haram captivity. The plight of those women and children is complex, multifaceted and brings into consideration a broad spectrum of human rights considerations. All three Special Rapporteurs identified areas of deep concern in relation to their respective mandates, including serious abuses of the human rights of women and children and violations of international humanitarian law, and constraints in meeting the obligation to protect and fulfil their human rights as explained in the ensuing sections.

During the visit, the Special Rapporteurs exchanged views with representatives from the Ministries for Women and Social Affairs, Health, Justice and Foreign Affairs, from the Office of the National Security Adviser, the Nigeria Police Force, the National Emergency Management Agency, Borno State Emergency Management Agency, the Victims Support Fund and the National Human Rights Commission, and members of the National Assembly. They held meetings with diplomatic representatives of European Union member States, civil society organisations, some of the parents of the abducted girls from Chibok and representatives of relevant United Nations agencies, both in Abuja and Maiduguri. They visited Dalori, Teachers village and Gubio camps for internally displaced persons in Maiduguri and the Kuje Prison Deradicalisation Programme in Abuja.

The Special Rapporteurs express their gratitude to the

courageous women and children and the representatives from the civil society organisations who graciously and generously shared their experiences. They are also thankful to the Government of Nigeria for its cooperation and openness in discussing issues pertaining to the objectives of their visit. They further extend their most sincere thanks to the United Nations country teams in Abuja and Maiduguri for facilitating the visit, in particular the Human Rights Adviser to the country teams.

The Special Rapporteurs offer their findings and recommendations in a spirit of constructive dialogue, which they hope to continue with the various interlocutors with whom they met. They therefore remain available for any further consultation and technical support that could ultimately lead to the successful rehabilitation and reintegration of women and children affected by the Boko Haram insurgency.

4.1 Background

North-east Nigeria, and particularly Borno State, has been the base of the group, *Jama'atu Ahlis Sunnah Lid'dawa'ati Wal Jihad,* more commonly known as Boko Haram (a phrase most often translated into English as "western education is forbidden"), which has waged a brutal insurgency that has claimed at least 12,000 lives since 2009 and displaced millions of people within and beyond the borders of Nigeria.[184]

Boko Haram was reportedly founded in 2002, but did not emerge as a significant security threat until the group's leader, Mohammed. Yusuf, and a large number of its members were killed by security forces in 2009.[185] Since then, the group has conducted numerous violent attacks, including suicide bombings, against civilians and civilian and military targets, predominantly in the north-east. The insurgency affects not only Nigeria but also Niger Republic, Chad and Cameroun and the entire Lake Chad region, posing serious threat to regional peace, stability, development and human rights. While analysis of the root causes of the creation and growth of Boko Haram is beyond the scope of the present report, a brief overview is included below as an indication of the context that underpins the findings of the Special Rapporteurs and related recommendations.

While the causes of radicalisation, in particular of women and girls, should be further researched, general causes of youth extremism include misinterpretation of religious teachings, linked to, among others, the proliferation of religious sects and

184 See www.unocha. Org/nigeria/about-ocha-nigeria/about-crisis

185 See H. Persson, Nigeria- An Overview of Challenges to Peace and Security (Swedish Defence Research Agency, 2014)

religious preachers often lacking knowledge of the religion in which they claim expertise. Persistent poverty, combined with a lack of positive outlook and the socioeconomic fabric of affected communities, are also contributing factors.[186] While children and young people are recruited through abduction and separation from their families, intimidation and coercion, they have also been enlisted through the use of financial and other incentives.[187] For example, it is reported that young suspects who were released by the military claimed Boko Haram had paid them about $30 each to set schools on fire and spy on soldiers.[188] 2013 progress report on the Millennium Development Goals indicated that youth unemployment was estimated at 37.7 percent, placing Nigeria among the countries with the worst youth unemployment record in sub-Saharan Africa.

The poverty level remained considerably high, with the most recent nationally representative survey indicating a 62.6 percent poverty prevalence rate, which translates to over 100 million people living in absolute poverty. The most affected groups are women, children and young people living in northern Nigeria.[189] For example, school non-attendance rates in the north can be as high as 72 percent compared with less than 3 percent in the south. At the national level, women are disadvantaged compared with men in terms of both education and earnings. In total, 38 percent of Nigerian women compared with 21 percent of men have no education, and girls' enrolment is rated at 20 percent in the north-east compared with 85 percent in the south-east and north-west regions.[190]

At the national level, more than half of women reported having had at least one problem gaining access to health care for themselves; and nearly 3 in 10 women have experienced physical violence at least once since the age of 15; wile 7 percent have experienced sexual violence. Experience of sexual violence varies by region, with 16 percent of women in the north-east having experienced some form of sexual violence. Spousal violence is also high, with one in four married women reporting that they have experienced physical, sexual or emotional violence by their husband or partner.[191] Around a quarter of

186 F.C Onuoha, "Why do youth join Boko Haram?", Special Report, No. 348 (Washington, D.C., United States Institute of Peace, June 2014).

187 Watchlist on Children and Armed Conflict, Who Will Care for Us? Grave Violations against Children in Northeastern Nigeria (September 2014). Available from http://watchlist.org/wordpress/wp-content/uploads/2111-Watchlist-Nigeria _I.R. pdf.

188 See Onuoha, "Why do youth join Boko Haram?"

189 See Onuoha, "Why do youth join Boko Haram"

190 Akinola Olojo, "Engendering counter-terrorism in Nigeria" (June 2013). Available from http://icct.nl/publication/engendering -counter-terrorism-in-northern-nigeria

191 National Population Commission of Nigeria and ICF International, Nigeria

Nigerian women have undergone female genital mutilation, a practice that has a profoundly detrimental impact on the health of women and girls, including their psychological and sexual and reproductive health, and is recognised as a human rights violation.[192]

Women and girls marry much younger than men; the average age of marriage is about 18 years for women, 9 years younger than for men. In total, 23 percent of adolescent women aged 15-19 are already mothers or pregnant with their first child. The rates of young pregnancy and motherhood are highest in the north-west and north-east.[193] The adolescent birth rate is 89 births per 1,000 women, while the total fertility rate is 5.7 children per woman. About 27 percent of women have a live birth before the age of 18, and about 7 percent have had a live birth before the age of 15.[194]

Overall, women have less control over assets like houses or land and thus are exposed to heightened economic vulnerability. For example, nationally, 18 percent of women own a house, either alone or jointly, and 15 percent own land, compared with 40 percent of men who own a house and 34 percent who own land.[195] In 2015, the maternal mortality ratio was 814 deaths per 100,000 live births, one of the highest in the world.[196] The north-eastern zone has the highest maternal mortality rate in Nigeria, at 1,549 deaths per 100,000 live births, compared with 165 deaths per 100,000 live births in the south-west.

4.2 Legal and Institutional Framework

The Special Rapporteurs noted the existence of a comprehensive legal, policy and institutional framework in the country providing a solid basis for responding to the current challenges posed by the Boko Haram insurgency. An overview of that framework is provided below.

4.2.1 International and Regional Legal Framework

Nigeria has ratified all of the core international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the

Demographic and Health Survey 2013 (Abuja and Rockville, Maryland, 2014).

192 See the fifth periodic report of Nigeria on implementation of the African Charter on Human and People's Rights in Nigeria, available from www.achpr.org/files/sessions/56th/state-reports/5th-2011-2014/staterep5_nigeria_2013_eng.pdf.

193 See National Population Commission, Demographic and Health Survey (footnote 9).

194 See the fifth periodic report of Nigeria (footnote9).

195 See National Population Commission, Demographic and Health Survey (footnote 9).

196 See http://data. Worldbank.org/indicator/SH.STA.MMRT.

Rights of the Child and its Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance. Nigeria is also party to the 1927 Slavery Convention and acceded in 1961 to the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. It accepted the individual complaints and inquiry procedures provided by the optional protocols to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. Nigeria also ratified the four Geneva Conventions of 1949, the Protocol additional to the Geneva Conventions of 12 August 1949 and the Rome Statute of the International Criminal Court.

At the regional level, Nigeria has ratified the 1981 African Charter on Human and Peoples' Rights, its 2003 Protocol on the Rights of Women in Africa (the Maputo Protocol) and the 1990 African Charter on the Rights and Welfare of the Child. Nigeria also ratified the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights and is party to the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) and various instruments of the Economic Community of West African States.

4.2.2 National Legal Framework

Chapter 4 of the 1999 Constitution safeguards the human rights of all and provides for protection against slavery, servitude, forced or compulsory labour. It also provides for the protection of children against any form of exploitation, moral and material neglect. Nigeria has transposed the Convention on the Rights of the Child into national law through the enactment of the Child Rights Act, 2003, which prohibits, among others, slavery and practices similar to slavery, such as the sale of or trafficking in children, debt bondage, serfdom and forced or compulsory labour for children. The Act guarantees the provision of special protection measures for children in need, including assistance and facilities necessary for education, training, preparation for employment, rehabilitation and recreational opportunities in a manner conducive to achieving their fullest possible social

integration and individual development. Furthermore, the Act prohibits the recruitment of children into the armed forces. In terms of the federal structure of Nigeria, national law does not apply unless specifically adopted by state assemblies. Only 22 out of 36 states have enacted the Child Rights Act. Borno, Yobe and Adamawa, the three north-eastern states most affected by the Boko Haram insurgency, have not yet done so. The dissonance between sharia law and civil law is also said to be one of the challenges preventing adoption of the Act in some states. It is noteworthy that the Child Rights Act defines a child as someone under the age of 18, while the definition on Children and Young Persons Laws applicable in the three north-eastern states is someone under 15.

The Violence against Persons (Prohibition) Act, adopted in May 2015, aims at eliminating violence in private and public life. It prohibits all forms of violence, including physical, sexual, psychological and domestic. It criminalises marital rape, female genital mutilation, forceful ejection from home and harmful widowhood practices. It also prohibits discrimination against persons and provides for protection and remedies for victims and punishment of offenders. The 2015 Administration of Criminal Justice Act is aimed at reforming the overall administration of the criminal justice system by promoting efficient management of criminal justice institutions, ensuring the timely dispensation of justice and protecting the rights and interests of all actors. Addressing corruption is said to have increased the independence of the judiciary. It has been said that prosecution and conviction rates for people found guilty of terrorism and other associated perpetrators of acts of criminal violence may increase given the specific timelines for prosecutions laid down in the Act.

The termination of pregnancy is illegal except when performed to save a woman's life. Both the Penal and Criminal Codes specify similar penalties for non-compliance. Yet pregnancy terminations are quite common and, because they are often performed clandestinely or by unskilled providers, most are unsafe.[197]

The Gender and Equal Opportunity bill has been on the legislative agenda since 2011. The bill would incorporate into national law certain provisions of the Convention on the Elimination of All Forms of Discrimination against Women and outlaw discrimination on the grounds of gender, age and

197 A. Bankole and others, "The incidence of abortion in Nigeria", incidence of abortion in Nigeria", in International Perspective on Sexual and Reproductive Health (December 2015), pp.170-181.

disability. The bill contains provisions related to temporary special measures, the modification of sociocultural practices, and the prohibition of discrimination on the grounds of marital and socioeconomic status, in political and public life, education, the health sector and employment. It would prohibit violence against women, establish the minimum age of marriage at 18 years, and also establish a gender and equal opportunities commission.

4.2.3 National Policy Framework

The National Priority Agenda for Vulnerable Children (2013-2020) is an eight-year strategic framework operationalising the commitment of the Government to ensure that all children are free from poverty and discrimination and are given the chance to fully develop their potential. The Agenda is tied to the Nigeria Vision 20: 2020 and draws from a number of national sectorial plans, including the National Strategic Health Development Plan (20102019), the National HIV/AIDS Strategic Plan (2010-2015), the National Strategic Plan for the Education Sector (2010-2016) and the Subsidy Reinvestment and Empowerment Programme.

In 2013, Nigeria adopted its plan of action for the implementation of Security Council resolution 1325 (2000), with a focus on prevention, participation, protection, promotion and prosecution. Of particular relevance are its stated objectives, which include initiating the process of transitional justice, strengthening the justice system to handle cases of gender-based violence and promoting the legal and economic empowerment of women and girls in conflict and post-conflict communities.

The draft national peace policy has also been finalised and is expected to be issued as an executive order in 2016. This policy aims to define the institutional and policy framework to guide the activities and mobilise resources to address conflict prevention and promote peace building in the short, medium and long term, taking into account the national context characterised by diversity and a plurality of ethnic, regional and religious identities.

A draft national policy on internally displaced persons was still on the Government's agenda at the time of the visit. This policy provides a framework for preventing and protecting citizens, and in some cases non-citizens, from arbitrary and other forms of internal displacement, meeting their needs during displacement and ensuring their rehabilitation, return, reintegration and resettlement after displacement. The policy, which integrates a human rights-based approach and a gender equality perspective, provides guidance on the provision of humanitarian assistance and the implementation of durable solutions in

situations of internal displacement, with specific guidance on the rights of internally displaced children, women and other groups of displaced persons.

4.2.4 Institutional Framework

The executive branch in Nigeria is decentralised. Federal ministries are generally responsible for policy guidance, whereas state ministries in the corresponding areas are responsible for implementation. The Federal Ministry of Women Affairs and Social Development is the lead department charged with promoting the general welfare of women and children. The Federal Ministry of Health aims at formulating and implementing policies and programmes related to health towards strengthening the national health system for an effective, efficient, accessible and affordable delivery of health services. The Office of the National Security Adviser coordinates the work related to countering terrorism and violent extremism.

The National Emergency Management Agency is the federal policymaking entity charged with guiding, coordinating and directly implementing humanitarian relief interventions and the rehabilitation of vulnerable groups affected by emergencies. The state emergency management agencies complement the National Agency at the state level. The National Human Rights Commission, established by the National Human Rights Commission Act of 1995, is the institution responsible for protecting and promoting human rights. The Commission has been accredited with "A" status by the International Coordinating Committee of National Human Rights Institutions in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

4.3 Human Rights Abuses against Women and Children

Boko Haram has conducted brutal and widespread human rights abuses and violations of international humanitarian law against civilians, particularly women and children. In his report prepared pursuant to Human Rights Council resolution S-23/1,[198] the United Nations High Commissioner for Human Rights documented such abuses and violations as including sexual violence, rape and child marriage. Child marriage is a form of forced marriage that places children at high risk of child domestic servitude and forced prostitution and can constitute a contemporary form of slavery.

The report also includes documented instances of numerous

198 See A/HRC/30/67.

women and girls forced to give birth or undergo miscarriages in extremely difficult conditions. In addition, the Special Rapporteurs were informed of widespread practices of abductions and abuses of women and children by insurgents, forced marriage of women to their abductors and pregnancy resulting from rape, and the disruption of education and health services. In particular, the stigma and discrimination suffered by women and girls associated with Boko Haram, including those who were abducted, escaped or rescued, were reported.

4.3.1 Abductions and Sexual Violence

Boko Haram has used widespread abductions of girls and boys as a part of its insurgency strategy. While the abduction on 14 April 2014 of 276 school girls from the town of Chibok in Borno State gained international attention, a number of other abductions of women and children have been largely unpublicised, including the abduction in 2015 of 300 primary school children and 100 women from the town of Damasak in Borno State. The total number of abductions remains unknown, but it is estimated that thousands of women and children have been abducted since 2012.[199] A number of abductees have managed to escape or were rescued, with 1,010 children reportedly rescued as at February 2016.

The manner in which those women and children were abducted, the duration of their captivity and the conditions under which they were held are diverse. They all referred to sexual violence and other forms of abuse, including situations of servitude, and many females returned pregnant or with babies. The number of those who managed to escape remains unknown.[200]

4.3.2 Use of Boys and Girls in the Insurgency

Boko Haram has reportedly recruited and used boys and girls in combat and support roles such as cooks, porters and look-outs.[201] Girls were also subjected to sexual violence and used as sex slaves by insurgents, which resulted in many becoming pregnant. Those who have escaped or were rescued reported extreme exploitation and being subjected to multiple human rights abuses. Some boys were forced to attack their own families and communities to demonstrate loyalty to Boko Haram, while girls were forced to marry Boko Haram fighters, clean, cook and carry equipment and weapons. Children were also used

199 International Alert/UNICEF, "Bad blood": Perception of children born of conflict related sexual violence and women and girls associated with Boko Haram in northeast Nigeria (Abuja and London, February 2016).

200 See A/HRC/30/67.

201 UNICEF, Missing childhoods: The impact of armed conflict on children in Nigeria and beyond (New York, April 2015); and M. Bloom and H. Maftess, "Women as symbols and swords in Boko Haram's Terror" , in Prism (vol. 6, No. 1 , 2016)

as human shields to protect Boko Haram insurgents. Another alarming trend is the growing number of women and girls used as "suicide" bombers in urban centres.[202] For example, in 2015, 21 children were used in suicide attacks, all of them girls, with some as young as 9. This number increased from four girls used as suicide bombers in 2014.[203]

4.3.3 Disruption of Education and Health Services

The Special Rapporteurs noted that education and health sectors, which were already weak in the north-eastern region, have been the most affected. Health providers working on family planning and providing lifesaving immunisation services, together with teachers, have been killed and kidnapped, with reports of their families being threatened. Hospitals and schools have been burnt down and ransacked and a number of schools were still being used to house internally displaced persons at the time of the visit. Cold-chain facilities were also destroyed.

The violence has disrupted HIV services and efforts to eradicate polio. In addition, displacement has increased the risk of outbreak of diseases like malaria, cholera and measles. The insurgency has also created a climate of fear by threatening and intimidating teachers and students who continued to go to school. This has led to school closures, the flight of teachers and the withdrawal of many students, increasing the number of children with no or little education opportunities.

It was reported to the Special Rapporteurs that, by the last quarter of 2015, 547 out of 1,713 public schools in Borno State had been destroyed or damaged as a result of the insurgency. This had reportedly prevented access to education for a large number of school children. While the Government referred to plans to relocate internally displaced persons from schools, a number of schools were still accommodating them at the time of the visit when, out of the 114 government schools in Borno State, only 78 were operating. More broadly, it is reported that, between 2009 and 2015, Boko Haram destroyed more than 910 schools and forced 1,500 more to close and killed at least 611 teachers, leaving approximately 1 million children with little or no access to school. [204]

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202 See Fund for Peace and Nigeria Stability and Reconciliation Programme, "Violence Affecting Women and Girls in Select Nigeria States" (October 2015), available from www.nsro-nigeria.org/wp-content/uploads/ 2016/01/VAWG-Monthly-Report-18-October-Final.pdf.

203 See UNICEF, Beyond Chibok (New York, 20160, available from www.unicef .org/infobycountry/files/Beyound_Chibok.pdf

204 See Human Rights Watch, "They set the Classrooms on Fire": Attacks on education in north-east Nigeria (2016), available from www.hrw.org/report/2016/11/they-set-classrooms-fire/attacks-education-northeast-nigeria.

4.3.4 Stigma against Women and Children Born of Rape

All women and girls who experienced sexual violence during the insurgency face stigmatisation. Yet the stigma and rejection from families and communities is greater for those who are perceived to have been associated with Boko Haram, as abductees, those living in Boko Haram controlled areas or those who were compelled and forced to become "wives" of Boko Haram insurgents. These women and girls, often referred to by communities as "Boko Haram wives" or "Sambisa women", are shunned and marginalised, even in camps for internally displaced persons. Many view these women as a direct threat, fearing that they have been indoctrinated.

The Special Rapporteurs were made aware of a high level of stigmatisation and ostracism of children born to women and girls who were abducted. These children are viewed as the next generation of fighters and often seen as being responsible for the violence and loss suffered by the communities. The basis of these fears fuels the popular beliefs about "bad bloodlines" and witchcraft. While communities believe that over time relations could be rebuilt and may be willing to accept the women and girls, acute fear and suspicion persist of children whose fathers are believed to be Boko Haram insurgents. They described such children as "hyenas among dogs" and held the view that "the child of a snake will always be a snake". While religious and traditional leaders have been reportedly more open towards accepting the mothers and their children, most of the displaced communities remain deeply distrustful of the returnees.[205]

4.3.5 Displacement

The insurgency and security responses to counter it have caused massive displacement with nearly 2 million persons displaced in the north-east as a result of protracted violence, representing a sharp increase from approximately 260,000 in 2014. Displacement has had grave consequences on the human rights of those affected, including access to food, water and sanitation facilities and livelihood opportunities inside and out of camps. In addition, camps have not been spared from targeted attacks by Boko Haram, leading to an increase in protection gaps.[206]

4.4 Responses, Programmes and Strategies

Significant interventions managed by different authorities and actors, federal and state, have been implemented in response to the insurgency and the resulting human rights violations.

205 See International Alert/UNICEF, "Bad blood" (footnote 21)

206 See Refugees International, "Nigeria's Displaced Women and Girls, Field Report" (Washington, D.C., April 2016

Increasing efforts have been made to ensure the efficient coordination of activities as part of an integrated response, though it is acknowledged that some challenges remain (see section VI).

4.4.1 Security Responses

The Civilian Joint Task Force, an organised local self-defence group, emerged in 2013 to support military counter-insurgency operations to identify and arrest Boko Haram suspects, control security checkpoints, provide information and monitor the movement of people. Local vigilante groups reportedly also operate in other areas. While membership is voluntary and the Task Force pledged that no child under the age of 15 would be allowed to join, a number of children continue to be involved, often owing to peer pressure or out of fear of reprisals, or out of gratitude for increased security in their communities.[207] While the Special Rapporteurs did not interact with the Task Force, they saw their members patrolling roads in Maiduguri and operating in the camps for internally displaced persons.

Boko Haram activities have progressively spilled beyond the borders of Nigeria into Cameroon, Chad and Niger Republic, and the group has established itself as a regional threat, prompting a response by the Africa Union. This regional military response includes the deployment of a multinational joint task force, with a mandate to create a safe and secure environment in the areas affected by Boko Haram activities, in order to reduce violence against civilians and end other abuses, including sexual and gender-based violence, and secure full compliance with international law, including international humanitarian law and the United Nations human rights due diligence policy.

That task force is responsible for protecting civilians under immediate threat, camps for internally displaced persons and refugees; providing security for humanitarian workers and other personnel; and searching and liberating all abductees, including the young girls abducted from Chibok. The task force is expected to establish standard operating procedures for the identification of victims, the immediate assistance and referral of victims and family reunification and assistance for those abducted and separated, such as unaccompanied children.

4.4.2 Identification of Victims

The Special Rapporteurs were unable to gain a clear understanding of the procedures used to screen individuals returning from captivity in order to establish whether they are offenders or victims. This is said to occur when such abductees

207 See A/HRC/30/67.

first make contact with the military in front-line areas. Those suspected of association with Boko Haram are subsequently transferred to military detention facilities in the region. Following further investigation, some are charged with offences under the Anti-Terrorism Act and offered enrolment in the "de-radicalisation" programme run by the Government.

It is also not entirely clear what happens to those not suspected of being Boko Haram insurgents. Some may be enrolled in another type of de-radicalisation programme and some let go, most likely ending up in camps for internally displaced persons or host communities. For example, a group of 307 women and 253 children — including 84 boys and 169 girls, 112 of whom were under 5 — who were mostly encountered during military operations in Sambisa Forest, were brought to one such camp in Adamawa State and subsequently transferred to a military facility run by the Office of the National Security Advisor in Kaduna State where they were enrolled in a de-radicalisation programme aimed at supporting them in their rehabilitation, de-stigmatisation and reintegration into the communities.

The Special Rapporteurs did not see the programme in action as by the time of their visit it had ended for the above group and had not yet started for another intake owing to a lack of funding. It was unclear at that time if the programme was due to resume, presumably leaving a gap in relation to the rehabilitation of women and children freed from Boko Haram as the military operations continued to liberate areas from its control.

The shortcomings of the screening procedures and the risk that individuals may be detained for a long time for no apparent reason can also be attested by the number of persons reported to have been released from military custody after being investigated and cleared.[208] While the Special Rapporteurs did not specifically focus on this issue, they underscore that any detention must comply with the international human rights norms and standards governing the deprivation of liberty, including that children should never be detained. They recall that these standards must apply even in times of emergency and in combating violent extremism as indicated in the report of the Secretary-General on the Plan of Action to Prevent Violent Extremism.[209]

4.4.3 Countering Violent Extremism Programme

This programme, led by the Office of the National Security Adviser, has three components. The first, called counter-

208 See Naji, "Army hands over 275 Boko Haram detainees" , 12 Federal 2016
209 A/70/674.

radicalisation, is aimed at creating awareness of the threat of violent extremism at the grass-roots level, including by training religious leaders, women and young people and initiating peace initiatives and interfaith processes. The second is the de-radicalisation component, the aim of which is to change the behaviour and mindset of Boko Haram adherents, including through cognitive behaviour and group therapy, religious dialogue, religious counselling and vocational training to acquire a basic level of education and skills.

The Special Rapporteurs visited this programme, which was run in the Kuje Detention Centre in Abuja with the support of the European Union, and learned about the literacy classes imparted to the inmates to allow them to read the Koran for themselves; and the vocational skills training, including in electrics, that some of the inmates were undertaking. Under this component, national security corridors can be provided for those insurgents who wish to lay down arms. The third stream is the strategic communications component, which is aimed at countering the extremist narrative through media and public information campaigns that spread messages of national identity, tolerance and community resilience.

4.4.4 Humanitarian Response

While the Special Rapporteurs were told that at the outset the overall humanitarian response was reportedly slow, fragmented and incapable of meeting the needs of the population affected by the insurgency,[210] they learned of much progress in the management of camps for internally displaced persons and service delivery for displaced persons both in camps and host communities. They commend the courageous national and international humanitarian workers who constantly struggle to provide a drop of support in an ocean of needs.

The national and state emergency management agencies are responsible for managing the camps for internally displaced persons with trained personnel, including providing food items, clean drinking water, dignity kits, emergency education and medicines. The National Emergency Management Agency, with international partners, established a displacement tracking matrix programme that creates a comprehensive system to collect and disseminate data on internally displaced persons and train government officers on its use.

The total number of such persons captured by the programme as at 31 December 2015 was 2,151,979, of whom 1,818,469

210 See Watch list on Children and Armed Conflict, Who Will Care for Us? (Footnote 4).

were considered displaced as a result of the Boko Haram insurgency. Borno State has the highest number of persons displaced by the insurgency, followed by Adamawa and Yobe States. In total, 51.77 percent of the internally displaced population was female. Children constituted 55.73 percent, more than half of whom were 5 years old or younger. In total, 92 percent of internally displaced persons lived in host communities, while 8 percent lived in camps or camp-like sites. Ninety-four percent of internally displaced persons expressed the desire to return to their places of origin, and it was observed that some movement of return may have started in some locations between October and December 2015.[211]

The insurgency and displacement have resulted in the separation of a large number of children from their parents, guardians, caregivers and families; many children have also become orphans. It is estimated that there were over 20,000 unaccompanied and separated children.[212] Children and their caregivers had to flee their areas of residence, losing their homes and safety nets and witnessing the most appalling violence, precipitating psychological and social needs. Child-friendly spaces have been created for children and young people, as have community-based committees in camps for internally displaced persons and communities aimed at ensuring social reintegration and physical rehabilitation of children affected by the crisis.

A child protection information management system was set up by the Federal Ministry of Women Affairs and Social Development at the federal and state levels and by various international partners to collate information on children separated and/or affected by the insurgency in the four affected states of Borno, Gombe, Adamawa and Yobe. The database provides a consolidated tracking system for the child protection services available to children in those states.[213] The Government has also piloted a community-based rehabilitation programme for placing children in the foster care of families from the same local government area. This programme, with the aim of eventually reconciling the children with their families, also includes children rejected by their communities for affiliating with Boko Haram. The National Emergency Management Agency, state agencies and humanitarian actors have also been implementing a range of activities, including strengthening community-based protection systems, providing psychosocial support, strengthening referral pathways and monitoring and reporting. For instance, the United Nations Children's Fund

211 See IOM, Displacement Tracking matrix, Round VII Report, December 2015.
212 Submission by Save the Children International
213 *Ibid*.

(UNICEF) has supported the provision of psychosocial assistance to girls and boys and their families.

The United Nations Population Fund has supported safe spaces in some camps for psychosocial counselling, dissemination of information on reproductive health, skills development and livelihood support for victims of sexual violence. Access to health care has focused on antenatal health services in the camps for internally displaced persons. Pregnant and nursing women are accommodated in separate sectors of the camps, provided with special diets for them and their babies and dignity kits. The relevant authorities and their partners have also provided medical items to health facilities, deployed mobile clinics, mobile intensive care units and ambulances. They have reinforced health assistance to host communities by mentoring community health workers in the camps and training internally displaced persons themselves to operate as health workers.

The specialised assistance needed by those affected by Boko Haram violence is generally scarce. Maiduguri has, for example, one neuropsychiatric ward at the University Teaching Hospital. In addition, programmes have been run to train primary health workers on how to counsel victims of the insurgency. 56. Programmes for the economic empowerment of displaced persons have also been initiated. For example, training in tailoring and sewing has been provided as have assistance in setting up microbusinesses in camps and sourcing microfinance to establish small businesses. Peace clubs have been formed to enable young people to develop skills and seek financial and material assistance. It is also reported that birth registration has continued in camps for internally displaced persons, although it is unclear whether all babies born in captivity have had their births registered. This remains to be verified.

4.4.5 Other Responses

The Government launched a "safe schools initiative", including the transfer of 2,400 students from high-risk areas of the three north-eastern states to 43 federal unity colleges across the country. It also supported schooling in camps for internally displaced persons, mobile classrooms and the rebuilding of damaged schools. This initiative complements the Presidential Initiative for the North-east, established to support education of displaced children, rebuilding of houses and bridges, demining of farms and economic development, including the creation of jobs for victims of the insurgency.[214]

214 For further information, see www.nationalplanning.gov.ng/index.php/news-media/news/current-news/334-insurgency-fg-development-partners-advocate-multi-donor-trust-fund-for-north-east-region.

A victims support fund, which amassed ₦30 billion from the private sector, has supported programmes aimed at providing economic empowerment, education and psychosocial assistance to the women and children affected by Boko Haram violence. The fund has also contributed to strengthening the capacity of medical facilities, including by giving grants to 14 hospitals for medical equipment. The economic empowerment programme has included training approximately 5,000 women in camps for internally displaced persons in a number of skills, including weaving scarves, producing vegetable oil and tailoring. The fund has also provided grants to 60 women and loans to women's associations. in addition, Government established a new social protection plan, supported by the World Bank, aimed at improving the quality of teachers and providing cash transfers to extremely poor families on the condition that they enrol their children in schools.[215]

4.5 Gaps and Challenges

The Special Rapporteurs noted that much progress had been made but that a number of gaps remained in implementing policies and enforcing laws in a manner that addresses human rights violations and has a significant impact on women and children affected by insecurity and violence.

4.5.1 Lack of Disaggregated Data and Monitoring

Collection and verification of accurate data on the number and typology of affected women, girls and boys and on the human rights abuses and other violations they have suffered continue to be difficult. Human rights monitoring and documentation have remained insufficient. The National Human Rights Commission, with the support of the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees, has deployed about 314 personnel to the north-eastern and north-central areas to monitor and report on the human rights situation and protection of internally displaced persons. The monitors collect information from the location, which is then analysed at the headquarters of the Commission. Yet the capacity of the monitors to adequately collect information and report on human rights violations and protection of civilians gives cause for concern, as capacity building is needed to ensure that they have the necessary skills to perform their roles in such a complex setting. Human rights and protection monitoring, where it was carried out, have proved important to map profiles of vulnerabilities, including unaccompanied, separated or orphaned children, child-headed households, cases of rape, sexual assault, forced marriage, so-called "survival sex", which

215 See Human Rights Watch, "They set the Classrooms on Fire" (footnote XX)

involves the exchange of sex for money and for food, single elderly persons with no family or neglected by caregivers, elderly-headed household, serious medical conditions, or people with mental, intellectual and physical disabilities.[216] These profiles should serve to inform tailored and targeted responses. It is also suggested that the mapping should cover all the vulnerabilities experienced by the displaced population.

4.5.2 Coordination

The Special Rapporteurs received information about the various government, United Nations and non-governmental organisations actors who have been working to address violence against women and children in the context of the Boko Haram insurgency, despite extremely challenging circumstances. While the commitment and investment of all these actors is laudable, concerns have been expressed about fragmented action and lack of adequate follow up. Notwithstanding the coordination mechanisms for protection against sexual violence and for child protection established at the federal and state levels, there is continued need to further streamline and efficiently coordinate such responses so that all relevant stakeholders, including the United Nations agencies, can maximise their value added and complement more efficiently the response of the Government to the crisis.

4.5.3 Continuing Lack of Security and Safety

At the time of the visit, state authorities indicated that all territories except two local government areas had been liberated from Boko Haram control, yet rehabilitation efforts continued to be hindered by the lack of physical access to affected women and children due to, inter alia, widespread insecurity, related to, for example, anti-personnel mines, poor infrastructure and ongoing attacks by the insurgents, including in so-called liberated areas. Due to the highly volatile situation in the north-east, access to a number of areas was still restricted to United Nations agencies and international organisations, with the consequence that those with the most acute need of protection and humanitarian assistance were not being reached. Furthermore, the very nature of the displacement with many displaced women and children residing among the host communities made it more difficult to access those affected.

The Special Rapporteurs were informed that, in camps and host communities, women and girls continued to face sexual violence, with reports of rape, child and forced marriage and survival sex. Overcrowding in camps with limited privacy, especially toilet

216 See Nigeria Red Cross and others, "North-East Nigeria: Protection Monitoring Report" (December 2015)

facilities and socioeconomic opportunities, exacerbated the risk of sexual violence. While the report of the ad hoc national fact-finding committee established following allegations of rape and child trafficking in camps for internally displaced persons in the north-east found no evidence of child trafficking, adolescent girls have been reported to engage in survival sex to meet their basic needs and support their families.[217]

The fact-finding committee also identified risk factors for human trafficking and other forms of exploitation as unaccompanied children often went out of the camps to "hawk, beg, fetch firewood or engage in menial labour to earn a living…some also go out at night to socialise…or some are expelled from the camps after having committed offences". The committee also established that there had been cases of sexual molestation, exploitation and defilement in the camps as officials took advantage of the vulnerabilities of internally displaced persons, protected by a "conspiracy of silence". Reference to allegations of rape of internally displaced girls living in camps by security personnel was also made in the community charters of needs agreed upon by the internally displaced communities of Bama, Chibok, Gwoza and Konduga. Notwithstanding the security imperative, the Special Rapporteurs reiterated that counterinsurgency measures must be taken in full compliance with international human rights and humanitarian law.

4.5.4 Gaps in Implementing Comprehensive Rehabilitation and Reintegration Programmes

Rehabilitation and reintegration programmes must include the full range of policies and services that are necessary to ensure the physical, cognitive, psychological, psychosocial and spiritual recovery, and the full social reintegration of victims.[218] Such programmes must also go hand in hand with measures to enable victims to seek redress.

4.5.5 Access to Health

During their visits to camps for internally displaced persons in Maiduguri, the Special Rapporteurs witnessed first-hand the health and social impacts of the insurgency and the remaining gaps in these sectors. They met with women and girls who reported limited access to services, including adequate nutritious food, psychosocial support, education and health, including sexual and reproductive health services. Internally displaced persons have also reported lack of proper care for pregnant women and lack of medical attention for nursing mothers. The Special Rapporteurs received reports of women and children who

217 See S/2016/361.
218 See A/70/222.

had been brought to some camps but were not given adequate shelter or provided with sufficient drinking water for more than eight days. They also heard a number of comments indicating a worrying perception among government officials both at the national and state levels that internally displaced persons living in the camps are better off than those living in host communities, or even the host communities themselves.

4.5.6 Psychosocial Support

Concerning the provision of psychosocial counselling, the number of those in need surpassed the services available, particularly in view of those still missing who hopefully would return shortly. The International Organisation for Migration (IOM) conducted an assessment[219] of psychosocial needs in some camps in Yola, and found that internally displaced persons feel uncertain about the future owing to separation from families, and were at a loss owing to loss of identity, status and assets. Factors provoking these feelings included displacement and separation from families, lack of freedom, loss of lives and property, lack of basic and social amenities, lack of jobs or income-generating activities, maltreatment by security personnel and issues of availability, quantity, quality and distribution of food. The willingness to go home but uncertainty associated with the return or lack of means to return played a substantial role in determining these feelings. The assessment confirmed the presence of people with mental disorders in the camps and host communities. The disorders probably pre-existed displacement and risk being unacknowledged because of the overwhelming needs of the mainstream displaced population and the shortage of specialised health providers.

4.5.7 Lack of Livelihood Opportunities

The lack of livelihood opportunities for women inside camps for internally displaced persons and in host communities, especially those who are rejected and separated from their families and communities, has also contributed to creating destitution, feeling of helplessness and heightened risks of exploitation and abuse. Outside of the camps, internally displaced persons are hosted by low-income communities, thus bringing already stretched services and resources under increased pressure. As a result, negative coping strategies and risky livelihoods have been recorded, such as begging and child labour. In addition, there is a gap in the interventions targeting host communities and the displaced persons they have hosted.

219 IOM, "An Assessment of Psychosocial Needs and Resources I Yola IDP Camps: North-East Nigeria" (Geneva, June 2015).

4.5.8 Lack of Effective Monitoring and Follow-up

Another glaring challenge is the lack of follow-up in relation to rehabilitation and reintegration assistance, which may become particularly worrying as women and children return to their places of residence. For example, apart from 8 unaccompanied children whom UNICEF was supporting with the Ministry of Women Affairs and Social Development, no details were available on the whereabouts of and follow up support to the 307 women and children who underwent the programme of the Office of the National Security Advisor in Kaduna.

The case of the Chibok girls, whose whereabouts continue to be unknown two years after their abductions, remains a living illustration of the failure of some of the responses. Yet the abducted schoolgirls have not been forgotten and their rescue is very important not only to their families but also to the whole Chibok community, which believes that their rescue will help to heal the emotional wounds.

The girls' parents, some of whom the Special Rapporteurs met with during the visit, are desperate for information on the steps taken by the Government to locate and liberate them. Yet when asked by the Special Rapporteurs, the authorities claimed that such information cannot be disclosed for security reasons. The Special Rapporteurs are mindful of such constraints but believe it would be important for the parents to have a regular and accessible interlocutor who could keep them informed and relay their grievances to the various governmental agencies. Some of the parents have died following the abduction and some have been living with deep trauma – graphic illustrations of the fact that the parents are also in need of support to cope with their suffering.

4.5.9 Stigma

As discussed above, women and children who have been abducted and their children born of rape have faced significant stigma and social exclusion upon return to their communities.[220] The Special Rapporteurs are mindful of the corrosive effect that stigma can have, not only on the rehabilitation and reintegration of women and children, but also on their future vulnerability to violence and exploitation. Their abduction and abuse by Boko Haram and subsequent social exclusion can create extreme vulnerability to violence and exploitation, including many forms of contemporary servitude, such as labour and sexual exploitation, forced marriage, forced labour and the worst forms of child labour. Effectively tackling this stigma within broader efforts to increase rehabilitation and reintegration is crucial to

220 See International Alert/UNICEF, "Bad blood" (footnote 21)

further prevent such violence. To this regard, the Special Rapporteurs encourage the authorities and all service providers to build on lessons that have been drawn from similar experiences in other countries and that point to the fact that the issue of children born of war can become a "time bomb".[221]

4.5.10 Access to Justice and Remedy

There appears to be a significant gap in current responses in terms of accountability for crimes perpetrated in the context of the insurgency. The Special Rapporteurs were informed that there had been very few prosecutions of insurgents. However, the national authorities have undertaken a number of investigations, namely, the Presidential Committee on security challenges in the north-east in 2011, and the Presidential Committee on dialogue and peaceful resolution of conflicts in 2013, as well as other investigations conducted by the military, but the outcome of these initiatives remains unknown.

Access to remedies for victims of the insurgency, including of sexual and gender based violence, is almost non-existent for a range of interrelated and mutually reinforcing factors, including resistance to reporting for fear of stigma, ostracism and reprisals, ignorance of entitlements and avenues to claim them, mistrust of authorities in the face of entrenched societal discrimination and stereotypes, and lack of training and sensitivity of public officials, including law enforcement officers, among others.

The Special Rapporteurs were informed of some non-governmental organisations providing legal aid to women and girls to get their marriages annulled under sharia law, which should be highlighted as the kind of support paving the way for sustainable and empowering rehabilitation efforts. Owing to stigma and discrimination and fear thereof, many women and girls are reluctant to talk about their experiences and therefore may be unwilling to seek remedies and access the related services. They may not know how to report sexual violence or may not trust formal authorities. The lack of information on available options for women and girls remains a major gap.[222]

4.6 Conclusions

The Special Rapporteurs have noted the efforts made by the

221 There are particular lessons to be drawn from Uganda, See, for example, Justice and Reconciliation Project, We Are All the Same: Experiences of children born into LRA captivity", Field Note 23 (December 2015); International Center for Transitional Justice, "From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda" (Kampala, October 2015; and V. Ladisch and L. McClain, "For children born of war, what future?" (12 June 2015), available from www.opendemocracy.net/opensecurity /for-children-born-of-war-what-future.

222 See International Alert/UNICEF, "Bad blood" (footnote 21).

Government and other actors to face the challenges posed by the Boko Haram insurgency. They acknowledge that the Government has taken commendable steps to meet its obligations to protect individuals within its jurisdiction from human rights abuses and violations of international humanitarian law committed by non-state actors. Yet the extent of those challenges and the numbers of people in need remain overwhelming and unfortunately stretches well beyond the reach of current programmes. This unmet need is particularly high considering that recent challenges have exacerbated important pre-existing problems affecting the population in Nigeria and the Lake Chad region.

The Special Rapporteurs therefore believe that it is important not only to ensure that rehabilitation and reintegration measures are grounded in human rights norms but also that they aim to fundamentally transform society for the better while addressing the immediate needs of women and children. These measures must also address root causes, especially poverty, discrimination, lack of security and deprivation, stigma, exclusion and gender inequality, as the insurgency and subsequent military responses have taken place against a backdrop characterised by inequalities among the regions, with the north-east faring worse than other regions of the country and among different groups of the population with women and children already marginalised in many sectors. The Government must seek to address the underlying causes of disparities in the north-east vis-à-vis other regions, considering the parity of resource allocation from the centre.

In line with the human rights-based approach, the development of policies, frameworks and other measures must be participatory, based on consultations with the affected population and aim at promoting agency, hope, aspirations and a positive outlook for the future.[223] In addition, these measures must be well resourced, implemented by trained staff and backed by political will in order to avoid the fate of previous initiatives aimed at addressing inequality. Only the implementation of a comprehensive, holistic and integrated approach to addressing the challenges in the north-east will provide a good opportunity not only to reintegrate women and children affected by Boko Haram but also to strengthen the institutional system, particularly the health and educational sectors, which are crucial for peace, security and sustainable development in Nigeria.

Effective reintegration and rehabilitation efforts must include

223 See A/70/222,para.81.

from the outset measures for restorative justice and effective redress for survivors, and to be sustainable, must also be accompanied by economic growth. Social cohesion, integration and national unity can only be nurtured by a holistic approach that heals, repairs, protects, empowers and transforms.

The Special Rapporteurs also emphasise that a comprehensive approach should take into account the persisting emergency and relief needs and at the same time address the emerging needs related to return and recovery. There is a risk that, because of the prevailing insecurity in certain areas and no real prospect of receiving rehabilitation and reintegration support, returnees may end up being displaced multiple times, including beyond national borders. Hence the importance of setting up mechanisms for promoting safe, dignified and voluntary returns. National and state authorities should endeavour to enhance cooperation with relevant humanitarian agencies to achieve these goals.

4.7 Recommendations

On the basis of the above considerations, the Special Rapporteurs would like to offer the recommendations below to the Government to be implemented in cooperation with its international and regional partners. Concerning the legal, policy and institutional framework, the Government should:

(a) Ensure the Child Rights Act and the Violence against Persons Prohibition Act are adopted in the states that have not yet done so and enforce those Acts;
(b) Adopt and implement the draft national policy on internally displaced persons and the draft national peace policy;
(c) Review and amend the legislation criminalising termination of pregnancy;
(d) Adopt the Gender and Equal Opportunity bill and ensure its effective implementation at all levels of government;
(e) Work with the states within Nigeria in order to sensitise them to their responsibilities under international human rights law.

Concerning data collection, analysis and monitoring, the Government should:

(a) Invest in the collection of disaggregated data and documentation to understand the scale of violence, including sexual violence in particular, to capture the experiences of women and children taking into account the best interest of the child and key principles of informed consent, confidentiality and referral;
(b) Scale up human rights monitoring and documentation by first and foremost strengthening the capacity of the national actors and entities involved in such monitoring, including the National Human Rights Commission and the National Committee against Torture. This should be complemented by

an enhanced human rights advisory capacity within the Office of the Resident Coordinator and country team, taking into consideration the existing monitoring and reporting mechanism under the mandate on children affected by armed conflict. The documentation generated from the monitoring should be shared with and analysed by relevant actors to inform policies and programmes; the country team should work hand in hand with national actors to ensure that the monitoring and reporting mechanisms in place are linked to accountability mechanisms;

(c) Ensure follow-up mechanisms, such as rehabilitation and reintegration measures; include long-term actions, particularly as individuals start returning to their places of habitual residence;

(d) Set up a tracking system for missing persons, whether abducted or detained, and provide information to the families; and set up a tracking system to reunite unaccompanied and separated children with their families and communities, taking into consideration the best interest of the child;

(e) In the light of the political will expressed at the highest level, step up efforts to locate the Chibok girls and all other abducted civilians, bring the perpetrators to justice and designate a focal point to channel information to the girls' parents.

Concerning identification, the Government should:

(a) Establish clear, transparent and predictable procedures for screening those liberated from Boko Haram-controlled areas and inform all key stakeholders about such procedures;

(b) Allow relevant governmental and non-governmental agencies, including the National Human Rights Commission, to monitor the implementation of such screening procedures and ensure effective avenues for reviewing outcomes where relevant;

(c) Integrate a gender-based perspective in de-radicalisation programmes and adapt such programmes to women and girls;

(d) Ensure that all the necessary measures are taken during screening procedures to prevent the separation of children from their families and in cases where this may accidentally happen ensure with due diligence that unaccompanied and separated children are reunited with their families.

Concerning security, the Government should:

(a) Provide and maintain the highest possible level of security for victims, including securing access to the most remote and insecure areas to avoid leaving behind anyone who may be in need of assistance;

(b) Improve coordination between military and humanitarian actors while maintaining the independence and neutrality of humanitarian work.

Concerning health, the Government should:
(a) Strengthen health systems so as to meet the physical and mental health needs of both the displaced and the host communities, in particular those of girls and women victims of sexual violence;
(b) Ensure that survivors of sexual violence who seek assistance have access to comprehensive clinical services, including emergency contraception and postexposure prophylaxis to prevent HIV infection, and authorisation from the authorities for termination of pregnancy for those wishing to do so;

Concerning education, the Government should:
(a) Promote the reintegration of pregnant girls and girls with young children into schools and build teachers' capacity to meet the needs of those girls;
(b) Ensure that all school sites are reopened promptly and all children, in particular girls, are able to access free and quality primary education without fear;
(c) Accelerate the rebuilding of damaged schools;
(d) Increase the provision of education in camps for internally displaced persons;
(e) Ensure that children born of rape are not stigmatised and have equal access to vocational training, life skills and socioeconomic support, sports and leisure activities, religion and cultural practices by means of an individualised plan that is adapted to the child's needs.

Concerning stigma, the Government should:
(a) Sensitise all actors involved, including governmental and nongovernmental organisations, about the vulnerabilities and risks faced by women and children born of sexual violence;
(b) Work with communities to prepare the return and acceptance of these survivors, dispelling bias and stereotypes towards these women and children; engage traditional and religious leaders in these efforts; and use the media to raise awareness of the situation of these women and children;
(c) Establish peer support groups and platforms to enable women and children to share their experiences and provide mothers with parenting skills.

Concerning social and other support, the Government should:
(a) Promote the expansion of community-based programmes to support the care, rehabilitation and reintegration of girls and

women who were abducted and who may have experienced sexual violence. These programmes should include psychosocial support and counselling, including to families. The right to privacy of the women and girls who escaped from Boko Haram and wish to be protected from public exposure should be respected;

(b) Ensure that child victims have access to safe and secure housing, create emergency and longer-term alternative care placements for the children that are unable to remain with their mothers or communities in accordance with the best interest of the child and the Guidelines for the Alternative Care of Children;

(c) Invest in the development of safe spaces to promote the dialogue between different stakeholders that is necessary for rehabilitation;

(d) Fund income-generation skills training, skills development and livelihood opportunities so that women can catch up on the education they missed and ensure their economic empowerment, access to decent work and independence from their families and communities. This will go a long way in ensuring internally displaced persons have the necessary skills and the opportunities to build normal lives and integrate in their former or new communities;

(e) Ensure birth registration for all children and identification documents for all displaced persons;

(f) Strive for the full realisation of the rights of children born following sexual violence through, among others, the provision of educational scholarships and assistance to organisations supporting these children with psychosocial counselling, educational facilities, peer support centres and diverse vocational training;

(g) Empower child victims through child-sensitive procedures and accessible avenues for participation that foster a sense of agency in their care, recovery and reintegration programme, keep them informed and allow them to be consulted on decisions affecting them.

Concerning access to justice and remedies, the Government should:

(a) Secure accountability and address impunity for all forms of violence against women and children, including sexual violence and exploitation, sexual slavery, domestic servitude, child and forced marriage, recruitment and use of children in insurgency and other slavery-like practices;

(b) Investigate the crimes committed by Boko Haram and prosecute and punish all those responsible in order to fight impunity for violations of human rights and international humanitarian law;

(c) Ensure that women and children have access to just and

effective remedies, as this is paramount to their recovery and reintegration;

(d) Build the capacity of law enforcement services to investigate and prosecute cases of violence against women and children;

(e) Ensure access to legal counsel for women and children who wish to seek redress through the justice system;

(f) Ensure the establishment of child-friendly reporting and complaint mechanisms;

(g) Set up witness and victim protection services for all women and children affected by violence;

(h) Promote legal aid and dispute settlement opportunities for the most vulnerable, including internally displaced persons and returnees;

(i) Develop transitional justice plans and mechanisms, in accordance with the national plan of action on Security Council resolution 1325 (2000), aimed at community cohesion, peace building and reconciliation as people begin to return from displacement;

(j) As part of transitional justice plans, disarm, demobilise and reintegrate children and young men members of the Civilian Joint Task Force;

(k) Ensure the respect of the human rights of civilians associated with Boko Haram who have left or been released, especially children.

In addition, the Special Rapporteurs recommend that the United Nations, international organisations and bilateral partners:

(a) Continue to support the Government in addressing the challenges caused by the Boko Haram insurgency, ensuring a clear focus on effective rehabilitation and reintegration of women and children affected by violence in compliance with international human rights law and standards;

(b) Within such efforts, promote effective coordination between different agencies and organisations, including between humanitarian, human rights actors and development agencies;

(c) Building on existing tools, they should continue to support the Government in developing effective data collection and protection monitoring systems and strengthening synergy among the complementary mechanisms;

(d) Contribute to mobilising support to promote economic growth, particularly in the north-eastern region; and

(e) Provide increased funding to address the remaining gap in funding shortfalls for humanitarian and recovery programmes.

Chapter 5

REPORT OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS

5.0 Executive Summary

The Secretariat has the honour to transmit the Human Rights Council the report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, on his mission to Nigeria from 23 to 26 August 2016. The insurgency by Jama'atu Ahlus-Sunna Lidda'Awati Wal Jihad (Boko Haram) in north-east Nigeria and the Government's counter-insurgency operations have killed thousands of civilians and led to the internal displacement of over 2 million people, the vast majority of whom are in Borno State. The terror campaign by Boko Haram led to the utter destruction of towns and villages and the homes and livelihoods of affected populations. As areas have been recovered following offensives by Nigerian security forces and the Multinational Joint Task Force, the full extent of the human suffering and humanitarian crisis has been revealed, with severe levels of malnutrition and food insecurity threatening the lives of tens of thousands of people, particularly children. Although the Nigerian security forces have made significant gains, Boko Haram remains a menacing presence causing further displacement, hampering safe returns and severely impeding humanitarian access.

In December 2016, the situation in the north-east was described by the United Nations as the largest humanitarian crisis in Africa. Urgent action is required to save lives in the short-term emergency phase, and to begin the difficult process of recovery. Ensuring access by humanitarian partners and that urgent food, shelter, medical care, water and sanitation and other essential services reach internally displaced persons and others in need without delay must be the highest priority. Equally, ensuring the protection of vulnerable internally displaced persons, many traumatised by violence, fear, starvation and displacement, must be a paramount concern. Evidence of widespread human rights violations in the north-east by non-State armed groups and State actors means that the situation must also be recognised as a human rights crisis.

Camps for internally displaced persons have been targeted by Boko Haram, and many such persons have been killed as a result of military operations. Internally displaced persons are highly vulnerable and a high percentage of them are women and children. Urgent action is needed to address an epidemic of exploitation and abuse. Camps for internally displaced persons

must be places of safety, yet sexual exploitation and sexual violence, including demands for transactional sex to access food and non-food items are commonplace. The risks of human rights violations have been exacerbated by a lack of adequate assistance to internally displaced persons in host communities and camps. The whereabouts of thousands of displaced men and boys remains unclear. Thousands have been killed by Boko Haram or in the context of the counter-insurgency. Many others are detained and must be treated according to international standards. Initiatives to identify the missing and dead should be strengthened.

5.1 Introduction

In accordance with his mandate under Human Rights Council resolution 32/11, the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, visited Nigeria from 23 to 26 August 2016 at the invitation of the Federal Government of Nigeria[224]. During his visit, the Special Rapporteur travelled to Abuja, the capital, and to Maiduguri in Borno State, recognised as being at the epicentre of the insurgency by *Jama'atu Ahlus-Sunna Lidda'Awati Wal Jihad* (Boko Haram) since 2009, which has caused conflict and mass displacement.

The objective of the Special Rapporteur's visit was to consult with senior government officials, including those responsible for displacement responses and the military, and other key national and international stakeholders on the main issues concerning internal displacement. He sought consultation, on ongoing challenges that Nigeria and its national and international humanitarian and development partners face with regard to internally displaced persons and assistance to them, and to identify the humanitarian, human rights and protection concerns facing them and host communities.

The Special Rapporteur thanks the Government of Nigeria for its invitation and its cooperation, which he hopes constitutes the beginning of a constructive engagement with the mandate. He also thanks the representatives of the government of Borno State. He is grateful to the United Nations country team, particularly the Office of the United Nations High Commissioner for Refugees (UNHCR), for their support in ensuring the success of his visit. He thanks all other national and international bodies, institutions and individuals he met and who provided valuable information for his visit and analysis.

224 Chaloka Beyani completed his term as Special Rapporteur on 31 October 2016. Cecilia Jimenez-Damary was appointed Special Rapporteur on the human rights of internally displaced persons by the Human Rights Council in September 2016 and assumed the mandate on 1 November 2016

In Maiduguri, the Special Rapporteur consulted with Borno State officials, United Nations agencies, non-governmental organisations (NGOs) and other members of the humanitarian community. He visited several camps for internally displaced persons in the vicinity of Maiduguri to consult with them and those providing assistance to them, and to learn about their situation, needs, protection concerns and expectations. He sought information on the situation of host communities with whom the majority of internally displaced persons are living. He regrets that he was unable to visit camps in remote and newly recovered areas outside Maiduguri where conditions are of particular concern due to the security situation and other access restrictions.

The Special Rapporteur was unable to verify some of the allegations contained in the present report due to time and access limitations, and therefore makes no judgment as to the facts in such cases. Nevertheless, he considers the sources to be credible and includes unverified allegations in order to bring them to the attention of the national authorities responsible for investigating and prosecuting human rights violations by State or non-State actors. Some allegations are based on the testimony of individuals who wish to remain anonymous.

Other internal displacement situations exist in Nigeria, including due to inter communal clashes, environmental issues and flooding, and require ongoing attention. The insurgency in the north has particularly affected the livelihoods of pastoralist groups, squeezing them out of grazing areas and trade. That has led to regular tensions between pastoralists and agriculturalists over land and resources. The Special Rapporteur underlines the need for the authorities to establish mechanisms to address the underlying causes of all displacement in the country and to respond to the needs of all internally displaced persons. However, due to the urgent and evolving situation in the north-east, his visit focused on that critical internal displacement situation.

5.2 Context of Internal Displacement

The militant Islamic terrorist group known as Boko Haram, loosely translated from the local Hausa language as "Western education is forbidden",[225] emerged in Maiduguri in 2002, promoting an extreme version of Islam under which Muslims are forbidden to take part in activities associated with Western society, and with the goal of establishing a Muslim state or

225 The official name in Arabic, *Jama'atu Ahlus-Sunna Lidda'Awati Wal Jihad,* means "people committed to the propagation of the Prophet's teachings and jihad"

caliphate. Its early activities included denouncing Western influence and corruption among government officials and the police, and recruiting young people in the economically deprived north-east, many of whom were unemployed. It became increasingly militant in character and violent, resulting in a police operation in 2009 in which several members were arrested.

That operation resulted in rioting and retaliation by Boko Haram supporters and marked a significant escalation in tensions, leading to the establishment of a joint military task force operation. Hundreds were subsequently killed in clashes with the security forces. Boko Haram's leader, Mohammed Yusuf, was allegedly arrested and killed while in detention. That marked the beginning of a campaign of violence under which police stations, government offices, prisons, schools and churches were targets of violent attack. Under a new leader, Abubakar Shekau, killings and bomb attacks were frequent and hit targets in other regions, including the United Nations headquarters in Abuja in August 2011, in which 11 United Nations staff members and 12 others died.

In May 2013, a state of emergency was declared across the north-eastern states of Adamawa, Borno and Yobe. Boko Haram changed tactics and took effective control of numerous local government areas. Hundreds of thousands in territories under its control fled in fear for their lives or due to the destruction inflicted. In January 2015, the Government launched a major offensive with forces from Cameroon, Chad and Niger. Throughout 2015 it regained territories, causing militants to retreat to forest strongholds. While the military recovered key urban areas in local government areas and supply routes, many areas outside the capitals of those areas remained susceptible to Boko Haram attack. Boko Haram reverted to terror tactics, using improvised explosive devices, suicide bombs and raids on villages.

In mid-2015, the offensive to recover territories began to push Boko Haram further into rural areas, resulting in another wave of large-scale displacement of the civilian population in rural areas, which was displaced to military-run camps in or near army barracks in Bama, Banki, Benisheik, Bui, Damboa, Dikwa, Gambaru, Gwoza, Monguno and Ngala. Hundreds of thousands of people were displaced to areas under government control, often on the instruction of the liberating forces and in what some described as part of a population "clearance operation". Violence forced more than 736,000 people from their homes in Nigeria in 2015 alone, more than in any other African country[226].Lacking

226 Seehttp://internal-displacement.org/assets/publications/2016/2016-Africa-

humanitarian assistance, the condition of those in camps frequently deteriorated and malnutrition rates increased. However, the full gravity and extent of the crisis began to come to light only in 2016 as humanitarian actors gained access to sites where internally displaced persons were living.

The civilian population has borne the brunt of the insurgency and conflict. More than 20,000 people have been killed and, at the time of the Special Rapporteur's visit, according to the data available, there were more than 2.2 million persons in the country who had been internally displaced as a result of the conflict with Boko Haram, 1.4 million of them in Borno State. Some 186,000 took refuge in neighbouring Cameroon, Chad and Niger.[227] As of August 2016, the National Emergency Management Agency has been managing 15 official camps for internally displaced persons in the newly recovered and accessible areas around Borno State, containing over 300,000 such persons. There are several other non-official camps and camp-like settlements in Adamawa and Borno.

One humanitarian official described Maiduguri as a city of internally displaced persons in which they are "present in every corner" and placing a huge strain on the city's services. At the time of the Special Rapporteur's visit, some 640,000 internally displaced persons were estimated to be located within the Maiduguri city area in organised camps, with host communities or in informal settlements. Authorities located internally displaced persons in camps around the city and in State housing projects, national youth centres and schools, in order to avoid makeshift shelters and camps emerging. Some small camps around the city had swelled over the weeks to hold tens of thousands of internally displaced persons. Nevertheless some 81 percent of them were living with host communities and sources noted that there was no coordinated or coherent out-of-camp humanitarian strategy in place.

Boko Haram completely destroyed many areas and villages it occupied and burned homes, public buildings and infrastructure, including in the towns of Baga, Bama, Dikwa and Gwoza. Some internally displaced persons from Maiduguri have "returned" to local government area capitals and urban centres. However, sources indicated that the returnees were neither entirely safe nor sustainable. Return to places of origin will therefore take time and require significant reconstruction and support, while

Report/20161209-IDMC-Africa-report-web-en.pdf

227 At the time of the visit, 106,000 Nigerians had returned to Nigeria, some under conditions that did not meet international standards. The Government and its humanitarian partners had started developing a tripartite arrangement to facilitate the return of Nigerian refugees.

Boko Haram remains active in numerous areas and continues to pose a significant security threat.

The root causes of the crisis include economic neglect, poor education, social inequality, deficits in good governance, unemployment, the effects of climate change, particularly in the Lake Chad Basin, poverty and deprivation in the region, which have been factors in the rise of radicalisation. Combating the underlying structural issues will be essential to future stability and to preventing reoccurrence of the crisis. Some interviewees noted that the extent of the influence of Boko Haram in the underdeveloped region was such that a military solution would be difficult to achieve. Broader development of the north-east alongside long-term deradicalisation, prevention of violent extremisms, demobilisation and reintegration programmes will therefore be critical.

5.3 National Legal, Policy and Institutional Responses

Numerous government institutions have been assigned roles in addressing the needs and protection of internally displaced persons at both the federal and state levels and are responding to the extent of their limited resources and capacity. Key among them are the National Emergency Management Agency and its state counterparts, the State Emergency Management Agencies, which have been at the forefront of the Government's humanitarian crisis response and in the provision and delivery of food and non-food items, in collaboration with their national and international partners. In addition, bodies including the National Commission for Refugees, Migrants and Internally Displaced Persons and the National Human Rights Commission have contributed to responses.

The Presidential Initiative for the North-east was set up in November 2014 to support reconstruction, recovery and economic development. An inter- ministerial task force and a high-level humanitarian coordination group, as well as the Borno State Humanitarian Response Committee, have also been established to assist in response coordination. Borno State has established the state-level Ministry of Rehabilitation, Reconstruction and Resettlement to support the construction of shelters and implement other recovery projects, particularly in the newly recovered areas. The Adamawa State government has also established a committee on return and durable solutions. At the federal level, the Ministry of Women and Social Development has been involved in responding to the particular needs of internally displaced women and girls, and other ministries continue to contribute sectorial responses.

Essential elements of an effective national response are absent,

notably legislative and policy frameworks on internal displacement that are in accordance with international standards, including the 1998 Guiding Principles on Internal Displacement and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention). They are urgently required to guide and inform responses and establish the rights of internally displaced persons and the obligations of the national authorities in domestic law. Such legislative and policy frameworks would have a crucial role to establish guidelines on interventions for recovery and durable solutions, to create much-needed clarity regarding the roles and responsibilities of different bodies and agencies and to ensure coordination, as well as establishing and guaranteeing budgets for humanitarian and development initiatives. Existing laws and policies, including the bill establishing the National Emergency Management Agency, are not sufficient to address the challenges facing internally displaced persons.

The Government of Nigeria was an active participant in shaping the 2009 Kampala Convention, and ratified it in 2012. The House of Peoples' Representatives has also established the first parliamentarian committee on internally displaced persons, refugees and the North-east Initiative. One of the requirements of States parties to the Convention is to domesticate its provisions into national law. A bill to domesticate the Convention was before the Parliament at the time of the Special Rapporteur's visit, but had yet to be passed into law. Equally, a draft policy on internally displaced persons, approved at the level of the Attorney General, has been in development for over 10 years without being adopted. However, the National Commission on Refugees, Migrants and Internally Displaced Persons has recently reactivated the process of reviewing the draft policy.

Gathering of baseline data and registration of internally displaced persons living in camps and host communities is being conducted by the International Organisation for Migration (IOM) in collaboration with the National Emergency Management Agency and the State Emergency Management Agencies in Adamawa, Borno and Yobe States, with the aim of ensuring appropriate administration and distribution of assistance, including cash transfers. UNHCR and its partners have also conducted profiling of the most vulnerable internally displaced persons. It has partnered with the National Immigration Services to register returnee refugees. Information collected will contribute to the provision of a comprehensive profile of the internally displaced population to be shared with relevant stakeholders and contribute towards identifying the needs of the displaced and developing interventions for providing them with

the necessary assistance.

While ongoing Displacement Tracking Matrix, vulnerability screening and protection assessments are commendable, the need for accurate and disaggregated data, including in return areas, remains acute. Without a consistent and reliable system of data collection, data varies from source to source. There is an urgent need to conduct detailed profiling and needs assessments of the most vulnerable internally displaced persons, both within and outside camps, and of those who are moving back to local government area capitals and urban centres, in order to identify the protection needs of, in particular, unaccompanied children, older persons, survivors of violence and abduction and persons with disabilities. Data gathering and analysis is especially vital in newly recovered areas where the needs are greatest.

According to IOM, the vast majority of internally displaced persons who have been registered live in host communities where little or no assistance had been provided. Digitisation of registration will be an important step. The Special Rapporteur was informed that a persistent problem is that the majority of internally displaced persons lack personal identification documentation, which may have been lost or confiscated. Research has revealed that the problem is widespread among internally displaced persons and may hamper their registration, access to assistance and service provision and freedom of movement. The Government of Nigeria reportedly lowered the priority of the issue of documentation, however the Special Rapporteur emphasised the importance of replacing personal documentation as soon as possible, as well as ensuring that civil registration of events such as births, marriages and deaths was completed and the relevant certificates provided systematically.

The military currently manages the security of sites for internally displaced persons in newly recovered areas and carries out the delivery of humanitarian assistance, partly due to the security environment and the absence of other humanitarian partners in conflict affected areas. It is consequently assisting in the provision of essential assistance and providing basic service functions, including education facilities. While military commanders stated that security forces are not involved in camp administration, they fill gaps where needed alongside their role in security and information gathering. The Special Rapporteur emphasised that camps for internally displaced persons should always be of civilian character and that a swift transition to civilian administration was essential. There is a civil-military coordination mechanism supporting exchange of information between the military and humanitarian actors.

Government officials stated that Nigeria lacked experience of a humanitarian and displacement crisis of the current scale. Humanitarian partners described government-led responses as too little too late, while existing institutional bodies were described as ad hoc, fragmented, lacking coordination and demonstrating institutional rivalry. One described the National Emergency Management Agency as "called upon to do everything, but stretched too thin". One official noted that the Agency had not received additional resources to respond to the humanitarian crisis. That view was widely shared by state-level actors, who often felt ignored and lacked involvement in the activities of the Presidential Committee on North-east Interventions and other federal initiatives. Numerous stakeholders stated that greater coordination and clarity regarding roles was required across institutions and in their partnerships with other national and international partners.

Allegations of fraud and misappropriation of funds had been made against the Presidential Initiative for the North-east, leading to an inquiry by a Senate ad hoc committee.[228]Allegations had been reported of officials and camp authorities diverting and selling food and non-food items including medicines, toiletries and bedding meant for internally displaced persons. The Special Rapporteur was also informed of instances in which registration cards issued to internally displaced persons had been confiscated and sold. All such allegations should be fully and independently investigated and, if shown to be true, those responsible prosecuted to ensure confidence, including among the international donor community, that all funds were properly allocated and accounted for.

5.4 Humanitarian Challenges

The situation in the north-east is the highest category crisis. Reportedly, nearly 7 million people were in need of humanitarian assistance in the aftermath of the insurgency in the three most affected states.[229] In October 2016, the United Nations Deputy Humanitarian Coordinator and Humanitarian Interim Coordinator warned that Nigeria was facing the worst humanitarian crisis on the African continent.[230] United Nations estimates suggested that nearly 400,000 children were facing starvation if they did not receive urgent access to therapeutic feeding, while many thousands of citizens had little or no access to clean water, health-care assistance, protection, education or food security. The Government was slow to respond to the crisis and to call for assistance from the international community and

228 See http://allafrica.com/stories/201612070143.html.

229 Seewww.unocha.org/nigeria/about-ocha-nigeria/about-crisis.

230http://reliefweb.int/sites/reliefweb.int/files/resources/nga_press_release_dhc_hc_ai_statement_25102016.pdf

consequently, the United Nations and international partners have been delayed in scaling up their responses.

Some United Nations agencies, including UNHCR, have categorised the crisis internally as the highest possible level of crisis (L3), which requires a higher level of funding and resources to be directed towards the situation. That is an important acknowledgment of the gravity of the situation and many are urging a general L3 designation. Having consulted widely and witnessed the challenges facing the Government and the humanitarian community, the Special Rapporteur endorsed that call. At the time of the Special Rapporteur's visit, a decision had been taken to activate seven humanitarian clusters in order to better coordinate the humanitarian response.

While as of August 2016, some 4 million people were thought to be accessible to some extent, that access, especially by international humanitarian actors, was extremely limited in some locations and reliant on helicopters with limited delivery capacity. Humanitarian actors remained concentrated in Maiduguri due to the restricted operational environment or security concerns. Following the Special Rapporteur's visit, some improvements were reportedly made, including the establishment of field-based humanitarian hubs in recovered areas, particularly in Borno State, and of a solutions strategy aimed at supporting humanitarian and development actors.[231] Nevertheless, it is vital to establish a stronger humanitarian presence in newly recovered areas and to secure supply routes. Moreover, humanitarian actors must establish effective partnerships with local actors who enjoy access to and the trust of communities.

The region continues to be a highly dangerous security environment in which road travel is frequently unsafe and humanitarian actors are at risk of attack. According to OCHA, over 80 percent of Borno State was considered high or very high risk for international humanitarian actors, constraining access to desperately vulnerable communities. The dangers faced by humanitarian actors were made evident by United Nations staff who described a targeted ambush attempt on their convoy in July 2016, despite having a military escort.

Reports were received that some camps had not received assistance for up to six months. Restrictions were also being imposed on access to internally displaced persons for humanitarian and human rights actors who were not directly

231 Initially, eight hubs will be located in Bama, Banki, Biu, Damboa ,Dikwa, Gambara Ngala, Gwoza and Monguno in Borno State. At least 12 are expected

involved in the delivery of food, non-food items or other services, for example to conduct monitoring, needs assessments or protection functions. Travel and access restrictions were reportedly applied to NGOs and journalists wishing to visit locations where internally displaced persons were living. Some government officials also engaged in public rhetoric against international NGOs and United Nations humanitarian actors. Sources indicated that internally displaced persons were facing harassment or intimidation to prevent them speaking about their situations, alleged diversion of humanitarian supplies or human rights abuses. The following sections are considered as some of the most pressing humanitarian and protection challenges.

5.4.1 Food, Security and Shelter

Following the recovery of numerous areas by security forces, 15 camps were established by the army to house internally displaced persons from those areas. The camps were referred to by some sources as "closed camps" and one said they were "like military internment camps". The camps were established for security reasons due to the conditions in the recovered areas that had been destroyed by Boko Haram and the levels of malnutrition and starvation among the civilian population. One army strategy was to cut supply lines to areas under Boko Haram control, but that had the greatest impact on civilians, who were left starving. Consequently, large areas were depopulated following their recovery, causing a large increase in the number of internally displaced persons. Shelter conditions in some locations are extremely basic and vast shelter needs were reported in order to protect internally displaced persons from the extreme temperatures and heavy rainfall.

In July 2016, the World Food Programme, alarmed by the situation, issued a food security alert, stating that a famine could be occurring in the worst affected and less accessible pockets of Borno State and calling for a sharp increase in food assistance. The food security requirements identified in the Nigerian 2016 Humanitarian Response Plan had been only 25 percent funded by the end of October 2016. The Government downplayed the extent of the hunger and malnutrition crisis in late 2016, contradicting warnings from the United Nations. One source stated that internally displaced persons in some camps that were officially receiving food assistance were not receiving the minimum nutritional requirement and some were resorting to eating boiled leaves.

Internally displaced persons, including children, were reportedly dying of starvation on a daily basis in some camps that were difficult to reach by humanitarian actors. The United Nations stated in July 2016 that some 250,000 children may be suffering

from severe and life-threatening malnutrition.[232] Even in camps for internally displaced persons around Maiduguri, where humanitarian access was good, demonstrations were held during the Special Rapporteur's visit to complain about poor provision of food. Internally displaced persons in over 20 camps around Maiduguri were left hungry due to shortages of supplies, with many surviving on only one basic meal a day. In April 2016, a joint United Nations assessment estimated that over 500,000 people required immediate food assistance in and around Maiduguri. A survey conducted in late May confirmed that roughly 60 percent of internally displaced persons were malnourished. In June 2016, the United Nations Children's Fund (UNICEF) screened 3,230 children in the Muna camp for internally displaced persons near Maiduguri and found that 29 percent of them were malnourished, 6 percent severely.

According to the Famine Early Warning System Network, it was likely that famine had occurred in 2016 in the towns of Bama and Banki, and in other rural areas where conditions were similar. Some 2,000 famine-related deaths might have occurred in Bama local government area between January and September 2016. Assistance had since improved conditions in accessible areas, reducing mortality and the prevalence of acute malnutrition, although improvements were tenuous and depended on the continued delivery of assistance. Food assistance might be preventing famine in other areas with internally displaced persons. However, large areas of Borno State remained inaccessible to all civilian actors, including humanitarian partners, and given the severity of food insecurity observed in the adjacent areas that humanitarians could reach, it was possible that famine was ongoing in inaccessible parts of Borno State and millions of people were likely to remain severely food insecure.[233]

According to some commentators, the Government did not have the required food provisions in place to respond adequately to needs, which amounted to some 40,000 metric tons of food per month to cover only the existing camps for internally displaced persons. An underestimation of the extent of the crisis meant that supplies were initially insufficient to meet demand. The Government was also late to call for international assistance, with the World Food Programme receiving permission to operate in the region only in March 2016. Over 100,000 people were benefiting from money received from the World Food Programme through a system that delivers credit to mobile phones, which

232 See www.unicef.org/media/media_91911.html.

233 See www.fews.net/west-africa/nigeria/special-report/december-13-2016.

can then be exchanged for food at markets. However, not everyone in need is covered by the scheme and the Special Rapporteur noted that care should be taken to ensure fairness and avoid creating tension, for example where members of host communities do not receive such cash assistance. The situation of host families and communities must be taken into account in view of their important and generous role in supporting the vast majority of internally displaced persons. The Special Rapporteur was informed that tensions were emerging as the duration of the displacement increased. Support to host communities must be a factor in all humanitarian responses.

5.4.2 Access to Healthcare, Water and Sanitation

Access to medical care is severely limited and medical facilities require urgent improvement. The greatest demand is in inaccessible and newly recovered areas and camps for internally displaced persons. As areas were recovered from Boko Haram, it became evident that the majority of health facilities had been damaged or destroyed and either ceased to function completely or continued to the best of their ability with the few staff and medical supplies available. Many health workers fled or were killed or abducted. That left many in the north-east, including internally displaced persons, cut off from government medical services and with urgent and untreated health issues. Many have survived without adequate health-care provision for months on end and the majority of internally displaced persons, particularly women and children, require urgent treatment for malnutrition.

Women and children are particularly vulnerable and medical needs in general are high. Cramped and unhygienic conditions lead to communicable diseases and the health- care needs of many, including pregnant women and infants, were not being met. Some pregnant women reportedly had to walk several kilometres in searing heat to seek medical attention. United Nations staff noted high mortality rates in some camps. Due to the living conditions and the onset of the rainy season, medical providers were treating diarrhea, malaria and respiratory infections, as well as malnourished children. New cases of poliomyelitis and outbreaks of measles were identified and the World Health Organisation was conducting vaccination campaigns. Water, sanitation and hygiene infrastructure needs to be urgently rehabilitated in newly accessible local government areas to minimize waterborne diseases.

Many internally displaced persons are suffering from trauma due to the violence that prompted them to flee. The majority of internally displaced persons surveyed reported the presence of persons who had been released from abduction by Boko Haram. Some, including children, witnessed and suffered severe abuse

or were forced to fight. Some described the killing of their parents and other family members in front of them. Women and girls were forcibly married to Boko Haram fighters and gave birth to babies from such unions. They require psychosocial support to deal with their trauma. However, that support was largely absent at the time of the Special Rapporteur's visit, particularly in newly recovered areas and camps for internally displaced persons in those areas.

Reports indicated that there was a desperate need for hygiene kits for women and girls as there were few stocks or provision of items such as sanitary towels. In view of the reportedly high levels of sexual abuse, rape, survival sex and survival prostitution that have been reported in camps for internally displaced persons and other locations, the risk of the spread of HIV and other sexually transmitted diseases has increased and should be closely monitored. Equally, it is likely that some people with chronic illnesses, including HIV, diabetes and other conditions, have been unable to access essential medication for months and require urgent attention.

5.4.3 Education

An estimated 3 million children affected by the insurgency have been out of formal education for months or even years, as schools were destroyed and teachers fled or were killed. While the region already lagged behind in terms of school enrolment and attendance, particularly for girls, hundreds of thousands of children have been denied access to safe learning spaces after 1,200 schools were destroyed by Boko Haram. Some people expressed fears of a lost generation of displaced or abducted children who have had little or no access to education.

In 106 sites for internally displaced persons accessed by IOM for the Displacement Tracking Matrix, 67 had facilities for formal or informal education. In 35 additional sites assessed, none of the children were attending school, while in a 24 other sites, less than 25 percent of children were attending school. Nevertheless, for some children, camps for internally displaced persons provide their first access to any formal education in a considerable time. Internal displacement has led to overcrowding in schools in host communities. Schools are also frequently used as shelters for internally displaced persons, which also has an impact on the access to education of those in host communities. Save the Children UK noted that, by the end of October 2016, less than one fifth of a limited $23 million education appeal had been resourced.[234]

234 Save the Children UK,"NorthEastNigeria:children'slivesandfuturesatrisk",p.7. Available at

5.4.4 Protection Challenges and Responses

At the time of the Special Rapporteur's visit, the protection sector was only 12 percent funded. While a series of vital protection assessments had been carried out, a deeper and ongoing understanding of the protection issues faced by internally displaced persons and other affected populations is needed. As the security situation improved, the Protection Sector Working Group in Nigeria conducted a rapid protection assessment in liberated local government areas in Borno State in May 2016.[235] At the end of the exercise, it concluded that the protection crisis in Borno State remained severe, with a significant level of protection needs and risks unaddressed. Many internally displaced persons are reliant on humanitarian assistance, while lack of access to livelihoods and resources for those in camps and in host communities results in negative coping strategies including exploitation and survival sex among internally displaced persons and host communities. The Special Rapporteur was informed of allegations that some internally displaced persons faced extortion in every phase of their displacement experience.

Some internally displaced persons would allegedly be required to pay to enter camps for internally displaced persons and to access shelters or materials. Sources reported that the military and the Civilian Joint Task Force exerted total control over internally displaced persons in some locations outside Maiduguri and that unchecked restrictions and lack of essential monitoring had created the conditions for widespread harassment, extortion, exploitation and abuse. It is vital that protection actors obtain access to all locations and strengthen their mechanism for systematic and effective protection monitoring with a view to supporting robust responses. Of particular concern are the protection challenges faced by the most vulnerable, including women and girls, unaccompanied children, older persons, persons with disabilities, and those who have been deeply traumatised by violence, brutality, starvation and displacement.

Numerous partners raised the role of the Civilian Joint Task Force in the humanitarian response as a particular cause for concern. The Civilian Joint Task Force had emerged as a volunteer militia and local-level response to Boko Haram and played an armed community defence role alongside, and frequently in the absence of, the Nigerian security forces. Some Task Force members had been absorbed into military structures and received basic

www.savethechildren.org.uk/sites/default/files/images/North_East_Nigeria.pdf.

235 See Protection Sector Working Group, Nigeria, and UNHC, "Rapid protection assessment report: Borno State, Nigeria". Available at http://reliefweb.int/sites/reliefweb.int/files/resources/rapid_protection_assessment_report_pswg_borno_may_2016. pdf.

training and salaries. With the recent offensives, some had found new roles in the humanitarian response, with members exercising authority and providing management functions in camps for internally displaced persons. The Special Rapporteur was concerned about their status and training, as partners described them as lacking the discipline and training of regular security forces. As such, they did not constitute a civilian administration and should be replaced as soon as possible.

The Special Rapporteur heard several allegations that members of the Task Force had been involved in abuse of internally displaced persons, including the sexual abuse of displaced women and girls. Other allegations included the arbitrary arrest, detention and execution of civilians, including internally displaced persons, in areas without civil authorities present. One interviewee stated that Task Force members would try to extort internally displaced persons with the threat that if they did not pay, they would be accused of membership of Boko Haram. One source stated that cells existed in some camps for internally displaced persons in which individuals could be held and beaten or deprived of food and water for minor infractions or failure to comply with the military or the Task Force.

In half of the sites surveyed for the rapid protection assessment, internally displaced persons reported other physical violence in addition to sexual violence. There had been incidents resulting from tensions between persons who had been displaced from different ethnic groups or areas of origin. Fighting and physical violence occurred in the context of food distribution, often relating to food shortages. Tensions between internally displaced persons and host communities occurred in several locations as the duration of displacement increased, leading to pressure on communities for cash, food and space. Some internally displaced persons were reportedly told, "This is not your place, this is our place", and experienced difficulty accessing water sources. Reports were received of exploitation of internally displaced persons by host communities, including forced labour, early or forced marriage or sexual and gender-based violence, particularly against internally displaced persons who could not contribute financially.

In 11 of the 26 sites surveyed, internally displaced persons described discrimination in access to assistance, with majority populations favouring their own tribal group or those from their own local government area. Some elderly and disabled persons reported physical difficulties queuing for assistance or their exclusion from queues and they asked for separate facilities.

5.4.5 Violations against Internally Displaced Women and Girls

Many camps for internally displaced persons are the settings for sexual exploitation, survival sex and organised prostitution, as well as sexual harassment and rape. One source stated that "transactional sex is the only option that many households have". Women and girls are reportedly coerced into providing sex for food rations or moving outside camps. There is a high number of pregnancies, including among young girls, and forced or coerced early marriages are reportedly increasing to prevent social stigma relating to pregnancy outside of marriage. In camps visited by the Special Rapporteur, food distribution was under the authority of males, creating the conditions for sexual abuse due to scarcity of food.

A group of three Special Rapporteurs with mandates relating to health, children and slavery visited Maiduguri in January 2016 and found evidence of sexual abuse and other major protection concerns (see A/HRC/32/32/Add.2). Over six months later, the Special Rapporteur found no improvement in the situation. In a rapid protection assessment in camps in Borno State,[236] internally displaced persons reported sexual exploitation in 14 out of 26 sites. In nearly all camps surveyed, survival sex was reported by women and girls in exchange for food, permission to leave camps with restricted movement policies, and in exchange for money. One woman interviewed by protection monitors reported that half the women she knew had had to sleep with service providers in exchange for food assistance. Focus groups in some locations reported instances of rape and sexual abuse, often by those in authority, of women or girls going to bathe or collect water. Lack of lighting in bathing areas and their location away from safe areas reportedly made women and girls vulnerable.

The Special Rapporteur found that civil authorities and the military downplayed the issue of sexual abuse and the complicity of security and camp officials. One senior National Emergency Management Agency official stated that "it has never come to our knowledge" and described allegations as "maybe a cultural issue". Ministry of Justice officials at the federal and state levels noted that there were national laws in place to protect individuals, including the Violence Against Persons (Prohibition) Act, 2015. The Special Rapporteur emphasised that such laws and the existing complaint mechanisms were insufficient to protect displaced women and girls from violence or to achieve legal redress in the context of the crisis. Since his visit, members

236 See Protection Sector Working Group, Nigeria, and UNHCR, "Rapid protection assessment report: Borno State, Nigeria".

of the military and the police have reportedly been imprisoned on allegations of involvement in abuse and exploitation.

The vulnerability of women and girls to human rights violation has been exacerbated by a lack of adequate assistance to internally displaced persons in host communities and camps. Equally, in displacement environments where male family members are largely absent, the normal social fabric has broken down, leaving women and girls highly vulnerable. Violations are particularly prevalent in camps for internally displaced persons in newly liberated areas, where access by trained humanitarian actors remains difficult or restricted. The Special Rapporteur expressed the concern that sexual exploitation and violence constitute a hidden epidemic with fear, stigma and impunity for perpetrators leading to underreporting of abuse to the authorities.

The Protection Sector Working Group in Nigeria emphasised that, when camps for internally displaced persons were manned by military or paramilitary personnel, there was an "inevitable reduction of protection space".[237]Camps must quickly come under trained civilian management and community-based protection and camp management systems must be put in place, while security forces should provide guarantees of security in areas that remain at risk from Boko Haram or other security threats. Humanitarian partners stated that protection measures must be taken urgently and include ensuring that women have leadership, food distribution and camp management roles. Equally, measures must be put in place to ensure appropriate civilian authority, including improving human rights and humanitarian training of security forces and civilian authorities.

Forced displacement, detention and kidnapping of women and girls has been a feature of Boko Haram's violence, notably in the case of the abduction of the Chibok girls. Numerous other cases have been less widely reported. At least 2,000 women and girls were thought to have been kidnapped between January 2014 and April 2015.[238] Their plight has been one of rape and sexual violence, forced marriage to their captors and childbirth, or forced labour. Their trauma and stigmatisation must not be underestimated and their immediate and long-term support and reintegration into families and communities must be a high priority. However, reports suggest that little assistance,

237 Protection Sector Working Group, Nigeria and UNHCR, "Rapid protection assessment report: Borno State, Nigeria", p. 25

238 See Chitra Nagarajan, "Don't forget the girls kidnapped in Nigeria: they need help more than ever", *Guardian*, 16 February 2016. Available at www.theguardian.com/commentisfree/2016/feb/16/kidnapped-boko-haram-girls-women-nigeria.

including specialist psychosocial support is available for victims of sexual abuse, violence and other human rights violations, particularly for those outside camps.

5.4.6 Child Rights and Protection Concerns

The challenges facing children are particularly acute and many have suffered or witnessed abuses under Boko Haram. At the time of the Special Rapporteur's visit, vulnerability screenings had identified some 20,000 unaccompanied and separated children. Research and estimates achieved through the IOM Displacement Tracking Matrix have established that some 54 percent of the internally displaced persons are children under 18 years of age, with more than half being under 5 years old. A condition of residence in some camps for internally displaced persons has reportedly been the separation of boys from their mothers and siblings and their housing in accommodation for adult men, which may create protection concerns.

Many children have been killed, maimed and abducted by Boko Haram, which has recruited and used boys and girls for active hostilities, according to a September 2015 report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on violations and abuses committed by the terror group (A/HRC/30/67). OHCHR and other human rights groups that interviewed children who have been freed or have escaped described most of them as deeply traumatised, having been forced to fight and experience sexual violence and exploitation, or having witnessed atrocities. Boko Haram systematically abducted children from towns and villages it captured or raided, including the alleged abduction of 300 children from Damasak near the border with Niger.

One interviewee stated that, as there was no database, the Government did not know how many girls were still in the hands of Boko Haram. Others suggested that thousands of boys had been abducted or coerced into joining the militants and exposed to abuse or forced to fight. Those who escaped or were released are frequently displaced and unable to return to their homes. They face challenges reintegrating into families and communities due to stigmatisation and discrimination. A government initiative entitled Operation Safe Corridor is aimed at deradicalising and reintegrating former fighters into their communities. Some projects aimed at working to reunite separated families and children, including the Restoring Family Links programme conducted with the International Committee of the Red Cross and national partners, have successfully reunited hundreds of unaccompanied children with their relatives.[239] However, the

239 See www.icrc.org/en/document/nigeria-happy-ending-unlikely-violence-anxiety.

levels and duration of psychosocial support remain inadequate or non-existent in most locations.

Credible reports highlight the fact that displaced children were detained during counter-terrorism operations, some for long periods. Some reports have alleged that young boys and some girls suspected of Boko Haram affiliation have been held in appalling conditions in detention facilities, including some 120 children held in Giwa Barracks in Maiduguri. An Amnesty International report alleges that between January and April 2016, 149 people, including 11 children and babies as young as 5 months, died at the detention facility.[240]The Nigerian authorities deny those allegations. Equally, the well-being of children released from detention must be monitored, since they may be unaccompanied, severely traumatised and ill, and highly vulnerable. While legitimate security concerns exist, it must be recognised that these children are also victims of Boko Haram who require support and rehabilitation.

5.4.7 Detention and Disappearances

A disturbing demographic picture is evident in camps for internally displaced persons, and the absence of young men of "fighting age" is a cause for concern. Many men and boys have disappeared and their whereabouts are unknown, while many others are reportedly held in detention. Some have been recruited by Boko Haram, while many thousands have reportedly been killed by the militants. One interviewee noted that Boko Haram sometimes killed males over their mid-twenties, while younger men were given the choice to join the group. Many men may have fled, fearing for their lives, either to other regions of Nigeria or across international borders due to the real threat posed to them by Boko Haram or their fear of detention by the security forces. One interviewee stated, "It's hard to be a young man here".

The Special Rapporteur was informed of the arrest and detention of suspected Boko Haram members, including from camps for internally displaced persons, sometimes for long periods. Persons leaving newly liberated areas, including women and children, were systematically detained and "screened" by security forces. The perception that internally displaced persons pose a security threat resulted in limitations to their freedom of movement. One interviewee noted that there was a reluctance to deal humanely with captives. The Special Rapporteur was informed that screening was non-transparent, had no legal basis, was conducted in poor detention conditions and that

240 See www.amnestyusa.org/research/reports/if-you-see-it-you-will-cry-life-and-death-in-giwa-barracks.

requests from international actors to monitor screenings were denied. Detention conditions were described as overcrowded and there was a lack of food, water and medical assistance. The Special Rapporteur emphasised that detention of internally displaced persons must be fully justified and conducted according to the law and international standards.

The Special Rapporteur consulted senior military commanders based in Maiduguri who were in charge of military operations in the north-east. He was informed that legitimate security concerns justified screening and information gathering within and around locations where internally displaced persons were living, in order to protect civilian communities, including internally displaced persons. Asked about the absence of men in the populations of internally displaced persons, the detention of individuals on security grounds was acknowledged, but the compliance of the security forces with international humanitarian and human rights law was emphasised. The military commander stated that younger men were the demographic that had joined Boko Haram, noting that it was "only natural" that young men would not be found in camps for internally displaced persons, since they would not want to be in such camps and would go elsewhere in the region or to other parts of the country.

There is an urgent need to clarify the whereabouts of thousands of young men in north-east Nigeria. The Government, with the support of international partners including the International Committee of the Red Cross, has initiated information and data collection on missing persons. The Special Rapporteur considers that such measures should be strengthened, including through outreach within populations of internally displaced persons, to record all cases of deceased and missing persons and to open cases. There should be a full and independent investigation into possible violations of international humanitarian and human rights law and possible war crimes and crimes against humanity. Any evidence, including mass graves or other sites that are identified, must be protected.

Freedom of movement has been restricted for internally displaced persons in some camps. This has implications for their ability to seek livelihood and income opportunities, leaving many totally reliant on assistance and compliance with the camp authorities, including the army and the Civilian Joint Task Force. Some reports indicated that internally displaced persons faced restrictions on entering Maiduguri, including refusal of passage through checkpoints without a national identity card or payment of extortion money or a fine. Moreover, internally displaced persons outside camps also reportedly faced movement restrictions and were required to pay fees in order to move

freely. Other allegations suggested that internally displaced persons would sometimes be told to leave a camp in order for assistance to be diverted elsewhere.

The military commander in the region acknowledged restrictions on freedom of movement of internally displaced persons on security grounds, stating that it was not possible to let everyone from camps wander around the city and that the restrictions were for the good of the internally displaced persons who were given passes to go to the towns. The Special Rapporteur emphasises that camps for internally displaced persons are not detention centres and internally displaced persons' right to freedom of movement and all their human rights must be respected, with proportionate security measures in place.

5.5 Prospects and Essential Measures for Return and Durable Solutions

Conditions in many areas recovered from Boko Haram are precarious and not conducive to the return of internally displaced persons and refugees due to insecurity, the destruction of infrastructure and homes and the absence of basic services, which pose acute humanitarian and protection risks. Agriculture and animal husbandry, on which many are dependent for livelihoods, have been severely disrupted. Nevertheless, by August 2016 over 910,000 internally displaced persons had reportedly returned to their areas of origin, particularly in Adamawa State, many during the rainy season for farming purposes.[241] While the authorities were making arrangements for internally displaced persons to return towards their areas of origin, most internally displaced persons, particularly in Borno State, were being placed within local capitals, therefore remaining displaced. The Special Rapporteur emphasised that return should only take place voluntarily and in conditions of security, dignity and with appropriate information and guarantees of safety and support.

Even where return is possible, many no longer have a home to return to due to the destruction inflicted by Boko Haram. One humanitarian stated: "I drove for two hours without seeing a house standing". Massive investment in rebuilding infrastructure and housing is required. Return is also hampered by unexploded ordnance and booby traps intended to kill or maim. The National Human Rights Commission informed the Special Rapporteur that it had established an Inter-Agency Task Team to ensure voluntary and safe returns and was undertaking assessment visits. While return may be the favoured option for national and

241 IOM Nigeria, "Displacement Tracking Matrix: round 11 report", August 2016. Available at https://goo.gl/EXDeXC.

state Governments, for some internally displaced persons, local integration or settlement elsewhere may be the most viable and preferred choices. The views and wishes of internally displaced persons must be taken.

While saving lives remains the highest priority, greater attention to durable solutions and transitional steps are required at the earliest phase. National response bodies such as the National Emergency Management Agency is only prepared for emergencies but lack capacity or experience to cope with the peculiar problems presented by the Boko Haram insurrection. Specialist development partners should be engaged at the earliest opportunity and development approaches integrated into the humanitarian phase as soon as possible to promote recovery, build resilience, and re-establish livelihoods. At the time of the Special Rapporteur's visit, the early recovery sector had no funds available. Some positive initiatives are under way. The humanitarian country team has developed a durable solution framework in 2015 to promote engagement with humanitarians. Both in Adamawa and Borno, the state governments have established committees on return and durable solutions. The Resident Coordinator, with the support of UNHCR and the United Nations Development Programme, is currently developing a return and solution strategy.

The Presidential Committee on North-east Interventions was inaugurated in October 2016 as a body charged with coordinating all interventions in the north-east, including those of public, private, national and international development partners. The Committee will be funded by government, private and international development sources for an initial three years and falls under the Presidency. It is responsible for developing the strategy and implementation framework for rebuilding the North-east region and communities ravaged by Boko Haram until a longer-term regional development framework is in place.[242]

5.6 Role of the International Community

The international community has a vital role to play in addressing and resolving the humanitarian crisis in north-east Nigeria. While Nigeria is considered to be a middle income country due to its oil and gas revenues, it is currently undergoing a period of intense economic challenges due to the fall in oil prices. Nevertheless, the extent of the crisis requires that she do better in providing adequate national financial resources to meet the massive needs in the north-east. In December 2016, the United Nations Office for the Coordination of Humanitarian Affairs doubled its

242 See http://breaking.com.ng/nigeria/buhari-inaugurates-presidential-committee-on-the-north-east-initiative/.

humanitarian funding appeal for north-east Nigeria to $1 billion required in 2017 in order to reach some 7 million people that it claims are in desperate need of assistance.

At this critical time, the international and donor communities are urged to provide necessary additional support to Nigeria as it confronts an insurgency and a humanitarian and displacement crisis that has regional and potentially global implications and consequences. The humanitarian response was only funded to some 38 percent of 2016 estimated needs by the end of October 2016. The United Nations and other humanitarian and development partners are hampered in their essential efforts by the significant shortfall in funding across key sectors. Scaling up the response is essential to save lives in the short term, however resources must also be provided for the longer-term challenges of securing durable solutions beyond the emergency response phase.

5.7 Conclusions

The efforts of the Government and its counterparts in Adamawa, Borno and Yobe States to address the internal displacement crisis in the north-east must be acknowledged and responses have improved. Nevertheless, the situation of internally displaced persons remains grave and responses must be stepped up and better coordinated to meet their urgent needs and those of host communities. The humanitarian crisis has been neglected and its extent significantly underestimated. From all indications, it required earlier and greater attention from the Government. Credible evidence of widespread human rights violations against internally displaced persons and other members of the civilian population by non-State armed groups and State actors alike require recognition as a human rights crisis requiring urgent and ongoing measures to protect all civilians from violence and abuse.

While the responsibility to respond to the immediate and longer-term humanitarian needs and human rights of internally displaced persons lies primarily with the Government, it lacks the capacity, expertise and resources to tackle the displacement crisis alone. The crisis has triggered the establishment of numerous new initiatives and national bodies. They are welcomed, but they must have clear mandates and responsibilities, be coordinated, funded in accordance with their functions, and fully transparent and accountable for their actions and expenditure. As a middle income country, Nigeria is better placed than many nations to respond effectively to the current displacement crisis. However, to date resource allocation has been insufficient and assistance to internally displaced persons inadequate. International humanitarian partners are called upon

to fill the immense gaps in the crisis response, although their own capacity is severely constrained by shortage of capacity, resources and funds. The international community must enhance its already generous support to the humanitarian community for its essential work.

While security measures are legitimate and necessary in the light of Boko Haram tactics, those measures must be proportionate and meet international standards, including for the treatment of detainees, particularly children. It is highly likely that men considered to be of fighting age are avoiding locations where internally displaced persons are living due to their fear of suspicion of being Boko Haram militants and the likelihood of detention. Allegations of mistreatment in detention by the security forces, while not verified and denied by authorities have fuelled that concern. It must be recalled that the vast majority of internally displaced persons are innocent victims of the insurgency and counter-insurgency measures. While the security forces have human rights advisors within their ranks and conduct training, more must be done to ensure compliance with the law and to protect civilians.

The main responsibility for the displacement crisis lies with Boko Haram and its campaign of terror. However, the wider causes of the insurgency and the subsequent conflict and displacement crisis must be acknowledged and addressed to ensure a future of stability, peace and prosperity for the north-east. In order to avoid renewed conflict and displacement, it is vital to meet the challenges of underdevelopment, poverty, access to education, unemployment and poor governance that contributed to the creation of Boko Haram and the spread of its influence. That requires long-term solutions that provide justice for victims and durable solutions for internally displaced persons and a process to promote reconciliation and prevent violent extremism.

5.8 Recommendations

The Special Rapporteur makes the following recommendations:

The Federal Government of Nigeria should:

(a) Adopt as a priority a legal and policy framework for the protection of the human rights of internally displaced persons in conformity with international and regional standards, including the Guiding Principles on Internal Displacement, the Framework on Durable Solutions for Internally Displaced Persons and the Kampala Convention;

(b) Expedite and finalise tripartite agreement with neighbouring countries to facilitate safe and dignified return of refugees with the support of UNHCR;

(c) Strengthen the institutional framework for responses, including by enhancing capacity and funding, better defining

roles and responsibilities and improving cooperation and coordination across bodies and between national and State actors; consider the establishment of a ministry for humanitarian affairs or a similar high-level institution with a dedicated mandate to comprehensively address the situation of internally displaced persons.

(d) Increase national funds for assistance to internally displaced persons and displacement-affected communities, reconstruction and development-based responses to ensure durable solutions. A positive step would be to guarantee a percentage of national revenues for crisis responses;

(e) Improve access by humanitarian actors, with appropriate security in place, to all areas, including newly recovered areas, in which internally displaced persons and conflict-affected communities are highly vulnerable, and establish supply routes;

(f) Facilitate freedom of movement, especially for those living in camps to leave and return freely. While security measures are legitimate, easing restrictions on movement allows internally displaced persons to exercise their basic rights and seek economic opportunities;

(g) Conduct comprehensive profiling and assessments within and outside camps to identify the protection needs of internally displaced persons, including the most vulnerable such as unaccompanied children, older persons and persons with disabilities.

(h) Ensure to the fullest extent possible the civilian character of camps for internally displaced persons and the transfer of camp management to appropriate and trained civilian humanitarian personnel as soon as possible;

(i) Ensure that all members of security services comply with domestic and international law and benefit from good practices in the treatment of internally displaced persons, including training and deployment of female personnel to engage the large number of internally displaced women;

(j) Strengthen prevention and response measures on violence against women and girls, and prosecute those responsible for violations; give roles to women in camp management and distribution; ensure that water collection and bathing facilities are safe; and put in place rigorous protection monitoring and complaint processes;

(k) Enhance protection and support, including medical and psychosocial support, to displaced children, particularly unaccompanied and traumatised children and those who have been forcibly recruited or abducted and refrain from any unjustified detention of children and their detention in adult facilities.

(l) Ensure that a strategy is in place to increase access to the majority of internally displaced persons who are outside

camps, including information and outreach projects, food and non-food item distribution points, and measures to identify the most vulnerable internally displaced persons;

(m) Take measures to ensure that internally displaced persons have access to civil identity and other documentation required to ensure their access to assistance and service provision;

(n) Engage business and civil society actors in Nigeria to enhance their role in the humanitarian and recovery responses, including through direct assistance and donations and the coordination of national appeals;

(o) Ensure that screening and detention of internally displaced persons is justified and in compliance with international standards relating to detention, including conditions and duration of detention and access to legal assistance. The security forces should establish guidelines to allow civilians to have access to services during the screening process.

(p) Ensure the systematic and disaggregated collection of information on missing and deceased persons, including the development of a database in order to open cases with a view to identifying the whereabouts of family members, including children;

(q) In view of the significant human rights and protection challenges, a human rights monitoring mission under the auspices of OHCHR should be agreed to and rapidly deployed to the north-east;

(r) Ensure that return of internally displaced persons to their places of origin takes place voluntarily, with provision of full information, and in conditions of security, dignity and appropriate support, particularly for women, children and other vulnerable groups;

(s) In collaboration with development partners, initiate as soon as possible a durable solution and development strategy for internally displaced persons, including reconstruction of affected areas, resilience building and recovery projects and measures to re-establish livelihoods, to ensure rapid progress beyond the emergency response phase;

(t) Establish consultation and participatory mechanisms to ensure that internally displaced persons are fully involved in decisions that affect them, including durable solutions options available to them.

(u) Facilitate and support a full investigation into possible violations of international humanitarian and human rights law and possible war crimes and crimes against humanity committed by Boko Haram members and any other actors accused of crimes, including members of the Nigerian security forces;

(v) Establish measures leading to an effective transitional justice process for victims and a peace building process,

ensuring that internally displaced persons are fully involved in such initiatives; and

(w) Continue working to resolve all situations of internal displacement in Nigeria and maintain support for internally displaced persons until durable solutions are achieved for them.

The Special Rapporteur considers that the United Nations and the international community should:

(a) Respond fully and rapidly to requests for humanitarian funding and material assistance across all humanitarian sectors to ensure that the 2017 Humanitarian Response Plan is fully funded and financial pledges delivered;

(b) Assist national actors in the collection of data on internally displaced persons and profiling of displaced populations and humanitarian and protection concerns and strengthen coordination of protection actors;

(c) Ensure provision of adequate resources to facilitate access to essential services for internally displaced persons, as well as to strengthen the prevention and response mechanisms on violence against women and girls;

(d) Support the Government in the development of solutions strategies and integrate durable solution approaches for internally displaced persons as early as possible in the displacement crisis, as part of the protection and assistance response to displacement;

(e) Promote the engagement of international development partners and the implementation of development approaches and assist the Government in the implementation of measures to support durable solutions for internally displaced persons and a regional reconstruction and development plan;

(f) Support the strengthening of international human rights monitoring mechanisms in collaboration with national human rights institutions and human rights protection systems;

(g) Support through technical cooperation measures in the field of transitional justice, community reconciliation and peace building, initiatives to ensure justice and compensation for internally displaced persons and other affected communities and to prevent future conflict and displacement.

Chapter 6

REPORT OF THE SPECIAL RAPPORTEUR ON MINORITY ISSUES

6.0 Executive Summary

Nigeria is a multi-ethnic and linguistically diverse society, where the great diversity of the population constitutes a valuable asset and rich cultural heritage. Nevertheless, the management of such a diverse population poses important challenges that have not been fully addressed and that require good and inclusive governance and the full implementation of minority rights. Nigeria's Constitution guarantees the right to equality and non-discrimination and contains provisions conducive to fostering the equal representation of diverse groups at the different governmental levels, in the application of the federal character principle. Nevertheless, the distinction between those considered the native inhabitants of a territory (indigenes) and those who are not (settlers) leads in many cases to discriminatory treatment of citizens in fields such as access to land and resources, public positions, university education and scholarships, and has contributed to tensions which created and reinforced ethnic and religious cleavages.

While harmonious and peaceful inter-ethnic relations prevail in most of the country, Nigeria has seen violent inter communal clashes which have left thousands of victims in some States, particularly in the North and Middle Belt regions. Root causes of violence are complex and intertwined, involving several factors such as the issue of indigenes/settlers, competition for resources, poverty, good governance deficits, impunity and polarisation over ethnic and religious affiliations. Such factors and their underlying[243] causes must be adequately addressed through specific programmes and investments directed to the most disadvantaged groups. In order to address the issue of violence, impunity must be tackled, perpetrators must be held accountable for their crimes and victims must be adequately redressed.

Many areas in the Niger Delta are still suffering from dire environmental degradation due to frequent oil spills. Affected communities, including the Ogoni and Ikwerre groups, have been deprived of their traditional livelihoods and face difficulties

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* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission only.

in gaining access to basic services. Urgent clean-up operations of polluted areas are required and concrete measures are needed to guarantee alternative means of livelihood and adequate services to affected communities. Nigeria's rich linguistic diversity encompasses hundreds of minority languages, though several of them are under threat. Government programmes to preserve the major minority languages are contributing to safeguarding Nigeria's linguistic heritage. However, further measures are required, including provisions for language education in lesser used languages.

6.1 Introduction

The Special Rapporteur on minority issues visited Nigeria between 17 and 28 February 2014. She visited Abuja, where she conducted extensive consultations with senior federal government representatives, including the Minister of the Interior, senior officials of the Ministries of Foreign Affairs, Justice and Culture, the National Human Rights Commission and the Federal Character Commission. She visited Plateau and Kaduna States, where she consulted with State authorities as well as with the National Human Rights Commission branches in Jos and Kaduna. She travelled to Port Harcourt in Rivers State, where she met with authorities and local communities. She held numerous meetings with non-governmental organisations, minority communities, youth representatives, religious leaders, academics, journalists and representatives of United Nations bodies. She thanks the Government for its cooperation and thanks the organisations and individuals that provided valuable information and facilitated aspects of her visit.

Nigeria is an ethnically and linguistically diverse country, with over 350 ethnic groups and even more languages spoken within its territory. According to the most recent census, conducted in 2006, the population of Nigeria stood at 140 million people. According to the most recent data provided by the World Bank in 2014,[244] the total population stands at 178.5 million, making Nigeria the most populous African country. The three largest ethnic groups in the country are the Hausa, Igbo and Yoruba. Other large ethnic groups include the Ekoi, Edo, Fulani, Ibibio, Idoma, Igala, Ijaw/Izon, Itsekiri, Gwari, Jukun, Kanuri/Beriberi, Nupe, Urhobo and Tiv. Muslims constitute about 51 percent of the population, while Christians comprise approximately 47 percent and almost 1 percent of the population professes traditional religions. There are no official data on the religious and ethnic composition of the population, but most Muslims constitute a majority in the northern states, while Christian populations are predominant in the southern states. The

244 Available from www.worldbank.org/en/country/nigeria.

majority of Hausa and Fulani are Muslim, while Igbo are predominantly Christians and Yoruba present a varied religious composition.

Nigeria is Africa's largest economy, with the World Bank data putting its gross domestic product growth at 6.5 percent in 2012, and with oil accounting for nearly 75 percent of the country's consolidated budgetary revenues. According to the United Nations Conference on Trade and Development, Nigeria receives more foreign direct investment than any other country in Africa.[245] Nigeria's strong macroeconomic performance notwithstanding, a number of human development indicators and socioeconomic statistics reveal profound deficits that must be addressed. The poverty rate has reached 48 percent of the population, with stark disparities between regions. Poverty is particularly concentrated in the northern regions, while the south-west has the lowest poverty rates.[246] In 2011, almost 24 percent of the population was unemployed.[247] The infant under-five mortality rate ranks among the highest in the world, with 124 deaths per 1,000 live births in 2012;[248] and the school attendance rate is low, with only 54 percent of children of secondary school age going to school, and vast differences across States and gender disparities favouring boys over girls.[249]

Despite the lack of specific data on socioeconomic indicators for minorities, available studies point to minorities as being particularly affected by poverty and low socioeconomic conditions. For instance, in the oil-rich Niger Delta region, minority communities, such as Ogoni or Ikwerre, rank among the poorest population groups, with many lacking access to clean water or health care.

6.2 Methodology

The Special Rapporteur's analysis of Nigeria is based on the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other relevant international standards, from which she has identified the following areas of concern:

(a) the protection of a minority's survival, through combating violence against them and preventing genocide;

245 United Nations Conference on Trade and Development, *World Investment Report2013* (United Nations publication, Sales No. E.13.II.D.5) p. 241. Available from http://unctad.org/en/publicationslibrary/wir2013_en .pdf.

246 See World Bank, Nigeria Economic Report, 2013, pp. 8 and9.

247 National Bureau of Statistics, 2011 Socio-Economic Survey: Unemployment 2011. (Download available from www.nigerianstat.gov.ng/pages/download/38.)

248 United Nations Children's Fund (UNICEF), Nigeria Basic Indicators available from www.unicef.org/infobycountry/nigeria_statistics.html.

249 UNICEF, Nigeria Multiple Indicator Cluster Survey2011, pp.171-185. (Available from www.unicef.org/nigeria/Multiple_Indicators_Cluster_Survey_4_Report.pdf).

(b) the protection and promotion of the cultural identity of minority groups and the right to enjoy their collective identity and to reject forced assimilation;
(c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and
(d) the guarantee of the right to effective participation of minorities in public life, especially with regard to decisions that affect them. She applies a gender perspective in all the areas of her work.

The Special Rapporteur focuses her work on national, ethnic, religious and linguistic groups whose generally non-dominant, disadvantaged positions within society require measures to allow them to exercise all their rights, including minority rights, to the fullest. She notes that, in accordance with general comment 23 of the Human Rights Committee on Article 27 of the International Covenant on Civil and Political Rights,[250] the existence of minorities is neither dependent on a decision by the State alone nor limited only to those officially recognised as minorities, but should be based on objective and subjective criteria and the principle of self-identification. Consideration given to minority issues in her analysis of Nigeria does not only reflect the national context, but also extends down to the State and local contexts, where the dynamics and dimensions of identity, ethnicity, religion, language, political participation and access to resources play a crucial role in the daily lives of individuals and communities. She acknowledges that the notions of "minority" and "majority" are changeable and dependent on the context analysed. Majority groups at the national level maybe minority groups at the State and local levels. Equally, minority ethnic groups in a region may be the majority religious groups and vice versa.

6.3 Historical Background

A brief overview of the contemporary history is necessary to understand the current situation of minorities and the political structure, legislation and policies that have shaped present-day Nigeria. The following information was obtained from public government and civil society sources. Modern Nigeria has been greatly influenced by its colonial history under the British in the nineteenth and twentieth centuries. During the nineteenth century, the British gained influence over a vast territory in West Africa that included several kingdoms and domains. At the end

250 *Official Records of the General Assembly, Forty-ninth Session, Supplement No.40*, vol. I (A/49/40 (Vol. I)), annex V.

of that century, the British Empire established in the Delta region the Niger Coast Protectorate while it expanded its influence over the region. In 1903, the Protectorate of Northern Nigeria was established and the colonial rule over the territory known as Nigeria began.

During the British colonial period (1900-1960), the territory was subjected to frequent regional reorganisations for administrative purposes. The Niger Coast Protectorate became Southern Nigeria, while in the northern part strategic alliances were made with local leaders to control the different territories; local governments were left in the hands of the traditional rulers, but were ultimately supervised and controlled by British officers, in a policy known as "indirect ruling". In 1914, the South and North regions were merged into the Colony and Protectorate of Nigeria. In 1954, a federal constitution further divided the territory into three regions (North, East and West), where the major ethnic groups (Hausa- Fulani, Igbo and Yoruba) held dominant positions over the others. As the London conferences in 1957 and 1958 for the independence of Nigeria were ongoing, minority groups, fearing a future domination by the three major groups after independence, started to advocate for the creation of separate states.

In 1957, the British Government appointed the Commission on Minority Groups in Nigeria (known after its Chairman as the "Willink Commission") with the mandate to:

"(1) Ascertain the facts about the fears of minorities in any part of Nigeria and to propose means of allaying those fears, whether well or ill-founded;
(2) Advise what safeguards should be included for this purpose in the Constitution of Nigeria; and
(3) If, but only if, no other solution seems to the Commission to meet the case, then, as a last resort to make detailed recommendations for the creation of one or more new States".

The 1958 report of the Commission did not recommend the creation of new States, on the grounds that they would soon lead to new minority groups with similar claims, and instead encouraged a balance of power between the different groups under a united Nigerian State. The Commission suggested broad measures, including the establishment of councils in each "minority area" that would "foster the well-being, cultural advancement and economic and social development of the minority area and to bring to the notice of the regional government any discrimination against the area".

In 1960, Nigeria attained independence and, in the following

years, significant territorial changes took place aimed at providing ethnic minority groups with more autonomy. In 1963, a fourth region (Mid-Western Region) was created. In 1967, the four regions were broken up into 12 states and, by 1976, the number of states within the Federation had reached nineteen. At present, the country comprises 36 states, in addition to the Federal Capital Territory, where the capital city Abuja is located, and six geopolitical zones.[251] Several civil society organisations highlighted that, despite the number of territorial reorganisations, the issue of minority groups has not been solved and, in many states, tensions between dominant and non-dominant groups persist.

6.4 Non-discrimination and Equality: Legal and Institutional Framework

Statistical analysis is of paramount importance for an accurate identification of the ethnic, religious and linguistic make-up of a country as diverse as Nigeria. Data collection plays a vital role in revealing inequalities between groups in society and informs appropriate actions to address them. The Special Rapporteur notes that Nigeria does not collect or analyse data disaggregated by ethnicity, religion or language. Some civil society organisations as well as the National Human Rights Commission stated their concern over the lack of disaggregated statistical data and the outdated census information, given that the census was last conducted in 2006. Other voices, however, were reticent about the collection of disaggregated data, stating fears that sensitive data could be manipulated for political ends.

The 1999 Constitution of Nigeria is the supreme law and enshrines the principle of equality and non-discrimination under its article 42, paragraph 1, which contains general non-discrimination provisions on the grounds of belonging to "a particular community, ethnic group, place of origin, sex, religion or political opinion". The Constitution establishes in its Article 14, paragraph 3, the so-called "federal character principle", which aims to ensure that public appointments reflect an equal representation of all groups at the Federal Government level by affirming that "the composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few states or from

251 The National Conference that took place in 2014 recommended the creation of 18 additional states; see Final Draft of Conference Report, p. 280, available from https://media.premiumtimesng.com/national-conference/wp-content/uploads/National-Conference-2014-Report-August-2014-Table-of-Contents-Chapters-1-7.pdf.

a few ethnic or other sectional groups in that Government or in any of its agencies".

Article 14, paragraph 4, further guarantees the participation of the different groups at the state and local levels, by affirming that "the composition of the government of a state, a local government council, or any of the agencies of such government or council, and the conduct of the affairs of the government or council or such agencies, shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all peoples of the Federation". Despite these provisions, several interviewees stated that the federal character principle was not applied in practice, because it only reflected the political representation of states at the federal level without applying other criteria, such as ethnic affiliation, in order to guarantee that all groups are adequately represented at the different government levels (local, state and federal).

The Federal Character Commission is a constitutionally sanctioned independent body made up of 37 commissioners representing the 36 states and the Federal Capital Territory. It was established by Decree No. 34 of 1996, with the mandate to give effect to the federal character principle, and is entrusted with "the responsibility to promote, monitor and enforce compliance with the principles of the proportional sharing of all bureaucratic, economic, media and political posts at all level of government". The Commission's main functions include monitoring compliance with the Commission's guidelines on the recruitment procedures by the Government, investigation of complaints, enforcement measures in case of failure to comply with the Commission's guidelines and data analysis.

The National Human Rights Commission was created by a 1995 Act that was subsequently amended in 2010 to provide it with additional powers. As an independent human rights monitoring body, it investigates alleged cases of human rights violations and makes recommendations to the Federal Government, receives and investigates complaints concerning human rights remedies on their behalf, conducts studies on all matters pertaining to human rights, organises seminars, workshops and other related activities. The Commission has branch offices located in each of the six geopolitical zones. Since 2010, the decisions made by its Governing Council have been deemed as decisions of the High Court.

Nigeria is a State Party to the core international human rights treaties of particular importance to the rights of minorities, including the International Covenant on Civil and Political Rights,

the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and other key treaties. Nigeria is also a State party to the African Charter on Human and Peoples' Rights, the African Charter on Democracy, Elections and Governance and the Charter for African Cultural Renaissance.

6.5 Identity, Ethnicity and Religion

The Constitution contains a provision in its article 147, paragraph3, relative to the appointment by the President of "at least one Minister from each State, who shall be an indigene of such State". However, the Constitution does not provide a definition of "indigene" or "settler" status. Those interviewed described a socially entrenched distinction between those recognised as the original inhabitants of a State (indigenes) and those who are not (settlers).

6.5.1 Indigenes/Settlers Dichotomy

The Special Rapporteur was informed that the distinction between indigenes and settlers can be traced back to colonial times, when British rule promoted alliances with certain ethnic groups, imposing differentiated treatment to groups and allowing the rise of new dominant ones. Community and civil society representatives repeatedly highlighted the relevance of the categorisation of indigenes/settlers at the state and local levels in today's Nigeria, and its profound impact on people's lives. It was pointed out that those regarded as "indigenes citizens" are given preferential access to public resources, government jobs, university education and scholarships and access to land, opportunities not provided to the "settlers".

In order to confirm the status of "indigene person", a "certificate of indigeneship" issued by the local government is required. In the light of the absence of guidelines to regulate the indigeneship status, local and state governments enjoy total discretion to grant it or not. The Special Rapporteur was informed that long-term residency in a state, even if for generations, is not considered a criterion that entitles a person or community to be considered indigenes, and therefore long-term residents are often denied indigeneship certificates.

Supporters of the so-called "indigenes clause" maintain that this status is meant to protect the rights of minority groups in States where indigenes are no longer a numerical majority. In Kaduna and Plateau States, the Special Rapporteur met with some community leaders who claimed that "indigeneship is defined by owning land, customs and traditions", that permitted the preservation of the linkage with their ancestors. She also met with critics of the "indigenes clause", who affirmed that this

distinction had led to a privileged status for some citizens and constituted a violation of the right to equality and non-discrimination enshrined in the Constitution.

Some civil society representatives advocated for the introduction of clearer provisions in the Constitution to regulate the status of indigeneship, on the grounds that the current constitutional provision is vague and subject to discretional interpretation. Several participants strongly advocated for a "residence clause", whereby specific residency requirements based on length of residence in a region replaced the indigene/settler dichotomy.

6.5.2 Minority Groups in the Middle Belt Region

The Special Rapporteur visited Plateau and Kaduna States, comprising the so-called "Middle Belt" region, a central area characterised by its ethnic and religious diversity. The region, and particularly Plateau and Kaduna States, have been the scene of several violent inter communal clashes among ethnic and religious communities over the past decades, resulting in over 10,000 deaths since 1992.[252] The terrorist group Boko Haram has recently been responsible for numerous deadly attacks across the country, particularly in the North and the Middle Belt, including bomb attacks resulting in more than 2,000 deaths in the first half of 2014 alone.[253]

In the course of interviews, including with security forces, representatives of the National Human Rights Commission headquarters in Jos and Kaduna, Plateau State authorities, Muslim and Christian leaders and victims of inter communal violence, the Special Rapporteur was informed that the root causes of the inter communal episodes of violence are diverse, complex and intertwined, involving the issue of indigenes/settlers, competition for resources, climate change, poverty, good governance deficits, partisan politics, impunity and the use of ethno-religious dimensions for political purposes, given that in many situations ethnic and religious identity overlap.

The distinction between indigenes and settlers has played a significant role in the conflicts in the Middle Belt. In Plateau and Kaduna States, some ethnic groups who have lived in the region for generations are still regarded as settlers and therefore cannot benefit from certain economic and social opportunities. In

252 Human Rights Watch, *Leave Everything to God, Accountability for Intercommunal Violence in Plateau and Kaduna States, Nigeria* (2013), available from www.hrw.org/sites/default/files/reports/nigeria1213_ForUpload.pdf.

253 See www.hrw.org/news/2014/07/15/nigeria-boko-haram-kills-2053-civilians-6-months.

Plateau State, indigenous ethnic groups are mainly Christian, while Muslim Hausa and Fulani residents and pastoralists are regarded as settlers. Disputes include competing claims to indigene status, inequality in access to politics owing to the difficulties and/or impossibility to run for elections for settlers, the use of land and access to university education and scholarships, where indigenes have preferential treatment. Civil society representatives in Jos stressed that, in most places, there are no legal provisions prohibiting the political participation of settlers at the local and state levels, but there is "a social prohibition", owing to the fear of indigenous communities that settlers will augment their power by running for elections. This prohibition, which would ignite feelings of frustration and resentment, was identified as a relevant trigger of violence. Civil society actors stated that political interference and the imposition of Government-favoured candidates over more popular candidates can provoke violence if the pro-Government candidate wins. The need for good governance as a mean to lessen tensions was repeatedly emphasised.

During the consultations held in Plateau and Kaduna States, it was commonly stated that the economic aspect of the situation of disadvantaged minority groups could not be underestimated when analysing the root causes of the conflicts in the Middle-Belt region. High levels of poverty, unemployment and illiteracy were identified as concrete socioeconomic issues contributing to fuelling inter communal violence. The lack of social and economic opportunities was regarded as a main driver that resulted in competition for resources and growing suspicions and hostility among groups. Minority women and girls were regarded as particularly affected by low socioeconomic status and insecurity.

Interviewees in Jos and Kaduna explained that competition for land between nomadic pastoralists and local farmers was a major conflict-generating issue in both Plateau and Kaduna States; the arrival of herders from Northern Nigeria, most of them Fulani Muslims in search of new grazing routes, is perceived by farmers, mostly Christians, as a threat to their economy and lifestyle. Pastoralists resent their limited access to public resources and feel discriminated against. The effects of climate change are also a cause of land competition in that, owing to the increasing desertification and droughts affecting the north, the grazing lands where pastoralists can take their herds have been reduced, forcing them to move south. In parallel, local farmers in the Middle Belt have been taking more land for cultivation, in some cases including long-agreed grazing routes for herders, resulting in a reduction of places for herders to water and graze their stock.

Most civil society and government representatives asserted that the current religious and ethnic dimensions of the conflicts were not a primary cause by themselves, but a result of the use of these factors by the different groups in order to mobilise and reach out to a larger number of people to their cause. This has added an extra layer of complexity to the situation while extending the conflict, owing to the escalation of violence through retaliation. A commentator said that "if a person of an ethnic or religious group is killed, that person's people go and kill people of the other group".

Most people consulted repeatedly highlighted the widespread lack of accountability and instigators and perpetrators of violence. It was noted that law enforcement is of paramount importance to guarantee the principle of rule of law and to prevent violence from escalating further; in fact, participants in consultations affirmed that impunity was reinforcing the cycle of violence and retaliatory actions, leading people to take the law into their own hands.

State-sponsored security initiatives have been launched in both Plateau and Kaduna States to tackle the recurring episodes of violence affecting the region. A special joint security initiative, "Operation Rainbow", began in Plateau State in 2010, inspired by a similar security initiative implemented by Kaduna State known as "Operation Yaki". Operation Rainbow is entrusted with "ensuring peace and security of lives and properties on the Plateau through the process of proper articulation and deployment of all embracing measures that would adequately address and contain the democratic values and rule of law issues that have potentials of leading to crisis in the state".

Operation Rainbow was framed as a multi-faceted intervention that focuses on four different dimensions:

(a) Political, through fostering dialogue with a range of stakeholders to promote good governance;
(b) economic, by implementing youth and women empowerment programmes as well as training courses to promote employment;
(c) Social, by encouraging dialogue among a wide range of stakeholders, such as civil society organisations, traditional rulers, religious leaders and family members; and
(d) Security, through the deployment of security forces. Operation Rainbow includes a system of "neighbourhood watch", where specially trained members of communities gather and report relevant information to prevent violent conflicts. It was acknowledged that shortages in relation to police resources, such as lack of fuel for police vehicles, must be addressed.

Civil society actors stated that security forces must be given sufficient and adequate capacity, training and resources to perform their duties. Training in human rights must be an integral part of security forces' instruction. Nevertheless, they noted that sustainable solutions to communal violence require not only a heightened security response, but also a comprehensive approach that addresses the underlying causes of violence, particularly good governance deficits, failure to hold perpetrators accountable and low socioeconomic status of certain vulnerable groups.

6.5.3 Religious Minorities in Plateau and Kaduna States

Nigeria is a multi-faith society where religion plays an important role in people's daily lives. In most cases, religious communities live harmoniously in a climate of mutual respect and acceptance, work together to foster interfaith dialogue, engage in shared activities for the benefit of their communities and strengthen understanding and dialogue between them.

Plateau and Kaduna States comprise large communities of Christians and Muslims that have coexisted peacefully. Nevertheless, in some locations, the climate of mutual trust and respect among interreligious communities has been eroded over recent years, leading to growing feelings of mutual suspicions and fears. In some cases, the divisions have become geographical, with separate neighbourhoods emerging along religious lines. It was stated by some commentators that, in Kaduna State and its capital, the northern part is predominantly inhabited by Muslim Hausa and Fulani communities while Christian ethnic groups were moving to the southern part.

Episodes of inter-communal violence in both States have affected members of both Christian and Muslim communities, which constitute religious minority groups depending on their location in each State. Some victims of inter-communal violence reported growing levels of religious intolerance and reprisals on the grounds of their religious beliefs, including physical attacks.

The Special Rapporteur met with Christian victims of violence in Jos. They recalled an attack against them and other members of the community in 2012 perpetrated by groups they described as radical Islamists. The victims referred to the "radical ideology" of the attackers as the root cause of the violence. They claimed to have reported the attack to the police but that no action had been taken against the perpetrators. The victims insisted on the need for accountability for justice and as a meaningful and effective deterrent. They regretted what they regarded as a total impunity of those responsible for instigating and conducting the

attacks.

The Special Rapporteur visited the internally displaced person's camp of Mandu Hajj in Kaduna South and held interviews with some Muslim victims who were still living in the camp (they were required by authorities to leave by the same day). They recalled the attack suffered by their community in Kaduna State in 2011, in which a mob of people started to burn the houses of the community following the announcement of the presidential election results. Dozens of people were reported to have died during the attack. Some contended that the attack was mainly politically motivated, while others maintained it was religiously motivated but sparked by political factors. They stated that security forces did not arrive when the attack started, despite the numerous calls made. A victim affirmed that he was told that the police could not go because "they did not have fuel in the cars". It was stressed that the perpetrators were currently free and had not been convicted or arrested.

The Special Rapporteur witnessed the poor conditions in which the victims had to live at Mandu Hajj camp, where they were placed after the attack, including overcrowded rooms separated by sexes and not on the basis of family ties and lack of electricity and water supply. Some babies were reported to have died due to diarrhea and other infections during the months the camp was operative. The victims indicated that the Government had promised them compensation to rebuild their houses but they had only received a minimal amount that did not cover their expenses.

The Special Rapporteur met with leaders of the Muslim and Christian communities in Plateau and Kaduna States. In Jos, she met leaders of the Muslim community, who highlighted that the root causes of the violence against Muslims in the State included the stigmatisation of the Muslims, which had been caused by a widespread perception of Muslims as "threats". Political leaders were accused of playing a key role in fuelling the tensions. Muslim leaders also stressed that Boko Haram did not represent Islam in Nigeria or globally and had also targeted and killed Muslims.

Leaders highlighted other problems faced by the Muslim community, including the impossibility to obtain an indigenes certificate despite numerous years of residence, the lack of adequate political representation at the local and state levels and difficulties in gaining access to university, given that scholarships were reserved for indigenes. One of the participants stated that "this means making marginalised communities more marginalised".

In Kaduna, the Special Rapporteur met with the Executive Secretary of the Northern Christian Association of Nigeria. He claimed that distorted religious principles lay at the root of the problems and violent episodes of inter-communal conflicts. He noted that political competition was another factor leading to inter-communal conflicts, as the Christian community had begun to get more involved in politics and governance. He affirmed that, in order to address the menace of Boko Haram, it was necessary to combine an effective security response with appropriate education measures, including human rights education in the school curriculum.

While recognising the profound problems and diverse challenges that threaten sustainable peace in the Middle Belt, the Special Rapporteur was impressed by numerous initiatives led by the civil society and religious leaders to achieve conflict resolution and bridge the gap between communities in both Plateau and Kaduna States. In Jos, she learned about examples of Muslim leaders working in partnership with Christian leaders to address together the conflicts and find adequate solutions collaboratively.

In Kaduna, the Special Rapporteur met with the leaders of the organisation, Christian-Muslim Alternative to Conflict, which was established in 2013. The organisation gathers several Christian and Muslim groups and its main focus is to promote dialogue and mediation in community conflicts as a tool to achieve peace and foster interreligious dialogue. She also learned about the activities of the Interfaith Mediation Centre, a non-governmental organisation founded in 1995 that had been conducting peace building and mediation work to settle conflicts between Muslim and Christian communities across the Middle Belt.

The Special Rapporteur was pleased to learn about peace building initiatives led by women. She met with the president of the Women without Walls Initiative, an organisation jointly founded and run by Christian and Muslim women in Jos that works to implement a non-violent and inclusive approach to conflict resolution through various educational community projects targeting women and young people. Its initiatives include the rehabilitation of schools, organisation of conflict management seminars for young people and the implementation of programmes to foster women's economic empowerment. The Initiative also promotes awareness of the role of women in peace building and conflict resolution.

Other peace building initiatives led by women included a peace

education project in Bauchi carried out by a young woman. Using her own resources, she had been working with hundreds of children in different schools to foster understanding, trust and mutual acceptance among them as well as to engage them with children in other countries affected by conflict.

6.5.4 Minority Groups in the Middle Belt Region

The Niger Delta is located in the Southern part of Nigeria, comprising an area of 70,000 km^2 that encompasses nine States: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers. The Niger Delta is crossed by the Niger River, the largest river in Nigeria, in a land covered with swamps, rainforests and woodlands. It is a region extremely rich in natural resources, particularly in oil, which was discovered in the 1950s. The Niger Delta is home to a large number of ethnic groups and communities, including Ijaw, Ikwerre, Itsekiri, Isoko, Ogoni and Ukwuani. The Special Rapporteur travelled to Rivers State, where she visited Port Harcourt, the Ogoni communities of Bodo and Goi and the Ikwerre community of Rumuekpe.

In Port Harcourt, representatives of the Movement for the Survival of the Ogoni People briefed the Special Rapporteur on the current situation of the Ogoni communities. Ogoni land is located in Rivers State and covers around 1,000 km^2. It has been the site for oil industry operations since the late 1950s. Ogoni land suffers from severe and well-documented environmental pollution from oil spills and oil well fires that have contaminated the land, water, vegetation and air, with a devastating impact on the livelihoods of many Ogoni communities. In a 2011 report, the United Nations Environment Programme (UNEP) found that oil contamination in Ogoni land was "widespread and severely impacting many components of the environment".[254] It also noted that most residents had lived with chronic oil pollution throughout their lives, with grave impacts on their health and livelihoods, as well as the presence of high levels of contaminants, including the known carcinogen benzene, in communities' drinking water.

In the report, UNEP stated that the environmental restoration of Ogoniland was possible, but warned that it would take 25 to 30 years. The recommendations contained in the report included the creation by the Government of an Ogoniland Environmental Restoration Authority to oversee the implementation of the recommendations and the establishment of an Environmental Restoration Fund with an initial provision of $1 billion. In July

254 United Nations Environment Programme, *Environmental Assessment of Ogoniland* (Nairobi, 2011). (Available from http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf.)

2012, a special unit within the Federal Ministry of Petroleum Resources, the Hydrocarbon Pollution Restoration Project, was created and entrusted with the mission to protect and restore the environmental human rights of all communities affected by hydrocarbon pollution in Nigeria.

In Bodo community, some Ogoni leaders described the Ogonis as "a minority within a minority" and highlighted the main problems faced by the community, particularly the effects of the oil spills that they allege to be caused by the petrochemical company Shell, which have severely polluted the soil and the water, resulting in health problems, limiting farming and creating a food crisis. They claimed that neither the federal nor the local government had visited the community to inquire about their situation. They described having each being offered financial compensation by Shell that they had refused to accept, considering it inadequate. The representatives stated that they wanted the oil company to access the community and clean the polluted area.

Other areas of concern stressed by the Bodo community leaders included the underrepresentation of Ogoni people in politics and the declining situation of the Ogoni language, which is no longer included in the school curriculum, the only mandatory languages since 1986 being Ibo, Hausa and Fulani. It was noted that the Ogoni language was featured on local television for only 15 minutes per day, and not at all at the federal level. The representatives advocated for a multilingual education programme in schools that included teaching children their mother tongue. One of the community representatives said that "Once you lose the language, you lose your identity, and therefore who you are", and stated that between 80 percent and 90 percent of the children currently did not speak their local languages.

In Goi, community representatives stated that the land of the community had been abandoned owing to oil pollution. Many people in the community reportedly suffered from health problems, particularly asthma and skin-related diseases, and there was a high prevalence of miscarriages among women. The primary source of livelihood for the community was fishing, which had been lost when the water and soil became polluted. Goi representatives protested that the community had not been recognised as being affected by oil pollution. They reported a lack of basic services in the community, such as a hospital or a school. The Special Rapporteur visited areas of the community affected by oil spills and saw first-hand the devastating effects of oil pollution.

The Special Rapporteur visited Rumuekpe, an Ikwerre community that had been abandoned after intercommunal conflict from 2005 to 2010. Community members commented that tensions within the community were linked to the disagreements over payments by oil companies to some community members. In 2010, the community had signed a peace agreement and some currently displaced people were returning to the area. During the visit, community representatives pointed out that, despite the fact that there were currently four oil companies operating in Rumuekpe, the community lacked basic services, such as a hospital, school and water supply. One commentator claimed that "the Government has not provided any service and always takes the side of the oil companies. They [oil companies] blackmail the Government by not paying revenues or stopping production in order to get what they want".

The Special Rapporteur consulted representative from Shell Nigeria to seek the company's views on the situation and to find out its activities in the Niger Delta. Shell informed her that the company had not operated in Ogoni land since 1993, but acknowledged that two of its pipelines passed through the Ogoni territory. Shell claimed that the profound environmental degradation was mainly due to oil spills caused by the sabotage of pipelines and bunkering (the illegal tapping of pipelines and small-scale refining). It indicated that, according to its own estimations, in 2012, 95 percent of spill volumes were caused by sabotage and only 5 percent were due to Shell's operations. The company stated that compensation to the affected communities was only payable in the event of an operational spill.

Shell affirmed that, if granted access to the territory of a community that has suffered an oil spill, it would clean up the polluted area. It indicated that Bodo community leaders had not granted them access to the community. It also stated that communities had denied it access to the sites in order to claim higher compensation. Shell representatives noted that it would like the Government to play a more active role in the development and regeneration of the area.

6.5.5 Governance and Political Participation

It was frequently stated by civil society organisations, community representatives, youth groups and religious leaders that good governance and inclusive political participation were key factors to achieve social and political stability as well as a means to overcome many of the socioeconomic challenges faced by Nigeria at present. One commentator acknowledged that "Nigerians would care less about ethnicity and religion if poverty and inequalities were really addressed".

Several non-governmental organisations reported endemic corruption permeating the local, state and Federal political levels, and denounced the lack of budgetary transparency, which renders the monitoring and accountability of political actors extremely difficult. There was a commonly shared claim that revenues from petroleum, which constitute most of the national wealth, were not trickling down to communities. In the December 2013 report on Nigeria by the Working Group on the Universal Periodic Review, Côte d'Ivoire recommended that Nigeria "reinforce anti-corruption laws".[255] This recommendation enjoyed the support of Nigeria.

The Government stated that the Constitution provided equal opportunities for political participation. It was stressed that the Federal Character Commission was the body in charge of guaranteeing equality of State representation in Federal institutions and administrations, through the application of the federal character principle. This principle can be traced back to the quota system introduced in the recruitment procedures of the Nigerian Armed Forces before independence, as a means to ensure no particular group would be a majority in the army.

The Special Rapporteur met with several members of the Federal Character Commission in Abuja. They informed her about the work of the Commission to foster a regional balance in public representation, particularly the development of a set of guidelines for the distribution of posts in the federal public service, including a provision stating that the indigenes of any State shall not constitute less than 2.5 percent or not more than 3 percent of the total positions available, including junior staff at the head office. It was also stressed that ethnic and religious aspects were not taken into account in applying the federal character principle in order to preserve the secular character of the Nigerian State.

Numerous non-governmental sources contended that the fact that the Federal Character Commission did not consider ethnic and religious aspects in applying the federal character principle rendered the equality of the representation of States' groups ineffective. Some representatives of non-governmental organisations affirmed that it was necessary to rethink the mandate and composition of the Commission in order to establish a proportional representation to ensure that ethnic and religious diversity was fully reflected within national, state and local institutions.

255 See A/HRC/25/6, para. 135.9

The Special Rapporteur is concerned that, despite the relevant role played by women, particularly minority women, in civil society initiatives, she hardly encountered women participating in Government and political leadership. She was informed of the adoption in December 2006 of the National Gender Policy,[256] which includes among its goals, "to achieve gender equity in political participation and representation, and to draw up mechanisms for the empowerment of women in politics". The National Gender Policy reserves a quota of 30 percent of political positions for women, in order to increase the number of women in elective positions and decision-making processes. She was informed of the growing presence of women in high-level political positions, and the appointment of 13 women as ministers following the 2011 elections. Nevertheless, the political participation of women in Nigeria remains low. According to the United Nations Development Programme, only 32 out of 469 seats in the National Parliament are held by women, which constitute 8 percent of the total representation.[257] There is lack of information regarding the political participation of minority women and the challenges they face in having their voices heard.

The Special Rapporteur welcomed the establishment of the National Dialogue Conference 2014, a nationwide forum convened in Abuja under the auspices of the Government to bring together a wide range of stakeholders (492 delegates representing ethnic groups, civil society organisations, political parties and professional associations, among others) to discuss and address the challenges Nigeria faces. Many civil society actors noted that the Conference could provide an ideal arena to discuss nationally long-standing minority issues and challenges and provide communities with a participatory role in this forum. Interviewees expressed hope that representatives of minority groups would be invited to attend the meetings.

The Special Rapporteur notes that further consideration of the outcomes of the National Dialogue Conference 2014 are required in order to understand the implications for minority issues. However, she welcomed the recommendation of the Conference that States should establish a 35 percent quota to ensure that women, minorities, people with disabilities and other marginalised groups participate and are represented in governance and other spheres of life.

6.5.6 Linguistic Rights

256 Available from http://cewhin.org/pdf/National%20Gender%20PolicySituation%20Analysis.pdf.

257 See www.undp.org/content/undp/en/home/ourwork/democraticgovernance/successstories/nigeria--a-boost-for-women-s-participation-in-politics/.

According to estimates of the United Nations Educational, Scientific and Cultural Organisation (UNESCO),[258] 27 languages are currently endangered in Nigeria. However, a pilot survey on endangered languages and cultures in Nigeria conducted by the Federal Ministry of Tourism, Culture and National Orientation in 2010 determined that there were 520 languages in the country, hundreds which fell into the category of "endangered language".

Diverse civil society actors also conveyed their concerns over minority languages in decline or at risk of disappearing within their territories and lamented those already lost. Many spoke passionately about the need to implement measures to protect their mother tongues. Various reasons have been given as the leading causes of the disappearance of minority languages, including the lack of mother-tongue instruction, the failure to include minority languages in the school curriculum, lack of political will to promote local languages, the pressure exerted by languages spoken by large populations of speakers and the abandonment of native languages in favour of Nigerian Pidgin or English, among others.

It was evident that there were different and opposing approaches on how to tackle the problem of the decline and disappearance of minority languages in Nigeria. Some described the need to amend Article 55 of the Constitution, which states that "the business of the National Assembly shall be conducted in English, and in Hausa, Ibo and Yoruba when adequate arrangements have been made thereof", considering it gives prevalence to three specific languages over all others. This approach was also very critical of the current language education curriculum in Nigerian schools, in which it is compulsory to study either Hausa, Ibo or Yoruba, in addition to English, and which does not have any provision regarding minority language education.

On the other hand, some were of the opinion that prioritising Hausa, Ibo and Yoruba languages, the three most widely spoken languages, along with English, was beneficial. Those of this perspective maintained that it was not feasible to provide mother-tongue education in each of the minority languages, given their large number. Instead, they maintained that the primary responsibility for educating children in their mother tongue was of parents. They also emphasised the importance and significance of keeping at least these three native Nigerian languages mandatory alongside English. Representatives of the Ministry of Culture acknowledged they were in favour of the

258 Available from www.unesco.org/culture/languages-atlas/index.php.

introduction of some criteria to teach local languages in schools and highlighted the importance of preserving minority languages as part of the cultural heritage of the peoples. As one of the representatives asserted, "Once the language dies, the culture dies".

Article 4, paragraph 3, of the 1992 Declaration on Minorities calls on States to take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. In its position paper on education in a multilingual world,[259] UNESCO asserts that mother-tongue instruction is highly beneficial in terms of school performance; it allows students learn to read more quickly and to learn to read in a second language more quickly, and students taught to read in their mother tongue also acquire academic learning skills more quickly.

The Special Rapporteur welcomed the programme implemented by the Ministry of Culture, currently in its second phase, to safeguard endangered languages, as well as the existence of the National Institute for Nigerian Languages, a specialised body in the Ministry of Education in charge of languages, a main objective of which is the promotion of "the study and use of Nigerian languages".

6.6 Conclusions and Recommendations

The history and configuration of present-day Nigeria is inextricably linked to the existence of hundreds of ethnic groups and languages. For the most part, Nigeria has managed to achieve a relatively peaceful and harmonious coexistence among the different groups. However, such diversity also poses important challenges to manage and appropriately address intercommunal and minority issues and to foster the conditions to ensure continued peaceful coexistence. While the principle of equality and non-discrimination is recognised in the Constitution, in order to implement adequate measures to guarantee equality and minority rights it is necessary to know in depth the composition of all groups within the country and understand the inequalities, challenges and issues that exist.

(a) Indigenes/Settlers Dichotomy

The Special Rapporteur considers the distinction between indigenes and settlers to be potentially damaging to intergroup relations and peaceful coexistence. It has opened and reinforced ethnic and religious cleavages and contributed to tensions and

259 Available from http://unesdoc.unesco.org/images/0012/001297/129728e.pdf.

conflict. Some groups regard indigene status as a safeguard of their rights in the light of the growing numbers, influence and economic dominance of other groups, while others consider it a breach of the right to equality and non-discrimination. If this distinction is maintained, further legal clarity will be required to regulate the indigeneship status and guarantee that no person is unfairly discriminated against or excluded from access to services and resources, land or the right to participate fully in the economic, social, cultural and political life.

(b) Middle Belt Communities

The Middle Belt region comprises an ethnically, religiously and linguistically diverse mosaic of groups and communities, which for the most part have lived together in harmony and mutual respect. Nevertheless, over the past years, some States in the region have suffered episodes of inter communal violence that, while exhibiting ethnic and religious dimensions, have root causes that are complex and multi-faceted. They are rarely based on ethnicity or religious factors alone.

The distinct status of indigenes and settlers and the unclear criteria to differentiate between them have frequently resulted in profound socioeconomic inequalities among citizens living in the same state. Many of those regarded as settlers have been living in a given state for generations and yet face insurmountable obstacles to exercise their rights to political participation at the local and State levels, access to public jobs, scholarships and land. This differentiated status has caused resentment among communities, contributed to fuelling tensions and paved the way towards episodes of violence.

The use of and competition for land has triggered many of the violent clashes among communities. The growing presence of pastoralists from the North in the Middle Belt region seeking grazing pastures for their livestock and the increasing cultivation of land by local farmers have resulted, in a number of cases, in violent intercommunal conflicts. The dynamics of these tensions and conflicts have grown in complexity when ethnic and religious affiliations of the groups involved have been mobilised.

Availability and exploitation of natural resources, and the impact of climate change in the North and Central regions, including desertification, droughts and food and water shortages, must be recognised as key issues and adequately addressed. The Government is urged to plan and implement coordinated National and State policies to fight the adverse effects of climate change and provide sustainable solutions to the use of land by different communities with competing lifestyles and livelihoods.

Federal and State Governments have acknowledged that socio economic factors, including poverty, high levels of illiteracy, unemployment and insufficient income levels are among the underlying causes fuelling tensions and violence among groups in the Middle Belt. Minorities are often among the most disadvantaged populations and experience the worst socioeconomic conditions. A comprehensive national plan against poverty and social exclusion should be urgently adopted, with clear objectives and specific benchmarks and timelines for completion. The plan should contain measures focused on the most vulnerable groups at the state and local levels, and include specific attention to the issues of minority women.

Members of Christian and Muslim communities reported what they perceived to be religiously motivated attacks against them. The Special Rapporteur is deeply concerned by the escalation of attacks by Boko Haram, which provides a distorted interpretation of religious principles to justify its violent actions. Leaders and members of the Muslim communities emphasised that Boko Haram represents neither Islam nor Islamic principles and that its attacks, including killings, kidnappings and destruction of properties, are also targeted against Muslims, are unacceptable and must be condemned. The Federal Government is urged to set up and implement as soon as possible a comprehensive security and prevention strategy to combat these unlawful actions by Boko Haram and/or other radical groups, in full compliance with human rights standards.

Lack of accountability and impunity were repeatedly stated as major flaws of the criminal justice system. A culture of impunity has extremely pernicious effects; investigations are not undertaken or poorly managed, prosecutions are not initiated or pursued, victims are left defenceless, the role of security forces is negatively perceived and, in many cases, people decide to take the law into their own hands. Perpetrators must be persecuted and held accountable for their crimes. Police and security forces must be trained in human rights and minority issues and provided with sufficient and adequate means to carry out their tasks. Mechanisms for adequate compensation and redress of victims must be implemented.

The Special Rapporteur stresses that sustainable solutions to communal violence require not only a heightened and effective security response, but also a comprehensive approach that addresses the underlying causes of violence, particularly good governance deficits, failure to hold perpetrators to account and low socioeconomic status of certain vulnerable groups. The Special Rapporteur was impressed by initiatives led by a number of civil society actors directed at fostering intercommunal and

interfaith dialogue and peace building among communities in the Middle Belt. Those initiatives promote understanding and harmonious coexistence among communities, conflict prevention and conflict solution. She urges the Government to provide financial support to such initiatives and consider implementing similar projects where necessary.

(c) Niger Delta Communities

Oil industry operations began in the Niger Delta at the end of the 1950s. Numerous oil spills during the past 50 years have resulted in extremely grave environmental damage across the region, causing water and soil pollution and destroying the livelihoods of many communities. One of the areas particularly affected is Ogoni land in Rivers State, the home of the Ogoni people. The Special Rapporteur witnessed the devastating effects of the oil spills in affected Ogoni and Ikwerre communities, including the destruction of traditional farming and fishing livelihoods owing to widespread soil and water pollution, severe health problems among community members and population migration to other areas. The lack of basic services and adequate facilities in the affected communities have further contributed to their situation of marginalisation and abandonment. The authorities are urged to take effective measures to assist the communities in need, providing health care and education facilities and foster means for the creation of alternative livelihood options.

The Special Rapporteur is concerned that, to date, many areas polluted by oil spills in Ogoni land are yet to be cleaned. The Government, in coordination with oil companies implicated in the environmental damage, should implement the recommendations made by the 2011 United Nations Environment Programme report *Environmental Assessment of Ogoni land*,[11] including the proper maintenance of oil field facilities and the decommissioning of facilities that are no longer used; the creation of training, employment and livelihood incentives to encourage people not to participate in illegal oil-related activities; the implementation of clean-up actions in all affected areas without further delay; the distribution of potable water to communities where drinking water wells do not comply with Nigerian national standards; and the monitoring of all such measures during and following clean-up operations, including tracking the health of communities exposed to oil pollution and providing adequate medical treatment when needed. Concerned communities must be consulted fully.

(d) Governance

Good governance is essential for a fully democratic and inclusive Nigerian society, minority rights, social stability and the

promotion of the rule of law. Nevertheless, a good governance deficit exists in Nigeria with implications for minority issues and rights and community relations. Good governance comprises different intertwined features, including inclusive participation, consultation, the fight against corruption, transparency of political decisions and accountability by political stakeholders. In the context of minority rights, good governance is an essential element to guarantee that minority groups who do not hold dominant positions participate in and are fairly considered when taking political decisions. Good governance plays a fundamental role in preventing tensions and conflicts, as it guarantees participation and the civil, cultural, economic, political and social rights of all groups.

Persistent allegations of widespread political corruption are serious concerns that affect minority rights and require an unequivocal response from the Government at all levels to effectively address those practices. Anti-corruption agencies should be strengthened and the establishment of a comprehensive national plan against corruption as well as new legislation should be considered. Budgetary transparency must be fully implemented as a means to effectively monitor political decision-making processes and to provide accountability mechanisms.

(e)Political Participation

It is of great importance to ensure representation of ethnic, religious and linguistic diversity at the different government levels. In order to guarantee equal participation at the federal level, the Federal Character Commission promotes the application of the federal character principle. Nevertheless, the Commission does not consider ethnic or religious elements, which leads many civil society groups to consider the principle of equal participation of the diverse groups ineffective in practice. The Special Rapporteur urges the Government to expand the scope of the federal character principle and the work of the Commission to include ethnic and religious identity.

Minorities, particularly minority women, are poorly represented in political life at all levels, especially at state and local governments. The Special Rapporteur notes the lack of information pertaining the situation and challenges faced by minority women, particularly in decision-making processes. Concrete and targeted measures are required to promote the active and effective political participation of women at all levels. Affirmative action measures to promote minorities and minority women in political life, including the use of quotas in political parties, should be considered.

The Special Rapporteur commends the Government for the establishment of the National Dialogue Conference 2014 as a nationwide forum where the diverse stakeholders gathered and discussed the current political, social, economic and cultural issues, including long-standing minority issues. She encourages the Government to continue providing similar platforms for an inclusive participation of groups in decision-making processes as meaningful ways to foster dialogue and find consensual solutions to minority issues.

(f) Census and Statistics

Nigeria does not collect or analyse data disaggregated by ethnicity, religion or language. The Special Rapporteur encourages collection and analysis of disaggregated data, which are essential for Nigeria to fully map its population and provide a complete picture of its diversity and the socioeconomic conditions of its various groups. The advantages, in terms of strategic planning and implementation of effective policies to ensure the rights of disadvantaged minorities and other marginalised groups, outweigh the concerns. Provisions should be put in place to safeguard against discrimination, stigmatisation and any misuse of sensitive information, in accordance with international standards of personal data protection and privacy.

At the federal, state and local levels, disaggregated data gathering, including the national census and social surveys, should be conducted and statistical analysis undertaken to provide an accurate picture of the population and key characteristics and socioeconomic status of different groups. Census questions should allow open and multiple responses to enable respondents to self-identify according to their national, ethnic, religious and linguistic affiliation, including multiple identities.

The scarce disaggregated data available reveal worrying issues in relation to socioeconomic rights, including high poverty and unemployment rates and regional disparities in access to education. The fulfilment of economic and social rights is not only a human rights obligation but also a fundamental step to foster social peace and stability. Measures to improve the socioeconomic conditions of the population, particularly of those most disadvantaged groups, must be carefully planned and implemented on the basis of comprehensive data.

(g) Civil Society Organisations

The Special Rapporteur was impressed by the high quality of civil society organisations. She acknowledges that their work makes a fundamental contribution to raising awareness and tackling

minority rights concerns, and encourages them to continue their valuable work. She also urges the Government to enhance cooperation with civil society organisations and support them in all necessary and possible ways so that they can continue their valuable work, often in essential areas where Government action is lacking.

(h)National Human Rights Commission

The Special Rapporteur commends the work of the National Human Rights Commission as a key institution for the promotion and protection of human rights. She welcomes the enhanced status given to the Commission in 2010, widening its mandate and powers. Sufficient resources should be allocated to enable the Commission and its regional offices carry on their work and to ensure adequate and dedicated attention to the issues of minorities in each region. Its independence must be always preserved to duly fulfil its fundamental mandate. Recruitment of staff from diverse ethnic and religious communities should be ensured.

(i) Linguistic Rights

The linguistic diversity in Nigeria includes hundreds of languages. However, many of them are seriously endangered and some have become extinct. The Special Rapporteur recognises the considerable efforts of the Government to safeguard endangered languages and encourages it to continue and intensify its efforts to preserve Nigeria's rich language heritage.

The multiplicity of minority languages poses challenges to the feasibility of mother-tongue instruction. The Special Rapporteur recalls the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, under which States are required to take appropriate measures to provide mother-tongue language education or instruction wherever possible. The Government should make available adequate funding and take practical steps, including provision of teaching materials to assist teaching of and instruction in minority languages in public schools. Where numerous languages exist in a locality, Government should consider formal and informal methodologies and programmes based on local language traditions, needs and requirements.

Among the difficulties faced by speakers of minority languages is the scarce presence of minority languages in public and private media. Media can play a significant role in the promotion and preservation of minority endangered languages and consequently the preservation of minority cultures and identities. The allocation of specific spaces for local languages on

television channels and radio programmes, as well as in the written press, should be encouraged and supported.

(j) Education

The Government must take appropriate actions to ensure that all children, regardless of their social status, have access to compulsory education. Special measures should be adopted to combat school dropouts, including those owing to poverty and socioeconomic factors, and ensure school attendance of children belonging to minorities, particularly minority girls, including assessments of the situation of minority children, increased provision of minority-language education, increased funding for education and collaboration with state and local governments and civil society organisations.

A specific subject on citizenship education should be introduced in the school curriculum to provide students with the fundamentals of human rights, political institutions and the rule of law. Knowledge of the diversity of Nigeria, including the history of its diverse ethnic, religious and linguistic groups and communities and their important contribution to enriching Nigeria's culture, society and unity, should also be an integral part of the national education programmes.

Chapter 7

REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

7.0 Executive Summary

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment undertook a visit to Nigeria from 4 to 10 March 2007. The visit included stops in Abuja, Lagos, Port Harcourt and Kaduna. He expresses his appreciation to the Government for the cooperation extended to him.

The Special Rapporteur welcomes Nigeria's commitment to promoting respect for human rights, as demonstrated by, among other things, its record of cooperation with international human rights mechanisms and organisations. He appreciates the challenges the State faces given the sheer size and diversity of the population, including ethno-linguistic and religious groups, the plurality of legal systems, the nature of the federal structure, the high level of crime, widespread poverty (despite the potential enormous wealth from oil revenues), and the conflict in the Niger Delta.

On the basis of an analysis of the legal system, visits to detention facilities, interviews with detainees, the support of forensic medical evidence, and interviews with government officials, lawyers and representatives of NGOs, the Special Rapporteur concluded that torture and ill-treatment is widespread in police custody, and particularly systemic in the Criminal Investigation Departments. In a vivid first-hand account, the circumstances surrounding the deaths of the two persons personally interviewed by the Special Rapporteur - examples of serious torture, disappearance and extrajudicial killing – illustrate and confirm the inability of the current system to effectively investigate allegations, protect victims of serious human rights violations, and bring law enforcement officials in Nigeria to account.

The conditions of detention in police cells visited were appalling. All the prisons visited were characterised by severe overcrowding, consisting of an inmate population which is typically double or triple the actual capacity of the facility. The vast majority of detainees are held in detention awaiting trial or held without charge for lengthy periods, as long as 10 years. However, female prisoners are provided with considerably better facilities.

The Special Rapporteur notes that corporal punishment, such as caning, and including sharia penal code punishments of the northern states (i.e. amputation, flogging and stoning to death), remain lawful in Nigeria. He recalls that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Under international law, they are not lawful sanctions and violate the international human rights treaties to which Nigeria is a party.

Noting that capital punishment is still available under the laws of Nigeria, the Special Rapporteur is encouraged by the policy of President Obasanjo not to carry out executions. However, he expresses concern that persons continue to be sentenced to death, contributing to the growing numbers of persons languishing on death row for many years in conditions that are inhuman. The Special Rapporteur welcomed the adoption of a number of State laws prohibiting discrimination against women in critical areas, such as female genital mutilation and early marriage. Despite such legislation, however, he remains concerned at the persistence of these practices and the social acceptance of them and the lack of effective mechanisms to enforce the existing prohibitions.

These findings are not new as many credible human rights organisations, as well as United Nations human rights mechanisms, have documented and concluded that torture is widespread in the country and that the conditions in detention are unacceptable. Nigerians themselves have exhaustively identified the nature and scale of these problems. Indeed, in August 2005 and again in a meeting with the Special Rapporteur on 21 May 2007, President Obasanjo clearly acknowledged the severity of the problem of torture in the country. Accordingly, the Special Rapporteur recommends a number of measures to be adopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.

7.1 Introduction

The Special Rapporteur was invited by the Government of Nigeria to undertake a visit to the country from 4 to 10 March 2007. The visit included stops in Abuja, Lagos, Port Harcourt and Kaduna. The Special Rapporteur held meetings with the President, the Minister of State for Foreign Affairs, the Minister of Internal Affairs, the Controller General of Prisons, the Inspector General of Police, the Attorney General and Minister of Justice, the Solicitor General, the Chairman of the Economic and Financial Crimes Commission, the Executive Secretary of the National Human Rights Commission, as well as with State Police Commissioners and Prison Controllers. On the last day of his visit

he was also received by representatives of the State Security Services.

The Special Rapporteur met with non-governmental organisations (NGOs) in Abuja, Lagos, Port Harcourt and Kaduna and with representatives of the corporate sector. In addition, the Special Rapporteur held meetings with representatives of the International Committee of the Red Cross (ICRC), the United Nations country team, including the United Nations Development Programme (UNDP), United Nations Children's Fund (UNICEF), United Nations Development Fund for Women (UNIFEM), United Nations Population Fund (UNFPA), United Nations Office on Drugs and Crime (UNODC), United Nations Educational, Scientific and Cultural Organisation (UNESCO), Word Health Organisation (WHO), and the diplomatic corps in Abuja.

The purpose of the mission was twofold: to assess the situation of torture and ill-treatment in the country and to offer assistance to the Government in its efforts to improve the administration of justice, including the police and prison sector. The Special Rapporteur expresses his appreciation to the Government for the cooperation extended to him during the visit. A primary focus of the visit was the inspection of detention facilities in the country and, in this regard, he expresses his appreciation to the Government for the respect of the terms of reference for the visit. In particular, he wishes to thank the Inspector General of Police (IGP) and the Controller General of Prisons (CGP) for opening up the prisons and police detention facilities to unannounced visits and permitting the Special Rapporteur to conduct private interviews with detainees. In Abuja, he visited Kuje Prison and the Force Criminal Investigation Department, Garki. In Lagos, he visited the Panti Criminal Investigation Department, Yaba. In Rivers State, visits were made to Port Harcourt Prison, the State Police Headquarters, the State Criminal Investigation Department and the Central Police Department. In Kaduna, he visited the Central Prison, the State Police Headquarters and the State Criminal Investigation Department and its Annex.

The Special Rapporteur regrets that the State Security Service denied him access to their detention facilities on each of the three occasions he attempted to visit.[260] This constitutes a serious breach of the terms of reference agreed upon by the Government. Since he received credible allegations of torture by this intelligence agency, the denial of his right to assess for himself the allegations by inspecting unannounced the facilities and interviewing detainees in private leads him to strongly

260 For a description of the incidents, see appendix I, below

suspect that the authorities wished to conceal evidence. On 9 July 2007, a preliminary version of this report was sent to the Government. On 14 September the Nigerian Government provided comments, contained in appendix II of the present report.

The Special Rapporteur wishes to acknowledge with appreciation the excellent support provided by the United Nations Resident Coordinator, Mr. Alberic Kacou, and his staff in the United Nations country team; the Office of the High Commissioner for Human Rights (OHCHR); Dr. Duarte Nuno Vieira, Director of the National Institute of Forensic Medicine, Portugal; and Mr. Roland Schmidt and Ms. Isabelle Tschan, of the Ludwig Boltzmann Institute of Human Rights.

7.2 Context and Challenges in the Promotion and Protection of Human Rights

The Special Rapporteur welcomes Nigeria's commitment to promoting respect for human rights, as demonstrated by, among other things, its democratic principles, the existence of a vibrant media, dedicated civil society organisations, membership of the Human Rights Council, and its record of cooperation with international human rights mechanisms and organisations. He appreciates the challenges the State faces given the sheer size and diversity of the population, including ethno-linguistic and religious groups, the plurality of legal systems, the nature of the federal structure, the high level of crime, widespread poverty and the conflict in the Niger Delta.

7.2.1 Niger Delta Conflict

The increasing violence in the Niger Delta, with its roots in the Federal Government's decades-long neglect and marginalisation of people in the region, as well as the desperate poverty they face – despite the enormous oil revenues emanating from there – impacts upon the practice of torture and ill-treatment. The rise of serious violent crime and attacks by vigilante and criminal gangs against the local population and the oil companies operating there, and the resultant heavy response from security forces and police paid by oil companies,[261] invite allegations of

261 Oil companies in Nigeria rely upon Nigerian security forces to provide security for their business interests in the country. Under the Nigeria Police Act, which provides for the appointment of "supernumerary police", these officers "shall be a member of the Force for all purposes" and are subject to the Act's provisions on discipline. They provide payments to officers assigned for protection, which amount to premiums above their regular monthly salaries, as was affirmed to the Special Rapporteur by Shell Group representatives in Nigeria. See, for example, Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, 1999; and International Crisis Group, *The Swamps of Insurgency: Nigeria's Delta Unrest*, Africa Report No.115, August 2006.

torture and ill-treatment.

7.3 Legal Framework

Nigeria is party to the major United Nations human rights treaties prohibiting torture and ill-treatment: the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Nigeria is party to the Geneva Conventions of 1949 and to the Additional Protocols I and II, and has ratified the Rome Statute of the International Criminal Court.

7.3.1 International and Regional Levels

Nigeria has not acceded to the first Optional Protocol to ICCPR and has therefore not recognised the competence of the Human Rights Committee to consider complaints by individuals regarding violations of the Covenant. Neither has it acceded to the Second Optional Protocol aiming at the abolition of the death penalty. Further, Nigeria has not recognised the competence of the Committee against Torture to receive communications from individuals under article 22 of CAT and has not signed the Optional Protocol on the Convention against Torture (OPCAT).

Relevant regional human rights instruments ratified by Nigeria include: the African Charter on Human and Peoples' Rights (ACHPR) and its Protocols on the Rights of Women in Africa, the establishment of an African Court on Human and Peoples' Rights; and the African Charter on the Rights and Welfare of the Child. As a member of the African Union, Nigeria is encouraged to abide by the Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) adopted by the African Commission on Human and Peoples' Rights in 2002.

7.3.2 Constitutional Protection of Human Rights, including the Prohibition of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Chapter IV of the Constitution, entitled Fundamental Rights, provides for, inter alia, rights to life, dignity, personal liberty, a fair hearing, private and family life, freedom of thought, conscience and religion, freedom of expression and the press, peaceful assembly and association, freedom of movement and freedom from discrimination. The prohibition of torture and inhuman or degrading treatment is provided in section 34(1) (a): no person shall be subject to torture or to inhuman or degrading

treatment. According to section 12(1) of the Constitution, international human rights treaties shall only be applicable if they are enacted into domestic law by the National Assembly.

On the Provisions of the Criminal Code and Penal Code Criminalising Torture**,** Nigeria's criminal law is primarily based on two legal texts: the Penal Code, applicable in the mainly Muslim 12 northern states; and the Criminal Code, applicable in the remaining 24 southern states of the country. The 1990 Criminal Code does not contain any provision explicitly prohibiting torture with the requirements laid down in article 1 of CAT (For example, the requirements regarding the role of a public official and the intentional infliction of severe pain or suffering for a specific purpose, such as obtaining a confession, intimidation, or punishment), or any provision for adequate sanctions, as required by article 4 of CAT. However, Part 5, which deals with offences against the person, contains a number of provisions criminalising acts which may fall within the scope of the Convention, such as various categories of assault (chaps. 25 and 29), homicide (chap. 27), offences endangering life (chap. 28), and assaults on females (chap. 30). Section 298 criminalises the excessive use of force.

Penalties potentially range from imprisonment for one year for ordinary assault to 14 years for assault with intent to have unlawful carnal knowledge; 7 years to life for grievous bodily harm; life imprisonment for manslaughter; death penalty for murder; and life imprisonment, with or without caning, for rape. Under the Penal Code applicable in the mostly Muslim states of the north which have introduced criminal law based on sharia to the jurisdiction of sharia courts and courts of appeal,[262] acts amounting to torture may constitute offences such as infliction of injury, homicide and rape. Under sharia, the perpetrator of homicide and injury can only be punished if the victim or relatives of a victim seek punishment. If committed intentionally, the punishment is retaliation: punishment mirroring the injury inflicted. Blood money can be paid to the victim or the relatives of a victim in lieu of retaliation.

262 Twelve northern states: Zamfara State, Kano, Katsina, Niger, Bauchi, Kaduna, Sokoto, Borno, Gombe, Kebbi, Jigawa and Yobe. Section 4 of the Constitution specifies that the legislative power of the Government is divided between the federal and state governments. Section 4 (7) gives state houses of assembly the power to "make laws for the peace, order and good government of the State". Section 6 empowers states to establish courts with jurisdiction at first instance or on appeal on matters. Advocates of the implementation of sharia argue that sharia courts have jurisdiction to try criminal cases, because although the Constitution mentions sharia courts with regard to civil proceedings and Islamic personal law, it is silent regarding criminal law jurisdiction; criminal law is not on the Federal Exclusive List in the Constitution, and the states have residual powers to legislate in this sphere.

The Police Act and Police Regulations provide for internal disciplinary measures. Section 341 of the Police Act provides: "In the individual exercise of his powers as a police officer, every police officer shall be personally liable for any misuse of his powers, or for any act done in excess of his authority." The First Schedule of the Police Act lists several disciplinary offences which are subject to internal disciplinary sanctions, including unlawful or unnecessary exercise of authority, i.e. if an officer uses any unnecessary violence on any prisoner or other persons with whom he may be brought into contact in the execution of his duty, or is uncivil to a member of the public (q) (ii). Punishments include dismissal, reduction in rank, withholding or deferment of salary rise, a reprimand, a fine, or confinement to barracks for up to 14 days.

7.4 Safeguards against Torture and ill-treatment during Arrest and Detention

In Nigeria, police functions to arrest, detain and investigate suspects for offences vest in a myriad of law enforcement agencies, including the Nigeria Police Force, the military, the State Security Service, the Economic and Financial Crimes Commission, the National Drug Law Enforcement Agency, the Federal Road Safety Commission, and the Nigerian Security and Civil Defence Corps.[263] Nevertheless, in carrying out these functions, they are all governed by international, constitutional and domestic law.

The Constitution contains a number of safeguards for suspects: section 35 (2) allows a detainee or arrested person to remain silent until consultation with a legal practitioner and section 35 (3) guarantees the right to be informed about the facts and grounds of the arrest or detention. Section 35 (4) includes time limits and safeguards regarding imprisonment: a person who is arrested or detained shall be brought before a court within one or two days. Further, if a person is not tried within a period of two or three months, he or she shall be released either unconditionally or upon such conditions as are necessary to ensure that he appears at trial at a later stage (Sects. 35 (4) (a-b)).

According to Section 35 (1) (f), "a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period

263 Apart from duplication of duties, rivalry and competition for scarcer sources, the proliferation of law enforcement agencies has been criticised for the establishment of parallel law enforcement regimes with the concomitant proliferation of parallel cells and detention facilities, the potential for abuse, and a challenge for adequate central oversight. See the *Report of the Presidential Committee on Police Reform*, May 2006, pp. 185-187

longer than the maximum period of imprisonment prescribed for the offence". Section 36 contains procedural rights, including the presumption of innocence (Sect. 36(5) and the right to a fair hearing within reasonable time before an independent and impartial tribunal in case of a charge of criminal offence (sect. 36 (1)).

There are a number of provisions in the Criminal Code (CC) as well as in the Criminal Procedure Code (CPC), which potentially safeguard the integrity of an individual arrested or detained: a person arrested shall not be exposed to unnecessary restraint, including handcuffing, unless there is a judicial order, a reasonable apprehension of violence, an attempt to escape, or the consideration of the restraints as necessary for the safety of the person arrested (CPC,sect.4); criminal accountability of authorities using excessive use of force (CC, sect. 298); the limitation of force used in executing process or in arrest to be reasonably necessary when overcoming resistance (CC, Sects. 261, 272, 273). Further potential safeguards are the obligations to take an arrested person within a reasonable time to a police station (CPC, Sect. 9); to report persons arrested without warrant to the nearest magistrate (CC, sect. 20); to notify the person arrested of the cause of the arrest (CPC, Sect. 5); to inform the person arrested without delay of the charge against him or her and to give reasonable facilities for obtaining legal advice, taking steps to furnish bail and otherwise making arrangements for his or her defence or release (CPC, Sect.9); and the prohibition of wilful delays to take an arrested person charged with an offence before court (CC, Sect. 130).

In addition, the Criminal Code penalises unlawful deprivation of liberty (Sect. 365), and requires the proper keeping of records of any person in confinement and punishes neglect or deliberate false entries (Sect. 368). Section 419 of the Criminal Procedure Code requires that young persons ordered to be imprisoned shall not be, so far as it is deemed practical, allowed to associate with adult prisoners.

Section 28 of the 1990 Evidence Act provides that a confession to a charge made by an accused person cannot be used to secure a conviction against him or her if it appears to have been caused by any inducement, threat or promise from a person in authority and sufficient to give the accused person grounds for supposing that he or she would avoid any evil of a temporal nature. This provision, however, does not appear to satisfy the wider requirements of article 15 of CAT, which provides that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against the person accused of torture.

7.5 Complaints and Investigation of Acts of Torture

Oral or written complaints of police misconduct by members of the public can be made to any superior police officer about acts of misconduct involving his or her subordinates, and if the complainant is dissatisfied with the response, he or she could complain in writing to higher officers, including the IGP. Complaints could also be sent to the police Public Complaints Bureau (PCB) located in the police public relations department of every state police command, or to the police Provost Department at the Force headquarters.[264] In addition, Human Rights Desks for receipt of complaints have been established in recent years for each state command.

The Police Service Commission (PSC), an independent constitutional body established in 2001,[265] is also responsible for investigating police abuses. Section 6 of the Act grants the body responsibility for the appointment, promotion, discipline and dismissal of all Nigerian police officers below the rank of Inspector General.

Criminal investigations and prosecutions of police officers are carried out by Investigating Police Officers (IPO) assigned within the command. Where sufficient evidence is found, they will refer the case to the Director of Public Prosecutions. Although instances of police misconduct are typically dealt with departmentally at first instance, internal review is without prejudice to criminal prosecution. The internal peer review, also referred to as an "orderly room trial", is carried out by the Provost Department, which can impose various disciplinary sanctions.[266] Discipline of senior officers (For example, Assistant Superintendent of Police and above) ultimately rests with the PSC, where the IGP sets up a panel of senior officers in order to hear the case, and recommendations are forwarded to the PSC for sanctioning.

Complaints on human rights violations may be made in writing or orally to the National Human Rights Commission (NHRC). Created in 1995 by a military decree, NHRC is mandated to monitor and investigate all alleged cases of human rights violations and make appropriate recommendations to the Federal Government.[267] Moreover, NHRC has identified torture as well as detention centres as 2 of its 15 main thematic areas.

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264 For a general discussion, see Alemika, E. E.O. and Chukwuma, I.C. (eds.), *Civilian Oversight and Accountability of Police in Nigeria*, Lagos: Centre for Law Enforcement Education, 2003.

265 2001 Police Service Commission (Establishment) Act: The Commission is made up of are tired Justice of the Supreme Court or Court of Appeal, a retired police officer not below the rank of Commissioner, and four members of civil society.

266 See paragraph 29 and note 5 above.

267 Human Rights Commission Act.

It has appointed a Special Rapporteur on Torture, Extrajudicial, Summary and Arbitrary Executions and a Special Rapporteur on Police, Prison and other Detention Centres. The Special Rapporteurs carry out investigations within their mandate and report to NHRC. However, the Commission is chronically under-resourced and lacks the judicial power to enforce redress, since it only has the power to make recommendations to Government.

The Legal Aid Council is mandated to provide free legal assistance and advice to persons who cannot afford a lawyer. A new programme deploying lawyers to police stations and magistrate courts has been recently introduced.

7.5.1 Compensation and Prevention

According to section 35 (6) of the Constitution any person who is unlawfully arrested or detained shall be entitled to compensation and a public apology from the appropriate authority or person. However, this clause is not applied in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence. The Special Rapporteur notes that there is currently no regular or systematic mechanism or activities related to independent visits to detention facilities.

7.6 The Situation of Torture and Ill-Treatment

The Special Rapporteur was told by government officials that torture is prohibited by law, though it may occur from time to time in an unfortunate isolated circumstance, and that the sternest measures are taken against perpetrators, including dismissal and criminal charges. However, these observations appear divorced from the realities prevailing in criminal investigation departments (CID) and police stations in the country, at least those visited by the Special Rapporteur. In fact, at CID detention facilities, it was a challenge to find a detainee that had not been ill-treated. The high number of consistent and credible allegations received from speaking with various detainees, corroborated by forensic medical evidence, in facilities visited in different parts of the country and obtained within the span of a one-week mission, speaks volumes.

Despite the existence of safeguards for arrest and detention (paras. 18-28 above), they are effectively meaningless because they are regularly ignored. Torture was frequently cited to the Special Rapporteur as being used for the purpose of extracting money, obtaining confessions or further information in relation to alleged crimes. Methods of torture included flogging with whips; beating with batons, cables, bamboo sticks, and machetes; shooting suspects in the foot; threatening a suspect with death and then shooting him with powder cartridges; suspension from the ceiling or metal rods in various positions;

and being denied food, water and medical treatment. Suggestions by officials that "torture" is only isolated or merely amounts to rough handling of suspects, are contradicted by evidence the Special Rapporteur found of dedicated rooms in CIDs for torture and equipment used for such purposes, and by the testimony from numerous detainees.

The Special Rapporteur concurs with the Special Rapporteur on summary, arbitrary and extrajudicial executions that while "… the scourge of armed robbery plagues much of Nigeria, the label of 'armed robber' is very often used to justify the jailing and/or extrajudicial execution of innocent individuals who have come to the attention of the police for reasons ranging from a refusal to pay a bribe to insulting or inconveniencing the police…[The rules contained in Police Order No. 237] are deeply flawed. They provide close to a carte blanche to the police to shoot and kill at will" (E/CN.4/2006/53/Add.4, paras. 43 and 46). A high proportion of individuals detained in the facilities that the Special Rapporteur visited were held on suspicion of armed robbery; many of them with close-range gunshot wounds to the feet and legs, which is reportedly a common practice to prevent suspects from fleeing once they have been apprehended and a means to make them confess on the threat of death. In custody, many of these detainees have not received any medical treatment for these injuries, which become seriously infected and consequently life-threatening. Allegations were received from detainees of prisoners dying as a result of such injuries, and this denial of medical treatment effectively amounts to extrajudicial killing.

On the basis of a thorough analysis of the legal system, visits to detention facilities, interviews with detainees, the support of forensic medical evidence, and interviews with government officials, lawyers and representatives of NGOs, the Special Rapporteur concludes that torture and ill-treatment are widespread in police custody, and particularly systemic at CIDs. Torture is an intrinsic part of how the police operate within the country.

7.6.1 Impunity and Lack of Effective Complaints Mechanisms

There was no question about accountability of perpetrators because there are no functioning complaint mechanisms in place to receive allegations, and to report and seek effective redress for acts of torture. Victims, especially those still in detention, have no confidence in the existing mechanisms, such as reporting allegations directly to senior police officials or to the Human Rights Desks (in those stations where they exist) - for example, at CID Panti, Lagos, prisoners were detained and

tortured right behind the Human Rights Desk.

Other avenues to complain are out of reach to the vast majority of detainees as they cannot afford lawyers and have no practical means of communicating allegations to family, NGOs, or others (i.e. by telephone, visits, etc.). The 2006 NHRC annual report states, "The Commission has a viable and effective complaints mechanism for treating complaints of allegations of human rights violation." The Special Rapporteur notes that he received more credible complaints of ill-treatment during any one of his visits to CIDs than NHRC throughout the country in one year.[268]

The Special Rapporteur notes with concern the climate of fear and mistrust of police prevalent in many of the places visited, and particularly at CIDs. A significant number of detainees declined to speak with the Rapporteur due to the fear of retaliations by the authorities, or only did so under the condition of anonymity. Detainees have the feeling of being left completely at the mercy of the officers and live under the constant fear of violent reprisals for any complaints, behavioural infractions, acts of non-compliance, or otherwise without provocation. Despite knowing that police abuse is wrong, victims feel powerless and are resigned to accept that impunity is the natural order of things when it comes to Nigerian law enforcement.

Attempts to register complaints may be met with intimidation, or investigations lack independence as they may be conducted by the police themselves or dealt with internally. Forensic medical examinations which could sustain complaints are non-existent, even in cases of death in police custody. No information was provided by the Government on evidence of successful criminal prosecutions of perpetrators of torture, or payment of compensation to victims, or statistics on disciplinary sanctions meted out to officers.

7.6.2 A First-Hand Account

The Special Rapporteur met at least three detainees with life-threatening gunshot wounds that would die without prompt medical attention all of whom were interviewed at CID Panti, Lagos, on 6 March 2007; and Mr. M.B. who was interviewed at CID Gwagwade, Kaduna, on 8 March. (See appendix I for further details). By telephone on 10 March, the Special Rapporteur made a direct plea to Mr. Sunday Ehindero, the Inspector General of Police, for urgent medical treatment, and assurances were received in this regard (in addition, follow-up letters were sent

268 Respectively, for the years 2005 and 2006, 42 and 24 complaints of degrading treatment by law enforcement agencies were received by NHRC (see 2005 and 2006 NHRC annual reports).

on 6 and 27 April). Appeals for assistance were also sent to the Controller General of Prisons, the Minister of Justice/Attorney General.

On 3 April 2007, a visit by United Nations officials found the torture room at CID Panti emptied. According to the officers in charge, Mr. J. and Mr. A.A. were brought to court shortly after the Special Rapporteur's visit. The District Court Chief Prosecutor, Magistrate Court Yaba, indicated that Mr. A.A. (case file C 26/07) was sentenced for armed robbery and imprisoned at Ikoyi Island Prison, Lagos. However, upon inquiries by the Lagos Prison Controller, the Head of Ikoyi Prison reported that Mr. A.A. did not appear on the current list of inmates. Furthermore, according to the files of the Investigating Police Officer, CID Panti, on 12 March, Mr. J.'s case (charge number - N/23/2007) was transferred to Magistrate Court No. 12, Ebute-Meta, Lagos. However, to date, no records related to this case ever reached the court.

On 21 May 2007, on the occasion of the Inter Action Council of Former Heads of State and Government in Vienna, the Special Rapporteur raised the case of those men with President Obasanjo. On 28 May, President Obasanjo wrote to the Special Rapporteur to assure him of the assistance of the IGP in the follow-up to these cases. On 6 June, the Special Rapporteur reiterated his appeal for information on the situation of these detainees to the newly inaugurated IGP, Mr. Mike Okiro. Despite several attempts to follow up on their situation with the Inspector General of Police, the Controller General of Prisons, the Attorney General and Minister of Justice, and the President, the authorities failed to provide any information on these persons; neither details of any medical treatment provided, nor their current whereabouts.

Given their physical condition at the time of the visit and their subsequent disappearance, the Special Rapporteur could not but conclude that these three individuals had been victims of reprisals as a result of his intervention. Either these detainees had died as a result of a deliberate denial of medical treatment, or, worse, they had been killed by the police and disappeared – a vivid first-hand confirmation of allegations of the widespread practice of extrajudicial killings across the country.

By letter dated 14 September 2007, the Government stated that it is "committed to unravelling the circumstances leading to and surrounding the deaths, which it has established, of two of the detainees, namely: Mr. E.J. and Mr. B.A.A. Their deaths are presently being investigated and the Government is committed

and determined to hold all those found guilty, accountable".[269] By the same letter, the Government informed that Mr. B. was alive and in prison custody in Kaduna. A photograph and medical certificate of Mr. B. following his treatment was also provided by the Government. The Special Rapporteur reports that he has not received any information to date on steps taken to bring the officers implicated in these acts, or their superiors, to justice.

These two clear and grave examples of serious torture, disappearance and extrajudicial killing, notwithstanding the above-stated commitments made at the highest levels of Government, disturbingly illustrate and confirm the inability of the current system to make timely and effective inquiries in order to protect victims of serious human rights violations. It further illustrates the breakdown of a credible system of accountability of law enforcement in Nigeria.

7.6.3 Conditions of Detention

The conditions of detention in police cells visited by the Special Rapporteur were appalling. Detainees are held in unsanitary overcrowded cells, forced to sleep on the concrete floor, and are provided with insufficient food and clean water. At some police stations, women and men, children and adults are held together in extremely overcrowded conditions. Medical care is non-existent and seriously ill detainees are left to languish until they die. In the opinion of the Special Rapporteur, this demonstrates a complete disrespect for human life and dignity.

All the prisons visited by the Special Rapporteur are characterised by severe overcrowding, consisting of an inmate population that is typically double or triple the actual capacity of the facility. For example, while Port Harcourt Prison is designed for 800 detainees, a total of 2,420 are presently held. The vast majority of detainees (e.g. in Port Harcourt, 92 percent) are held awaiting trial (in pre-trial detention) or held without charge for lengthy periods, as long as 10 years. These detainees are subject to even more severe conditions than those of convicts, as they are held in overcrowded cells, lacking appropriate hygiene facilities, with insufficient places to sleep, inadequate and/or insufficient food, water, and medical care, let alone any opportunities for educational, leisure, or vocational training. Pre-trial detainees reported that they are forced to pay for food,

269 However, on 20 September 2007, in a meeting with the Special Rapporteur in Geneva, the Permanent Representative of Nigeria informed him that Mr. J and Mr. A. were subsequently found to be alive and have received medical treatment. Despite repeated requests for details of their situation, including their whereabouts and medical treatment reports, no information has been provided to date.

bathing, or contacting family members, receiving visitors, or medication. It is ironic that discriminatory treatment suffered by pre-trial detainees, who may be held longer than some convicts, has been justified by the heads of some facilities on the grounds that their guilt being not yet proven, there is less responsibility and obligation, and consequently less resources, allocated to care for them. Children on remand are often held with adult males.

The Special Rapporteur considers that such an extensive recourse to pre-trial detention constitutes the major cause for the overcrowding of prisons. It is contrary to the principle of the presumption of innocence and to the rule regarding deprivation of liberty as a disposition of last resort laid down by international law (article 9, paragraph 3, of the International Covenant on Civil and Political Rights). The Special Rapporteur is encouraged by the Government's recognition of the severity of the problem by considering the release of approximately 25,000 of the 45,000 detainees currently held in Nigerian prisons as announced on 4 January 2006. He is further encouraged by the announcement on 16 May 2007, that the Government will release all prisoners over 70, and those over 60 who have been on death row for 10 years or more.

The Special Rapporteur notes that at the facilities he visited the conditions of detention of female detainees are much better than those of men. The female sections/wings of the prisons are not overcrowded and women are provided with considerably better facilities. He welcomes that at Port Harcourt prison, the female detainees are able to engage in (vocational) activities, such as sewing, etc. The Special Rapporteur acknowledges that in almost all of the facilities he visited there were serious constraints on resources and that staff have not been paid for several months.

7.7 Corporal Punishment, Shariah Penal Code Punishment, and Capital Punishment

The Special Rapporteur notes that corporal punishment, such as caning, and including sharia penal code punishments of the northern states (i.e. amputation, flogging and stoning to death), remain lawful in Nigeria. Moreover he notes that sharia-related provisions for adultery and sodomy discriminate against women and same-sex couples, respectively.

7.7.1 Corporal Punishment

Section 17 of the Criminal Code includes death and caning as punishments. Caning can be inflicted in addition to imprisonment for various offences regarding the defilement of young girls (sects. 218, 219, 221, 222, 225A), offences endangering life or health (Sects. 330, 334), and assaults on females (Sects. 358,

359).[270] Furthermore, section 18 gives courts the discretion to order the caning of male persons believed to be under 17 in addition to or in substitution for any other punishment to which they are liable. Section 295 justifies "a blow or other force" for the correction of children, servants and others.

The Criminal Procedure Code sets out in part 42 the provisions regulating caning: no person shall be sentenced to caning more than once for the same offence (Sect. 384); persons over 45 shall not be punished with caning (Sect.385); caning shall be executed with a light rod, cane or birch and not exceed 12 strokes (Sect. 386); offenders convicted for a minimum of six months' imprisonment can be sentenced to caning in addition to or in lieu of any other punishment (sect. 387); and a confirmed sentence of corporal punishment shall be inflicted as soon as practicable (sect. 388).

7.7.2 Sharia Penal Codes

The sharia penal codes contain a number of provisions raising serious concerns not only regarding their constitutionality but more fundamentally regarding their compatibility with the international prohibition of torture and other cruel, inhuman and degrading treatment (see fora detailed discussion, report on the Mission to Nigeria of the Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.2), paras. 47-79).

The Special Rapporteur recalls that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Under international law, they are not lawful sanctions and violate the international human rights treaties to which Nigeria is a party, particularly CAT, ICCPR and CRC (A/60/316, paras. 18-28).

7.7.3 Capital Punishment

Noting that capital punishment is still available under the laws of Nigeria, the Special Rapporteur is encouraged by the position of President Obasanjo not to support the death penalty. According to information received from the Government, eight executions have been carried out in Nigeria in the period of March 2002 to July 2006.[271] Although the rate of executions may be low, the

270 Defilement of girls under 13 (Criminal Code (CC), sect. 218); Householder permitting defilement of young girls on his premises (CC, sect. 219); Defilement of girls under 16 and above 13, and of idiots (CC, sect. 221); Indecent treatment of girls under 16 (CC, sect. 222); Persons trading in prostitution (CC, sect. 225); Disabling in order to commit felony or misdemeanor (CC, sect. 330); Intentionally endangering safety of persons travelling by railway (CC, sect. 334); Punishment of rape (CC, sect. 358); Attempt to commit rape (CC, sect. 359).

271 In this period, three persons were executed in Kaduna Prison, Kaduna State for homicide and armed robbery; one person in Jos Prison, Plateau State, for homicide; and four persons in Enugu Prison, Enugu State, for armed robbery.

Special Rapporteur expresses concern that persons continue to be sentenced to death, contributing to the growing numbers of persons languishing on death row for many years (Up to 17 years) in conditions that are inhuman. The Special Rapporteur appeals to the Government to officially declare a moratorium, to commute death sentences to terms of imprisonment and de jure abolish capital punishment.

7.7.4 Female Genital Mutilation

On the occasion of International Women's Day, which was celebrated during the week of the Special Rapporteur's visit to Nigeria and drew attention to violence against women and girls and the impunity that makes it possible, the Special Rapporteur welcomed the adoption of a number of State laws prohibiting discrimination against women in critical areas, such as female genital mutilation and early marriage. Despite such legislation, however, he remains concerned at the persistence of these practices and the social acceptance of them and the lack of effective mechanisms to enforce the existing prohibitions.

7.8 Conclusion

In Nigeria, torture and ill-treatment are widely practiced in police custody; they are particularly systemic in the Criminal Investigation Departments (CID). Torture is an intrinsic part of the functioning of the police in Nigeria. This unacceptable state of affairs must end. The Government must take immediate and effective measures to ensure that this message permeates every level of every law enforcement agency in Nigeria.

The Special Rapporteur emphasises that the prohibition of torture and ill-treatment is absolute. The circumstances surrounding the deaths of the two persons personally interviewed by the Special Rapporteur (see paragraphs 44-49 above) –
examples of serious torture, disappearance and extrajudicial killing – illustrate and confirm the inability of the current system to effectively investigate allegations, protect victims of serious human rights violations, and bring law enforcement officials in Nigeria to account.

The findings of the Special Rapporteur are hardly a revelation as many credible human rights organisations, as well as United Nations human rights mechanisms, as for example the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.4), have documented and concluded that torture is widespread in the country.[272] That the conditions in

272 See also Human Rights Watch, *Rest in Pieces, Police Torture and Deaths in Custody in Nigeria*, July 2005.

detention are appalling is similarly well known.

That Nigerian law enforcement is seriously under-resourced and at the same time confronted with a high rate of violent crime is an established fact. Consequently, adequate training is lacking, corruption is endemic, and the cadres, emboldened by a culture of impunity for torture, are prone to heavy-handed tactics in a criminal justice system which relies heavily on confessions. But the roots of the problem cut a wider swathe. The Special Rapporteur concurs fully with the analysis of the Special Rapporteur on summary, arbitrary and extrajudicial executions, who carried out a visit to the country in 2005.

There is no single entry point for reformers of the dismally inadequate Nigerian criminal justice system. Virtually every component part of the system functions badly. The result is a vicious circle in which each group contributing to the problem is content to blame others. Thus, police officers complain about lack of resources, but the politicians complain that the police are thugs and their performance undeserving of increased resources. The judiciary blames the prison system and the police for the scandalous number of uncompleted cases, while the police observe that arresting robbers is futile because the courts will never convict them. It is essential to understand the vicious cycle of blame and for all actors to acknowledge their own responsibilities (E/CN.4/2006/53/Add.4, para. 88).[273]

The Special Rapporteur cannot emphasise enough that Nigerians themselves have exhaustively identified the nature and scale of these problems. In August 2005, President Obasanjo acknowledged the severity of the problem of torture in the country.[274] Further, Nigerians have already come up with the way forward. One needs only to pore over the comprehensive findings and recommendations of the Presidential Commission on Reform of the Administration of Justice, the Presidential Committee on Prison Reform and Rehabilitation, and the

273 This is echoed in the Report of the Presidential Committee on Police Reform, which states: "...there are some factors, organisations, and institutions that tend to affect the effectiveness and efficiency of the police in the discharge of its statutory responsibilities. For the Police to operate maximally and meet the expectations of the public, these institutions must play their part in such a way that they will help rather than hinder the efficiency of the Police…institutions such as the Prisons and the Judiciary, which together with the police make up the Criminal Justice System have to be reformed to ensure a harmonious working relationship with the reformed Nigeria Police …" (pp. 179-180).

274 See the President's opening address in Ehindero, S.G., and Alemika, E.E.O.(eds.), *Human Rights and Law Enforcement in Nigeria, Proceedings at a national workshop, 18-19 August 2005*, 2005, which contains, among other things, discussions on patterns of human rights violations by law enforcement agencies in Nigeria, human rights abuse by police, etiology of police brutality in Nigeria, as well as recommendations.

Presidential Committee on Police Reforms.[275] Thus the commitment to engage in a meaningful process of reform in Nigeria is not new.[276] What is of concern, however, is that such reform efforts have been short-lived, without the same commitment to follow-up.

The Special Rapporteur recognises the significant challenges faced by the country. As the report of the Presidential Commission on Reform of the Administration of Justice in Nigeria states, "… transforming the administration of justice in Nigeria will have to be taken in the context of many and competing economic and human development challenges facing the country as a whole. However, the justice sector is relevant and indeed central to poverty reduction initiatives…"[277] Moreover, "the solution to many of the problems that … [have been] … identified does not lie only in budgetary appropriation, much of the issues can be resolved administratively …"[278]

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275 *Proposals for Reform of the Administration of Justice in Nigeria*, Presidential Commission on Reform of the Administration of Justice in Nigeria, February 2006; Report of the Presidential Committee on Police Reform, May 2006; and Presidential Committee on Prison Reform and Rehabilitation (2006). See also *Key Interventions in the Justice Sector in Nigeria*, Report of the Harmonisation Committee on the Review of Key Recommendations from the Reports of the Presidential Commission on Reform of the Administration of Justice, Presidential Committee on Prison Reform and Rehabilitation, and Presidential Committee on Police Reforms, March 2007

276 The United Nations Office on Drugs and Crime (UNODC) is currently working with the Nigerian Prison Service, the Ministry of Internal Affairs and the Ministry of Justice on the development and implementation of the prison reform agenda of the Government. The UNODC prison reform project involves: capacity-building for prison personnel; rehabilitation of prison infrastructures; development of a detainee data file management system; improved health-care delivery; rehabilitation of prison inmates; and prison decongestion. In addition, UNODC is concluding a preventive HIV/AIDS and drug abuse awareness programme in some selected prisons in the country, which began in 2003. More generally, since 2003, UNODC has been working with the Government to strengthen the rule of law, both at the national and local levels, by increasing the capacity and integrity of the justice system, in particular of the judiciary. In one of its projects, "Support to the Economic and Financial Crimes Commission (EFCC) and the Nigerian Judiciary", UNODC is working with the Government and the European Union to: increase access to justice; timeliness and quality of justice; public confidence in the courts; efficiency, effectiveness and credibility of the complaints system; and coordination across the criminal justice system. Other partners in the international community are also striving to see that the effectiveness of the criminal justice sector is enhanced. For example, the United Kingdom Department for International Development (DFID) through its programme, "Security, Justice and Growth Programme", has substantially supported the justice sector, covering areas such as improving systems for delivery of effective justice services, at both federal and state levels. DFID has also promoted a project on community policing with the Nigerian Police Force. There is currently a Justice Sector Coordination Working Group made up of UNODC, the World Bank, the European Union, DFID, and USAID that seeks to harmonize the respective programmes in the justice sector, develop joint initiatives, and seek out more efficient ways of implementing programmes in the sector.

277 *Proposals for Reform of the Administration of Justice in Nigeria* Presidential Commission on Reform of the Administration of Justice in Nigeria, February 2006, p. v.

278 *Ibid*., p. iii.

After concluding the visit, the Special Rapporteur wishes to report on two important developments. By letter dated 8 May 2007, President Obasanjo wrote to the Special Rapporteur to acknowledge receipt of a draft law on the definition and prohibition of torture in line with article 1 of CAT, information on OPCAT, and a new draft law on the establishment of a torture investigation commission, which he had requested at their 9 March 2007 meeting. He indicated that the Attorney General and the Minister of Justice were requested to use the draft laws as a Basis for bills for consideration by the Federal Executive Council and onward transmission to the National Assembly for passage into law.

On 16 May 2007, the Government announced the release of all prisoners over 70, and those over 60 who had been on death row for 10 years or more; an information which was confirmed by the letter of the Nigerian Government dated 14 September 2007 (see paragraph 6 above). The Special Rapporteur welcomes this information and has requested that Government provide detailed information on this process, including the numbers of prisoners released, the names of the death row prisoners that have been released, and the dates of their release.

The Special Rapporteur expresses his gratitude to President Obasanjo for taking these important initiatives. He calls upon the Government to expeditiously follow through. As a member of the Human Rights Council, Nigeria has pledged cooperation with human rights treaty bodies, timely submission of State party reports, and declared its readiness to welcome Special Rapporteurs and to submit itself to universal periodic review. The invitation of the Government to the Special Rapporteur and the cooperation extended to him demonstrate Nigeria's willingness to open itself up to independent and objective scrutiny of its human rights situation, and reaffirms its commitment to cooperate with the international community in the area of human rights.

7.9 Recommendations

In this continuing spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with the assistance of the international community (United Nations and other actors), take decisive steps to implement the following recommendations:

Impunity

(a) The absolute prohibition of torture should be considered for incorporation into the Constitution;
(b) The highest authorities, particularly those responsible for law

enforcement activities, should declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted. The message should be spread that torture is an extremely serious crime which will be punished with severe (long-term) prison sentences;

(c) The crime of torture should be defined as a matter of priority in accordance with Article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture;

(d) An effective and independent complaints system for torture and abuse leading to criminal investigations should be established, similar to the Economic and Financial Crimes Commission;

Safeguards

(e) The right to legal counsel should be legally guaranteed from the moment of arrest;

(f) The power to order or approve arrest and supervision of the police and detention facilities should be vested solely with independent courts;

(g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings;

(h) Judges and prosecutors should routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination in accordance with the Istanbul Protocol;

(i) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;

(j) The maintenance of custody register should be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time at which the family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer.

(k) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge shall not be admissible as evidence against the persons who made the confession. Serious consideration should be

given to video and audio taping of interrogations, including of all persons present;

(l) All allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim;

(m) Any public official found responsible for abuse or torture in this report, either directly involved in torture or ill-treatment, as well as implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty, and prosecuted. The Special Rapporteur urges the Government to thoroughly investigate all allegations contained in appendix I to the present report with a view to bringing the perpetrators to justice;

(n) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, as well as adequate medical treatment and rehabilitation;

(o) The declaration should be made with respect to article 22 of the Convention against Torture recognising the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;

Conditions of Detention

(p) The release of non-violent offenders from confinement in pre-trial detention facilities should be expedited, beginning especially with the most vulnerable groups, such as children and the elderly, and those requiring medical treatment subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgment);

(q) Pre-trial detainees and convicted prisoners should be strictly separated;

(r) Detainees under 18 should be separated from adult ones; Females should be separated from male detainees;

(s) The Criminal Procedure Code should be amended to ensure that the automatic recourse to pre-trial detention, which is the current de facto general practice, is authorised by a judge strictly as a measure of last resort, and the use of non-custodial measures, such as bail and recognisance, are increased for non-violent, minor or less serious offences;

Corporal Punishment

(t) Abolish all forms of corporal punishment, including sharia-based punishments; and Capital punishment;

(u) Abolish the death penalty de jure, commute the sentences of prisoners on death row to imprisonment, and release those aged over 60 who have been on death row for 10 years or

more;

Violence against women

(v) Establish effective mechanisms to enforce the prohibition of violence against women, including traditional practices such as FGM, and continue awareness-raising campaigns to eradicate such practices, and expedite the adoption of the Violence against Women Bill;

Prevention

(w) Security personnel shall undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;

(x) Security personnel recommended for United Nations, as well as regional, peacekeeping operations should be scrupulously vetted for their suitability to serve;

(y) The Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism should be established – where the members of the visiting commissions would be appointed for a fixed period of time and not subject to dismissal – to carry out unannounced visits to all places where persons are deprived of their liberty throughout the country, to conduct private interviews with detainees and subject them to independent medical examinations;

(z) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security personnel, legal professionals and the judiciary.

In terms of international cooperation, the Special Rapporteur recommends that relevant international organisations, including the Office of the High Commissioner for Human Rights and the United Nations Development Programme and United Nations Office on Drugs and Crime, be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.

Appendix I

Places of Detention – Individual Cases

The following accounts are based on allegations by detainees while being interviewed by the Special Rapporteur. If detainees requested confidentiality, their allegations are not contained in the present appendix. The Special Rapporteur conducted visits to detention facilities unannounced and was able to hold private interviews with detainees, in general. It should be mentioned that the Government on its own initiative organised a programme, including visits to a number of facilities (e.g. Kuje Prison, and Force CID, Garki) which the Special Rapporteur subsequently visited unannounced. While detainees in such facilities reported that they were aware of the visit, that the facilities were cleaned in advance, and at Force CID, Garki most detainees were allegedly transferred away before the visit of the Special Rapporteur, these incidences had no impact on the subsequent findings. The individual case histories are based on well-substantiated allegations of detainees. In many cases allegations of torture or ill-treatment were corroborated by medical evidence.

State Security Services (visited on 4 and 8 March 2007)

On 4 and 8 March, the Special Rapporteur attempted to visit the detention facility at the headquarters of the State Security Services (SSS) in Abuja. On 8 March, he also tried to visit the State Security Services' detention facility in Kaduna. On all three occasions he was refused entry. This denial of access constitutes a deliberate and flagrant violation of the terms of reference for the visit agreed upon by the Government. Since he received credible allegations of torture by this intelligence agency, the denial of his right to assess for himself the allegations by inspecting unannounced the facilities and interviewing detainees in private leads him to strongly suspect that the authorities wished to conceal evidence. On the last day of the mission, the Special Rapporteur met representatives of the SSS: Mr. S. Agbase, Director of Enforcement, Mr. Ibrahim Bakut, Director of Administration, and Mr. Felix Ikumapayi. In the course of this meeting, it was confirmed that the facility in Kaduna contains detention cells, which the authorities there (i.e. Mr. Musa Tbautum, Officer in Charge and Mr. Baba Thomas, Assistant to the Officer in Charge) had earlier denied and was reason for the denial of access.

Kuje Medium Security Prison, Kuje, Federal Capital Territory (visited on 4 March 2007)

Kuje Medium Security Prison is located on the outskirts of Abuja. Originally an 80-bed facility, its current official capacity is 320

inmates. On the day of the visit, 529 prisoners were detained there. Ninety-one percent were awaiting trial prisoners; and of these 62 percent were charged with armed robbery, 11 percent for homicide and 27 percent for other offences. The Special Rapporteur was received by Mr. Abdul-Rahman Ashafa, the Controller, and Mr. Kabir Umar Funtua, Assistant Controller of Prisons. A new building providing additional space for 120 detainees is currently being built.

General Conditions and Treatment in Detention: The prison director and his staff were fully cooperative and allowed unrestricted access to all detainees and ensured private interviews. The Special Rapporteur received allegations about the practice of caning as a disciplinary punishment. Detainees also reported that they are punished for minor offences such as possession of cigarettes. They are beaten with sticks and cables, either in plain sight of other detainees, or in a backyard from where other detainees can hear the screaming. The detainees are later brought to the prison's hospital where they receive first aid. According to the allegations, the most recent caning was carried out the month prior to the Special Rapporteur's visit. The prison director confirmed the practice, stated that it would only be carried out after consultation with the prison's doctor, and that the most recent case was in October 2006. As another form of disciplinary punishment, detainees are put in to solitary confinement in the "back cell" (1.5 x 2 m cell) where they are held for no longer than two days according to the prison director. However, the Special Rapporteur received numerous accounts by detainees that they were held there for up to two weeks.

The water is of poor quality, and detainees complain about the quality (e.g. the rice is contaminated with small stones) and quantity of food. Only a small number of prisoners having the necessary financial means can order food from outside the prison ("self-feeding programme"). There is no possibility to make phone calls, neither to contact family members or a legal representative. Doctors provide only pain relievers, regardless of the medical complaint.

The cells for pre-trial prisoners are heavily overcrowded (Cell No. 1: capacity 136, actual population 235; Cell No. 2: capacity 128, actual population 246 detainees). Bedding is insufficient. Although bunk beds are available, many detainees have to sleep on the floor, under the beds of others, or have to share. There are two toilets per cell. Detainees are locked up in the cell for the entire day, except from 10 a.m. to 1 p.m. Furthermore, pre-trial detainees are barred from participating in any recreational, vocational or educational activities. The cell for convicts is less crowded. These prisoners can participate in recreational,

vocational or educational activities. Pre-trial detainees might be transferred to the convict cell if they pay, or are in bad health.

Medium Custody Cell no. 1: Pre-Trial Detainees

S.O., aged 25, construction worker, Edo State: On 4 July2002, he was arrested from the construction site he was working in connection with the theft of US $150,000. He was accused of conspiracy and robbery. Taken to Force CID, Garki, he was tortured by the police during his two months of detention there. During one three-day period, he was brought to an office, stripped naked, handcuffed, beaten on the head, and suspended from the ceiling for approximately one hour from his handcuffs. He reports no visible injuries remaining except for hearing problems. He did not report the torture when he arrived at the prison, nor was a medical examination carried out upon his arrival. On 6 September 2002, he was remanded in custody in Kuje Prison. In October 2005, his case came to the High Court and he was granted bail for Naira 8,000, which he was unable to afford. He has not received visits from his family, nor does he have a lawyer.

A.D.A, aged 18, Ekiti State: On 25 February2006, he was arrested in Lugbe (between Abuja and Kuje Prison) because he went to the house of a police officer, which he had mistaken for a brothel. He was involved in scuffle with the police officer during which he suffered a head injury. He was brought to Lugbe Police Station FCT, where he was beaten and deprived of food for three days. On 1 March 2006, he was remanded in Kuje Prison. He did not report any experience of torture in prison.

G.O., aged 37, wood merchant, Rivers State: On 28 August 2006, he was arrested in Abuja by the State Security Service (SSS) in his hotel room. The SSS officers in civilian clothes forcibly entered his room at midnight, handcuffed him and brought him to the SSS headquarters in Abuja, where he was detained without being able to inform any relatives or a lawyer. He was interrogated about kidnappings and hostages in the Niger Delta. On 30 August around midnight, he was blindfolded, handcuffed and shackled and brought to a cemetery outside of Abuja. He was threatened with death, told, "Have your last prayer", suspended from a tree and beaten with cables. He was tortured to force him to admit his involvement in Hostage-takings, to which he later confessed. Mr. O. was able to provide the Special Rapporteur with a detailed sketch of the location of his cell, which was located in the basement of the SSS' headquarters. He also reported that during his detention Mr. A.D. and a person named O. from Kano State had been kept there as well. The latter reportedly has been detained incommunicado for two years at the SSS facility on terrorism

charges. Up until mid-November 2006, Mr. O. was held incommunicado at which time the lawyer retained by his wife was able to trace him. He saw his lawyer for the first time when his case was brought to the High Court. The confession obtained under torture was forwarded to the High Court, and although he informed his lawyer that he had been tortured, no action was being taken in this regard. On 14 November 2006, he was brought to Kuje Prison. He reports no abuse at the prison. He is able to order food from outside the prison (self-feeding).

Y.L.O., aged 32, Kogi State: On 15 February 2004, he was arrested in his shop by plain clothes SSS officers on suspicion of vandalising pipelines. He was brought together with other suspects to the SSS detention centre in Lokoja. He was detained there incommunicado for three months. The other suspects were released on bail. He reports that he did not confess and was not tortured. In May 2004, he was brought to Kuje Prison, and was not tortured or subjected to corporal punishment.

E.A., aged 26, Akwa Ibom State: He has been awaiting trial in Kuje Prison since 2001 on charges of armed robbery. In the six years he has spent in Kuje Prison, he has only had one court hearing. He reports that he was subjected to solitary confinement, shackled and beaten with a baton about three months ago. The injuries could not be confirmed by the forensic expert.

Medium Custody Cell No.2: pre-trial detainees

B.S., aged 24, an artist, Benue State: On 19 January 2001, he was arrested in a police raid, and charged with conspiracy and armed robbery. He reports that he was beaten with black wooden batons and cable wires, and money was demanded from him by the police. In the more than six years he has been in Kuje Prison awaiting trial, he reports that his case has been brought before the court only to be adjourned more than 100 times. In the prison, he was beaten several times with a wooden and a plastic stick as a disciplinary measure. His next meeting with his lawyer is expected to be on 6 March 2007.

S.O., aged 37, Delta State: Detained in Kuje Prison since 2003, he is awaiting trial for homicide. His case has been subjected to over 60 adjournments, typically because no witnesses were presented. He reports that he was interrogated in a 5x 5m cell in the basement of Force CID, Garki. He is next expected to appear in court on 14 March 2007.

O.D., aged 17, student, Imo State: He is awaiting trial in Kuje Prison for one month. Seven months earlier, he was arrested and detained incommunicado at Force CID, Garki, for six months on

suspicion of illegal fire arms possession. He was beaten with an iron rod and slapped on the ear by CID officers in order to extract a confession. He did not receive any medical treatment, despite continuing complaints of pain in his ear. He has no lawyer and has had no contact with his family for seven months. He was last brought to court on 28 February 2007.

Maximum Custody Cell: Convicted Prisoners

A.U., aged 43, an economist, Akwa Ibom State: In May 2006, he was arrested in Abuja by police on suspicion of financial crimes. He was detained for two weeks in Maitama Police Station. Over the course of one week, between 8.30 p.m. and midnight, after the senior officers had left, he was interrogated by an IPO in the first-floor room. He was beaten with a wooden baton and the butt of a gun while he was handcuffed; cabled with electrical wire; and flogged with strips of rubber. After two weeks he was taken to the detention centre in the office of the Economic and Financial Crimes Commission, Awolowo Road, Lagos. He was detained there for five months; nine days of which were spent in the Military Hospital in Lagos as a result of the beatings he sustained. He was later released, but rearrested and brought to Kuje Prison on 1 November 2006, where he is awaiting trial. He reports that he was not subjected to ill-treatment in Kuje Prison; he is generally better treated than other pre-trial detainees because he has money. Because of his poor health he is able to stay in the cell with the convicts, who enjoy significantly better conditions and less overcrowding than pre-trial detainees; he is on the self-feeding programme.

A.I., aged 44, Kano State: He has been awaiting trial since January 2007 in Kuje Prison. On 11 December 2006, he was arrested and taken to Force CID, Garki, Abuja, on suspicion of financial crimes. Until 23 December, he was detained incommunicado. On one occasion, in a room on the second floor of the CID building, between 9.30 a.m. and p.m., he was tortured on the orders of two police officers, one male and one female. His limbs were wrapped with strips of rubber starting from the extremities in order to restrict circulation; and his arms and legs were tied behind his back, and he was suspended from a metal bar under his arms for about two hours. At 4.30 p.m. he was presented with a paper to write a statement, which he refused to sign. At 6.45 p.m. he was told to sign the statement and he again refused. He described four 4 x 4 m cells in the CID, which held about 142 persons at the time of his detention. While at the CID, he begged for food to be smuggled in for him. On 23 December, he was able to pass a message through a CID officer to his lawyer, whose efforts, including contacts with the Deputy Assistant Commissioner of Police, led to his release. On 4 January 2007, however, on the orders of the female officer, he

was rearrested and brought to Kuje Prison. He reports that although he is awaiting trial, he can afford to pay for a place in the convicts' cell. He last appeared in court on 26 February 2007.

Observations: The Special Rapporteur concludes that the conditions of detention for pre-trial detainees are inhuman. The sanitary conditions are deplorable. The Special Rapporteur notes with strong concern that some detainees have been held in these conditions for up to six years while awaiting trial. As far as the conditions of detention of convicted prisoners are concerned, they were deemed slightly better.

As a follow-up to his 4 March visit, by letter dated 4 May 2007, the Special Rapporteur sent an urgent appeal concerning recent allegations of violence in Kuje Prison. According to the allegations received, on 28 March 2007, the inmates sought to complain to the yard master about the shortage of clean drinking water provided to them. When they insisted to see the yard master, the warders attempted to use batons to force the inmates back into Medium Custody 1 cell. An armed squad arrived shortly thereafter and shot three inmates. Other warders armed with sticks, iron and other objects proceeded to beat the inmates. Seven inmates were reportedly identified by the warders as leading the protestors and taken to a cell in the yard where they were beaten and tortured until they gave up their protest three days after the incident. As a result, two of these prisoners – Mr. Mathew Mato, a mobile police constable charged with armed robbery, and an elderly inmate named Joseph, who was facing charges of corruption – died. It has been reported that since the violence, inmates in the yard are served one cup of water in the morning and in the evening; complaints are ignored; and at the slightest provocation, the warders bring out and beat the offending inmate.

Nigeria Police Force Criminal Investigation Department, Garki, Area 10, Abuja, FCT

Force CID, Garki, is the Nigeria Police Force's principal CID for FCT and the rest of the country. The Special Rapporteur was received by the Commissioner of Police, Columbus Okaro, the Deputy Commissioner of Police, Christopher Katso, and the Chief Superintendent of Police, Mr. Aval M. Mohammed. According to the Deputy Commissioner, the total capacity of the CID is 150 inmates.

General Conditions and Treatment in Detention. The authorities of the CID were cooperative and allowed unrestricted access to and private interviews with the detainees. However, there was a significant delay and the Special Rapporteur was only able to access the facility at nightfall after having waited for

approximately 45minutes. Due to the lack of electricity in the cells, the interviews had to be conducted with flash lights. The Special Rapporteur notes with concern that the detention facility did not have the possibility to provide light during night which, in his opinion, does not allow officers to protect detainees against inter-prisoner violence, among other things.

Upon arrival, about 30 detainees were present in the cells; several of whom separately reported that approximately 400 detainees were removed from the CID two days earlier. The Special Rapporteur suggests that the removal of detainees was deliberate attempt to hide evidence from the Special Rapporteur. Despite the maximum period of police custody being two days as stipulated in Nigerian law, many detainees have been held for several months at CID Garki.

M.O., aged 36: On 21 December 2006, he was arrested in Jos, Plateau State, on suspicion of armed robbery, and on 23 December, he was brought to Force CID, Garki. A few days after his arrival, he was tortured by four to five CID officers: a bicycle inner tube was tightly wrapped around his left hand in order to restrict blood circulation; and he was brought to the basement of the building, forced to stand on a table, handcuffed on the right hand to a hook on the ceiling, and was hung from his hand when the table was removed. He was beaten during his one-hour suspension. He was taken down after he confessed. No medical attention was provided, and consequently he will not regain the use of his arm.

H.A., aged 41, Kano State: In May 2006, he was arrested in Kano on suspicion of burglary, and transferred to Force CID in November 2006. Two days after his arrival at the CID he was taken out of the cell by plain clothed officers and brought to the basement, where one of his arms was fixed with a chain to the ceiling. He was suspended from his arm for about ten minutes and beaten, including with cables, in order to extract a confession. He confessed and signed a statement. Despite his arrest in May 2006, he has not yet been brought before a judge.

M.J., aged 23, **Y.A**, aged 30, and **M.U**, aged 27, all from Kebbi State: Held in the same cell, all reported torture and ill-treatment in the basement of the CID. They reported that there were approximately 60 other detainees in their cell two days prior to the arrival of the Special Rapporteur. **S.U.**, aged 28, Edo State: Suspected of armed robbery, he has been detained at the CID for about five months. In November and December of 2006, and January 2007, he was severely tortured in the basement by CID officers, handcuffed and hung by his hand from a ceiling fan fixture, beaten, and shot in his left shin. As a result of being

tortured, he has lost the use of his right hand and is suffering from a serious infection of his leg. He has been shackled almost since he arrived at the CID. He is held in a cell with about 24 other detainees.

Recommendations
The Special Rapporteur expresses strong concern that the vast majority of detainees had been removed from CID Garki only two days before his arrival to conceal evidence. He recommends that prompt and independent investigations of all torture allegations be carried out in order to bring those responsible to justice (i.e. the alleged perpetrators, and those senior officers who were under a duty to investigate as soon as there were reasonable grounds to believe that an act of torture had been committed (namely the Commissioner and Deputy Commissioner). He recommends that lighting be improved in the evening hours to enable officers to protect detainees against inter-prisoner violence. The Special Rapporteur is further concerned over the sanitary conditions, the lack of sufficient clean water, as well as the very limited quantity of food provided, and lack of medical treatment for the detainees.

Nigeria Police Force, State Criminal Investigation Department, Panti, Yaba, Lagos, Lagos State
The Special Rapporteur was received by Mr. Olayinka B. Balogun, the Deputy Commissioner of the Panti CID. The Special Rapporteur expresses with strong concern that this is one of the worst detention facilities he has ever seen. After a lengthy and heated discussion with the Deputy Commissioner, the Special Rapporteur was finally allowed to conduct private interviews with the detainees. When requesting entry to the "torture room", the Deputy Commissioner and guards attempted to mislead the Special Rapporteur and guide him to another building. Access to the "torture room" was secured only by telephone instructions from the IGP, Mr. Sunday Ehindero.

Cell Behind Human Rights Desk
The cell is located at the end of a small corridor behind the human rights desk. The 72 male detainees accused of armed robbery inside have been there from five months to more than two years. The room is severely overcrowded, badly lit, and filthy. None of the detainees have left the cell since their arrival, have seen a lawyer or been visited by family members, who in many cases are not aware of their whereabouts. One detainee had been shot in the foot in the cell four weeks earlier. There are 16 female detainees held in the adjacent cell.

E.B, aged 26, Benin City, Edo State: On26February2007, he was arrested at Bar Beach and brought to the CID. On 2 March in the

evening, he was tortured by four officers for almost two hours: suspended upside down in the "torture room", beaten with a stick and a metal baton. He confessed, and was then brought to the cell behind the Human Rights Desk for medical treatment. Severe skin injuries were still visible at the time of the visit of the Special Rapporteur. He reports that torture is regularly practised.

J.O., aged 24, Lagos. On 19 February 2006, he was arrested by the Special Anti-Robbery Squad (SARS) in Ikeja, Lagos, on suspicion of having stolen Naira 11 million. Four days after the arrest, he was shot with an AK-47 in his left and right foot by an officer. Denied medical treatment, he treated himself in the cell by using a candle flame to cauterise his wound. He remained in incommunicado detention for three months, and his bank account and property were seized. From SARS he was transferred to CID Panti where he is awaiting trial. **J. O.:** He reported that it was common for other detainees to be forced by the guards to torture each other. Very little food is provided and the detainees must pay for what they receive; the detainees are starving. One person died recently. He reported that suspected armed robbers are perceived as less than human by the officials.

"Torture Room"
The "torture room" is located in "Ojo Adekolu Hall D9", which is a separate bungalow behind the main building on the premises of the CID. When entering the bungalow, one comes into a large room furnished with desks and chairs where investigators take statements. At the very end of this room, on the left hand side, a doorway covered with a curtain leads to the torture room, which comprises a smaller roofed section, and a larger open-air section.

At the time of the visit of the Special Rapporteur some 125 individuals, including three women, and children as young as eleven years, were detained under extremely inhuman conditions. The room was heavily overcrowded, extremely hot, humid and filthy. Detainees had to sleep directly on the earth floor or on small pieces of cardboard. A makeshift hole in the ground served as a toilet. The smell was unbearable, even more so by the stench of one injured detainee's decaying foot. None of the detainees had seen a lawyer, judge, or been able to contact family members, although some had been there for more than two months. Food, provided on the basis of bribes to the guards, is insufficient and of poor quality. People were found to be starving.

Almost every detainee in this room had serious physical marks of torture, ranging from skin injuries inflicted with a heated

machete or from a beating with a metal bar to cases of untreated gunshot wounds. Detainees reported that they were forced by officers to torture each other, on the ground face down; the hands and feet of the victim are bound together behind their back, from which they are raised and left suspended from an iron bar. To increase the pain, the victim's back is weighed down with a heavy engine part, which was found in the room. This practice takes place in front of the other detainees, including children, with the aim to threaten and intimidate them. The Special Rapporteur found in the cell metal bars and other instruments whose shapes corresponded to detainees' injuries. It was reported that one person died in the cell shortly prior to the Special Rapporteur's visit.

B.A.M.A., aged 22, Kwara State: He has been detained at the CID for about two months. At the time of the visit of the Special Rapporteur it was clear, given that he was provided no medical attention, that he was at risk of life-threatening complications arising from a gunshot wound sustained in connection with his arrest. His foot was in an advanced state of decay and he was in urgent need of an amputation to save his life. **E.J.**, aged 43, Abia State: He was shot by police during arrest, and at the time of the visit of the Special Rapporteur it was apparent, given that he was provided no medical attention, that he was at risk of life-threatening complications arising from his gunshot wounds. He was detained in the torture room and placed adjacent to the toilet.

E.G, a United States citizen: He was held in the torture room in handcuffs. He had been detained for two weeks in the torture room. He was too weak to stand and complained of hunger. **G. O**: He demonstrated the torture methods used by the CID officers. He reported that that IPO who tortured him is Sgt. Dickson. Ms. **T.A**: She was detained with two other women among approximately 120 male detainees. She did not complain about any harassment from the male detainees. Ms. **S.W**: She reported that IPO Friday tortured her. Ms. **J.S**: Another female detainee in the torture room.

Recommendations

In his debriefing, the Deputy Commissioner stated that the officials "would try not to torture", however the detainees in the torture room were not "normal criminals", but armed robbers. The women in the room were reportedly not detainees but in the process of being screened, and that due to a lack of space they are locked up with men. The Deputy Commissioner assured that the severely injured persons would immediately receive proper medical care and no detainee would have to fear reprisals for having spoken to the Special Rapporteur.

By telephone on 10 March 2007, the Special Rapporteur made a direct plea to Mr. Sunday Ehindero, the Inspector General of Police, for urgent medical treatment, and assurances were received in this regard (in addition, follow-up letters were sent on 6 and 27 April). Appeals for assistance were also sent to the Controller General of Prisons, the Minister of Justice/Attorney General, as well as the President of the Republic.

A visit on 3 April 2007 by United Nations officials found the "torture room" in CID Panti emptied. According to the officers in charge Mr. J. and Mr. A.A. were brought to court shortly after the Special Rapporteur's visit. The District Court Chief Prosecutor, Magistrate Court Yaba, indicated that Mr. A.A. (case file C 26/07) was sentenced for armed robbery and imprisoned at Ikoyi Island Prison, Lagos. However, upon inquiries by the Lagos Prison Controller, the Head of Ikoyi Prison reported that Mr. A.A. did not appear on the current list of inmates. Furthermore, according to the files of the Investigating Police Officer, CID Panti, on 12 March 2007, Mr. J.'s case (charge number-N/23/2007) was transferred to Magistrate Court No. 12, Ebute-Meta, Lagos. However, to date, no records related to this case ever reached the court.

On 21 May 2007, on the occasion of the Inter Action Council of Former Heads of State and Government in Vienna, the Special Rapporteur raised the case of the above men with President Obasanjo. On 28 May, President Obasanjo wrote to the Special Rapporteur to assure him of the assistance of the IGP in the follow-up to these cases. On 6 June, the Special Rapporteur reiterated his appeal for information on the situation of these detainees to the newly inaugurated IGP, Mr. Mike Okiro. By letter dated 14 September 2007, the Government stated that it is "committed to unravelling the circumstances leading to and surrounding the deaths, which it has established, of two of the detainees, namely; Mr. E.J. and Mr. B.A.A. Their deaths are presently being investigated and the Government is committed and determined to hold all those found guilty, accountable."

The Special Rapporteur recommends that independent investigations of all those responsible for the appalling conditions in the "torture room" and of torture allegations be carried out in order to bring those responsible to justice (i.e. the alleged perpetrators; the senior officers who were under a duty to investigate as soon as there were reasonable grounds to believe that acts of torture had been committed, including the Commissioner and the Deputy Commissioner; and the medical staff at the CID (for denial of medical treatment). The authorities should ensure that separation of males and females, as well as

adults and children, is rigorously implemented.

Port Harcourt prison, Port Harcourt, Rivers State
The Special Rapporteur was received by Mr. B. K. Bogunjoko, the State Controller of Prisons, Rivers State; Mr. A. B. Olusola, the Chief Inspector of Prison, and Mr. Alpheous Ottan, the Duty-Officer. Built in 1918 and one of the largest in the country, the prison was originally built to house 804 inmates. On the day of the visit of the Special Rapporteur, the total number of detainees was 2,420, served by about 194 staff. Ninety-two percent of the inmates are pre-trial detainees; 4.5 percent are facing the death penalty, including a total of 19 female detainees, who are confined in a separate wing.

General Conditions and Treatment in Detention.
According to the Chief Inspector of Prison disciplinary measures are set out in the prison regulations and include flogging as well as detention in a punishment cell. Corporal punishment is inflicted for the offence of bodily harm against an inmate or warden or participation in a prison riot, and requires the consent of the prison's doctor. According to the official, the last caning was carried out two years ago. Solitary confinement is only possible for up to two days. Reportedly, there has been one case of staff misbehaviour which has been sanctioned with extra-duty. Detainees can leave the cells from 9 a.m. to 1 p.m. The Special Rapporteur notes with concern that staff members have not received any salary for already three months.

However, on 20 September 2007, in a meeting with the Special Rapporteur in Geneva, the Permanent Representative of Nigeria informed him that Mr. J. and Mr. A. were subsequently found to be alive and have received medical treatment. Despite repeated requests for details of their situation, including their whereabouts and medical treatment reports, no information has been provided to date.

Death Row
The 110 condemned prisoners are detained in four different cells. Similar to other prisoners, they can leave their cells from 10 a.m. to 1 p.m. However, they are not allowed to leave the vicinity of their buildings. Since a mass jailbreak in 2005 they are excluded from participating in recreational or vocational activities. Like other cells, death row cells are severely overcrowded and lack all basic facilities.

(a) Building B/13
A.M., aged 43: He has been a detainee on death row for 10 years. **J.O.**, aged 65: He has been a detainee on death row for 10 years. **U.N.**, aged 34: He has been a detainee on death row

for eight years. He requires eye surgery. **U.O.**, aged 48: He has been a detainee on death row for eight years. He suffers from tuberculosis. **D.O.**, aged 40, Imo State: A detainee on death row, he was detained in cell 1.

(b)Building A/3

I.I., aged 27: In 2002, he was sentenced to death for murder. On 6 January 2007, he was sentenced to six lashes for the destruction of a mobile phone. According to the punishment book, the medical officer did not deem him fit enough for the punishment. The lashing took place in the yard under the mango tree with a *koboko* (three-braided cow-hide whip). Mr. I.I. claims to have been punished for having smoked a cigarette and that, at the time of the incident, he had been taken immediately out of his cell and beaten by the warders.

S.N., aged 97, Imo State: He was arrested in 1997, and convicted in 2003. At the time of the visit of the Special Rapporteur, he was in a very poor state of health. Since he was unable to walk, other detainees carried him to the door so that he could speak with the Special Rapporteur. **U.M**: A detainee on death row, he was arrested in 1985, and convicted in 1995 in Owerri. **O.O.:** A detainee on death row, he refers to the jail break on 17 July 2005, in which none of the condemned prisoners participated. The announcement by the President of a moratorium on death sentences in recent years had not led to commutations of sentences of condemned prisoners in Port Harcourt.

O.C., aged 55, Ebonyi State: A detainee on death row, he was arrested in 1986 and sentenced to death on 21 May 1990. He has spent 17 years on death row. **A.O.**, aged 33, Akwa Ibom State: A detainee on death row, he complains about the exclusion of condemned prisoners from sport and other recreational activities since the jail break in 2005, even though condemned prisoners did not participate. **P.O.,** aged 31: A detainee on death row, he was arrested. On 16 December 1997, and convicted in 2005. He complains about the lack of sport activities, and the poor quality and insufficient quantity of food. **A.O**, aged 62, Imo State. A detainee on death row, he was arrested on 11 October 1987 and convicted in 1997.

Reception Cell; New Arrivals

Newly arrived detainees are locked up in the reception cell which is located next to the football pitch. The cell was severely overcrowded with approximately 60 detainees – some of them children – locked up I it. There are only 18 bunk beds and one toilet. The majority of detainees have to sleep sitting on the floor, because there is not enough space for them to lie down on

the ground. Detainees reportedly have to pay ₦50 to the prison wardens to shower. Guards retain money from visiting family members and make prisoners pay for food. A meal of beans without any sauce is served three times. Some detainees have been in the reception cell for more than one year, although the stay is meant to be temporary until processing of the detainee has been completed.

E.N., aged 39: A debtor, he has been detained in the reception cell since March 2006. He complains of the bail terms that are impossible to meet. He reports that children are regularly detained in the cell together with adults.
F.A, aged 21. He has been detained in the reception cell for two months. On 12 January 2007, he was arrested on suspicion of armed robbery and was detained for 11 days at Borikiri SARS station. His hands were tied together with marine rope and he was suspended from the ceiling for 30 minutes. He was flogged on his back with a machete and a stick for 40 minutes, and later was shot in the leg by the ASP. He was threatened with death and forced to sign a statement. He did not receive medical treatment and his gunshot wound became infected. His lawyer brought him medicine but the officers at SARS would not give it to him. His next court appearance was expected to be on 28 March 2007.

C.W., aged 18: In September 2005, he was arrested by police on suspicion of armed robbery and taken to Rumukoro Police Station, Port Harcourt. He was detained incommunicado for six months and was flogged by the IPO. He has been detained in the reception cell in Port Harcourt Prison for one year now and has not been subjected to ill-treatment. He has had no visits, though his family is aware of his detention. **C.O.,** aged 14: In June 2006, he was coming home from school when he was shot in the stomach by police in pursuit of armed robbers. He was arrested and first taken to the State Intelligence and Investigation Bureau (SIIB). Then he was brought to the local hospital, where he had surgery. He was taken back to SIIB, and despite medical reports he was refused further medical treatment. He has been detained in the reception cell for eight months. He complains of continuing severe pain. The detainee can hardly walk due to his medical condition, and is assisted by fellow inmates. He has been visited by his sister.

I.N., aged 15: On 15 November 2005, he was arrested, and brought to SARS, where he was detained incommunicado for six months. During the interrogation, he was handcuffed, he was hung from the ceiling from his shoulders, and he was flogged with a machete. He has been detained in the reception cell of the prison for about one year. He was not ill-treated in prison. He

has not had any contact with family. **O.I.**, aged 12: He has been detained for four months in the reception cell awaiting trial. On 7 October 2006, he was arrested and later detained for two months at Rumukoro Police Station, Port Harcourt, in connection with the death of his classmate. He reports that he was beaten. He receives weekly visits from his mother. He complains that he misses his education. He reports that the detainees were aware of the visit on Saturday.

Rev. L.F., aged 43: He has been detained in the reception cell for six months, and prior to that he was held for three months at the office of the EFCC, Port Harcourt, in connection with financial crimes. He complains that bail is often set for which one cannot meet the conditions.

Female Detainee Wing

The wing is in a very good condition. The cells are clean and every detainee has a bunk bed. There is one convicted prisoner and 13 pre-trial detainees guarded by 17 female prison guards. According to the detainees, they can leave their cells from 8 a.m. to 1.30 p.m. and are allowed to engage in activities, such as sewing etc. The guards here report that caning is not practiced anymore and the last instance of solitary confinement was imposed a long time ago. Guards have received some training by human rights NGO and became sensitised not to cane.

R.D., aged 26: On 7 September 2006, she was arrested on suspicion of murder, and taken to CID Port Harcourt. She was detained for one week in a separate women's cell. During the interrogation by two male police officers, she was handcuffed, beaten with a machete and forced to sign a statement. In prison she was not subjected to ill-treatment, but separation is allegedly used as disciplinary measure. Voluntary work and visits are possible in prison. The detainees are allowed to stay outside their cells from 8 a.m. to 1:30 p.m. She has not seen her son since her arrest. She receives support from Female Legal Aid, but has no lawyer. She is awaiting trial.

C.E., aged 45, Imo State: On 25 September 2006, she was arrested on suspicion of drug-dealing. Subsequently on 6 November, she was sentenced to 20 months' imprisonment for drug-dealing. Prior to detention in Port Harcourt Prison, she had spent five weeks in NDLEA Women's Cell in Port Harcourt. She was beaten by NDLEA officers (a male and female). In prison, she was not subjected to ill-treatment. As a disciplinary measure, she reports that she has had to clean toilets. She gets regular visits from her children, who bring her food.

Psychiatric Unit

The unit for detainees with psychiatric conditions is located in the women's wing. When visited by the Special Rapporteur, the cells were clean and empty. According to the prison guards, the cell is not used anymore.

Infirmary
There are two doctors and 13 nurses working in the infirmary. Reportedly, many detainees suffer from tuberculosis and/or malaria as well as HIV/AIDS. The supply of drugs is generally insufficient. There are neither drugs for the treatment of tuberculosis available nor X-rays. There have been three deaths in total this year.

O.O., aged 16: Awaiting trial in Port Harcourt Prison for six months, he is currently in the infirmary.

A.O., aged 72, was arrested in May or June 2006, in connection with a land dispute with his brother, and is awaiting trial. He has been in the infirmary for nine months since he arrived to Port Harcourt Prison. **R.A.**, aged 77, Imo State, was detained in 1996, and convicted in 2003. He suffers from diabetes and, hypertension and needs medical treatment.

Recommendations
As a priority, the Special Rapporteur recommends the separation of children from adult prisoners. Pending consideration of alternative measures to detention for the children, they should be transferred to the section for female detainees. The children should be provided adequate educational, vocational and recreational activities, including the use of the library. The Special Rapporteur recommends the release of S.N., A.O., and R.A. on humanitarian grounds, given their advanced ages and state of health. Detainees on death row should enjoy the same recreational and vocational activities as other detainees.

Nigeria Police Force, State Criminal Investigation Department and Central Police Station, Port Harcourt, River State
The CID and the Central Police Station are located in the same compound. The Special Rapporteur was received by Mr. Sunday Kuryas, Officer in Charge of the Central Police Station, Mr. Felix Ogbaudu the Police Commissioner and the Assistant Police Commissioner (female), who were very cooperative.

Criminal Investigation Department
There are currently over 40 persons in the CID cells. The detainees are forced to buy their own food.

O.N., a civil servant: On 5 March 2007, he was arrested in

connection with an altercation involving a soldier and a police officer. He reports no ill-treatment.

C.A., aged 20, Gala Park. On 1 March 2007, he was detained along with two others by 12 police officers on suspicion of selling a stolen handset, and brought to the Mobile Police Office at the CID around 5 or 6 p.m. He described it as the yellow-painted building situated immediately to the right upon entry to the CID compound. He described the interior as 14 x 14m with a ply-wood division. Their hands were tied behind their backs, and for about an hour, eight officers beat them with machetes, canes, and a horse whip. They signed confessions in the end, and no treatment was provided for their injuries. They sustained numerous lesions, which were still visible at the time of the visit of the Special Rapporteur. He is unable to afford a lawyer. He has been visited by his girlfriend.

P.D., aged 22: On 1 March 2007, he was arrested and taken to the police station at Omoku. He reports that he was beaten by an officer with a baton, and struck on the knee with the butt of a gun. He suffers from a large hematoma on his knee, and is unable to move it. His parents are unaware of where he is and he has no lawyer.

T.N., aged 24, laundry tradesman, Ogoni: On 8 February 2007, he was arrested by police at home on suspicion of stealing ₦1 million. The police seized his property, including his motorbike, handset, shoes, shirt, and trousers, and ₦7,800. He was first taken to Bori Police Station, Ogoni, and around 12 February, to the office of the Swift Operation Squad (SOS), Port Harcourt. He was held there for two weeks in a cell with about 15 people. He was then brought to CID. In the first office on the right of the entry gate, he was handcuffed behind his back, his feet were bound with rope, and he was beaten with a baton and machete all over his body. A gun muzzle was pressed to his right shoulder. He last saw his wife on 28 February.

L.A.: On 18 December 2006, he was arrested at his home around 10 a.m. by the "Agip Army" (security services of Agip), on suspicion of stealing oil tools from "Agip Newbase". He was taken to Bori Camp, where the "Agip Army" commander ordered him beaten with a chair for 30 minutes. On 22 December, he was taken to the CID. Their investigation turned up nothing, and the officers decided that this was a federal matter, and he was transferred to Force CID, Abuja. He was held there for about two weeks. Since nothing was found, he was brought back to Port Harcourt CID for release. However, he remains in detention without charge or having been brought before a judge.

G.E., aged 18, Akwa Ibum State: Around 24 January 2007, he was arrested together with **P.A.,** aged 22, a driver, Delta State, on suspicion of stealing a handset. They were taken to Bori Camp and held there for about one month. They were beaten with machetes with their hands bound behind their backs. They were then brought to the CID, taken to the office adjacent to the compound entrance. Over a period of five days, their hands were cuffed, heads forced under the table, struck with machetes, batons, and a *koboko* (three-braided cow-hide whip). They were questioned over the identity of a person. They have not had contact with any family or had access to a lawyer.

Gate House; "Engine Room"

The gate house, or "engine room" – the alleged place of torture – is a yellow-painted building situated immediately to the right upon entry to the CID compound. The interior is approximately 14 x 14m with a ply-wood division, and consists of three small rooms. The Special Rapporteur met Mr. Ben Awor, Assistant Superintendent of Police, attached to State CID. He denied any allegations of torture or ill-treatment taking place in the building.

However, when the Special Rapporteur identified a *koboko* (a three-braided cow-hide whip of the type which corresponded to the allegations) in the room, he was told by investigating officers that it was an item of evidence in a case. When the Special Rapporteur attempted to photograph it, a plainclothes officer reached in from a window and fled with it. He was later ordered back and the item was photographed.

Central Police Station

The Central Police Station is a two-floor building with offices on the first floor and eight cells on the ground floor. At the time of the visit, the Officer in Charge was Sunday Kuryas. The cells are overcrowded, dark and filthy. The women's cell (with three detainees) is located within the cells where male detainees are kept. A bucket serves as a toilet. Detainees have to sit and sleep on the concrete floor, and complain about the lack of food. Young boy on a bench in the corridor: A young boy with severe injuries on his legs and arms was found. He was barely able to sit or to stand up and was in need of medical treatment. Officers arrived and intimidated the boy, who subsequently declined to be interviewed and was brought outside of the building under armed guard.

Ms. N.I., sisters, both aged 23: Since 26 February 2007, they have been detained. The police demand the family pay ₦20, 000 to release them. They are detained in a separate cell together with one other woman. They are not provided food and have no possibility to shower. Ms. **G.D.,** aged 20: She has been detained

incommunicado for one week, is HIV positive, but reports no allegations of ill-treatment.

Recommendations
The Special Rapporteur recommends that prompt and independent investigations of all torture allegations be carried out in order to bring those responsible to justice (i.e. the alleged perpetrators including B.A.; those senior officers who were under a duty to investigate as soon as there were reasonable grounds to believe that an act of torture had been committed).

Nigeria Police Force, Criminal Investigation Department, Gwagwade, Kaduna, Kaduna State
The Special Rapporteur was received by Mr. Ernest Ibhaze, the Commissioner of Police, and Mr. Alkali Usman Yakubu Eway, Assistant. Numerous allegations were received indicating that torture was carried out in a specific room, known as the "Panteka", on the left-hand side on the first floor of the CID. There is a general climate of fear, and many detainees declined to speak with the Special Rapporteur, or they ask for confidentiality ("They will kill me if I give you my name."). Detainees reported that the visit was expected and that they were forced to clean their cells some days before. The cells, which are relocated on the ground floor, are overcrowded and in poor condition. In total, 76 detainees are held there. They all have to sit and sleep on the floor; none of the cells are lit, and there is no toilet. Thirty-six detainees were recently shown on a local TV channel, where they had to state that the conditions of detention in Kaduna are good. Those who refused were allegedly tortured. It was reported that a detainee was recently shot dead outside of the cell.

S.A., aged 23, Benue State: On 26 February 2007, he was arrested on suspicion of armed robbery and taken to Tafa Police Station. The next day he was taken to the CID, where he was beaten by a number of officers. He has not received medical treatment for the injuries he sustained, including those on his buttocks.

R.J., aged 20, Kaduna State: On 22 February 2007, he was arrested, and brought to the State CID. In the torture room (Panteka), he was handcuffed, threatened with death, and beaten with a wooden stick for an hour.

A.J., aged 35, Calabar: On 2 February 2007, he was arrested in Kaduna on suspicion of armed robbery, and brought from the police station to the CID. He was tortured for three days, during the daytime for 30 minute to one hour sessions. He was beaten with sticks, cables and a sturdy, long bamboo stick. He

eventually confessed after the beatings.

P.U., aged 18, Kaduna: On 16 January 2007, he was arrested on suspicion of robbery. He was initially brought to a police station where he was beaten with a stick before being transferred to the CID later that day. He was tortured in the Panteka for over two days. He was beaten with a heavy bamboo stick for about 40 minutes and threatened with death.

M.B., aged 27. He was arrested on 8 February 2007, on suspicion of armed robbery. He was shot by the police in his right leg when he was arrested, and taken shortly thereafter to St. Gerard's Hospital to get a bandage. He has not received appropriate treatment since then. As a result, his wound has become seriously infected and without immediate treatment his life is at risk. He is unable to walk and cannot move from the place he is sitting (in the corridor between the cells). He has no lawyer and is held incommunicado. In the subsequent debriefing meeting, the Commissioner of Police explained the lack of medical treatment by the lack of financial resources. His assistant, Mr. Eway, however asserted that the detainee was brought several times to the local hospital, though this was proved to be untrue upon examining Mr. B's files. The case of Mr. B has been included in the communications sent in relation to the two severely injured detainees at CID Panti, Lagos (see para. 44 of the annex). By letter dated 14 September 2007, the Government informed that Mr. B was alive and in prison custody in Kaduna. A photograph and medical certificate of Mr. B. following his treatment was also provided by the Government.

S.A., aged 27, Fulani, Kaduna State: On 2 March 2007, he was arrested in connection with the theft of a cow. During his interrogation at the CID, in the "torture room", he was beaten with a wooden stick and was raised to a height of about two metres by three policemen and released. He was forced to sign a confession. He has not been taken to court yet.

A.H., aged 17, Kaduna State: In July 2006, he was arrested on suspicion of burglary, and taken to the CID Station. He was interrogated in the Panteka. Over the course of four days he was beaten, and whipped. His hands and feet were bound together and he was suspended and swung from the ceiling for 15 minutes at a time. He was forced to sign a statement. He has been to court twice, he has no lawyer, and his family is not aware of his whereabouts.

D.H., aged 35: In December 2006, he was arrested about 40 km outside Kaduna on suspicion of vandalising oil pipelines. He was shot in his left leg and taken to Gwagwade Police Station. He was

beaten with a wooden stick on his wound. After one day he was taken to Force CID Headquarters in Kaduna, where he was interrogated, but was not ill-treated. In Kaduna, he was brought to the general hospital for treatment, whereupon the doctor recommended him to be hospitalised. The officers refused. He was brought to court in the first week of March 2007, and was granted bail. However, because he has not been able to produce a certificate of security, the bail has not yet been effected.

Ms. **P.J.,** aged 35, a nurse: Since 24 February2007, she has been detained in the women's cell, and accused of performing an abortion. She reports that she was treating a woman, who was six months pregnant, and who subsequently lost her baby. She was interrogated at the CID, but was not ill-treated. However, she was threatened that if she told anyone about her detention she would never be released. She has a lawyer, but police deny him visits. She further complains that she is refused access to toilet facilities.

Recommendations
The Special Rapporteur recommends that immediate medical assistance be provided to injured detainees, in particular to Mr. B. The Special Rapporteur recommends that prompt and independent investigations of all torture allegations be carried out in order to bring those responsible to justice (i.e. Commissioner of Police Ernest Ibhaze, his assistant Alkali Usman Yakubu, the Officer in Charge, as well as Sergeant Danlame, from Wakawa, Sabu Police Station, who had been identified by several detainees as a perpetrator of torture).

Kaduna Medium Security Prison, Kaduna, Kaduna State
The Special Rapporteur was received by Mr. Momodu, the Controller of Prisons. Mr. Patrick Ondoma, Chief Inspector of Prison and his staff. Kaduna Prison was built in 1915 for an inmate population of 547. On the day of the visit, the population was 959, which is served by 224 staff. Sixty-three percent of the detainees are awaiting trial; 11 percent were on death row, including one woman; and there were ten women detained in total.

General Conditions of Detention and Treatment: The Special Rapporteur had a comparably good impression of the prison. The facilities are clean; detainees get enough food and have the possibility for recreational or vocational activities (except those who are condemned). With the exception of some allegations on ill-treatment in the women's wing, he did not receive any strong allegations of torture committed inside the prison. There seems to be a consensus among the staff not to inflict corporal punishment. At the time of the visit, 104

condemned prisoners were held in the prison (Building 5, and in cells next to the gallows), many of them already for more than 10 years. Two condemned prisoners were convicted on the basis of Sharia law. While he did not receive any explicit allegations of torture, detainees complained to the Special Rapporteur that they are barred from participating in any educational, vocational or recreational activity.

The Special Rapporteur was informed that detainees on death row do not know the exact date of their execution, leaving them under constant fear that they could be taken to the gallows at any moment. Visiting family members are left in doubt whether their visit has been the last one and do not have the possibility for a final goodbye. Furthermore, the body of the executed is not returned to the family for a funeral, but kept as a property of the State. Condemned prisoners in cells next to the gallows receive significantly more food than other detainees. All detainees have to pay for the arising expenses if admitted to the prison's hospital. According to the prison authorities, detainees are punished with solitary confinement of up to three days for disciplinary offences. However, there were allegations that detainees were held in solitary confinement in excess of three days. Prison staff members have not received any salary for already three months.

S.J., aged 40, Edo State: On 23 July 2004, he was arrested on suspicion of theft. He was brought to CID in Gwagwade, Kaduna where he was detained for five months. He confessed under torture, which included being suspended upside down for almost two hours. He reports that torture is rampant at this CID. He described the torture room on the first floor. At the time of the Special Rapporteur's visit, he was detained in the punishment cell for one day.
A.S., Edo State: He was also arrested in connection with the above case. He was shot by officers during the interrogations. The perpetrators were alleged to be Officers Backfire, Yayabos, Bako, and Ajeogo.

When conducting interviews with those detainees who were held in the punishment cell, the Special Rapporteur found a **teenage boy**, who was locked up in the cell, additionally shackled on the feet, and apparently suffering from a strong mental condition. Due to his confused state, it was not possible to receive clear information from him. It is the Rapporteur's opinion that the boy should be seen by a competent psychiatrist and the shackles removed.

A.E., aged 24, Anambra State: In November 2005, he was arrested in Jos on suspicion of robbery. He was detained at CID,

in Jos, for two months, and later for one month at the CID, in Kaduna. He reports that he was beaten with a heavy piece of wood in Kaduna. On 19 January 2006, he was transferred to Kaduna Prison. Since May 2006, he has been detained in isolation of the other prisoners as he has had problems with some of them. He can leave his cell from morning until 1:30 p.m. daily.

S.I., aged 39 years. In 2003, he was convicted for robbery. He is presently in the prison hospital, suffering from a serious dermatological condition, for which he cannot receive appropriate treatment without the necessary medication.

Y.B.: In 1998, he was condemned to death for robbery, which was commuted to life imprisonment in 1999. He maintains his innocence.

Female Detainee Wing

When visited by the Special Rapporteur there were 10 women detained in this wing, including 2 convicted and 1 condemned. Seven are awaiting trial. The general conditions of the facility are good. However, the Special Rapporteur received allegations of inhumane and degrading treatment, according to which women had been chained to their bed for up to three days. Furthermore, prison staff had been accused of seizing presents received from visitors.

Ms. **Z.Y.**, aged 31: For the last two years, she has been detained awaiting trial for charges of fraud. Prior to this, she had been detained on numerous occasions for up to several weeks at Metro Police Station, Kaduna. On these occasions, she reports that she was arrested and rearrested by Sergeant Haruna, who brought her to a warehouse and attempted to rape her. The police seized her property. At the police station, she was handcuffed, suspended naked from a pole resting on two tables and beaten up. She reports that she was pregnant at the time and lost her baby as a result. The prison doctor wrote a letter recommending her release, which was supported by the prison director and prison controller. She was granted bail, however the amount of Naira 1.7 million in cash is not a condition that she can meet. She reports that all the witnesses that have been produced against her by the complainant are members of the police.

Ms. **H.D.,** aged 38, Kaduna State: She has been awaiting trial already for six years for killing eight children. After her arrest she was taken to the CID, where she was detained for one month. She was beaten by a female police officer, forced to swallow teargas, and fainted as a result. She cannot recall

signing a statement. She reports that she was pregnant at the time, lost the baby, was not provided medical treatment, and had to buy medicine with her own money. In prison she was beaten by male and female officers. However things improved with the arrival of the new prison director. She has had no contact with her seven children, and does not know where they are, since her husband died while she was prison. She cannot afford a lawyer.

Ms. **R.I.,** aged 36 years: She is detained in Kaduna Prison, awaiting the outcome of her appeal to the Court of Appeal, Kaduna. Prior to this she was awaiting trial in Kano Prison for two years before she was sentenced by the High Court of Kano (No. 11). She has a lawyer from Kano.

Recommendations

The Special Rapporteur recommends that condemned prisoners be permitted to participate in the recreational, vocational and educational activities available to other detainees. All cases of ill-treatment in the women's wing should be fully investigated, leading to disciplinary measures and criminal prosecution against the perpetrators.

Appendix II

By letter dated 14 September 2007, the Nigerian Government provided comments to the preliminary version of the report transmitted to it on 9 July 2007:

I write in fulfilment of Nigeria's commitment to the Human Rights Council and in acknowledgement of the final draft report submitted by Mr. Manfred Nowak, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on his visit to Nigeria from 4 to 10 March 2007. The Federal Government of Nigeria wishes, on behalf of the people of Nigeria, to thank the Special Rapporteur for the painstaking effort which he has taken to detail the findings of his visit in the report.

As a state party to the majority of the international human rights instruments, including the Convention on Torture, and as a member of the Human Rights Council, Nigeria remains firmly committed to the promotion, protection and advancement of human rights, as well as to the special procedures mechanism of the Committee against Torture, which affords members the opportunity to evaluate and review, through independent and impartial observers, the human rights records of all members. Indeed, we consider it to be consistent with the objective of this administration to promote a Rule of Law environment that will deepen our democracy. It is against this background that the

visit of Mr. Manfred Nowak, Special Rapporteur on Torture, was undertaken at the invitation and support of the Federal Government of Nigeria. We are gratified that the Special Rapporteur highlighted the cooperation he received during his visit, including at the highest levels.

The principal aim of the visit was to 'assess the situation of torture and ill-treatment in Nigeria' and to 'offer assistance to the justice, police and prison sectors' in the Government's effort to fulfil its commitments under the Convention, in a way that enables the Nigerian Government to correct, improve and strengthen its observance of human rights requirements in governance. It was clear to the Government that to achieve this inquiry had to be open, unfettered and objective. It is indeed quite gratifying to note that the Special Rapporteur in his report acknowledged the commitment and willingness of the Nigerian Government to subject itself to the universal periodic review. He also acknowledged the country's commitment to establishing the necessary legal framework for the promotion and protection of human rights, through the signing, ratification and domestication of various international and regional instruments.

The only hitch during the visit was in connection with the Special Rapporteur's inability to inspect the holding cells of the Directorate of State Services (DSS). The Government views this hitch more as an administrative lapse rather than a deliberate attempt to conceal anything from him. The Special Rapporteur arrived at the location without prior knowledge on Sunday night; the low-level cadres he met had neither authority nor instruction to let him into the facility. However, in spite of the need for free and unfettered access to places of concern and interest, it is the view of the Nigerian Government that these visits be properly coordinated to achieve the desired results. The Government regrets this unfortunate incident, which it hopes can be avoided in future through proper coordination and communication.

The Government notes with satisfaction that the Special Rapporteur has accorded due significance to the enormous challenges faced by the State, such as the size of the population and country, ethnic and religious diversity, high level of crime, poverty, federal character, etc. in addressing developmental, human rights issues and crime in the country. While the Government does not intend to justify torture and ill-treatment under any circumstances, it is hoped that the international community understands the enormous challenges faced by law-enforcement agencies in a developing nation as our own. Some of these challenges are highlighted in the Special Rapporteurs report and may have a direct correlation with his observations on the attitude of the police to suspects; the lack of an effective

complaints mechanism; the unsatisfactory state of detention facilities; the under-resourced and over-stretched criminal justice system; Sharia Law and corporal punishment, etc.

Whereas the Government takes the various conclusions reached and recommendations made by the Special Rapporteur in good spirit and good faith, it takes serious exception to the sweeping generalisation on the alleged widespread nature and application of torture in the Nigerian Police and the Criminal Investigation Department (CID) formations, based on his visits to only three police posts (out of more than 3,000 around the country), notably in Abuja, Kaduna and Lagos. The Government is of the view that the conclusion is indeed too sweeping and generalised. It is not logical to use information from a small sample (in this case less than 0.1 percent) to reach a universal conclusion.

It is also important to underscore the fact that Police officers are accountable and that they do not operate with such impunity as suggested in the report. The Police Service Commission, the National Human Rights Commission, and various disciplinary organs at respective police formations, are empowered to examine and address these excesses when they are reported. Such disciplinary actions are reported regularly in the vibrant Nigerian press. This notwithstanding, the Government welcomes the recommendations made by the Special Rapporteur to increase the training received by the police and to broaden their sensitivity and awareness on human rights issues. It would be pleasing to note that bold steps are already being taken to train and reposition the police along this path. The human rights desk, already established in every police station and command is to ensure that the rights of the accused are respected and the rule of law applied in the administration of law and justice.

The Government also views, with grave seriousness and importance, the concerns raised by the Special Rapporteur about the fate of three detainees who he interviewed and whose whereabouts became unknown shortly after his visit, which made him to conclude, again without any reasonable basis, that extrajudicial killings were 'widespread' across the country. The Government recognises the negative effect the fear of reprisals by interviewees will have on the entire review process and is therefore committed to unravelling the circumstances leading to and surrounding the deaths, which it has established, of two of the detainees, namely; Mr. E.J. and Mr. B. A. A. Their deaths are presently being investigated and the Government is committed and determined to hold all those found guilty, accountable. On the other hand, the Government is pleased to report that the third detainee, Mr. M. B., is alive and in prison custody in Kaduna.

While appreciating the concern for the safety and welfare of the detainees shown by the Special Rapporteur, the Government rejects the conclusion of the Special Rapporteur, based only on these two isolated cases, that extra judicial killing is a widespread practice across the country. It must be underscored that the Special Procedure process is designed to assist members to improve, promote and /or strengthen their human rights capacity and records. For this reason, disparaging remarks and conclusions which are largely unsubstantiated must be avoided especially in the interest of objectivity and fairness.

Nigeria welcomes the recommendations made in the report for the decongestion of its prisons and the improvement of the welfare of the prisoners. The Government is pleased to confirm that it has, as part of the decongestion process, released all prisoners over 60 and 70 years old, as well as all prisoners on death row who have served for more than 10 years. The Government has also built new prisons and is committed to the building of additional prisons, in the broader interest of improving the detention condition of detainees and inmates.

Finally, the Nigerian Government finds the Special Rapporteur's report useful and would endeavour to incorporate some of his recommendations in its broader plan of completely eliminating torture and ill-treatment in law enforcement. The Government also recognises the continuous nature of this evaluative process and therefore welcomes the call made by the Special Rapporteur on the international community to support and assist in the building of capacities that would enable the country attain and reach the noble objective of projecting and promoting the highest standards of human rights.

Chapter 8

REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF

8.0 Executive Summary

From 27 February to 7 March 2005, the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief, Asma Jahangir, carried on a visit to Nigeria at her request and further to an invitation from the Government of Nigeria. During her visit, the Special Rapporteur noted that tensions and lack of understanding between Muslim and Christian communities, which had been so far contained and confined to certain areas, had aggravated in recent years. In particular, the adoption of criminal law based on sharia by a number of northern states since 1999 has provoked negative reactions among members of the non-Muslim communities, although only Muslims are subject to these legal systems. Moreover, while economic, political and other factors contribute to such tensions, they have often led to polarisation along religious lines.

For these reasons, the Special Rapporteur is of the opinion that the level of enjoyment of the right to freedom of religion or belief is not satisfactory. Moreover, she is concerned that the increase in religious tensions may further hamper the enjoyment of this right among the Nigerian population.

8.1 Introduction

From 27 February to 7 March 2005, the Special Rapporteur on freedom of religion or belief carried out a visit to Nigeria in fulfilment of her mandate, at her request and at the invitation of the Government. The Special Rapporteur had meetings in Abuja and Lagos, but also travelled to the cities of Kaduna (Kaduna State) and Jos (Plateau State) where she met with local officials as well as members of the civil society.

During her visit, she had the honour to meet the president of Nigeria, to whom she is grateful for the frank discussion. She also had meetings with a number of other Nigerian officials, including the Governor of Plateau State, the Minister for Foreign Affairs, the Minister of Internal Affairs, the Minister of Culture, the President of the Supreme Court, and other officials dealing with questions related to the mandate on freedom of religion or belief. She also had meetings with the National Human Rights Commission, a member of the Parliamentary Committee on Human Rights and representatives of the National Labour Congress. Despite her efforts, she was not able to meet with members of the opposition as they were unable to receive her

for a meeting.

The Special Rapporteur also had meetings with religious leaders, representatives of religious communities and religious organisations, including representatives of the Christian Association of Nigeria (CAN) and of the Jama'atul Nasril Islam[279] (JNI) in the different locations that she visited.

Consultations with non-governmental human rights organisations were organised individually and in groups at all the places that the Special Rapporteur visited. These groups included the Baobab for Women's Human Rights, the National Association of Democratic Lawyers, Constitutional Watch, Legal Resources Consortium, Hurilaws, Legal Defence and Assistance Project, the Centre for the Rule of Law, Global Rights, Women's Rights Advancement and Protection Alternative, Constitutional Rights Project, the Centre of Democracy and Development, Community Action for Popular Participation, and Even Development Projects.

The Special Rapporteur wishes to thank the Nigerian authorities for their invitation, the preparation of the official programme and the assistance provided during the visit. While the organisation of official meetings sometimes proved laborious, in particular with regard to time management, the officials in charge of the visit were in most cases cooperative.

The Special Rapporteur is particularly grateful for the very positive attitude that representatives of religious groups and non-governmental organisations (NGOs) demonstrated during the visit. In this regard, she was impressed by the level of analysis and research that is carried out by NGOs on human rights issues and, in particular, on those related to her mandate. She considers that the high quality and dynamism of Nigerian NGOs constitute an indisputable advantage, including for the Government, in the realisation of the measures that will be needed to bring the country's religious communities to an acceptable level of harmony. Moreover, while she acknowledges that the analyses carried out by NGOs will help in addressing the root causes of religious tensions, she would encourage the civil society to provide the United Nations and other human rights mechanisms with more factual information on cases and situations of human rights violations.

Lastly, she would like to thank the staff member of the United Nations Development Programme (UNDP) in Abuja who assisted in organising logistical and other practical aspects of her visit.

279 The umbrella organisation for Muslims of the north of Nigeria

She regrets, however, that UNDP denied her the facilities to hold a press conference at the end of her visit. During her visit and in the present report, the Special Rapporteur has concentrated her analysis on the situation of freedom of religion or belief in Nigeria, including in the light of the application of sharia penal codes adopted by several states in the north and of instances of communal violence that have taken place in Nigeria over the last few years. Within the scope of her mandate, the Special Rapporteur, in visiting Nigeria, addressed not only the right to freedom of religion of religious communities, but also the right to freedom of religion or belief of individuals within those communities, as well as situations where religion has been used – or misused – for purposes that are inconsistent with human rights.

8.2 Political and Legal Background

The Federal Republic of Nigeria, which gained its independence from Great Britain in 1960, adopted a new Constitution in 1999, marking the completion of the peaceful transition to a civilian Government after nearly 16 years of military rule.

The Federal Republic consists of 36 states, plus the Federal Capital Territory of Abuja. The system of government is structured in three tiers: federal, state and local. The states enjoy a high degree of autonomy. The three arms of the Federal Government are the executive, headed by the President and Commander-in-Chief, a bicameral National Assembly and the judiciary. Ministers are appointed by the President. There are 360 seats in the House of Representatives and 109 seats in the Senate. The People's Democratic Party (PDP) is the largest party, with approximately 60 percent of seats in both Houses. The main opposition party is the All-Nigerian People's Party (ANPP).

8.2.1 Legal System and Political Structure

The Nigerian legal system is based on three sources: common law, sharia and customary law. The three systems operate in parallel to each other. The judicial branch includes the Supreme Court and the Federal Court of Appeal. Subordinate courts are established by state authorities. The National Human Rights Commission (NHRC) of Nigeria was established in 1995 and the Federal Government is developing a National Action Plan for the promotion and protection of human rights in Nigeria through the NHRC.

8.2.2 International Human Rights Obligations and Mechanisms

Nigeria is a State party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention

on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child and its two Optional Protocols.

By resolution 1997/53, the Commission on Human Rights invited its chairman to appoint a Special Rapporteur on the situation of human rights in Nigeria with a mandate to establish direct contacts with the authorities and the people of Nigeria and to report to the General Assembly and the Commission. Soli Jehangier Sorabjee (India) was appointed as Special Rapporteur on 16 October 1997. The Special Rapporteur submitted three reports to the Commission on Human Rights and General Assembly before the termination of his mandate in 1999 (E/CN.4/1998/62, E/CN.4/1999/36 and A/53/366 and Add.1).

The Special Rapporteur on freedom of religion or belief is the first thematic special procedure of the Commission to carry out a visit in the country. It is expected that she will be followed by other special procedures mandate holders, which will provide an opportunity for the Government of Nigeria to receive an objective assessment of certain aspects of the human rights situation in the country and to improve its human rights record and capacity accordingly.

8.3 Religion and Belief in Nigeria

In Nigeria, religion undoubtedly has a very important place in the daily lives of citizens. A significant majority of Nigerians are not only believers but regularly attend religious services and are active members of their religious communities. For these reasons, religion also constitute a very sensitive feature of today's Nigeria.

According to different sources, approximately half of the population is Muslim, about 40 percent is Christian and the remaining 10 percent practice traditional African religions or other beliefs, or have no religion. Religious affiliation is usually but not always linked to ethnicity. While most Hausas and Fulani are Muslims, Yorubas and Igbos are mainly Christians. Geographically, the majority of the population of the north of the country is Muslims while most of the Christians live in the South. States of the so-called "middle belt" have both Christians and Muslims in different proportions.

Most Muslims are Maliki Sunnis, but there are other Muslim groups like Shias and Ahmadiyyas. The Ahmadiyya community is mainly located in the South. Christian denominations include Roman Catholics, Anglicans, Methodists, Presbyterians, Pentecostals, Evangelicals and the Organisation of African Indigenous Churches. Despite her efforts, the Special

Rapporteur has not been able to meet with official representatives of traditional religions,[280] although she did meet with individual practitioners. Christian and Muslim issues and concerns overwhelmingly dominate the agenda, so that there is not much room for members of other faiths, whose voices are rarely heard. More significantly, most of the Special Rapporteur's interlocutors either expressed disdain for or mocked the followers of traditional religions or minimised their numbers.

The reality, however, is that, according to many, a significant portion of people calling themselves Christians or Muslims have not completely abandoned traditional religious practice, although sometimes more for cultural than for religious reason. As one editorialist put it, "[the] adherents of the two big religions give the impression that Nigeria and Nigerians are all about Islam and Christianity. They go on the defensive as if the existence of other religions is the failure of Islam and Christianity. The truth of the matter is that Nigeria is not only about Islam and about Christianity".[281]

Similarly, there does not seem to be any place for those who have different types of belief or who do not believe in anything. There has not been a census in Nigeria since 1991, but there have been suggestions that one should be organised since 2002. The issue of the census is very controversial, in particular concerning whether a question on religion should be included. The Christians, who usually believe that they account for more than 40 percent of the population, consider that religion should be part of the census so that their numbers could be determined, but the Muslims, in particular the Ahmadiyyas, oppose this idea.[282] The Special Rapporteur has not received further information from the Government in this regard.

An important aspect of religious life in Nigeria is that many families include members from both the Muslim and Christian communities, including because of interfaith marriages. This explains the very moderate approach of some Christians and Muslims in the face of more radical discourse by some religious leaders.

Because of this reality, it is significant to note that a portion of the civil society has initiated a real dialogue between the two communities. A number of NGOs, while being identified, because

280 The words "traditional religions" refer, in this report, to traditional African religions

281 Ethnic and Religious Rights (an NGO publication). September 2004, p.3

282 The Ahmadiyyas fear that an indication of the religious affiliation in the census could lead to demands to declare them non-Muslims. Some Muslim leaders have indeed expressed the belief that Ahmadiyyas should not be considered Muslims.

of their members, with one or the other community, have contributed to promoting a culture of tolerance and trust between Muslims and Christians. Also, the Special Rapporteur heard testimonies of acts of humanity that took place during the riots in Jos and Kaduna, where people helped to save others regardless of their religious affiliations. However, this has not prevented the serious conflicts that have opposed Christians and Muslims during the last few years, during which several thousand people were killed.

8.4 Legal Framework

The 1999 Constitution develops in unequivocal terms the principles of freedom of religion or belief. Article 38 of the Constitution provides: "Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian. No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society."

It is to be noted that this constitutional provision specifically provides for the right to "change" religion,[283] a provision that has some implications that will be developed in section V below. Moreover, the last paragraph of article 38 refers to the prohibition of secret societies, which are defined in article 318 as "any society, association, group or body of persons (whether registered or not) (a) that uses secret signs, oaths, rites or symbols and which is formed to promote a cause, the purpose or part of the purpose of which is to foster the interest of its members and to aid one another under any circumstances without due regard to merit, fair play or justice to the detriment of the legitimate interest of those who are not members; (b) the membership of which is incompatible with the function or dignity of any public office under this Constitution and whose members are sworn to observe oaths of secrecy; or (c) the activities of which are not known to the public at large, the names of whose members are kept secret and whose meetings and other

283 See general comment of the Human Rights Committee No. 22, para.5

activities are held in secret".

Secret societies are also called "cults" and are usually formed by students at Nigerian universities. In recent years, these cults have allegedly committed a number of serious criminal offences, including murders, which have been appropriately addressed by the Government. Nevertheless, the Special Rapporteur has received reports according to which authorities had sometimes destroyed shrines which were thought to be related to the commission of criminal offences, but she has not been able to verify them. In addition to protecting the right to freedom of religion per se, the Constitution provides, in Article 10, that "[t]he Government of the Federation or of a State shall not adopt any religion as State religion". This provision, intended to preserve the multi religious character of Nigeria, is creating much controversy at a moment when sharia penal codes are being adopted in a number of states.

Finally, a number of constitutional provisions, such as article 42, also provide for safeguards against different possible forms of discriminations on the basis of religion. Besides constitutional provisions, sections 204 and 205 of the Criminal Code Act of Nigeria provides for a number of offences relating to religious worship. These provisions give specific protection to some aspects of the manifestation of religion, including with respect to clergy. The Special Rapporteur notes that the wording of these provisions gives them a potentially large scope of application which, if interpreted broadly, could lead to certain abuses, including in terms of freedom of religion. Nevertheless, she has not received any credible information that the use of this legislation may have caused violations of the right to freedom of religion.

8.5 Situation of the Right to Freedom of Religion or Belief

The Government of Nigeria generally does not deliberately violate the right to freedom of religion or belief. Although Nigerian authorities have often limited or restricted important religious gatherings or religious ceremonies or, in some places, prohibited the use of microphones, in order to prevent interreligious tensions, the Special Rapporteur has not received indications of the existence of a policy that would directly limit the right to freedom of religion or belief of Nigerians.

This, however, does not mean that Nigerians do not suffer from violations of their right to freedom of religion or belief and that the Government fulfils its obligations in terms of freedom of religion or belief. There are indeed strong and consistent indications that violations of this particular right occur in many

parts of Nigeria and are either committed by non-State actors – or are the consequences of acts committed by non-State actors – or indirectly result from the Government's policy or, on the contrary, from the absence of appropriate measures to protect.

8.5.1 Governmental Policy and Religion

It would therefore be wrong to consider that in the apparent absence of direct violations of the right to freedom of religion or belief by the Government, that it is relieved of its international obligations related to this and other rights. As the Special Rapporteur and her predecessor have recalled in many reports to the Commission on Human Rights or to the General Assembly, the internationally accepted standards of freedom of religion or belief include a relatively extensive catalogue of positive obligations.[284]

Many of the Special Rapporteur's interlocutors from all religious communities agreed that the Federal Government as well as state governments interfered excessively with the religious life of Nigerians. For most of them, this attitude is the main explanation for the current problems faced by religious communities in Nigeria. Some examples of this interference are the selective subsidising of religious communities, including by financing pilgrimages for both Christians and Muslims, the use of public money to build places of worship and the appointment of persons to government positions or in public services on the basis of their religion.

In this context, state governments tend to follow the opinion of the religious majority living within their jurisdiction and guide their policy according to the wishes of this majority. Partly as a result of this policy, authorities are said to use religions to achieve their own political agendas. Particularly in the so-called "middle belt" states where the population is relatively mixed, members of state governments are usually drawn from the predominant religious community in the state. Key positions are held by members of the majority and only a few members of religious minorities are represented in the administration.

One positive measure taken by the Government in terms of interreligious dialogue has been the creation of the Nigerian Inter-Religious Council (NIREC), which has been charged with the responsibility of promoting the ideals of peaceful coexistence, especially among the various religions of the country. However, many of the Special Rapporteur's interlocutors expressed doubts about the achievements of this Council.

284 See E/CN.4/2005/61,para. 75;E/CN.4/2004/63,para. 148.

8.5.2 Complaints about Violations of the Right to Freedom of Religion

Both Christians and Muslims complained of limitations on the right to freedom of religion or belief suffered by members of their respective community. Generally, the limitations affecting Muslims usually occurred in areas inhabited predominantly by Christians while the limitations affecting Christians occurred in predominantly Muslim areas. Most of the time, the limitations were imposed by either non-State actors, in particular religious groups, or state governments, or a combination of both, but rarely were there complaints of limitations imposed by the Federal Government, apart from those restricting rights in situations that could potentially foment religious violence. Nigerians who are neither Muslim nor Christian complain of neglect by the Government and of being "overpowered" by the tensions between the Muslim and Christian communities.

In the majority of cases, Christians linked the limitations and violations that they were suffering to the adoption and implementation of sharia penal codes in a number of northern states (see Sect. IV below). Sometimes, Muslims also claimed that limitations or violations of their rights were also due to the adoption of sharia penal codes (see next section), either because of retaliatory measures taken by Christians or because they could be subjected to a judicial interpretation of sharia which may not be acceptable to them. A number of Muslims complained of being portrayed as "barbaric", "militants" and "anti-women". They were deeply hurt by this stereotyping in some national and international media. They alleged that they were not adequately represented in the police service or the armed forces. In addition, they pointed out that they were poorly represented at the peace conferences held in the Plateau region. In their defence, they gave examples of the tolerance shown by their community: Sunday rather than Friday had since time immemorial been accepted as the weekly national day of rest, and there were more Christian foreign missionaries in Nigeria than Muslims. Others who were uncomfortable with the recent introduction of sharia in the northern states feared further backlash because the "open-ended monopoly of interpreting sharia" had been left in the hands of poorly-trained judges.

It seems that the grave outbreaks of intercommunal violence that have unfolded along religious lines have provoked real tensions between religious communities and generated the imposition of numerous de facto and de jure limitations on the manifestation of religious belief by one or the other group. The Special Rapporteur has noted, particularly in Kaduna and Jos, that the mere existence of these tensions has created a climate of unease and, for a number of people, a real fear of openly

manifesting their religion, for example by wearing certain dress or participating in public religious events. Some Muslim scholars and lawyers complained that they dared not openly criticise the substance or implementation of the sharia penal provisions. These tensions therefore undoubtedly limit the freedom of religion or belief of a number of Nigerian citizens.

In many cases, the examples of limitations brought to the attention of the Special Rapporteur were related to the building of places of worship, or their confiscation or transformation for a different purpose. Although it appeared that restrictions on building were justified by invoking zoning laws, it was often claimed that the zoning laws were usually not closely followed and that only in the case of places of worship were the regulations applied, resulting sometimes in the complete destruction of the places built. In some instances, the difficulties related to the construction of a place of worship have been resolved through the mediation of an organised interreligious dialogue at the local level.

In many places the climate of fear created by religious tensions and violence has prevented Nigerians from fully enjoying their right to practise and manifest their religion. Freedom of religion or belief, like other human rights, is properly enjoyed where a satisfactory level of security exists. If one is afraid to leave home to go to church or to go outside in Muslim dress, freedom of religion is restricted even though not directly imposed by the authorities, or even by members of another religious community.

The level of insecurity in certain areas of Nigeria can also be attributed to religious reasons, which makes the right to freedom of religion even more vulnerable. Nigerians can legitimately claim that they do not feel secure to freely practise their religion because they may feel targeted because of their religious identity. The Special Rapporteur notes in this regard that a similar conclusion was reached by the Human Rights Committee in its concluding observations of 24 July 1996, in which it stated that "[i]nter-ethnic and inter-religious violence which persist in Nigeria appear to affect adversely the enjoyment of rights and freedoms protected by the Covenant", which includes the right to freedom of religion. (CCPR/79/Add.65, para.6).

For these reasons, and also those related to the adoption of sharia penal codes in several states, the Special Rapporteur is of the opinion that the level of enjoyment of the right to freedom of religion or belief is not satisfactory. Moreover, she is concerned that the increase in religious tensions may further hamper the enjoyment of this right among the Nigerian population.

8.6 The Implementation of Sharia in Criminal Matters

Since 1999, the legal and religious picture of Nigeria has significantly changed, in particular because several states of the north have decided to extend the scope of application of Islamic law to include criminal matters (hereafter "Islamic criminal law") through the drafting and adoption of sharia penal codes.

8.6.1 Background and Nature of Sharia

The first to take this path was Zamfara State in 1999. It was quickly followed by 11 other states, in the north and populated by a majority of Muslims, viz., Kano, Katsina, Niger, Bauchi, Kaduna, Sokoto, Borno, Gombe, Kebbi, Jigawa and Yobe. While most of these states already applied Islamic law in certain civil matters, mainly personal law, they used the Zamfara sharia penal code as model, except for relatively minor points. Many commentators have in this regard pointed to the fact that a number of these codes had been adopted in haste and contained mistakes and inaccuracies, or were incomplete.

A common feature of these new legal systems and an argument often used in support of their application is that they are only applicable to Muslims, people from other faiths remaining subject to the old penal code. It has, however, been mentioned that in some cases, non-Muslims may opt for the application of Islamic laws, including in the cases where sentences are lighter than those of the otherwise applicable general law. Among other provisions, these sharia penal codes provide for a mandatory death penalty as Hadd punishments[285] for criminal offences such as zina,[286] rape, sodomy and incest.

Many of the Special Rapporteur's interlocutors including Muslims, supported the view that sharia penal codes had been introduced by state authorities seeking to please their populations. Others maintained that the extension of sharia was a result of the Government's failure to address the real problems of Nigerian society. Muslims had progressively turned their backs on the non-religious way of organising their lives and had found in Islam an appropriate response to their concerns as citizens. An introductory note to the sharia Penal Code of Zamfara State by the state Attorney-General says that the "inefficacy and failure of the Common law … provide yet another cogent reason and justification for a radical departure in favour of a remodelled Sharia-oriented Penal Code". He admitted that "the sharia issue endures as the most debated and controversial

285 Hadd punishments are fixed and applied under very strict and restricted requirements of evidence

286 The offence of zina consists of acts of sexual intercourse outside marriage. It includes adultery.

issue in Nigeria". He explained that the law adopted in Zamfara was based on the Maliki School and inputs to the bill had included visits to Sudan and Saudi Arabia.

A large number of Nigerian Muslims support the imposition of sharia. A number of Muslim leaders emphasised that sharia was a way of life for all Muslims and its non-application would deny Muslims their freedom of religion. In Nigeria sharia was only applicable to Muslims; therefore, it was argued, it did not in any way limit the freedom of religion of non-Muslims. In addition, a number of Muslim leaders believed that English common law had its roots in canon law, making Muslims subject to a legal framework based on non-Muslim norms. Muslim personal law[287] has always been applied in Nigeria. On the other hand, after several years of application, Islamic criminal law has created various problems and is far from enjoying unanimous support, even among Muslims. The Special Rapporteur will limit her report to those laws (regardless of their origin) that fall within the terms of her mandate.

8.6.2 Implementation of Sharia and Religious Minorities

The speed with which the sharia penal codes were adopted has led to many difficulties and concerns regarding their practical implementation. Judges, it was contended, had not been sufficiently trained, a concern because, at the first level of sharia courts, judges do not have to be lawyers. In some cases, following the adoption of these new codes, rules of evidence and procedure had either been disregarded or not correctly followed; defendants had been deprived of legal representation and convictions were arrived at in haste; some defendants did not understand what they were being tried for or the implications of their trials. In this respect, a lack of understanding of the operation of the Nigerian sharia penal codes as well as a lack of awareness about the rights and obligations under Islamic law in general, in particular concerning women or vulnerable groups, is a real source of concern.

A particularly alarming development in the implementation of sharia has been the institutionalisation of enforcement bodies known as Hisbah, composed of young, untrained Muslim civilians, whose role is to enforce the principles of Islam. Their activities have resulted in a number of violent, arbitrary and other illegal acts, especially against non-Muslim women, which in many cases amounted to human rights violations. The strongest reactions to the implementation of sharia penal codes has evidently come from the religious minorities living in the states concerned, in particular the Christians, even though these

287 Personal law includes laws regarding inheritance, divorce, marriage, custody, etc.

laws are not applicable to them. Their main accusation is that the practical implementation of sharia may in a number of situations indirectly violate their rights or create discrimination of which they are victims. In this respect, new regulations like the banning of alcohol or segregated public transport indirectly limit their freedom, as they prevent them from living according to their own standards. In states like Zamfara, where the intention is to implement the principles of sharia strictly, segregated transport, health services and public schools have been established, which Christians claim violates their freedom.

Indeed, while Christians or other religious minorities are not expected to observe practises like fasting on Ramadan, they are compelled to close restaurants and eating places during that period. This situation therefore subjects them, at least partly, to a religious obligation by obliging them to eat in their homes. This obligation also reportedly constitutes a significant economic loss for the non-Muslims engaged in the restaurant sector of the economy. Another difficulty of implementing sharia penal codes in places of mixed population is that it is almost impossible to draw a clear line between who is and is not subject to sharia. For instance, in all interfaith relationships, the fact that the Muslim partner may be subject to sharia sanctions while the non-Muslim partner is not will nevertheless affect the entire family. Thus, the application of certain prohibitions affects the rights of non-Muslim populations.

Concerns have also been raised that the practical application of different legal system could result in discrimination on the basis of religion, for example where offenders are from different religious backgrounds and therefore subject to different procedural rules or tried in different courts. Sharia rules of evidence restrict non-Muslims from deposing in Hadd trials under sharia penal codes. Penal sanctions for the same offence apply according to the religion of the accused, rather than the severity of the crime. To address selective discrimination on the basis of religion, sharia allows a non-Muslim the option of being tried under sharia penal codes. A number of non-Muslims have argued that they are left with little option but to agree to be tried under sharia penal codes, where tazir punishments[288] are less severe for the same crime.

Thus, they are indirectly forced to acknowledge a system of law, which in its totality is not in conformity with their religious beliefs. In some cases, Christians have complained about difficulties in obtaining land and accommodation or

288 All punishment other than Hadd punishments which take into consideration mitigating circumstances and where rules of procedure may be less rigidly applied

disproportionate delays in receiving permission to build places of worship or nurseries. There have been complaints of restriction on denial of access to airtime on state radio and to public schools or universities unless Christian applicants change their names to Islamic names. It is charged that local governments spend disproportionate amount of money for implementing sharia, also discriminating against Christians. In this regard non-Muslims reported that zakat[289] money was not available to them.

Finally, the implementation of sharia in northern states has also allegedly had a considerable impact on freedom of expression, in particular for the non-Muslim minorities. Indeed, people feel reluctant to criticise sharia and open debate on the question of religious laws has been discouraged, leading to de facto self-censorship.

8.6.3 Sharia and the Constitution

A main problem raised by the adoption of sharia penal codes in Nigeria is one of constitutionality. As underlined above, article 10 of the Constitution provides that "[t]he Government of the Federation or of a State shall not adopt any religion as State Religion". Many detractors of these codes consider that making religion the only basis for regulating the behaviour of Muslim citizens in the society, including with regard to criminal matters, is equivalent to adopting a state religion.

Other constitutional problems are often raised with respect to the compatibility of sharia penal codes with certain fundamental rights protected by the Constitution, including the prohibition of torture or inhuman and degrading treatment, the prohibition of discrimination on the basis of sex or religion, equality before the law, certain rules of due process and, in particular, the right to change religion. In 2002 the Federal Minister of Justice sent a letter to the northern states that had adopted sharia penal codes pointing out that those laws were unconstitutional on different grounds; however, there has so far not been a constitutional challenge of the sharia penal codes at the Supreme Court level or before the Federal Court of Appeal. This may be explained by various reasons, including the fact that many sentences pronounced by subordinate sharia courts are usually quashed on appeal and that only persons who have a locus standi, that is an interest in filing a case because they have been personally affected by the application of these laws, may bring a constitutional claim before the Supreme Court. This therefore precludes non-governmental organisations or other entities from bringing such a case. But a few interlocutors of the Special Rapporteur have also raised the fact that the absence of

289 Money collected for charity to the disadvantaged.

constitutional challenge is also explained by the fear of most citizens subjected to Islamic laws to legally challenge sharia.

Sharia law advocates consider that the Constitution has given the Sates legislative authority to adopt criminal laws and that the constitutionally protected right to freedom of religion entitles citizens of Nigeria to decide whether they want to be governed by Islamic law. Some Muslims told the Special Rapporteur that only the Holy Koran had legal significance for them, and that there could be no other laws, including the Constitution that could govern their lives. So far, the Federal Government, except for the letter of the Minister of Justice mentioned above, has remained passive, sometimes claiming that any kind of intervention would rather worsen the situation. Moreover, a committee has been created by the Federal Government to draft a uniform sharia penal code and code of procedure for the states that have adopted Islamic criminal law, without achieving much progress so far.

8.6.4 Sharia in Nigeria and Human Rights

The adoption of sharia penal codes by state governments, and in particular their application, pose various questions in terms of international human rights law.

(a) Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Probably the most often addressed question is the compatibility of certain forms of punishment prescribed by sharia penal codes with international human rights law, in particular those provisions that prohibit torture or cruel, inhuman and degrading treatment or punishment.

In this regard, in addition to the Human Rights Committee which stated in its general comment No. 20 that the prohibition of torture and cruel, inhuman or degrading treatment or punishment contained in article 7 of the International Covenant on Civil and Political Rights extends to corporal punishment, other United Nations human rights mechanisms have, on numerous occasions, declared the incompatibility of such forms of punishment with human rights provisions prohibiting torture and other forms of ill treatment. The Special Rapporteur is of the opinion that punishments such as stoning or amputation constitute, if not torture, at least cruel, inhuman and degrading treatment[290] that is prohibited in absolute terms by various international conventions to which Nigeria is a party and which allow for no exception whatsoever.

290 The Special Rapporteur emphasises in this regard that she does not wish to make a distinction between torture and other forms of ill-treatment, including because such a consideration is outside the scope of her mandate. She would limit herself to consider these acts as contrary to article 7 of the ICCPR

(b) Equality before the Law and Non-Discrimination

Another human rights principle raising questions under the sharia penal codes is equality before the law. While it does not appear that sharia penal codes contain provisions that discriminate between men and women, the implementation of those codes in the northern states of Nigeria is in many ways to the detriment of women, the most notable illustration being the application by sharia courts of the principle that extramarital pregnancy constitutes proof of zina, even though no such principle is warranted under sharia penal codes as adopted in Nigeria.[291] This practice of the sharia courts is at the origin of a number of cases that have attracted worldwide attention and outcry.

Women judges cannot be appointed to the courts hearing trials under the sharia penal codes. A number of incidents were reported where women lawyers were discouraged from practising in these courts. The rules of evidence under the sharia penal codes adopted in Nigeria discriminate against women and non-Muslims. Neither can testify in cases of Hadd punishments. The weight given to the testimony of women is not equal to that of men.

(c) The Death Penalty

Article 6 (2) of ICCPR, to which Nigeria is a State Party, provides, inter alia, that "[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". Besides, in general comment No. 6 on article 6, the Human Rights Committee clearly stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". In addition, paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty provides that "[i]n countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or extremely grave consequences".

Despite this obligation under international law, the Special Rapporteur notes with great concern that Nigerian sharia penal codes provide for death sentences for offences which do not fall into the category of the "most serious crimes". Such a position has been taken by other United Nations human rights mechanisms, including with regard to Nigeria.[292] The death

291 See, for instance, E/CN.4/2003/75, para.68

292 See the interim report of the Special Rapporteur on extra judicial, summary or arbitrary executions (A/59/319, para.56).

penalty for children is prohibited under article 37 of the Convention on the Rights of the Child. While Hadd punishments are not per se applicable to minors, the Nigerian sharia penal codes define a child as being below the age of taklif.[293] However, according to the information submitted to the Special Rapporteur, no sentence of death has so far been passed against a child.

(d) The Right to Change Religion

In their present form, sharia penal codes adopted in northern states of Nigeria have not included the conversion from Islam to another religion among the offences punishable by death. This seems to be explained by article 38 of the Constitution (see para. 26 above), which expressly provides for the right to change religion or belief, but also by the reality of Nigeria, that is, as underlined above, the fact that in many places Christians and Muslims mix to a great extent and interfaith marriages are very common. In the Nigerian reality, it would thus seem difficult to enforce a rule that would completely segregate Muslims from Christians.

Nevertheless, leaders of the Muslim community maintained that sharia itself prohibits conversion from Islam to another religion and provides for the death penalty for this act. In this regard, it has been argued that nearly all the sharia penal codes of Nigeria (except in Kano State) provide that Muslims may be convicted for offences that are punishable under sharia itself even in the absence of a provision in the penal code. In addition to raising question under the principle of *nulla poena sine lege,* this provision opens the possibility of criminalisation of conversion and therefore certainly raises concern about the right to freedom of religion or belief as protected by universally accepted human rights standards.

In addition, besides the legal aspects, the prohibition of conversion also appears to be well rooted in certain minds, especially of those who follow the principles of Islam strictly. A number of Muslim religious leaders whom the Special Rapporteur met categorically rejected the possibility of permitting Muslims to convert or to change their religion. They stated clearly that such persons should be executed. At the same time, they also contended that a Muslim woman could not marry a non-Muslim man. Such a marriage would be null and void in law and constitute the offence of zina. This means that interfaith marriages would no longer be possible in the states that have adopted sharia penal codes and that interfaith couples visiting those states would risk arrest and conviction.

293 The age of attaining legal and religious responsibilities.

The Special Rapporteur has also been informed of a number of cases where Muslim or Christian girls were allegedly "abducted" by members of the other religious community and forced into marriage.[294] While she has not been able to confirm these allegations, she considers it an obligation of the Government, at least at the local level, to ensure that consent to marriage is free. More generally, and in order to guarantee the – often claimed – multi religious character of Nigeria, there is need to protect the right to freedom of religion or belief in this respect.

Finally, it is arguable that, Christians not being subject to sharia, their right to profess their religion is not at risk under sharia penal codes. However, the Zamfara State penal code provides in its section 406 (d) that "[w]hoever presides at or is present at or takes part in the worship or invocation of any juju which has been declared unlawful under the provisions of Section 405 will be punished with death". Section 405 defines the terms "unlawful juju" as the worship or invocation of any subject or being other than Allah. While only applicable to Muslims, this provision, which appears to be in clear contravention of the right to freedom of religion, may affect those who believe in traditional religions. It also disseminates a message of religious intolerance.

8.6.5 Communal Violence

Over the last few years, a number of violent riots and other attacks have occurred in several locations in Nigeria and caused the deaths of several thousand people, probably constituting one of the most serious human rights concerns in the country. The Special Rapporteur will not provide a detailed description of these tragic events in the present report because she does not have the capacity to investigate the circumstances of large-scale events of this sort, and because a number of very detailed and well-documented reports have been written by non-governmental organisations. Rather, she would like to focus her attention on the religious aspects of the killings and emphasise that religious violence is also an element of the overall situation of freedom of religion or belief in Nigeria as described elsewhere in the report.

The following instances of violence between Muslims and Christians in Nigeria are particularly relevant to her mandate:

– Between 21 and 25 February 2000 and between 22 and 23 May of the same year, at least 2,000 people were killed in Kaduna (and in the south of Nigeria as retaliation) as a result of the adoption of a sharia penal code by Kaduna State;[295]

294 A similar concern was raised by the Committee on the Rights of the Child in its concluding observations on the second periodic report of Nigeria, 28 January 2005 (CRC/C/15/Add.257, para.54).

295 See E/CN.4/2001/63,para.104

- Between 7 and 13 September 2001, in Jos and surrounding areas of Plateau State, more than 1,000 people were killed after a Christian woman tried to walk through a praying Muslim congregation outside a Mosque;
- Between 21 and 23 November 2002, in Kaduna, 250 people were killed after a press article mentioned that the Prophet Muhammad would have approved the holding of the Miss World contest in Nigeria;[296]
- On 24 February and on 2 and 11 May 2004, at least 1,000 people were killed in a cycle of retaliatory violence in the town of Yelwa, Plateau State and Kano, Kano State.[297]

Most interlocutors at governmental level as well as from the civil society stated that those events were the result not only of religious intolerance but also, if not mainly, of political, economic and ethnic factors. In Jos, for example, the riots were explained as a conflict between the indigenous people and settlers and their respective rights, particularly in terms of land acquisition and property. The Special Rapporteur notes that the reasons for this violence are manifold and complex, but she has also observed that in most cases the violence has unfolded along religious lines. It is noticeable that the instigators of this violence have found that they can gain more support if they put their arguments in religions terms. Religious beliefs not only constitute a very emotional issue in Nigeria, but also provide a relatively simple and easy way to identify an opponent.

These instances of violence are striking in their intensity. In each case, a great number of killings occurred in only a few days. This also shows that a very significant portion of the population took part in the killings or has been affected by them. For this reason among others, the killings are still very much in the minds of all those living in the places affected by the violence. So many people have been implicated in – and suffer from – the violence that a majority of the people in those places live in an atmosphere of fear, anger and sadness which, in a way, prevents the population from returning to normal life. In some places, the Special Rapporteur felt an atmosphere of real tension as if the violence had occurred more recently than it actually did.

In the many consultations held during her visit, especially with representatives of religious groups, the Special Rapporteur clearly felt a high level of tensions and strong indications that the situation could degenerate into a conflict of much larger intensity. Members of religious communities and representatives

296 See A/58/296,para. 80

297 See the addendum to the report of the Special Rapporteur on freedom of religion or belief (E/CN.4/2005/61/Add.1, para.174

of non-governmental organisations often expressed their fear of further violence and their exasperation with regard to the current situation. Some of them even warned that members of one or the other community could not contain their frustration much longer and asserted that dissatisfaction and sometimes anger were affecting an increasing number of Nigerians.

A significant number of interlocutors at various levels and from different backgrounds confirmed that members of both Muslim and Christian communities were currently accumulating weapons, which they receive by different means, including from abroad. This is indeed alarming and sounds like a warning which must be heeded.

8.6.6 Government's Reaction

The most striking aspect of this violence is the way the authorities responded to it. According to the majority of the reports submitted to the Special Rapporteur, the authorities in most cases did not initiate the mechanisms designed to prosecute the offenders and compensate the victims. Despite efforts, including numerous requests, to secure information, the Special Rapporteur has not received figures or other factual information on prosecutions initiated after the riots and remedies provided to the victims. On numerous occasions, the Special Rapporteur unsuccessfully tried to obtain from government officials copies of reports of commissions of inquiry that had been established by the Government to investigate the causes and circumstances of some of the riots.

On the contrary, the Special Rapporteur's interlocutors, including at the highest official level, claimed that the identification of the instigators of the riots as well as the assessment of damages suffered by the victims[298] were particularly arduous. It was argued that rather than prosecution and punishment, the promotion of peace and reconciliation was the authorities' priority. The main significant measure taken by the Federal Government in recent times was the imposition of a state of emergency in Plateau State during the second half of 2004 after the killings in Yelwa in May.[299] While this had the effect of preventing further violence while it was in force, it is not known whether it has helped to address the root causes of the problem. Finally, despite the periodic recurrence of such violence, no warning mechanisms seem to have been put in place or to function properly in spite of the high degree of predictability of some of the incidents.

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298 In this regard, it was mentioned to the Special Rapporteur that the National Emergency Management Agency (NEMA) of Nigeria had provided humanitarian assistance to the victims of the riots

299 See E/CN.4/2005/61/Add.1, para.174

8.7 Conclusions

(a) Religious Tensions

With respect to the religious tensions existing in Nigeria, the Special Rapporteur has noted that while numerous interlocutors claimed that religion per se was not the cause of tension and violence, conflicts have nevertheless unfolded along religious lines and that increasingly, most societal attitudes and behaviours are translated into religious terms, a phenomenon that exacerbates the differences between religions and creates a climate of religious intolerance. The situation is aggravated by the political manipulation of these differences that is widely claimed to take place. Today, religious identity takes precedence over almost everything else. The Special Rapporteur wishes to take the opportunity of this report to draw attention to the developments that are taking place in Nigeria so that appropriate action can be taken before a wider crisis erupts.

(b) Government Policy

The policy of interference by the Government and local authorities in religious matters, including by selectively subsidising different forms of manifestation of religious belief, contributes to overemphasising religious differences instead of helping to find a common ground between communities or allaying tensions. The Special Rapporteur is concerned in this regard that the Government may have oriented its policy in the wrong direction. While it has not hesitated so far to give important support to manifestations of religion by building places of worship or financing pilgrimages, it has often proved reluctant to take a firm stand on religious practices that could be harmful to human rights or take appropriate action with regard to religious violence, for fear of offending one or the other religious community. This policy has unfortunately led to the current situation where the distances between Christians and Muslims are growing and isolating them from each other.

(c) Justice and Promotion of Religious Tolerance

The Special Rapporteur is of the opinion that there be no lasting solution without proper justice for the perpetrators and victims of all acts of violence on religious grounds that have occurred. A climate of impunity can only encourage those who plan to foment further violence, whatever their motivations may be, and reinforce the feeling of injustice of the victims, thereby paving the way for retaliatory action. Impunity further strengthens the fears of those who have been affected by previous instances of violence and inherently limits the enjoyment of their right to freely manifest their religion or belief. In the context of this mandate, reports have often pointed out that perpetrators who

enjoy impunity, even for well-intentioned reasons, remain active in keeping religious tensions alive. Impunity therefore only escalates religious intolerance.

A long-term effort to promote respect and tolerance, including religious tolerance, among members of the Nigerian society is necessary to gradually erase the tensions and misunderstandings between Muslims and Christians. For that purpose, measures at the Federal level have to be complemented by mechanisms at the local level. In this regard, the Special Rapporteur has been encouraged by grass-roots initiatives which aim at building bridges between communities and help them to understand each other's concerns. Other local measures aimed at finding solutions to specific disputes through dialogue between communities are also an essential means of opening minds to other forms of conflict resolution that are particularly appropriate in the Nigerian context.

The Special Rapporteur further emphasises that the different kinds of measures should contribute to the establishment of an early warning system, which seems to be imperative in the current situation. The Special Rapporteur considers that reports according to which members of both communities are arming themselves, whether for defensive purposes or for future aggression, constitute a sign that there remains a willingness to provoke or accept more violence. While the authorities have reacted by taking some appropriate actions in this regard, a more comprehensive policy should be adopted to address this particularly worrying development. While in most instances of violence, attacks were carried out with no arms or with objects used as weapons, it is clear that the alleged stocking of proper weapons can only increase the scale of future violence and the number of casualties.

(d) Sharia Penal Codes

On the questions related to the application of Sharia to criminal matters, the Special Rapporteur wishes to emphasise that the human rights concerns related to the adoption of penal codes on the basis of religious laws are not a question of religion per se, but of determining the compatibility with human rights of specific regulations and their application in a given legal system, in particular the right to freedom of religion or belief. The purpose of the Special Rapporteur in this respect is neither to make a judgment on nor to analyse or interpret the content of a religion, but to assess the impact of a legal system based on religious laws from a human rights perspective.

The Special Rapporteur considers that the legal systems such as have been adopted by a number of states in Nigeria contain

provisions that raise concern in terms of human rights. Certain forms of punishment contained in the sharia penal codes, such as amputation or stoning, constitute treatment that is contrary to universally recognised norms prohibiting torture and other degrading, cruel and inhuman treatment or punishment, including international conventions to which Nigeria is a party. Moreover, it was underlined above that certain provisions, as well as the practice of some Sharia Courts appeared to be in contravention of the principle of *nulla poena sine lege* and of equality before the law. Finally, the possibility, at least in theory, that Muslims could be convicted and sentenced to death because they converted to another religion would constitute a clear violation of the right to freedom of religion or belief.

In response to the above concern, it has been emphasised by some state officials that the majority of Hadd sentences are usually quashed at the appeal level and are therefore never ultimately implemented. The Special Rapporteur would like to stress that such a defence does not represent a satisfactory response to the human rights concerns at issue and does not relieve Nigeria from its international human rights obligations. Indeed, the mere existence of a norm that contradicts human rights standards is sufficient to create a climate of fear among members of the Nigerian population, including Muslims and in particular the poorest part of the population which may not have a correct understanding of the legal system to which they are subject. This climate of pressure and intimidation also has an impact on those Muslims who have a different interpretation of their religion. This may constitute an unlawful limitation to the right to freedom of religion or belief.

Moreover, it has been reported that the actual implementation of numerous rules provided for by these new legal systems were affecting and, in some cases, limiting the rights of members of religious minorities, including their right to freedom of religion or belief. The Special Rapporteur recalls in this regard general comment No. 22 of the Human Rights Committee according to which "[i]f a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognised under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it".

8.8 Recommendations

(a) General Policy with Regard to Religions

With regard to the general policy of the Government of Nigeria vis-à-vis religion and belief, the Special Rapporteur recommends

that the Government adopt a more careful approach when it comes to supporting one or the other religious community and consider the possibility of refraining from interfering with religious matters whenever these do not endanger human rights. At the same time, the Government should take very firm positions whenever religion is at the origin of human rights violations, regardless of which religious community is concerned.

The Government should further strengthen the existing inter-religious dialogue to address the overall objective of promoting religious tolerance, and therefore extend the scope of the dialogue and increase the number of stakeholders in the process. Such initiatives must link local dialogues to the national scene so that signs of trouble are detected early and resolved before violence breaks out. Such dialogue would further create better understanding and accommodation. It must include women and members of civil society so that their concerns are also heard.

The Government should also take concrete steps to strengthen the education system throughout Nigeria in order for children to receive teaching on religious tolerance. The Government should reassess its position with regard to traditional religions as well as other forms of religion or belief. Adherents of traditional religions should be given a place in the mainstream policy and be represented in institutions and other forums that deal with religious matters.

(b) Sharia Penal Codes

With respect to the sharia penal codes adopted by states in the north, the Federal Government has the obligation to respect the international human rights conventions to which it is a party and therefore ensure, as a priority, that the laws of the nation, whether local or federal, are in conformity with these conventions. In this regard, the Special Rapporteur recommends that the Federal Republic of Nigeria carry out an assessment of all the laws in force and analyse their compatibility with international human rights law.

In particular, the Special Rapporteur insists that the Government should ensure within the context of freedom of religion and freedom of expression that Nigerians can express themselves and dissent even within their religion without fear of any form of retaliation or threat. This is especially important in a context where it is religion rather than general laws that is governing human behaviour. In that context, the State must ensure that there is space for dissent.

In this respect, and taking into account the absence so far of any constitutional challenge at the Federal Court level of sharia penal

codes and their implementation, the authorities of Nigeria should ensure that appropriate mechanisms are put in place so that citizens who are willing to contest the constitutionality of these laws are neither attacked nor threatened or intimidated. The rights of members of religious minorities should be systematically monitored and protected whenever regulations – whether or not adopted in the name of religion – affect the enjoyment of their rights.

As a matter of urgency, the Special Rapporteur calls upon the Government to take all necessary measures to put an end to the practice of Hisbah, including by declaring these groups outside the law and investigating any particular act they have committed that may amount to a human rights violation.

(c) Religious Tensions and Communal Violence

With respect to religious tensions and communal violence, the Special Rapporteur is of the opinion that the obligation of the Government of Nigeria is first and foremost to ensure that justice is done promptly and properly. This obligation should include a full investigation of the violence that occurred, including the identification and prosecution of alleged perpetrators, allowing victims to file proper claims for the damage they have suffered, and recognising their proper status as victims in trials as well as awarding them appropriate compensation.

The Government should also abide by its basic obligation to ensure the protection and security of religious groups which may be targeted and which should be entitled to practice their religions freely and without any obstacles, including those created by non-State actors. The Government should reassess the efficiency of its mechanisms in order to be able to intervene in a timely and proper manner when such violence occurs. Early warning mechanisms should also be strengthened.

The mechanisms created by the Government to promote interreligious dialogue should be strengthened and extended. In particular, they should ensure that religious leaders of all communities can participate and involve the civil society. Mechanisms at the local level should be created in as many places as may require them because of the composition of the population, past experience, or any other indication of possible religious tensions. The Government should also increase its support for such initiatives coming from the civil society and disseminate principles of good practice.

Chapter 9

REPORT OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

9.0 Executive Summary:

The Special Representative conducted a country visit to Nigeria from 3 to 12 May 2005 during which she met with senior officials of the Government, a wide range of human rights defenders and representatives of international intergovernmental organisations and States. The objective of the visit was to assess the situation and role of human rights defenders in Nigeria. The Special Representative described the vibrancy of civil society in Nigeria and noted that the transition to democracy brought different and new challenges for the human rights movement and the necessity to adjust its strategies.

According to the Special Rapporteur, the present civil society in Nigeria combines experience and maturity with fresh ideas and different approaches. She welcomed the development of Government initiatives in the field of human rights which has created an improved framework and better prospects for the promotion and protection of human rights. The Special Representative examined the legal framework in which human rights defenders operated. She noted with concern the persistence of a number of serious shortcomings in the law which results in an environment that falls short of being fully conducive to the work of defenders and has sometimes put their safety at risk. She expressed concern particularly with regards to the framework regulating freedom of assembly, access to information and to a lesser extent freedom of association.

The Special Representative examined the limits to the work of human rights defenders in Nigeria. In particular, she expressed concern over the situation of journalists working on corruption and good governance, the situation of trade unions and labour activists. She noted the difficulties encountered by economic, social and environmental rights activists particularly in the Nigeria Delta region and those encountered by women rights activists. She observed that there is lack of response from the authorities to the issues raised by human rights defenders and that the level of impunity remains high which greatly increases their vulnerability.

9.1 Introduction

Pursuant to her mandate, the Special Representative of the Secretary-General on human rights defenders conducted an official visit to Nigeria in May 2005. The Special Representative

thanked the Government of Nigeria for extending this invitation and wished to acknowledge the cooperation extended to her by the Ministry for Foreign Affairs in the preparation of her visit and throughout its duration. She welcomed the opportunity to meet with the Minister for Foreign Affairs, the Minister of Internal Affairs, the Ministers of Defence, Labour and the Environment, the Chief Justice of Nigeria, the Attorney-General of the Federation and other senior members of Government and Parliament. She regrets that she was unfortunately not able to meet with the President.

Apart from Abuja, the Special Representative visited Kaduna, Port Harcourt and Lagos, where she met state governors, state police commissioners, armed forces commanders and other senior State authorities. She is grateful to the Office of the United Nations Resident Coordinator for the logistical support they provided during her visit. She also extends her gratitude to the wide spectrum of civil society actors who met with her to share their experience and expertise throughout her visit.

9.2 Civilian Rule: An Enhanced Environment for Human Rights Defenders

Human rights defenders in Nigeria were systematically targeted during the oppressive military regime in the 1990s. Representatives of NGOs, pro-democracy activists, journalists and lawyers suffered from extrajudicial killings, arbitrary detention, ill-treatment and torture aimed at suppressing their activities and silencing them. It is widely recognised that despite the repressive environment in which they worked, the resilience of human defenders in exposing the weaknesses and challenging the authoritarianism of the military regime was a significant factor in bringing about civilian rule. The 1999 elections, which brought President Obasanjo to power, marked an important transition from military to civilian rule which brought hope for a new era of respect for fundamental rights and democracy.

Significant improvements to the environment for human rights defenders were amongst the immediate gains of Nigeria's transition to civilian rule in 1999. Human rights defenders consistently reported that since the end of the military regime, their overall situation has improved.

9.2.1 A Vibrant Civil Society

In the course of her visit, the Special Representative met with a host of civil society representatives who work on a vast array of issues from civil and political rights such as freedom of expression, information, illegal detention, summary executions and police abuse, as well as economic, social and cultural rights in a variety of contexts. In the southern states, defenders are particularly vocal on economic and environmental issues related

to the impact of oil production on local communities. Women's rights groups are also well represented in the Nigerian civil society.

Nigerian defenders come from very varied backgrounds including human rights activists, trade unionists, journalists and writers. In their vast majority, they work within civil society organisations, many of which have created issue-specific programmes, spread throughout the country. Frequently, networks are set up to give momentum to legislative reform initiatives. The freedom of information network that coordinates advocacy on the freedom of information bill, the women rights network, and the Transition Monitoring Group (TMG), and the election monitoring network, are illustrative of this trend.

9.2.2 A Movement in Transition

During military rule, the human rights movement in Nigeria had united and organised to fight for democracy. The transition to democracy brought different and newer challenges for the human rights movement as well as the necessity of adjusting its strategies for the defence of human rights to the new environment. Although many significant actors in the struggle against military dictatorship either chose to join political parties because of the opening up of political space in the country, or disengaged from civil society activities, believing that their objective had been achieved, a new generation of defenders did step in. The present civil society in Nigeria, therefore, combines experience and maturity with fresh ideas and different approaches to the promotion and protection of human rights.

Most defenders work as members of human rights organisations with more of their activities focused on training, education and advocacy on law reforms. There are few organisations working on public mobilisation and fewer engaging in public action. Monitoring of individual cases of violations and victim support has also waned, except as a part of women's rights advocacy. Currently, amendments to the Constitution, legislation on the freedom of information, electoral reform and legislative reform for the protection of women's rights are amongst the central concerns of human rights organisations. Many of the organisations continue to participate in committees set up by Government for identifying areas of legislative reform in order to bring about conformity between national legislation and international standards of human rights. An important example of successful advocacy of human rights groups is the passage of a law in Rivers State prohibiting female circumcision.

Many NGOs also work in cooperation with government agencies on human rights education and training. One example of positive

results of such cooperation is the nationwide prison staff training programme undertaken by Prisoners Rehabilitation and Welfare Action (PRAWA). The Special Representative was informed that this training has now been incorporated in the curriculum of the regular training of prison staff. Other successful collaborative programmes have been education programmes aimed at raising awareness of human rights within the population through workshops, seminars and conferences targeting students, teachers, and women. Defenders who have been active in the defence of human rights for a long period, however, feel nostalgic about the more vibrant role played by the civil society, particularly human rights organisations, in challenging lapses of the State and calling for accountability for human rights violations.

NGOs whom the Special Representative met explained this change in human rights activity in two ways. In the period immediately following the restoration of civilian rule in Nigeria, civil society wanted to provide the new civilian Government with space to develop and strengthen. More recently, defenders have found it difficult to pursue issues of human rights violations owing to donor preference for projects in which defenders can adopt a collaborative approach with the State. Some also indicated that the will to struggle against State resistance to change practices that persist in violating human rights has been weakened after the long and hard struggle that the human rights community experienced during military rule.

As part of the transition to civilian rule, the Government of Nigeria adopted laws, developed policies and strengthened institutions aimed at addressing human rights issues. This movement towards inclusion of human rights concerns in State policies has created an improved framework and better prospects for the promotion and protection of human rights as well as a more constructive environment for human rights defenders to work in.

9.2.3 Ratification of International Instruments

Today, Nigeria is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. In 2000 and 2001, Nigeria also signed the two Optional Protocols to the Convention on the Rights of the Child, ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and

the Rome Statute of the International Criminal Court.

9.2.4 Strengthening National Institutions for the Support of Human Rights Defenders

The National Human Rights Commission (NHRC), established in 1995, has received more support from the Government's policies. NHRC aims to promote and protect human rights by providing a forum for public enlightenment and dialogue and facilitating the implementation of Nigeria's various international and regional human rights treaty obligations. The functions of the Commission include monitoring and investigating alleged cases of abuse, reporting on the respect of human rights within the country, assisting victims in seeking redress, monitoring prisons, engaging in human rights education and helping the Government formulate policies on human rights.

9.2.5 NHRC Cooperation with Defenders

The strengthening of NHRC is seen by the vast majority of human rights defenders as a positive development in support of their work. Many indicated that NHRC is currently very active and collaborates with civil society in the areas of legislative reforms and awareness-raising programmes. An illustrative example of such cooperation is the collaborative initiative between NHRC, UNICEF, the Constitutional Rights Project, Penal Reform International, the National Bar Association and the National Working Group on Juvenile Justice Administration which resulted in a national study visit to 68 prisons and detention centres in March 2003. The dynamism of NHRC and its visibility amongst civil society are illustrated by the increase in the number of complaints received yearly, which have more than quadrupled since 1999. Between 1996 and 1998, the Commission received a total of 376 complaints, whereas from 2000 to 2002, 1,506 complaints were received.

9.2.6 Limitations of NHRC

While NGOs have generally recognised the positive role played by NHRC in addressing human rights issues, they also pointed out a number of limitations. Most acknowledged that NHRC has been operating independently, but expressed concerns that institutional safeguards are insufficient to guarantee a sustained level of activity or development. In this respect, they emphasised that the 1999 Constitution does not guarantee the existence of such a body and that the NHRC statutes do not adequately guarantee its independence. In particular, they pointed to the fact that members of the Commission are appointed by the President, who also has the power to remove them.

They also underlined the Commission's lack of investigatory

powers and authority to compel authorities to respond to their queries. Overall, NHRC reported having received good cooperation from the authorities in the pursuit of its activities, but in some cases having encountered reluctance from some officials. At times, such obstructionist behaviour on the part of the authorities has resulted in undue delays in the conclusion of cases. Defenders also pointed out that NHRC has not, so far, made its reports public nor made any public assessment of the situation of human rights in the country. Lastly, both NHRC itself and defenders stressed that the lack of adequate funding represented a serious obstacle to the Commission's ability to discharge its mandate adequately.

During her meeting with the Executive Secretary of NHRC, the Special Representative was informed that in addition to its Abuja headquarters, five zonal offices have been established in Lagos, Maiduguri, Enugu, Kano and Port Harcourt. She regrets that she was unable to assess the capacity and efficiency of these offices first hand. Nevertheless, she notes that amongst the civil society actors, only a few are aware of their existence.

9.3 Development of a National Plan of Action on Human Rights

The Government has developed a National Plan of Action, which was presented to the public during the Human Rights Summit in October 2001. The Special Representative was given a copy of the plan, which aims at constituting a framework for sustained and coordinated measures to be undertaken by the country as a whole to protect and promote human rights within a given time frame.

NHRC reports that the process of developing the plan was both collaborative and consultative. It brought together various stakeholders, including the National Assembly, government departments and civil society (including the private sector) and provided a forum for identifying and agreeing on priority areas. In November 2002, the finalised plan was submitted to the Chairman of the Steering Committee, the Attorney-General of the Federation and the Minister of Justice.

The Special Representative was given the implementation plan for the National Action Plan, which provides for a number of steps to be taken before 2006, but she was unable to confirm whether the implementation process had started and how it is being carried out. As such, she cannot assess its impact on the work of human rights defenders.

9.3.1 Advisory Functions

In order to flesh out its new policies for human rights, the

Government has created several senior advisory positions. The Special Representative had the opportunity to meet with the Special Adviser on Ethics and Human Rights and the Special Adviser on Civil Society.

The mandate of the Special Adviser on Ethics and Human Rights is to advise the President on human rights matters for the purpose of developing national policies. It also acts as a liaison office between the various governmental structures working on human rights. Very few defenders reported having had any interaction with this particular office, but some that had expressed disappointment at the lack of response after contact had been initiated. Owing to the minimal information she received on the activities and programmes undertaken by the office of the Special Adviser, the Special Representative regrets that she is not in a position to assess its impact on the situation of human rights defenders.

In 2003, the Government created the Office of the Special Adviser on Civil Society to act as a bridge between the Government and civil society actors. It is tasked with presenting the concerns and aspirations of the Nigerian civil society to the Government and informing civil society about governmental programmes and activities. For instance, the office was tasked with identifying three NGOs to participate in the National Reform Conference. The Special Representative welcomes the creation of this Office which, if granted the appropriate space and resources, could act as a forum for productive civil society participation in public affairs and policies, as a channel of communication between civil society actors and the executive branch, and help develop a climate of mutual trust and respect between the Government and civil society.

However, the Special Representative notes that while NGOs welcomed the creation of this position, few reported having developed working relationships with this office and, in the absence of any declared policy or initiatives by the Office of the Special Adviser, there was little clarity about its role. In several instances, NGOs also expressed reservations regarding the process through which the Office chose the NGOs with whom it maintained any level of contact.

9.3.2 Parliamentary Committees

Many defenders welcomed the positive role performed by the committees of the House of Representatives in addressing human rights concerns. They indicate that House committees have shown a capacity to react consistently to human rights issues and have become easily accessible to civil society actors. Notably, defenders mentioned the positive feedback received

from the House committees on information, water resources, power and human rights. The Special Representative regrets that her scheduled meetings with the Chairman of the Human Rights Committee and the Speaker of the House were cancelled. As a result, she was unable to collect information on the mandate and activities of the Committee or have any discussions that could enable her to assess its efficacy for the protection and support of human rights defenders.

Many defenders and some members of the committees whom the Special Representative was able to interview regretted the lack of response from the Government regarding concerns raised in the Parliament on issues brought to its attention by human rights groups. They regretted that committees are limited to making recommendations which receive little attention or response from the executive and are seldom implemented. It was also emphasised that this lack of response resulted from Parliament's limited powers of oversight of executive action.

9.3.3 Human Rights Initiatives by the States

A number of states have set up Directorates of Citizens' Rights. The Special Representative met with the team from the Lagos Directorate established in 1999 as part of the state administration's policy to provide greater access to justice through Government-funded legal defence, advice, mediation and human rights education. Of particular relevance to the Special Representative's mandate is the work performed by the Human Rights Protection Unit and the Office of the Public Defender. The Unit is responsible for the protection and enforcement of the fundamental rights of the residents of Lagos State. It handles petitions concerning human rights violations and monitors prisons. Between 2000 and 2004, the Unit officially handled some 2,636 petitions, mostly related to landlord and tenant issues, arbitrary arrests, detentions and killings. Thirty one cases ended in trials, and the Unit was able to secure the release of a number of persons illegally arrested and detained. It is noteworthy that the number of petitions received and dealt with by the Unit more than tripled in its first four years of existence, increasing from 263 in 2000 to 865 in 2004. The Directorate also organised a series of workshops aimed at training the police forces.

The Office of the Public Defender aims at providing free legal advice and counsel in civil and criminal matters to disadvantaged populations. The Office now comprises 30 lawyers and five project officers. The bulk of its activities are related to monitoring cases of prolonged illegal detention and of individuals awaiting trials for years. The Lagos office reported having secured the release of some 1,000 prisoners and represented 50

accused persons in courts across the state. Both the Directorate and the Office reported that high levels of corruption amongst security forces have created serious obstacles to their work. Funding has also been a factor limiting their ability to expand their work and spread the programme to other parts of the country.

The Special Representative was able to confirm that the work performed by the Directorate has been well received by the population and the NGO community. Many Lagos-based NGOs reported being in regular contact with the Directorate and consider this new institution an accessible forum and an efficient tool for raising and resolving human rights issues. Concern was expressed, however, that while the Office has received significant support from state authorities, the legal aid programme is not performing its functions due to lack of funding. The Special Representative was nevertheless encouraged by the quality of the work of the Directorate. She hopes that such institutions will also be developed in northern states to effectively address human rights issues at the local level.

9.3.4 Training

The Government reported that it has embarked on modernising of its police force. During her meeting with the Office of the Inspector General of Police, the Special Representative was informed that human rights education has been included in the curriculum of the basic training of the police at the staff college and is carried out by various NGOs and national and state human rights institutions, including NHRC and the Directorate. The Office of the Inspector General of Police also reported that human rights desks have been set up in every state police command to handle complaints of police abuse. Overall, however, human rights defenders reported that these structures have not materialised. In most cases, human rights desks have not been set up and human rights defenders have not started interacting with them.

9.4 Legislative Framework: Persistent Shortcomings

While defenders have generally reported an overall improvement of their situation after the advent of civilian rule, all insisted that certain federal laws continue to allow for an environment which is not fully conducive to their work and at times has put their safety at risk.

(a) Freedom of Association

The Special Representative was pleased to observe that the overall framework of laws regulating associative activities in Nigeria guarantees that human rights defenders enjoy a wide ability to form and operate NGOs free from government

interferences. There are no specific laws regulating the operation of NGOs, but human rights organisations fall under the provisions of the 1999 Constitution, the Companies and Allied Matters Act (CAMA) of 1990 and relevant federal and state laws. Separate laws regulate specialised organisations such as trade unions and political parties.

Under the current legislation, registration or incorporation is not mandatory in Nigeria. Nevertheless, defenders have indicated that donors increasingly require organisations to be duly registered before providing funds. NGOs can register under CAMA either as a "company limited by guaranty", which confers the status of a corporate body on the NGO itself, or as an "incorporation of trustees", which grants the trustees of the NGO rather than the organisation itself the status of a corporate body.

Registration of a company limited by guaranty is performed by the Corporate Affairs Commission (CAC), which verifies the availability of the proposed name. Few organisations, however, are registered as companies limited by guaranty, largely because of the bureaucracy involved in applying for the consent of the Attorney-General who may, at his discretion, withhold consent. Most NGOs therefore register as incorporated trustees under section 673 of CAMA. It is noteworthy that there is no minimum requirement in terms of members or capital for the registration, which is open to physical and legal persons. Human rights defenders unanimously reported that despite this apparently liberal regulation, in practice registering as incorporated trustees can also prove to be a long road encumbered by bureaucratic obstacles, heavy expenses and uncertainty regarding the response to their application.

Applications for registration may be rejected for failure to comply with even the most insignificant of requirements, or even minor omissions or discrepancies. There are no specific appeal provisions against rejection, but an application for judicial review can be brought under the common law rules. Human rights defenders reported that the Commission requires police clearance for all the trustees named in the application.

Human rights defenders reported that registering as incorporated trustees takes a minimum of six to nine months. The Special Representative was informed that in some instances the process has been pending for years. The case of Gender and Human Value Proactive, which sent its application in 2003 and received a response only in February 2005, and that of the League of Democratic Women, which started the process five years ago and is still not registered, are illustrative of this problem.

Defenders also pointed out that the expenses incurred in the process are extremely heavy, especially for smaller organisations. Despite a relatively reasonable official fee of 10,000 naira (about US$ 95), the additional cost of newspaper advertisements, printing of a constitution, making of a seal and other expenses result in applicants spending at least 150,000 naira (US$ 1,425) on the registration process.

NGOs reported having had their applications rejected due to the prevailing restrictive interpretation of provisions on the choice of the organisation's name. During her meeting with CAC, the Special Representative was informed that under section 30 (1) of CAMA, NGO names cannot include words such as "federal", "national", "State", "Government", or any other word which suggests "that it enjoys the patronage of the Government of the Federation or any Ministry or Department of the Government". Defenders reported that as a result words such as "Nigeria", "governance" or "democracy" are also banned. The case of the "Institute of Corporate Governance"[300] is an illustrative example of the restrictive interpretation of CAC. According to the CAC decision, the word "institute" represents "something that is instituted", or set up by statute and not registration. The Commission's decision was confirmed in appeal by the Federal High Court, which stated that the terms "governance" and "policy" are also not acceptable as they pertain to functions of Government.

While the Special Representative recognises the need to avoid any perceptions that an NGO is a State entity, she has seen examples of refusals of registration that indicated a narrow interpretation of the rules and that have caused unnecessary and serious inconvenience for applicants. She also expresses concern about the wide discretionary powers granted by law to CAC for the purpose of registering NGOs. The attention of the Special Representative was drawn to an attempt in 2001 to pass a bill establishing a council to regulate NGOs, oversee their activities and harmonise their operations. In this respect, the Special Representative would like to recall the conclusion laid out in her 2004 report to the General Assembly concerning NGO legislation and compliance with international standards in which she called on States to refrain from adopting further regulation which may restrict the space for NGOs. She encourages the Government of Nigeria to explore possible practical means of ensuring smoother registration procedures, to review its provision limiting the choice of names, and to review its interpretation of those provisions.

300 Abuja Federal High Court, No.: FHC/ABJ/CS/543/2003.

(b)Freedom of Assembly

The Public Order Act, which regulates freedom of assembly, requires a licence to be obtained to conduct "any assembly or meeting or [form] any processions on the public roads or place of public resort" 48 hours before the event. Defenders have reported that under the current legal framework, organising protests on human rights issues has repeatedly proven arduous. While the Special Representative was able to witness a number of demonstrations and workshops that were allowed, she notes that in other cases authorisations to demonstrate or organise a seminar are denied. She was informed that while marches in support of issues perceived as "non-political", such as women's rights, are granted authorisation, rallies concerning issues perceived as "political", such as corruption, labour rights, or issues of democratic governance, are generally not authorised. In particular, she was able to verify that demonstrations organised by the National Labour Congress are frequently banned.

In certain regions, defenders reported that the law is broadly interpreted as regulating any public meetings, including workshops and conferences held in privately owned spaces. For example, the Civil Liberties Organisation in Kaduna recounted that in May 2004, the Network for Justice had been denied authorisation by the Commissioner of Police's Office to hold a one-day symposium entitled "Towards democratic stability in Nigeria" "due to the prevailing tension" in the city.

After a careful review of the Public Order Act, the Special Representative finds that its provisions, as well as their overly broad interpretation by the police forces, severely restricts freedom of assembly. In particular, the Special Representative is concerned at the wide and discretionary powers granted to police commissioners and officers under section 4 (1), (2) and (3) to ban temporarily any public meeting in a given area. She is also concerned at the lack of judicial oversight of temporary and geographically specific bans on assemblies and by the absence of judicial process to appeal the denial of a licence. State concerns for public order and traffic have not proved convincing to legitimatise restriction of the right of peaceful assembly. As a result, many defenders have reported violent repression of demonstrations.

Defenders working in northern states operating under sharia law also mentioned other types of impediments to their workshop activities. In particular, LEDAP, an organisation working on impunity and justice issues, reported having difficulties in February 2003 in holding a human rights training course for judges in Kano. They explained that they had to provide the authorities with their training material and list of resource

persons. In order to receive a licence, the substance of a session entitled "Integrating human rights of women in sharia law implementation" had to be amended and the training had to be given exclusively in Hausa, which excluded trainers coming from southern states.

(c) Freedom of Information

Another crucial issue for defenders in Nigeria is the lack of freedom of information legislation and the existence of laws and practices restricting public access to information. During her meetings, the Special Representative was informed that the Official Secrets Act makes the transmitting of "classified" information an offence and prohibits access to places designated as "protected". Under that law, "classified information" is defined as "any information or thing which … is not to be disclosed to the public and of which the disclosure to the public of Nigeria would be prejudicial to the security of Nigeria". It was pointed out that provisions in the law remain vague and subject to discretionary interpretation.

In practice, the Special Representative observed that there is no uniform policy of granting access for independent monitors to places where abuses occur, be they NGOs or journalists. Defenders reported that access to prisons is generally easier, while access to police stations, detention centres or sites of violations such as oil spills and eviction areas varies greatly. Defenders unanimously deplored the dearth of public statistics, data and public information on the objectives and implementation of State policies and programmes. Weaknesses in systems of data collection and documentation within State organs result in flaws and gaps in the information in public records. For example, prison authorities do not maintain proper and full records of inmates, and police authorities also do not properly record the number of detainees in their custody, or the charges pending against them. The Special Representative was informed that in certain cases State authorities have had to resort to NGOs to help them gather important statistical information. This not only deprives defenders of the right to information, but could lead to serious flaws in policy if the information is not sound information. The Special Representative tried to verify the accuracy of this information with the Government, but was not able to get a response that could clarify the matter. She herself received very little information by way of statistics from the Government.

As a result of this lack of access to information, NGOs are unable to perform any form of monitoring of public policies and practices. They can neither assess the human rights compliance of public policies, nor monitor their implementation nor hold

public authorities accountable. This lack of transparency, and the absence of a law protecting State employees who act as whistle-blowers have helped create an environment propitious for the development of corrupt practices. In this respect, the Special Representative welcomes the steps that have been taken towards the adoption of a freedom of information bill. She notes that a freedom of information coalition was formed in 1999 by civil society actors who started campaigning for the adoption of a freedom of information bill. In 2003, a bill was presented and passed in the House of Representatives. She regrets that at the time of the visit, the bill was still pending in the Senate after two years, and she encourages the Government to expedite its adoption.

9.5 Limits to the Work of Human Rights Defenders

While the overall climate in which defenders operate has significantly improved, 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. Defenders repeatedly expressed their concern that the Government wishes to "box" civil society in specific issues while prohibiting its engagement in others.

(a) Journalists and Defenders Working on Corruption and Good Governance

While significant improvements in freedom of expression were amongst the immediate gains of Nigeria's transition to civilian rule in 1999, with the blossoming of independent news outlets, some of which are critical of Government, State hostility towards public criticism of government policies in certain sensitive areas has been growing. Critical views on topics such as State-sponsored violence, corruption and lack of good governance are construed as seditious and subversive and severely repressed. The security forces, including at the senior level, have continued to display a persistently hostile and suspicious attitude towards journalists and human rights defenders.

It was reported to the Special Representative that since 1999, journalists have continued to be arrested, brutalised and detained in the course of their reporting. In many instances, journalists were violently prevented by security forces from filming or taking photographs. For instance, on 1 July 2003, during a peaceful rally in Abuja, an Associated Press photographer was beaten with the butt of a gun by 10 policemen as he was trying to take pictures of the demonstration, and 2 others were arrested. On 23 September 2003, two Reuters cameramen and an AP member were prevented by officials of

the Navy and from the Nigerian National Petroleum Corporation from taking a picture of a ruptured pipeline in Lagos State. Their cameras were taken away and they were detained for a few hours, after which they were finally able to take photographs.

It was alleged that arrests of journalists are a common practice. On 8 September 2004, a staff member of *Africa Today* was arrested and detained without charges by the State Security Service. On 24 November 2004, the police in Lagos arrested and detained three editors of *Insider Weekly* in connection with a story denouncing an oil bunkering scandal in which senior government officials were involved. It was reported to the Special Representative that on 2 May 2005, the publisher of the *Midwest Herald* was arrested in Lagos by the police in connection with an article critical of the First Lady. At the time of the Special Representative's visit, he was still in detention without charges.

Members of human rights organisations also reported sporadic cases of arrests and beatings. For instance, on 30 April 2003, the south-east zone director of the Civil Liberties Organisation was arrested by the police, interrogated, and accused of fighting the police and harbouring criminals for several hours in connection with his work documenting police abuses in the city of Enugu. Amongst the six officers questioning him was the Deputy Commissioner of Police. Journalists and NGO members have also had their freedom of movement curbed. It was reported that in December 2002, the State Security Service (SSS) seized the passport of the Chairperson of the International Board of the Centre for Democracy and Development and informed him that his name was on their "watch list". The chief of SSS later apologised, blaming bureaucratic laxity for not having removed his name from the list after 1999. In the following days, the Secretary of the National Association of Democratic Lawyers and the Director of Alliance for Africa were also prevented from leaving the country to attend conferences abroad and were informed that they needed clearance. In another instance, in October 2003, the head of the Africa Bureau of CNN was stopped at the Lagos airport by the SSS and customs officials and informed that orders had been received not to let him into the country. Eventually, he and his team were let in and received an apology from the authorities.

Publications by human rights organisations deemed "seditious" have been seized on several occasions. The Special Representative recalls the case concerning a report by the CLEEN Foundation and the World Organisation against Torture on the issue of impunity and State-sponsored violence in 2003 which was seized by the authorities for containing seditious materials. In another instance, SSS seized all copies of a book entitled *This*

Madness Called Elections 2003, which denounced government abuses during the electoral process.

Newspaper premises and offices of human rights organisations have been subjected to sporadic raids by security forces. The Special Representative was told that in November 2002, the premises of three independent newspapers based in Port Harcourt, *The Beacon*, *The Angus* and *The Independent Monitor*, were raided and several of their journalists arrested in connection with articles critical of the Rivers State Government. In June 2004, the Lagos office of the Constitutional Research Project was searched by SSS because of its project called, "The parliamentary handbook", which aims at publishing a directory of parliamentarians. More recently, in September 2004, the office of *The Insider Weekly* was raided and ransacked by SSS, who took computers, printers and office files and then sealed the office for two weeks. During the raid the production editor, the circulation officer and the security guard were arrested. In a press statement, SSS later alleged that it had acted within its power, for the sake of national security, as the magazine had consistently humiliated the President and other officials, which it qualified as an act of subversion and sedition.

(b)Trade Unions and Labour Activists

While activism is generally on the decrease in Nigeria, trade unions represent a highly organised segment of civil society that continues to mobilise the population to act collectively. As a consequence, the Government appears to consider trade unions as a threat. Throughout her visit, the Special Representative observed that trade union activities are consistently repressed in law and in practice. The legislation regulating trade unions was recently amended by the Trade Union Amendment Act, which restricts the activities of unions, the freedom to decide how to organise collectively and the right to strike. In particular, the new law abolishes the regime of a single central federation and requires deregistering the National Labour Congress (NLC). It prohibits any unions other than those in the industrial sector from affiliating with NLC. It also grants federal authorities means to interfere with the internal organisation of unions, for instance by setting specific rules for voting to strike.

The right to picket and strike, recognised in the Constitution, is limited by the new law, which distinguishes disputes over rights (e.g. contractual issues) from disputes over interests (e.g. governance issues), in which trade unions are prohibited from engaging. Under section 30 (6) (b) of the Amendment Act, strikes can only be held in connection with disputes over rights. Consequently, trade unions cannot engage in public action on policy issues. A wide category of workers considered as

"essential" under the new law, including health and aviation workers, are prohibited from engaging in strikes.

On several occasions, authorities alleged that trade unions violently coerce individuals to participate in strikes. The Special Representative found no evidence to support these claims. On the contrary, she was shown evidence of NLC having displayed restraint in calling for a strike in certain sectors. For instance, during the October 2004 strike, the personnel and vehicles carrying out the national immunisation campaign were not called on to participate. While the Government insisted that the new law had been developed in consultation with civil society, NLC insisted that none of its concerns are reflected in the adopted law. The Special Representative was informed that on 29 July 2004, the NLC Parliamentary Liaison Officer and a member of the NLC administration were arrested and detained by SSS inside the National Assembly for distributing copies of the workers' comments on the draft bill. In view of the restrictive nature of the legislation, NLC informed the Special Representative that it intended to lodge a complaint against the Government with the International Labour Organisation on the basis that the new law contradicts ILO conventions and fundamental rights of workers.

In the course of her dialogue with officials, the Special Representative was able to observe that Nigerian authorities, including at the highest level, perceive the labour movement as a threat to political and economic stability. The Government appears to understand trade union activities as limited to addressing a set of contractual and welfare issues to the exclusion of State policy issues. The statement by the Labour Minister, who publicly declared that trade unions have "abandoned their primary responsibility" and that the current behaviour of unions represents "anarchy" and "a dangerous trend", is illustrative of such an understanding. This perception is at the root of the newly passed Labour Law, which restricts trade union activism to disputes over rights.

The legal framework and the hostile attitude of State authorities result in labour activists being intimidated, arrested, detained and beaten. Accounts of NLC members and supporters being arrested in connection with strike actions are numerous countrywide. In October 2003, following the call for a strike against the deregulation of the oil market by the Government, NLC officials were arrested, detained and charged. In another instance, on 9 October 2004, the President of the organisation was arrested without a warrant at the Abuja airport two days before the strike was due to start. On 12 October 2004, eight union leaders were arrested in Abuja while they were monitoring the strike in a hotel.

Raids by security forces against unions also appear to be a common practice. On 7 June 2003, the leadership of the National Association of Nigerian Students was attacked by armed security agents during a press conference held to announce their joining the ongoing strike against an increase in the price of oil. Over the years, the NLC premises have been raided and surrounded by SSS which blocked access to the National Secretariat on numerous occasions and on 15 October 2004, SSS raided the office of the American Labour Solidarity Centre, arrested and detained 13 members of staff, as well as a priest and a 4-month-old child, without charges.

The policing of rallies, especially those organised by NLC, remains an area of grave concern in Nigeria. Cases where the police outnumber demonstrators are numerous, as are reports of the use of excessive force against protestors. The Special Representative was informed of uncountable instances of arrests, beatings, and even killings by the police during protests. During the June 2003 strike in Lagos, protesters were beaten up and some died from police brutality in Lagos, Abuja and the Niger Delta. More recently, in October 2004, during a strike action, officers from the Kaduna State Police Command reportedly fired live ammunition into the crowd, killing a 12-year-old child.

Security forces have usually denied their responsibility for the violence occurring during strikes and rallies. For instance, after the June 2003 events, the Police Public Relations Officer in Lagos publicly denied any knowledge of deaths during the protest. Eventually, after the graphic evidence was published, the police acknowledged the deaths but continued to deny responsibility for the killings, alleging that victims had been killed in car accidents or by rioters. In this instance, an investigative report by the Senate Committee on Petroleum Resources confirmed police involvement in the death of some four individuals, and concluded that the police reaction to the situation was "inhuman". Based on the credible information she has received, the Special Representative concludes that in many instances, the Nigerian Police response to rallies and strikes, particularly when organised by NLC, is brutal and falls below minimum standards of democratic policing.

Unionism is generally either discouraged or penalised. Defenders reported that unionised teachers and professors have been dismissed or demoted for participating in strikes and others denied promotions in connection with their participation in trade unions. In 2003, following a six-month strike, 60 lecturers at the University of Ilorin were reportedly fired. Later, a judge declared the termination of their appointments illegal and ordered their

reinstatement.

(c) Economic, Social and Environmental Rights Activists

Human rights defenders working on economic, social and environmental issues in the Niger Delta remain marginalised, and are more at risk of repressive action. Even where they do not experience any active repression, they receive no response from authorities and policymakers to expressions of concern regarding these areas of rights. The Special Representative had the opportunity to meet with a variety of activists while in the Delta region and was able to witness the economic and environmental degradation caused by the exploitation of oil and gas in some areas. According to the World Bank, there are some 300 oil spills every year in Nigeria. During her visit, the Special Representative visited villages in Ogoni land where she observed the contamination of water supplies and soil and the environmental damage caused by abandoned flow stations.

Defenders reported that there have been no significant improvements in the way such issues have been addressed since the beginning of civilian rule. Many oil companies claim to have a policy of engaging with local communities; nevertheless, despite their dedicating a significant budget for such projects, a gap remains between their intentions and their impact on the ground. Defenders reported that responses to environmental damage caused by oil extraction by both the companies and the State are often slow and inadequate. While companies claimed that they spend large amounts of money on clean-up operations to meet international standards and that some of the oil spills are the result of sabotage, defenders reported that in many cases, clean-up is insufficient and areas remain unusable for years after accidents happen. In May 2002, the African Commission on Human and Peoples' Rights stated in a decision that oil production by the Government and Shell PDC had caused serious health and environmental damage and that there had been inadequate compensation, information and consultation with the Ogoni. Increasingly, companies also claim to have adopted inclusive conflict resolution approaches by consulting with communities. However, these processes often do not include critical civil society actors and have shown no tangible results.

Additionally, redress mechanisms are unavailable to communities and defenders to ensure the effective protection of their rights. Indeed, the framework regulating economic, social and environmental rights in Nigeria remains weak. Land laws, especially, tend to protect the interests of the oil and gas companies over community interests. Under the current law, state governors can expropriate land for mining purposes and

compensation for the land is given to the governor rather than the concerned community. Legislation governing environmental impact assessments is also problematic as it does not require consultation with concerned communities and does not guarantee them access to findings. Furthermore, the guidelines regulating compensation for environmental damage do not allow for adequate levels of compensation.

While the Niger Delta Development Commission was set up by the Federal Government in response to growing discontent in oil-producing regions, in the view of the defenders who spoke to the Special Representative, Federal and state Governments have failed to assume their responsibility with respect to devising policies and allocating funds to address the economic, social and development needs of oil-producing regions. In 2004, Nigeria's oil revenue was estimated to have reached over US$ 21 billion. Nevertheless, 7 out of 10 Nigerians are reported to live on less than $1 a day, the absolute poverty line according to the World Bank. Essential services and social and physical infrastructure have not been provided. Rather, most of these issues seem to be left to the private oil companies to address through their community projects.

In the absence of the State providing such services, oil companies have often stepped in to provide basic services or build infrastructure and dedicated large budgets to developing projects to address some of the immediate negative impact of their activities on the population directly affected. During their meeting with the Special Representative, companies pointed out, however, that the main responsibility for the overall development of the region remains with the Federation, which receives revenues from oil companies. There was concern that the State has not invested in infrastructure such as water supply, roads, electricity, health centres and schools. It was pointed out that this lack of response to economic and social concerns in the region creates great competition for the benefits of oil companies, which can degenerate into inter-community violence.

During her meeting with the Ministry of the Environment, the Special Representative was made aware of efforts by the Government to open channels to respond adequately to concerns surrounding environmental degradation. In particular, it was claimed that the Government had made efforts to bring together affected communities, NGOs and oil companies in the framework of a national forum for dialogue for the first time in 2004 and again in March 2005. The Minister reported that as a result, all impacted sites had been registered with the authorities for remedies. The Special Representative was impressed by the

Minister's understanding of the issues. Nevertheless, she notes that in spite of the Government's efforts, defenders continue to report a general lack of response from the Government and the companies.

They reported that on many occasions, authorities gave assurances that compensation or reparation would be provided, but often those pledges did not materialise. In the case of the demolition of the Eagle Island Estate, the Movement for the Survival of the Ogoni People (MOSOP) reported raising the issue of the economic and social impact of the demolition with both the Rivers State Government and the management of AGIP, to no avail. In particular, they noted that while at first AGIP had been rather responsive and proposed to set up a joint investigation, no action had been taken and no compensation was paid. They also pointed out that the Rivers State authorities had not responded to the private and public appeals on behalf of those affected by the demolition.

Apart from this lack of response, defenders' activities in the region have also been hampered by persistent hostility against their work. Accessing sites of evictions, oil spills and environmental degradation remains difficult. In March 2005, the Nigerian police arrested two Australian journalists who wanted to film the demolition of houses on the Eagle Island Estate adjacent to the AGIP industrial area in Port Harcourt. Public reports or investigations of violations of economic, cultural and environmental rights such as those denouncing links of political figures to violence, oil bunkering and the circulation of small arms have also led to arrests.
MOSOP continues to suffer from regular harassment. In 2002, in Bori, the Vice-President of MOSOP was threatened by a Superintendent of Police who shot into the air and threatened to kill people in the community. According to reports received, two days later the police raided the community of Yeghe, causing harm to persons and property. In May 2002, the home of the MOSOP President was raided by the police and he was taken to the State Intelligence and Investigation Bureau where he was detained. More recently, in 2003, he was arrested at the airport on his way to attend the Commission on Human Rights for having published a report on the situation of human rights in the region.

The confrontation of vigilante groups, militias, police and the army in the region has resulted in a climate of violence which makes defenders particularly vulnerable. NGOs estimate that there were around 1,000 deaths in the Niger Delta in 2003 and that some 70,000 arms were circulating in the region. Defenders reported a worrisome increase in militias and proliferation of small arms in the region. The Special Representative is

particularly concerned about the heavy presence of military personnel tasked with the protection of oil extraction sites and the negative repercussions this has had on the work of human rights defenders. In particular, the Special Representative notes that this arrangement results in a cycle of impunity for abuses as each actor passes the responsibility for violations onto the next. It is telling that when asked about the lack of access to sites, the oil companies and the army pass the responsibility onto each other, with the military responding that they have been directed by the oil companies not to grant access, while the oil companies respond that such action is the responsibility of the military.

(d) Women's Rights Activists

Women's rights defenders have faced difficulties specific to their work and in particular face difficulties in raising issues of women's rights in the context of religion and the imposition of sharia in some northern states. Some victories were recorded in the south with the banning of female genital mutilation in Cross River State, but women's rights groups report that most often, the federal authorities lack genuine interest in women's rights, noting that in many cases commitments by the State made at the international level are not followed up domestically. Many reported that they are often ostracised for their work by many in the Government and the opposition.

Women's rights defenders reported that they face the greatest challenges when working on traditional practices negatively affecting women. In many instances, these have become so ingrained that women themselves have come to believe that these conditions cannot be changed and at times are enforcing them. Organisations working on reproductive rights and health issues have been the subjects of slander campaigns and attacks. In August 2003, the Reproductive Health Centre organised a conference which received slanderous coverage in the media, which called participants "abortionists". Women activists working to provide protection to victims of domestic violence also reported receiving threats from family members.

For the most part, threats against women's rights activists come from non-State actors, including religious authorities and the media. Most often, however, the State fails to address these threats appropriately. Women's rights activists do not benefit from police protection against assaults by non-State actors. In one illustrative example, an activist was assaulted and beaten up by the husband of a victim in front of a police station, an incident that remained unaddressed by the police.

(e) Lack of Response and Impunity for Abuses

Lack of response from the authorities to the issues raised by civil society and the high level of impunity greatly increase the vulnerability of defenders. In one of its reports, LEDAP documented 750 cases of extrajudicial killings, of which only 3 had been resolved and 16 investigated. Such a high rate of impunity (97 percent) has resulted in self-censorship by defenders. Since the beginning of civilian rule, the Government has set up numerous commissions and panels of inquiry to cast light onto abuses by authorities. However, to date, none of the processes has had any tangible impact. Defenders have reported in particular that in the vast majority of cases, the findings and reports of these bodies are not made public and their recommendations seldom implemented. One particular example is the lack of follow-up to the findings of the Human Rights Violations Investigation Commission (the Oputa Panel) set up in 1999 to investigate the human rights abuses committed under the previous regime, which was declared unconstitutional by the Supreme Court.

While the Government pointed to many processes where civil society were included, the Special Representative notes that in sensitive areas such as oil production, corruption and elections, the participation allowed to civil society was minimal. The lack of community representatives, NGO members, or independent environment experts in the Niger Delta Development Commission set up in 2000 is an illustrative example of the lack of access by civil society to certain areas of policy and decision-making. In May 2004, CLO and NHRC met with the Minister of Justice to present a list of 50 extrajudicial killings which they had been working on. The Minister promised to intervene, but as of June 2005, no action had been taken.

The Special Representative also observed a hostile and suspicious attitude on the part of many State officials, particularly from the police forces. In particular, one state governor explained that he considered the "vast majority of NGOs either as failed professionals or politicians who have created their organisations for personal purposes and whose organisations have no legitimacy". This perception seems to be common in the governmental sphere and was echoed by certain members of the Corporate Affairs Commission.

9.6 Conclusions and Recommendations

The Special Representative welcomes the visible commitment of the Government of Nigeria to include human rights in its national and state policies. She is particularly encouraged by the work performed by the National Human Rights Commission at the national level and the recognition it has gained from the defender community. She is equally encouraged by the creation of the

Directorate of Citizens' Rights in some southern states and hopes that similar institutions can be set up and funded to address human rights issues at the local level. Despite these promising developments, she noted that some of these institutions have not started to function in practice and others still present serious shortcomings.

She also welcomes the overall improvement in the situation and safety of human rights defenders. The environment for the functioning of defenders is expected to be further strengthened by the initiatives that are under way for the reorientation and sensitisation of government departments and State authorities on human rights. However, success in any such initiative can only be achieved if the importance of active participation by civil society and the human rights community in the country is fully recognised. The transition from military to civilian rule has resulted in the emergence of democratic institutions that promote respect for the human rights and fundamental freedoms necessary for the functioning of human rights defenders.

The Special Representative is also aware of challenges that such a period of transition presents in achieving transformation of State structures, as well as in political, social and economic conditions that affect the enjoyment and protection of human rights. Nevertheless, there must be sufficient progress at a pace that guarantees the completion of transformation so that the transitional hurdles do not become fixed in State practice. The Government cannot maintain credibility for its commitment to progress and change by pointing to the improvements of the past. The expectations of the State now are those of a democratic government and cannot be satisfied by merely improving the practices of the past.

It is true that the Special Representative has found no policy of systematic harassment of human rights defenders or of obstruction of their work in general. It is also apparent that there is no resistance on the part of Government to engage with the civil society and to involve defenders in its human rights programmes. However, involvement of the defenders remains formal and the outcome of such cooperation is limited because of a serious lack of response from the Government to the concerns expressed by the defender community. Despite defenders' access to legislators and the willingness, particularly of the Human Rights Committee of the Parliament, to hear the concerns of the defenders, recommendations made by the civil society for improvements in the institutional and legal frameworks for the promotion and protection of human rights are rarely reflected in legislative or policy reforms.

However, there are areas of rights where the Government has shown less openness and tolerance of criticism, which has resulted in curbing the rights of defenders active in those areas. The Special Representative also remains concerned at the persistent shortcomings in Nigerian laws which do not allow for the emergence of a fully constructive environment for the defence of human rights. She expresses concern with regard to persistent practices of harassment by security forces of defenders working on certain issues perceived as sensitive, including of journalists and human rights activists working on governance, elections, and economic and environmental rights. She is equally concerned at the lack of response of the executive branch to issues raised by civil society and the high level of impunity for perpetrators of human rights abuses.

The Special Representative greatly appreciates the Government's support for peace initiatives that the civil society has taken in the region of the country experiencing inter-religious tensions. She is, however, concerned that Government has been over-cautious and does not intervene to protect the lives of those who are exposed to risk because of their efforts towards peace. Lastly, she notes that the prevailing climate of violence in the country has had a severe, adverse impact on the work of human rights defenders. In the past, elections were periods of increased violence and vulnerability for human rights defenders. In that context, defenders have expressed serious fears with regard to the elections scheduled for 2007.

The Special Representative calls on the Government of Nigeria to further strengthen the National Human Rights Commission by making express provision for the Commission's independence and autonomy; making it compulsory that inquiries or correspondence on human rights matters emanating from the Commission be responded to within 30 days, as in the case for a court summons, and entrenching the Commission in the Constitution. She encourages state Governments to set up Directorates for Citizens' Rights and ensure that they receive sufficient funds to fulfil their mandate. She also recommends that the Government streamline and ease the registration procedures and seriously review any plans to adopt any regulations that infringe the freedom of association of human rights organisations or limit their autonomy and independence.

She calls on the Government of Nigeria to review the provisions and implementation of the Public Order Act to ensure that the right to freedom of assembly is fully respected and that undue or unreasonable limits are not placed on collective and public action for the promotion or protection of human rights. She

urges the Government of Nigeria to expedite the process of adopting an adequate legislative framework for freedom of information and to set up adequate mechanisms to collect and publish data and statistics on public policies and institutions in order to ensure transparency and accountability, without which defenders cannot perform their monitoring and reporting functions.

She urges the Government of Nigeria to take immediate measures to address impunity, and in particular to set up a strict system of accountability within the security forces, including disciplinary proceedings, and include human rights training in the basic training curriculum for police officers and staff at all levels of the hierarchy. The Special Representative calls on the Government to develop appropriate measures for the adequate protection of election monitors and journalists in view of the 2007 elections; in particular, she calls for formal recognition of election monitors in order to ensure their safety.