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الأمم المتحدة

المجلس الاقتصـــادي والاجتماعي

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لجنة حقوق الإنسان

الدورة الثانية والستون

البند ١١(ب) من جدول الأعمال المؤقت

الحقوق المدنية والسياسية، بما في ذلك مسألتا حالات الاختفاء والإعدام بإجراءات موجزة

حالات الإعدام خارج نطاق القضاء أو بإجراءات موجزة أو تعسفاً

تقرير المقرر الخاص، السيد فيليب ألستون

إضافة

البعثة التي قام بها إلى نيجيريا* **

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* يُعمم ملخص هذا التقرير بجميع اللغات الرسمية. ويرد التقرير نفسه في مرفق الملخص ويُعمم كما ورد باللغة التي قُدم بها فقط.

** قُدم هذا التقرير في وقت متأخر لكي يعكس أحدث المعلومات.

ملخص

على الرغم من جميع الجهود التي بذلتها حكومة نيجيريا لمكافحة الفساد وتدعيم استعادة الديمقراطية، فما زالت توجد مشاكل خطيرة فيما يتصل بحالات الإعدام خارج نطاق القضاء. وقد اعترف رئيس الجمهورية في الآونة الأخيرة بهذه المشاكل، ويحدد هذا التقرير التدابير المطلوبة لتحسين الوضع. وهذه المشاكل توضحها أربع دراسات حالات إفرادية: `١` تلفيق اتهامات ضد ستة مدنيين أبرياء وقتلهم من جانب الشرطة في "آبو" في حزيران/يونيه ٢٠٠٥؛ و`٢` القيام، أثناء الحبس لدى الشرطة، بإعدام ستة لصوص مسلحين مدّعين خارج نطاق القضاء في "إينوغو" في كانون الثاني/يناير ٢٠٠٥، و`٣` قيام قوات الأمن بقتل متفرج بريء شهد سلوكهم أثناء العنف الطائفي في "كانو" في أيار/مايو ٢٠٠٤؛ و`٤` الإعدام عن طريق الرجم بموجب قوانين الشريعة بسبب إتيان أفعال جنسية خاصة مثل الزنى والمثلية الجنسية.

وفيما يتصل بعقوبة الإعدام، توجد ثلاثة أوجه قلق رئيسية: المخالفات الإجرائية الواسعة الانتشار، بما في ذلك استخدام التعذيب من جانب الشرطة لانتزاع الاعترافات، وعدم وجود تمثيل قانوني في القضايا التي تنطوي على حكم بالإعدام، وأحكام الإعدام التي أصدرتها محاكم عسكرية في ظل النظام السابق؛ والأوضاع الفظيعة في أقسام المنتظرين تنفيذ حكم الإعدام والإبقاء لمدة غير مقبولة تبلغ في المتوسط عشرين عاماً في انتظار تنفيذ الحكم بالإعدام؛ وفرض حد الرجم في حالات الزنى أو اللواط في ١٢ ولاية، بما يخالف القانون النيجيري والقانون الدولي. وينبغي أن تكرر الحكومة الاتحادية إعلان أن فرض عقوبة الإعدام على جرائم مثل الزنى واللواط هو أمر غير دستوري. وينبغي في حالة جميع الأشخاص المحكوم عليهم بالإعدام أو السجن المؤبد بموجب الأحكام العرفية إعادة النظر في الإدانات الصادرة ضدهم اعترافاً بأن الحماية المطبَّقة بموجب الإجراءات القانونية الواجبة الاتباع في ذلك الوقت لم تكن مُرضية إلى حد كبير.

وفي الوقت نفسه فإن قوات الشرطة النيجرية تنقصها الموارد على نحو خطير وتواجه معدلاً مرتفعاً من جرائم العنف. ونتيجة لذلك، تشيع التجاوزات التي تشمل الفساد والتعسف والتعذيب والاستخدام المفرط للقوة وحالات الإعدام. و لا توجد إحصاءات منهجية تسجل حالات الإعدام هذه. ولذلك ينبغي نشر سجل سنوي يورد بالكامل وبلا تأخير وبدقة جميع حالات الوفاة التي تحدث على أيدي الشرطة.

وتقدم الشرطة أعذاراً شتى لتبرير حالات الإعدام خارج نطاق القضاء. وعندما يُقتَل أحد الضحايا أثناء الحبس، ربما يُذكَر أنه مات نتيجة محاولته الهروب. وعندما يُقتل الضحية قبل أخذه إلى الحبس، ربما يُذكر سبب هذه الحالة على أنه لص مسلح. ويؤدي الإطار القانوني الداخلي إلى تيسير اللجوء إلى هذه الأعذار. أولاً، فإن رفع درجة السرقة المسلحة إلى مستوى الجريمة التي يعاقَب عليها بالإعدام ينطوي على آثار مُفسدة. وفي حين أن السرقة المسلحة هي بلاء يعمّ كثيراً من أنحاء نيجيريا، فإن التوصيف "سارق مسلّح" كثيراً جداً ما يُستخدم لتبرير السجن و/أو الإعدام خارج نطاق القضاء لأفراد أبرياء اتجه انتباه الشرطة إليهم لأسباب تتراوح بين رفض دفع غرامة ما وسبّ الشرطة أو مضايقتها. وتوجد أسباب تدعو إلى الشك في أن اللصوص المسلحين البالغ عددهم ٢ ٤٠٢ الذين قُتلوا منذ عام ٢٠٠٠ كانوا في الحقيقة جميعاً لصوصاً مسلحين، ناهيك عن أن يكونوا قد قُتلوا جميعاً في تبادل لإطلاق النار. فينبغي إزالة جريمة اللصوصية المسلحة بهذه الصفة كجريمة من الجرائم التي تستحق الإعدام.

ثانـــياً، فإن "القواعد التوجيهية في مجال استعمال الشرطة للأسلحة النارية" وهي القواعد القائمة معيبة للغاية. ويسمح الأمر الشرطي رقم ٢٣٧ باستخدام الأسلحة النارية إذا لم يمكن للشرطي "بأي وسيلة أخرى" أن يلقي القبض أو يعيد إلقاء القبض على أي شخص يُشتبه في ارتكابه جريمة يعاقَب عليها بالإعدام أو بالسجن لمدة لا تقل عن سبع سنوات (أو يكون قد أُدين بهذه الجريمة بالفعل). بل إن القواعد التي تشرح هذا الحكم تفتح هذا الـــباب على نطاق أوسع. فوفقاً لهذه القواعد، فإن أي شخص يسعى إلى الهرب من احتجاز قانوني إنما يرتكب بذلك جناية تبرر الحكم عليه بالسجن سبع سنوات. ونتيجة لذلك، يكون من المبرر إطلاق النار على شخص اتُهم بسرقة سلع ذات قيمة لا تُذكر ولكن يُدّعى أنه سعى إلى الفرار من الحبس. وفي الواقع العملي، تتيح هذه القواعد للشرطة تفويضاً مطلقاً لإطلاق النار بقصد القتل متى شاءت. وينبغي القيام في الحال بتعديل الأمر الشرطي رقم ٢٣٧ لجعله مطابقاً للمبادئ الأساسية المتعلقة باستخدام القوة والأسلحة النارية من جانب موظفي إنفاذ القوانين. وينـــبغي أن ينصب التوكيد الناتج عن ذلك على مسألة النسبية، وعلى استخدام القوة الفتاكة كملاذ أخير بشكل مطلق، وفقط على النحو المنصوص عليه في المبادئ الأساسية، "عندما يكون ذلك أمراً لا يمكن تجنبه من أجل حماية الحياة".

ومما يُيسر أيضاً حالات الإعدام خارج نطاق القضاء الإفلات من العقاب الذي تتمتع به قوات الشرطة. ويحـــتاج نظـــام التحقيق في سوء تصرف الشرطة إلى إصلاحات هامة، ومن المشجع أن الحكومة تشترك في هذا الـــرأي. وهـــذا الـــتقرير يقترح إصلاحات ويبحث المبادرات الراهنة تحت عناوين المساءلة الداخلية، والمساءلة الحكومـــية، والمســـاءلة المجتمعية. وعلى الرغم من هذه العقبات، فإن من الضروري والممكن في آن القيام بجهد إصلاحي منهجي.

ويجب إصلاح وضع قوات الشرطة بدلاً من تهميشها. ويوجد عدد من الممارسات التي تحاول الإبقاء على النظام العام دون الاعتماد على قوات الشرطة: استخدام القوات العسكرية لممارسة مهام الشرطة، وقيام شركات النفط باستئجار عدد من الشرطة يتجاوز العدد المقرر، والدعم المقدم من المسؤولين في الدولة إلى جماعات الدفاع الذاتي بشكل مفتوح أو مستتر. وتقوم القوات العسكرية على نحو منتظم بتكملة الشرطة أو حتى الحلول محلها في حفظ القانون والنظام أثناء الاضطرابات المدنية. وقد انطوى ذلك في بعض الأحيان على تجاوزات جسيمة، مثل قـــتل أكثر من ٢٠٠ مدني على سبيل الانتقام في ولاية "بينو" في عام ٢٠٠١. وفي هذه الحادثة، وفي غيرها من الحوادث، أُبقي على تقارير التحقيقات طي الكتمان، ولم تُتخذ قط أي تدابير ضد المسؤولين عن ارتكابها. ويمثل أيضـــاً انتشار جماعات الدفاع الذاتي مشاكل تتعلق بارتكاب تجاوزات كما تتعلق بالمساءلة. وبينما يوجد مفهوم تقليدي حميد لمسألة الدفاع الذاتي في نيجيريا، فإن كثيراً من المجموعات قد تجاوزت كثيراً الحدود المناسبة. ويجب أن تكفل الحكومة المساءلة والتصرفات المشروعة من جانب جميع الجماعات كما يجب أن تحسّن أداء الشرطة في سد الفراغ القائم في مجال إنفاذ القوانين محلياً.

وترتبط مشكلة حالات الإعدام خارج نطاق القضاء في نيجيريا ارتباطاً وثيقاً بما يلاحَظ من عدم ملاءمة نظام القضاء الجنائي النيجيري على جميع المستويات، على النحو الذي يتمثل فيما يلي:

- التحقـــيق: لا يوجـــد تقليد خاص بإجراء تحقيق جنائي منهجي في نيجيريا إذ لا يوجد في البلد بأســـره سوى خبير مقذوفات واحد، ومختبر واحد للشرطة، كما لا توجد قاعدة بيانات خاصة

بالبصمات. ووفقاً لأحد التقديرات، فإن الاعترافات تكون الأساس الذي تقوم عليه نسبة ٦٠ في المائة من حالات المقاضاة؛

- تحريات الطبيب الشرعي: الأطباء الشرعيون هم سلالة مهددة بالانقراض وتحرياتهم هي أمر نادر؛ ومن الشائع أن يوقع أخصائيو الأمراض على التقارير دون حتى أن يفحصوا الجثة؛

- الادعاء العام: ليس لدى جهات الادعاء العام أي سيطرة على تحقيقات الشرطة ولا هي تستطيع أن تطلب إحضار الأفراد في المحكمة؛

- القضـــاء: تصـــدر قرارات التأجيل باستهتار، مما ينتج عنه أن الآلاف المتهمين بارتكاب جرائم عقوبتها الإعدام يُتركوا مهمَلين في السجن؛

- الاحـــتجاز: تحصل الشرطة بصورة روتينية على "اقهام احتجازي" يسمح باحتجاز المشتبه فيهم احتجازاً إلى أجل غير مسمى تقريباً في حالة ضياع قانونية لا تستند إلى أكثر من مجرد الاشتباه في إتيان نشاط إجرامي؛

- ولا توجد نقطة بداية واحدة للإصلاح. وتتمثل إحدى الخطوات الأولى الضرورية في قبول كل مؤسسة بنصيبها من المسؤولية.

وبيـــنما يركّـــز هذا التقرير على المشاكل الرئيسية، فإنه توجد أيضاً تطورات مشجعة كثيرة. وبصورة خاصة، فإن مكافحة الفساد على جميع المستويات ترتبط ارتباطاً وثيقاً بقضايا الإعدام خارج نطاق القضاء، وقد نجحـــت المـــبادرات الأخيرة في التصدي لبعض أبرز الحالات في هذا الصدد. وفي آب/أغسطس ٢٠٠٥، اعترف الرئـــيس "أوباسانجو" بأن حالات الإعدام خارج نطاق القضاء واسعة الانتشار والتزم التزاماً واضحاً باستئصال شأفة هذه الممارسة وبمعاقبة المسؤولين عنها. وفي وقت سابق من عام ٢٠٠٥، أعلن المفتش العام للشرطة بالإنابة أن "أيام القتل خارج نطاق القضاء" يجب أن تنتهي. ومن حسن الطالع أنه توجد عناصر داخل الشرطة والقوات المسلحة ملتزمة بتعزيز الإصلاحات. ويقع على عاتقهم جانب كبير من العمل. ودعماً لعملية الإصلاح هذه، يحدد هذا التقرير التدابير المطلوبة لتحسين الحالة.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS, PHILIP ALSTON, ON HIS MISSION TO NIGERIA (27 JUNE-8 JULY 2005)

CONTENTS

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Introduction

1. This report describes the situation in Nigeria in relation to extrajudicial executions.[1] It is based upon *in situ* visits and extensive interviews undertaken in four States and in the Federal Territory of Abuja. The cooperation provided by the Government of Nigeria at all levels is acknowledged with gratitude. The appendix provides complete details of the visit.

2. Nigeria is the most populous and one of the most resource-rich countries in Africa. It gained independence in 1963, and civilian rule was restored in 1999. The population is 130 million, of whom three-quarters live on less than one dollar a day. In October 2005 it negotiated debt relief worth $18 billion, which could lead to the elimination of its outstanding debt by early 2006. Oil accounts for 98 per cent of Nigeria's exports and 80 per cent of government revenues.

3. It is customary in reports of this nature to provide a detailed overview of the country and of its constitutional structure and legal and administrative institutions. Since this information is available to the Commission on Human Rights from other up to date sources it will not be replicated here.[2]

4. Shortly after the completion of the Special Rapporteur's mission to Nigeria, President Obasanjo acknowledged, in August 2005, that extrajudicial executions and killings of suspects and innocent citizens by the police were widespread. The President made a clear commitment to rooting out and punishing those responsible.[3] This report provides an indication of what needs to be done.

5. The applicable legal framework is straightforward. Nigeria is a party to the six principal human rights treaties, and its 1999 Constitution contains extensive human rights provisions. As far as possible the Special Rapporteur sought to establish, to a standard beyond that of reasonable doubt, the accuracy of the allegations referred to in this report. In terms of domestic remedies, they are plentiful in theory, but very often unavailable in practice. Many sources are first-hand and have been backed up by appropriate documentation whenever available. While newspaper reports are never relied upon exclusively, they are cited to contextualize various issues.

I. FOUR REPRESENTATIVE CASE STUDIES

6. A leading Nigerian NGO, the Legal Defence and Assistance Project, recorded 997 cases of extrajudicial killing in 2003, of which 19 resulted in a prosecution. For 2004 there were 2,987 cases and not a single prosecution.[4]

7. But statistical data recording systemic pathologies are no substitute for the vivid details of reasonably typical cases. Thus this report begins by illustrating the major current concerns through four recent case studies. Each is indicative of a much broader problem.

A. Case study 1: the "Apo 6": the framing and killing of innocent civilians

8. The Abuja Police reported that on 8 June 2005 in the Apo district of Abuja five young male traders and a female student5 were arrested on suspicion of armed robbery, taken to the Garki police station, and subsequently killed while trying to escape. The dead robbers were photographed with their weapons, a post-mortem was conducted as required, death certificates were issued after examination by a doctor, and the bodies were buried. When challenges to this story first emerged the Federal Capital Territory Police Commissioner, Emmanuel Adebayo, publicly affirmed these details. The case looked very typical of many reported by the police in Nigeria.

9. Unfortunately for the police, however, one of the "robbers" had managed to phone a relative from the police station and reported that the six had been involved in an altercation in a pub with a police officer. Their car had subsequently been ambushed by other police who were called in, they had all been badly beaten, and they were taken to the police station. Family members immediately sought their release but were unable to pay the bribe of 5000 Nairas ($40) demanded by the police. Several of them were executed a few hours later. Another managed to escape but was recaptured and brutally killed by the police. In fact, no post-mortems were carried out, death certificates were not completed by a medical officer, and the bodies were hastily buried in a common grave.

10. The news of the killings spread rapidly. Rioters ransacked the Apo police station and demanded an investigation. The relatively new Acting Inspector-General of Police convened an internal investigation. But he also took the unprecedented and commendable step of making its proceedings public. Two further elements compounded the horror story that was to emerge. One police officer who took part in the killings allegedly provided the victims' relatives with information on what really happened. He died of "tonsillitis" the day before he was supposed to give evidence to the inquiry. He was subsequently deemed to have been poisoned by two of his colleagues. Meanwhile, the Divisional Police Office in charge of the Garki police station on the fateful night "escaped" from detention.[6]

11. In the course of the inquiry one police officer and the photographer on duty that night confirmed that the youths had been killed in cold blood. It was subsequently revealed that the "robbers" alleged weapons had been in police storage until they were removed by a police officer shortly before the incident. As a result of the inquiry ten police officers were arrested.

12. On 27 June 2005, one day after the Special Rapporteur arrived in Abuja, the President unprecedentedly appointed a Federal judicial commission of enquiry. [7] In December 2005 the Government paid compensation of 3 million Naira to the relatives of each of the six.

13. If the Apo 6 were an isolated incident it would be a tragedy and a case of a few bad apples within the police force. Unfortunately, many of the ingredients - the false labelling of people as armed robbers, the shooting, the fraudulent placement of weapons, the attempted extortion of the victims' families, the contempt for post mortem procedures, the falsified death certificates, and the flight of an accused senior police officer - are all too familiar occurrences.

14. Thus the Apo 6 killings were not an aberration. The Government response, however, was noteworthy in four important respects: the Inspector-General of Police was responsive to protests; the internal police inquiry was public; a judicial inquiry was established; and compensation was paid. These elements need to become routine in the future.

B. Case study 2: the "Enugu 6": the extrajudicial execution of alleged armed robbers

15. A bank was robbed in Enugu on January 27, 2005. Six accused,[8] mostly university students, were arrested from various locations during March and April and were transferred to the Ogui Area Command in Enugu. On April 27, 2005 they were paraded before journalists at the Enugu State CID (Criminal Investigation Division) to publicize police success in fighting crime. Photographs of the six in handcuffs were widely published in the press.[9]

16. Local human rights groups feared that this public parade signified the prelude to a "traditional" execution by the police. Accordingly, the Nigerian Civil Liberties Organisation called upon all the relevant authorities to ensure that the accused were taken before a judge and protected from "imminent execution".[10] Just a few days later, and after some had been in police custody for more than a month rather than being arraigned before a judge, all six accused were killed while allegedly attempting to escape. Not one of the "escapees" was merely wounded, and not one received medical attention. No autopsy was carried out, the bodies were never seen by the families, and it is unknown where they were buried. No serious inquiry appears to have been undertaken, no police officers have been investigated, and none charged. Nor have the police responded to any inquiries from human rights groups or the victims' families.

17. A later press report quoted "an insider at the police headquarters" who indicated that all of the accused had asked to go to the toilet at virtually the same time. According to the source, "soon afterward they began to make funny movements which suggested that the boys were ready to escape from jail. For a sensible policeman under such predicament and who had his rifle loaded, the next option available would be to gun the suspect down and that was exactly what may have happened".[11]

18. This scenario is utterly implausible. Even if it were true, it would represent an entirely disproportionate use of force to subdue individuals who were unarmed, still within police custody, and had not escaped. Once again, this case study represents a common practice within the Nigeria Police and it is unsurprising that their own figures list 2,402 armed robbers killed since 2000. In 2004, for example, 3,184 armed robberies were reported which led to the killing of 569 robbers and 111 police.[12] Moreover, according to civil society groups, these figures do not capture the real magnitude of the phenomenon of extrajudicial killings of alleged robbers.

C. Case study 3: the killing of Lawan Rafa'i Rogo: executions in the course of responding to communal violence

19. On 11 May 2004, violent clashes broke out in the city of Kano. Estimates of the number killed within a two day period range from the Police figure of 84 to a more commonly cited 200-250.[13] The response of the security forces involved disproportionate force, aided by an order to shoot on sight, and dozens of people appear to have been killed by police and soldiers. The killing of Lawan Rafa'i Rogo, a civil servant in the State Ministry of Commerce, is emblematic. Rogo expressed concern to a neighbour who was being militarily escorted to her house that the sight of the soldiers could raise tensions in the area due to the prior killing of a neighbourhood child by the military. The soldiers left the area, but soon returned in larger numbers. They broke into the house where those in mourning for the child had assembled, firing indiscriminately. Rogo appears to have been singled out and was shot in the chest, thigh and legs. He died several hours later.

20. A subsequent State Government commission of inquiry effectively confirmed the impunity of the military which had refused to cooperate in any way.

D. Case study 4: the sharia courts and stoning to death for homosexuality

21. In 2000 the jurisdiction of the sharia courts,[14] which exist in twelve states, was extended from civil and personal matters to criminal cases. Concerns have long been expressed that the sharia judges lacked the training necessary to deal with criminal matters, that a confession alone was sufficient to convict, that defendants were unrepresented or poorly represented, and that some penalties violated human rights standards.[15] After considerable publicity and lengthy legal proceedings, the widely-publicized convictions of several women sentenced to death by stoning for adultery were overturned. In a lengthy discussion of these issues, several judges of the Appeals Court of the Grand Khadi of Kano sought to allay the concerns of the Special Rapporteur by recalling the injunction attributed to the Prophet to "[p]ut off the hudud (prescribed) penalties in cases of uncertainty".

22. The day after meeting the judges the Special Rapporteur asked to meet with all death row prisoners in Kano prison. One of them was a 50 year old man awaiting death by stoning after being convicted of sodomy. A neighbour had reported him to the local Hisbah Committee[16] which carried out a citizen arrest and handed him to the police. He claimed to have been comprehensively beaten by both groups. The official court records show that he admitted to the offence, but sought the court's forgiveness. He had no legal representation and failed to appeal within the time provided. The Special Rapporteur subsequently took steps so that a late appeal could be lodged and the case is now under review.

23. In December 2005 the Katsina Sharia Court acquitted two other men charged with the capital offence of sodomy, because there were no witnesses. They had nevertheless spent six months in prison on remand which the judge reportedly said should remind them "to be of firm character and desist from any form of immorality".[17]

24. Regardless of the circumstances of the individual case, however, the incident serves to highlight several major problems. They are the use of stoning to death as a punishment, and the prescription of the death penalty for private sexual conduct.

E. The approach adopted in the report

25. These four case studies are illustrative of the types of issues that demand particular attention from the Nigerian Government in order that the systems for maintaining law and order and providing criminal justice do not violate applicable standards of human rights. In the remainder of this report further details are given in relation to each of the major problem areas. Consideration is then given to the deep pathologies pervading most aspects of the criminal justice system. Finally, specific recommendations for immediate measures to alleviate the situation are identified.

II. THE MAJOR PROBLEMS

A. The right to life and the death penalty

26. Several aspects of the death penalty in Nigeria are of particular concern: (a) widespread procedural irregularities; (b) conditions on death row; and (c) the operation of sharia law, especially in relation to adultery and sodomy.

(a) Procedural irregularities

27. During the military era the death penalty was liberally prescribed for a range of offences including economic crimes such as setting fire to public buildings, ships or aircraft, tampering with oil pipelines or electric and telephone cables, and the selling of cocaine. Today Nigerian Federal law prescribes the death penalty only for treason, homicide and armed robbery.

28. In 2004 there were 530 condemned convicts on death row in Nigeria. In the course of the Special Rapporteur's visit to several prisons he spoke on an individual basis with more than 20 per cent of this number. It became clear from individual testimony, supported by convincing civil society studies, that torture is consistently used by the Nigeria Police to extract confessions and that these confessions have often been critical to the conviction of persons charged with capital offences. Moreover many defendants in capital trials have effectively had no legal representation and legal aid is not available for appeals.

29. In addition, many of the individuals with whom he met on death row were tried when Nigeria was governed by a military regime, when various constitutional rights were suspended and capital trials were sometimes conducted by military tribunals. The procedural probity of such trials was almost certainly deeply flawed. Another problem is the imposition of the death penalty for crimes committed as a minor.

(b) Conditions on death row

30. The average period spent on death row is 20 years.[18] From the observations of the Special Rapporteur the resulting health risks to these prisoners are immense. Prisons are overcrowded and unsanitary and many prisoners develop serious illnesses that often go

untreated.[19] In addition, and partly as a result of these conditions, a significant number of these "condemned convicts" suffer from serious mental illnesses for which they receive no treatment or care.

31. Because of the abusive use of the death penalty by Nigerian military governments most of today's civilian Governors are extremely reluctant to sign execution warrants. For the reasons discussed above, signing such warrants would seriously risk the execution of an innocent person. This does not, however, justify the standard alternative: 20 years on death row, in life threatening health circumstances and in constant fear of the possibility of execution. In order to avoid the result that a death sentence is replaced by a life sentence plus the cruel and inhuman treatment of the uncertainty of remaining formally on death row, the sentences of all death row inmates whose appeals have been completed should be commuted to life imprisonment.[20]

(c) Sharia law in Nigeria

32. Under the Sharia Penal Codes in force in twelve northern states, capital offences include sodomy, "adultery (zina), apostasy (ridda), rebellion (bag'yi), and Hiraba, translated as highway robbery …".[21] The issue of punishment for zina (adultery) has attracted extensive media attention because of cases in which the sharia courts prescribed death by stoning for women found guilty of zina. In the Special Rapporteur's discussions with them, judges of the Appeals Court of the Grand Khadi of Kano emphasized the extent to which the version of the sharia which they applied (following the Maliki School)[22] contains provisions which ensure that only very few cases will ever satisfy the requirements for the imposition of the death penalty.[23]

33. In March 2002 a Sharia Court in Katsina State sentenced Ms. Amina Lawal to death by stoning for *zina*. A higher court upheld the judgment in August 2002.[24] On appeal in September 2003 the Katsina State Sharia Court of Appeal (by a 4-1 majority) overturned the conviction. Several grounds were cited: (i) the evidence against her should have been presented not just by the police but by four witnesses as required by the Koran; (ii) her initial conviction should have been rendered by a three judge panel, rather than only a single judge; (iii) under Islamic law she should have been permitted to withdraw her confession at any point prior to execution; and (iv) the child of a divorced woman is presumed to have been fathered by her ex-husband, a presumption which only he could refute.[25] The alleged father of the baby denied paternity and had been discharged at an early stage on the grounds that the required four witnesses could not be found to testify against him.

34. In late 2004 two women, Hajara Ibrahim and Daso Adamu, were sentenced to death for *zina* by Sharia Courts in Bauchi State. Both convictions were later overturned by Upper Sharia Courts. Ms. Ibrahim was acquitted on the basis that her marriage had never been consummated so she could not be guilty of adultery and Ms. Adamu was acquitted on the basis of the principle that a pregnancy can reasonably be attributed to the ex-husband up to five years after a divorce.[26]

35. Fortunately, the accused in all of these cases were ultimately acquitted. But reason for continuing concern remains. Firstly, characterizing adultery and sodomy as capital offences leading to death by stoning is contrary to applicable Nigerian and international law. Neither can be considered to be one of the most serious crimes for which the death penalty may be prescribed.27 Secondly, even if the sentence is never carried out, the mere possibility that it can threaten the accused for years until overturned or commuted constitutes a form of cruel, inhuman or degrading treatment or punishment. Assurances that an offence which continues to be recognized by the law will never be applied in practice are neither justified nor convincing. The very existence of such laws invites abuse by individuals. This is all the more so in a context in which sharia vigilante groups have been formed with strong Government support. The maintenance of such laws on the books is an invitation to arbitrariness and in the case of *zina* to a campaign of persecution of women.

36. The operation of the *zina* laws is also discriminatory in terms of Nigerian and international law. The theory is that both the man and the woman in such allegedly adulterous situations are protected by the requirement of four witnesses, which will in almost all circumstances be impossible to obtain. But the woman alone remains very vulnerable because her pregnancy alone can be considered sufficient evidence to warrant conviction.[28] In terms of gender equality this outcome is entirely unbalanced because the rules of evidence operate so as to exculpate almost every male and inculpate almost every female in such situations. Similarly, DNA testing seems never to have been considered, most likely because it would lead to a more gender neutral outcome in which the child could be linked to a specific father as well as mother.

37. In relation to sodomy, the imposition of the death sentence for a private sexual practice is clearly incompatible with Nigeria's international obligations. Moral sanction is a matter for the consciences of individuals and the beliefs of religious groups. Criminal sanctions are an entirely different matter and when the threat of execution is involved the State cannot stand idly by and permit the two types of sanctions to be conflated in a way that violates international law.

38. The constitutionality of sharia criminal law has been widely challenged for violating the principle of non-discrimination, the federal-state division of powers, freedom of religion and the prohibitions against a state religion. Indeed the Federal Government has itself asserted that the northern states are acting unconstitutionally. Yet it has so far failed to take legal action to uphold the Constitution.[29]

B. The right to life and the Nigerian Police

39. The Nigeria Police have grown significantly under civilian rule to 325,000 in 2005. But the numbers are still inadequate, their level of training and funding insufficient, and their morale low. Although Nigeria suffers from high violent crime rates, the force is chronically under-resourced. All too often new recruits pay for their own uniforms, salaries are delayed for many months, equipment required in an emergency needs to be borrowed from other agencies,[30] and complainants (even those alleging murder) are asked to cover the costs of the police investigation including travel and accommodation. Where

they cannot afford to do so, the investigation fizzles. In addition, corruption is widespread among police officers, in part due to very low salaries.[31]

40. For these reasons, and because police tactics are often marked by the arbitrary and unnecessary use of force, including high rates of extrajudicial killings, there is little public confidence in the police. Indeed, they are criticized by virtually all sectors of civil society.[32]

41. Common complaints include the carrying of firearms in public by un-uniformed police, the wearing of uniforms by police when they are off-duty,[33] and the widespread practice of police requiring payment to ensure the safe delivery of goods. As a result, the overriding public attitude towards the police is one of fear and mistrust.

42. The focus of this analysis, however, is on extrajudicial killings by the Nigeria Police. These can be broadly grouped into three main types: (1) extrajudicial executions of suspected criminals; (2) the excessive and arbitrary use of force; and (3) deaths in custody.

Armed robbers

43. Despite the fact that 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 problem lies in part in the elevation of armed robbery to the level of a capital offence. This seems to have at least two perverse consequences: (1) criminals interrupted in an armed robbery have no disincentive to use arms (either way it will be a capital offence); (2) the police are given a justification to shoot to kill any person who has committed a capital offence and is seeking to flee.[34]

44. The case of the Enugu Six[35] is telling in that the Nigerian Civil Liberties Organisation was able to predict, with chilling accuracy, the execution of six alleged armed robbers. Tragically, the practice of summarily executing suspected criminals by the Nigeria Police is widespread and systematic. This is both illegal and counter-productive. There are no circumstances under which summary executions are legally permissible let alone justifiable. The practice is counter-productive for several reasons. Summary executions of suspects, many of whom are innocent of the crime of which they have been accused, does nothing to stem the high rate of armed robbery in Nigeria. For all the killings at the hands of the police, this rate has shown no diminution. The practice also confirms the public sense of the police as being out of control, brutal, and relatively unconcerned with protecting the public and upholding the law. Fundamentally different police tactics are thus required by law and for pragmatic reasons.

45. The key challenge is to determine when deadly force can legitimately be used against criminals. Most approaches to date seem to be inconsistent with human rights requirements. For example, in "operation fire-for-fire", a 2002 campaign against crime,

the Inspector-General of Police pre-authorized police officers to fire in "very difficult situations". The result, revealed in police statistics, was that in the first 100 days, 225 suspected criminals were killed, along with 41 innocent by-standers.[36] Fortunately, this operation was terminated.

46. But the standing "rules for guidance in use of firearms by the police" are equally flawed. Police Order No. 237 provides for the use of firearms in situations where it is essential in order to protect the life of the police officer or of another person, or where necessary to prevent "serious offences against life and property" by rioters. These provisions are unexceptionable but the rules which effectively relate to "armed robbers" are formulated very differently. They authorize the use of firearms if a police officer cannot "by any other means" arrest or re-arrest any person who is suspected (or has already been convicted) of an offence punishable by death or at least seven years imprisonment. The rules which elaborate upon this provision are even more permissive. They note that any person who seeks to escape from lawful custody commits a felony warranting a seven year sentence. As a result shooting to kill someone charged with stealing goods of negligible value but alleged to be seeking to escape from custody would be justified. The only qualification contained in the rules is "firearms should only be used if there are no other means of effecting his arrest, and the circumstances are such that his subsequent arrest is unlikely". These rules are deeply flawed. They provide close to a *carte blanche* to the police to shoot and kill at will.

47. Police Order No. 237 should be amended immediately to bring it into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The resulting emphasis should be on proportionality, on the use of lethal force as an absolute last resort, and only "when strictly unavoidable in order to protect life".37 Thus, the possible escape of an alleged robber who presents no direct threat to the lives of others, cannot justify shooting to kill.

Checkpoints

48. No person can feel safe driving at night in Nigeria and there are regular reports of horrendous attacks by bandits on cars, buses and trucks on roads throughout the country, even in daylight. The result is strong public support for a significant police presence on the roads. The paradox is that the major highway "service" provided by the police consists of the erection of roadblocks or checkpoints, euphemistically known as "nipping points". In fact, these are used primarily for the purposes of extorting money from motorists and some even see them as a necessary means by which police officers can ensure a subsistence income. But to dismiss the widespread abuse of checkpoints as a minor inconvenience or fact of life, as many of the Special Rapporteur's interlocutors suggested, is to ignore three deeply corrosive effects: (i) checkpoints provide the occasion for a large number of extra-judicial executions by police;[38] (ii) checkpoint abuses have deeply alienated the general public; and (iii) the economic consequences are enormous.[39]

49. Despite orders by the President, the Inspector-General of Police, and other authorities the practice continues largely unabated. Police figures undermine claims made

by some that checkpoints are needed to catch armed robbers, or stem the flow of illegal arms.[40]

Deaths in custody

50. Numerous prisoners reported being systematically tortured by the police to extract a confession. Techniques include hanging from the ceiling[41] and severe beatings, followed by the denial of food, water and medical care, and being left to die in the cells. The State Intelligence and Investigation Bureaux (SIIBs) and local CIDs were consistently named as places where such events are commonplace. Prison medical staff also confirmed regularly receiving prisoners who had been badly beaten by the police.

51. Police have systematically encouraged a practice whereby medical personnel will not treat individuals reporting with bullet or knife wounds before receiving police authorization. Since permission is often delayed or withheld, many casualties occur.[42]

Investigating complaints

52. On paper, the system for investigating police misconduct is impressive. In practice, it is too often a charade. The outcome of investigations usually seems to justify inaction or to ensure that complaints are dealt with internally through "orderly-room hearings" or the like.[43] While police officers are certainly disciplined and some dismissed, the system has rarely worked in cases in which police are accused of extrajudicial executions. In these instances genuine investigations are rare and referral to the DPP for prosecution are even rarer. It is also not uncommon for the primary accused police officer to escape, for charges to be brought against others, and for the latter to be acquitted on the grounds either of insufficient evidence or of prosecution of the wrong officers. The result gives the appearance of a functioning investigative system, while in fact promoting the goal of de facto police impunity.

53. This scenario is illustrated in two, apparently all too typical, cases. In the first, two boys[44] were arrested by police in Nsukka, Enugu state. They were bundled into the trunk of a car by Police Superintendent Gambo Sarki, and taken to the police station. Their presence was not recorded, they were denied bail, and their parents were told they were not at the station. Their mutilated bodies were subsequently found dumped in a nearby town.[45] Following public protests an inquiry was held which concluded that Sarki had ordered junior officers to shoot the boys. When they refused, he did it himself.46 Sarki "escaped" before he could be tried, as a result of which all other prosecutions were suspended. Most of the other accused officers continue to serve and be promoted.[47]

54. In the second case, the grandmother of Nnamdi Francis Ekwuyasi told the Special Rapporteur of how he was shot and killed at a checkpoint only 200 meters from his home. The accused was a drug and alcohol intoxicated policeman whose name was well known to the community. He promptly absconded. Charges were proposed against two other policemen but the DPP concluded that they were not responsible. The accused has never been "found".

Police accountability

55. In 2005 the acting Inspector-General of Police (IGP) announced that "the days of extra-judiciary killings" and of "corruption in the service" must end.[48] The question for Nigeria is how to introduce some notion of accountability. While no single country can provide a model, efforts to promote democratic policing[49] in South Africa are of major relevance.[50] It is generally accepted that three different levels of control are needed: internal, governmental, and societal.

56. In terms of *internal accountability* the Nigeria Police system is weak. What few statistics were made available to the Special Rapporteur in response to repeated requests indicate that few serious disciplinary measures are taken except against rogue individuals. Indeed the single greatest impediment to bringing police officers to justice for their crimes is the Nigeria Police force itself. Evidence indicates that it systematically blocks or hampers investigations and allows suspects to flee. In order to break this cycle of impunity, a new investigation and prosecution mechanism is required.

57. A ten-point police reform plan put forward by the acting IGP includes reviewing and strengthening mechanisms for public complaints of police misconduct, introducing a zero-tolerance policy on corruption, particularly in relation to roadblocks, and efforts to ensure that police obey court orders.[51] The initiative is encouraging, but it needs to be implemented and monitored.[52] The Police Complaints Bureaux and the Human Rights Desks set up within the Police structures since 2003 have yielded little. The offices that the Special Rapporteur saw in various states looked forlorn and determinedly unavailable and he received evidence that they had achieved little of substance. The internal vacuum must be filled since external accountability procedures can "only be effective if they complement well developed internal forms of control".[53]

58. In terms of *governmental accountability*, the Police Service Commission is charged with police discipline, but has opted to refer all complaints of extrajudicial police killings back to the police for investigation. The Commission's mandate is potentially empowering. But despite efforts by one or two excellent commissioners, its performance has been dismal and self-restraining.[54] Its Quarterly Reports to the President are not published and present a dismal chronicle of rubber-stamping decisions taken by the police, coupled with inaction in relation to pressing concerns. A radical overhaul of its procedures and composition is warranted.

59. In terms of *societal accountability* there are various initiatives to promote community policing and reinvigorate the Police-Community Relations Committees that exist in some states.[55] But these efforts fall far short of the need. Some external authority needs to be equipped and empowered to monitor police abuses, including instances of illegal checkpoints, demands for bribes and other forms of corruption and abuse.

C. The right to life and the Nigerian armed forces

60. The military regularly supplement or even replace the police in establishing law and order in civilian disturbances. The President acts on his own initiative or in response to a State Governor's request. The Minister for State for Defence informed the Special Rapporteur that the armed forces are not given any rules of engagement in such situations.

It is unsurprising therefore that there have been frequent complaints of arbitrary and excessive use of force, but few, if any investigations[56] or prosecutions.[57]

61. The armed forces have also attacked towns to exact revenge on civilians for militia attacks on the army. In Benue State, in 2001, in response to the kidnapping and killing of nineteen soldiers by a militia group, carefully-planned army attacks killed over 200 civilians. A federal judicial inquiry reported in April 2003, but the report remains typically confidential, with no adequate Government response and no measures taken by or against the military.

62. In February 2005 in Bayelsa State, a joint army/police patrol entered Odioma seeking a local militia leader. He escaped, but a number of people were killed and the town was burned down.[58] Local leaders viewed the attack as an act of collective punishment.[59] A federal Senate committee blamed the town for having shielded the militia leader,[60] an assessment which unwittingly seemed to confirm the allegations. The Governor of Bayelsa State acknowledged to the Special Rapporteur that excessive force was employed. A judicial inquiry was established but, as usual, no report has been published.

63. In such incidents it is assumed by officials that the armed forces acted in "self defence" or were otherwise justified in carrying out retaliatory executions of civilians. Thus, although the intentional killing of unarmed civilians, whether in situations of armed conflict or otherwise, is a clear violation of both international and Nigerian law, impunity is the reality. The Minister of State for Defence assured the Special Rapporteur that the media exaggerated the Odi and Odiama incidents and that the military intervenes to promote community mediation.

64. There is a consistent pattern in responding to these incidents. Major human rights violations are alleged; the authorities announce an inquiry; and either the resulting reports are not published, or the recommendations are ignored.[61] The reports become a substitute for appropriate civil and criminal measures, no-one is charged or disciplined, and no or inadequate compensation is paid.

65. The Special Rapporteur officially requested copies of the major reports resulting from recent commissions of inquiry. The Federal Government provided none. The Governor of Kano State cooperated fully. The report on the 2004 Kano "sectarian crisis" is instructive and apparently typical.[62] It reported in November 2004. By July 2005 nothing had been made public and the State Government was still working on a White Paper in response. One of the key questions for the inquiry concerned the number killed. Credible and detailed civil society reports put the figure at 200-250.[63] The report, on the basis of no investigation or analysis of any sort, notes that there are "conflicting figures" but recommends that the Police figures of 84 be taken as the "official position". This step removed in one fell swoop the prospect that the overall inquiry could be meaningful.

66. Other terms of reference involving a determination of the damage done and advice on compensation were analysed in less than 40 lines of text. In relation to damage, the Commission accepted without question the Government figures, thus undertaking no

inquiry worthy of the name. On the second issue, compensation of 60 per cent for buildings and 40 per cent for personal property was recommended, with no differentiation in terms of the circumstances and no argument as to why those figures were chosen. To the Special Rapporteur's knowledge, none has actually been paid.

67. The killings, considered briefly as "security problems", are explained by "[o]ver-zealousness and/or calculated hatred on the part of some security personnel". The report notes detailed information about the identities of those responsible, but observes that the army did not acknowledge or reply to the Commission's correspondence.[64] It suggested compensation be paid and action be taken against the responsible army officers. According to the Special Rapporteur's interlocutors, not a single soldier has ever been charged or disciplined. In short, apart from identifying measures to promote future inter-communal harmony, the Commission was a whitewash and army impunity was vindicated.

D. The prison system and deaths in custody

68. Deaths in custody and the many prisoners on death row make the Nigerian prison system highly relevant to this report. On the basis of a largely malfunctioning justice system, Nigeria tolerates an arbitrary and especially harsh form of punishment of alleged criminals. Of approximately 44,000 prisoners, some 25,000, or well over 50 per cent, have yet to face trial.[65] About 75 per cent of the latter have been charged with armed robbery, which is a capital offence. Three-quarters of those were not able to get legal assistance from the Legal Aid Council and a shocking 3.7 per cent remain in prison because of lost case files. Many of the 25,000 with whom the Special Rapporteur spoke are held in seriously health-threatening conditions, some for periods of 10-14 years.

69. Almost no accused with access to money will suffer this fate. Such unconscionable incarceration practices become the "privilege" of the poor. Some State Chief Judges are highly conscientious in carrying out regular visits with a view to ordering the release of those held longer than their alleged crime could possibly warrant,[66] but others are slow and unsystematic and many inmates awaiting trial are rarely visited. One way forward is to resolve that any prisoner held for more than five years without trial should be entitled to an immediate court appearance and benefit from a presumption that s/he should be released. Similarly, any prisoner whose hearing is adjourned more than five times should benefit from the presumption of release. Prisoners whom the Special Rapporteur met who in ten years have been subject to more than 50 adjournments are living testimony to a system which simply does not care about people once they are in prison.

70. Prison conditions in general are not part of the Special Rapporteur's mandate. However, because of the numbers of individuals on death row and the fact that perhaps a majority of inmates are charged with capital offences (armed robbery or murder), a comment on prison conditions is warranted. The Special Rapporteur heard impressively few accusations of official abuse, but the lack of resources to ensure humane conditions was decried by almost everyone, including senior administrators. Common phenomena included: considerably in excess of 100 prisoners in cells designed to hold 25, unsanitary conditions which breed terrible illnesses, untreated illnesses leading to death, and food which is wholly inadequate. Money to improve prison conditions is never on politicians'

lists of priorities, but it is absolutely essential. While death row conditions are harsh, they are often better than those endured by the vast numbers awaiting trial. Most deaths in custody are due to atrocious conditions rather than intentional ill-treatment.

71. Some interlocutors spoke of the need for a Minister for Prisons, a Prison Service Commission, or the need to decentralize control over prisons to the State level. The Special Rapporteur was in no position to choose among the different options but it is clear that an enhanced mechanism for monitoring and public reporting on prison conditions is urgent and indispensable.

E. Inter-communal violence

72. In recent years large-scale violence between religious and/or ethnic groups have cost thousands of lives. For example, in Kaduna State in 2002, Christian/Muslim riots coincided with the 2002 Miss World contest, and led to the deaths of some 250 people.[67] In February 2004 violent clashes shook Yelwa in Plateau State. At least 78 Christians, and a number of Muslims, were killed in well-organized attacks. Smaller scale attacks occurred in nearby villages. In May 2004 an attack by Christians killed an estimated 700 Muslims.[68] A little over a week later the violence spread to Kano where Muslims retaliated against Christians, resulting in the deaths of more than 200.[69]

73. The causes of inter-communal violence in Nigeria are complex. There are over 250 ethnic groups, some of which have long been in conflict over political power, land, and resources. While the government does not bear direct responsibility for killings perpetrated by individuals during these violent incidents, action and inaction by the authorities have contributed significantly.

74. Although religious events are often the trigger, these divides coincide with ethnic and political splits and religion is often exploited for populist reasons. Underlying many incidents is a legal distinction drawn between “indigenes” (individuals considered to be living in their state of “origin”) and settlers (“newcomers” who might have lived in the state for decades). The distinction often coincides with ethnic and/or religious divisions, and is used to justify according indigenes privileged access to government jobs, educational institutions and political positions.[70] The distinction itself and the ways in which it operates are, at least potentially, highly discriminatory. Unless steps are taken to significantly downplay its importance, it will sow the seeds of a great many future incidents of communal violence.

75. Another problem is a failure by the security forces to react quickly, let alone pre-emptively, to situations of inter-communal tension, thereby allowing the violence to escalate.[71] In addition, politicians have been accused of actively fuelling violence for political gain.

76. With relatively few exceptions, a consistent pattern of governmental response to inter-communal violence has emerged. Security forces respond slowly, resulting in higher casualties; they then use force indiscriminately and excessively. A few arrests and

prosecutions of minor players follow. If an inquiry is held it quells popular anger but the report remains confidential, is ignored, or adopts a formalistic approach. And almost no long-term preventive measures are taken. Just as predictable as this routine is the future occurrence of more serious incidents of inter-communal violence unless Federal and State Governments take seriously the need for thorough-going reforms.

F. Political assassinations

77. In recent years many leading political figures have been assassinated.[72] Prosecutions have been rare and convictions almost non-existent. One interlocutor suggested that this was unsurprising since many of those killed would have been involved in shady financial deals. Others, including the Minister for Justice, invoked the absence of an effective police forensic capacity. The de facto impunity enjoyed for these crimes risks undermining Nigerian democracy, and the 2007 election year threatens many more killings unless impunity is ended.

G. Vigilantes

78. With the end of military rule large businesses, including oil companies and banks, as well as the rich, turned to private security to fill the vacuum of authority. For the poor, vigilantes were seen as a way to make-up for inadequate, ineffectual and often malign policing. For politicians, armed volunteer groups offered a means of intimidating opponents and rewarding supporters. While "vigilante" groups play a major role in Nigeria, definitional issues are crucial to understanding the situation. The term covers a wide spectrum of groups ranging from community policing through problematic ethnic-based vigilantes, to state-sponsored or supported gangs. Because many of the groups have been openly or covertly supported by State officials, they cannot be considered classical non-state actors. The right of citizen arrest is often invoked to justify the groups' activities.[73]

79. Among the most violent have been those established to defend commercial interests in urban areas. While they may carry out some "policing", they also undertake debt collection, crime protection, extortion and armed enforcement services. The Bakassi Boys for example, is a group active mainly in Abia, Anambra and Imo states that has been responsible for many extrajudicial executions, often carried out publicly. They patrol the streets in heavily armed gangs, arrest suspects, determine guilt on the spot and exact punishment, which may involve beating, "fining", detaining, torturing or killing the victim. The Bakassi Boys are tacitly supported by state governments and one has accorded them official recognition.[74]

80. Another prominent group operating in the south-west is the O'odua People's Congress (OPC) which combines vigilantism with political advocacy of Yoruba autonomy. There have been persistent reports of OPC members apprehending suspected robbers and beating and killing them in public. Members of other ethnic groups, particularly the Hausa, are especially vulnerable. Despite official denials, the OPC appears to have a close relationship with some state governments.

81. An important religious-based group is the Hisbah who are considered to be an integral part of overall State policing in some northern States. While some strongly defend their role there are also persistent reports of attacks upon women alleged to be inappropriately dressed, of businesses selling alcohol being destroyed, of insults to Islam being punished severely, and of prostitutes being badly beaten. There is a need for much closer and more systematic scrutiny of their activities.

82. The rise of vigilante groups has especially problematic consequences for women since such groups are overwhelmingly male-dominated. As a result, gender stereotypes are both reinforced and enforced, and women are often subjected to various forms of gender-based violence. This consequence is exacerbated by the support given to the groups by state governments. In Kano, the relationship between the Hisbah and the Government is very close and the Governor of Bayelsa told the Special Rapporteur that he has recruited some 420 vigilantes who play a law enforcement role and are paid a salary far in excess of that earned by junior police officers. Whatever the justifications offered, the potential for manipulation of such groups by politicians is immense.

83. While there is a benign traditional concept of vigilantism in Nigeria, many groups have moved far beyond the appropriate limits. Too many have evolved into highly armed criminal gangs, or gangs doing the political bidding of their paymasters. State governments have generally supported this expanded role while imposing no form of regulation or accountability. Clear guidelines should be published in relation to all groups operating with governmental support, their conduct must be monitored, and impunity for activities such as torture, detention and executions must cease.

84. The rise of vigilantism and the undeniably significant public support for some groups partly reflects the failure of the Nigeria Police to address high violent crime rates. However, the lack of public trust and confidence in the police cannot be used to justify the violent and illegal acts of untrained, unregulated and unaccountable armed groups. The performance of the Nigeria Police must instead be improved so that the vigilantes can be confined to non-policing activities.

85. Community policing initiatives are in their infancy in Nigeria but offer an important opportunity. A pilot Community Policing Programme, launched in 2004 in Enugu State, involves local, highly visible patrols interacting cooperatively with the public to reduce and prevent criminal activity, as well as improved police training and accountability. It has succeeded in reducing levels of police corruption and public fear of crime, while improving police-public relations and the treatment of prisoners. The expansion of such programmes throughout Nigeria offers the potential to fill the vacuum in local law enforcement that has facilitated the rise of vigilante groups.

H. Non-state actors and the right to life

86. Oil companies have long been accused of complicity in actions involving human rights violations including extrajudicial executions. In Ojobo in November 2004, up to 21 people were wounded and one or more deaths were alleged. Shell vigorously denies that charge and claims an independent report vindicated its position. The Special Rapporteur's request for that report was unsuccessful and community activists apparently contest the

author's independence. The February 2005 Odioma incident[75] was not blamed on Shell but one report has argued that because it occurred "within its sphere of influence and area of operations" the company should have been more vigilant in relation to the human rights issues involved.[76] In Escravos in February 2005 protesters against Chevron were fired upon and one person was shot and later died. Eight months later it was reported that neither Chevron nor the Nigerian Government had undertaken a full inquiry into the incident.[77]

87. In the present context it must suffice to emphasize that the oil companies must do all in their power to ensure that security companies and others to whom they contract or sub-contract work respect human rights standards. State Governments must also acknowledge their own responsibility.[78]

III. A CYCLE OF BLAME: THE MAIN PATHOLOGIES AFFECTING THE NIGERIAN CRIMINAL JUSTICE SYSTEM

88. 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 for example, police officers complain about a 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. The following list illustrates some of the pathologies.

A. The police investigation

89. Only the Police are authorized to investigate killings, even where the principal suspects are police officers. But the police service is so under-funded that the family of the deceased are often requested to fund any investigation, an expense which is well beyond the capacity of most Nigerians. Notions such as sealing off a crime scene or allocating the best officers to investigate a particular crime are foreign to a force for whom the phrase "police investigation" has become an oxymoron. There is no tradition of systematic forensic investigation in Nigeria, there is a single ballistician in the entire country, only one police laboratory, and no fingerprint database. The result, unsurprisingly, is that the police rely heavily upon confessions which, on one estimate, are the basis for 60 per cent of prosecutions. The temptation to "extract" a confession by all available means seems hard to resist.

B. Coroner's inquiries

90. The Nigeria Police informed the Special Rapporteur that "[c]oronial inquiries [have] been conducted in all relevant cases, however records are not available …".[79] According to

virtually every other source, however, coroners are an endangered species and inquiries a rarity. It is unsurprising that the records are unavailable.

91. In practice, unspecialized magistrates act as coroners. It is commonplace for pathologists to sign reports without examining the body and when police killings are involved, there is often no signature.

C. Administrative remedies

92. The Special Rapporteur heard impressive plans for Citizen's Rights bureaux and comparable initiatives but received remarkably little evidence that most were working. These institutions have immense potential but they need resources, staff and powers, all of which are in short supply.

D. The holding charge

93. If the system worked, suspects would be brought before a court, charged and remanded. Instead the police consistently resort to a short cut by taking suspects before a magistrate who remands them indefinitely without formal charges while the police conduct their investigation. The result of this "holding charge" is that individuals can be jailed more or less indefinitely in a legal limbo based on little more than a suspicion of criminal activity, unsupported by any evidence. This practice continues despite a declaration of its unconstitutionality by the Court of Appeal.[80] It has contributed significantly to the extremely high rates of individuals in Nigerian prisons who have not been formally charged, a situation which can endure for a decade and beyond. It is an insidious but pervasive practice which shields police inefficiency and severely punishes many innocent persons.

94. Proposals in Lagos State would limit the remand period to 100 days.[81] This would constitute a vast improvement, although 100 days is still far too long.[82]

E. The prosecutorial system

95. Public Prosecutors have no control over police investigations, nor can they demand that individuals be produced in court. As a result, most police killings are never referred to the DPP and the latter cannot initiate a prosecution. Moreover, a police officer must be dismissed from the police force before being prosecuted.

F. Legal aid

96. There is a "severe lack of competent and adequately compensated counsel for indigent defendants and death row inmates seeking appeals."[83] Although the Legal Aid Act guarantees free legal assistance in capital cases to those who cannot afford a lawyer, in practice the Legal Aid Council, the body responsible for providing such assistance, is under-funded and unable to fulfil its duties.[84] While practitioners are keen to point to the pro bono work done by some barristers, this makes little dent in the overall shortfall of legal aid.

G. The prison systems

97. The budget allocated to individual prisons is manifestly inadequate. Casualties in the administration of justice include those who need to go to court when their cases are finally scheduled. The chronic shortage of prison vehicles ("black marias") means that many prisoners are not delivered to court and their cases are simply adjourned.

H. The judicial system

98. The judiciary cannot absolve itself of responsibility for the unconscionable amount of time taken to resolve serious criminal charges, the adjournments handed out with reckless abandon (the Special Rapporteur met accused persons who had endured more than 50 adjournments), and the subsequent long-term rotting in prison of thousands charged with capital offences. There seem to have been remarkably few efforts to develop alternative dispute resolution mechanisms or more efficient methods of resolving criminal charges.

I. The Federal-State complication

99. There are good reasons why policing is a federal responsibility. By the same token State authorities use this as an excuse to insist that there is nothing they can do to change police behaviour. In practice State Governors do exercise a measure of control over the police and the local Police Commissioner is an important part of the State executive. But the permission of the IGP or the President is required to direct the police to take any particular action. Moreover, since the States lack any independent investigative capacity they are almost entirely dependent upon the police to investigate. When the issue is alleged police misconduct such a system is neither viable nor convincing. One State DPP suggested that in such cases "the facts are systematically concealed and the files submitted to the DPP are wholly inadequate to base a prosecution". As in South Africa, consideration needs to be given to developing community policing which is responsible to local communities, without undermining ultimate federal control.

IV. IMPUNITY

100. The result of the vicious cycle described above is predictable. Investigations are replaced by heavy-handed tactics to extract confessions from suspects. Coronial findings rarely challenge police accounts, holding charges are used and abused where necessary, and where confessions are not available the well-cultivated inefficiencies of the system will ensure the long-term incarceration of the unconvicted accused. The result is a largely unaccountable police force, a system that does little to deter police killings or deaths in custody, and impunity for those accused of associated misconduct.

101. The official response is one of implausible denial. It is exemplified by a Government response to allegations concerning the killing of alleged armed robbers in Anambra State. The Government flatly refuted the allegations, partly on the grounds that the Special Rapporteur's information "did not indicate the venue of the execution, the names of the other detainees that carried the corpses into waiting police vehicles, and the final destination of the corpses". Such information is rarely available, especially given

witnesses' fear of retribution. More tellingly, the Government observed that the "[b]odies of all such robbers are usually deposited by the Police in mortuaries or government hospitals and subsequently given burial by hospital authorities. There is always a coroner's inquest/post mortem examination report …". In terms of the general situation, each of these claims runs counter to the Special Rapporteur's findings. The reply added that the activities of police throughout Nigeria are guided by laws that respect human rights and that "[e]very effort by the Nigeria Police to keep Nigeria safe for all … should be commended and supported". Accordingly, it concluded that the "petition is not only frivolous, diversionary, and false but calculated to encourage criminality especially violent crimes."85 Such a reply does not exactly signify either a vibrant system of investigating allegations or of general police accountability.86

V. CONCLUSIONS

102. While this report focuses on major problems within Nigeria, there are also many encouraging developments underway. In particular, the fight against corruption at all levels is closely linked to issues of extrajudicial executions. African leaders have identified corruption as one of the biggest problems confronting Africa,[87] and Nigeria has ranked especially badly.[88] Recent initiatives, however, have succeeded in targeting some of the most prominent cases,[89] and other governance reforms have facilitated significant debt relief. It should also be acknowledged that there are elements within the police and the armed forces which are committed to promoting reforms. Much will rest on their shoulders.

VI. RECOMMENDATIONS

103. ***Commissions of inquiry***

Inquiries are often used for whitewashing purposes. One State Attorney-General could recall no case of prosecutions following such an inquiry. Their main purpose, he observed, was to facilitate a "cooling of the political temperature".

(a) The only slightly delayed publication of the report of the Apo 6 inquiry is exemplary and this should become standard practice. To that end the Federal Government should legislate to require the publication within six months of all commission of inquiry reports relevant to extrajudicial executions. In cases of non-publication a specific national security exemption should need to be invoked, and justified;

(b) The full report of the Apo 6 inquiry should be made public immediately.

104. ***The death penalty***

(a) The Federal Government should reiterate that the imposition of the death penalty for offences such as adultery and sodomy is unconstitutional. It should commit to undertaking a constitutional challenge at the earliest opportunity;

(b) The sentence of every prisoner who has served more than five years on death row should be commuted immediately and consideration given to commuting all such sentences;

(c) All persons sentenced to death or life imprisonment under martial law should have their convictions reviewed in recognition of the highly unsatisfactory due process protections applied at the time. Since judicial review is probably beyond the capacity of an inefficient and overstretched court system, an administrative procedure should undertake an initial vetting of all such convictions and make recommendations to the Government;

(d) UNICEF should commission a consultant to review the files of all prisoners on death row for crimes committed before they were 18. Judicial review should then be sought to ensure compliance with the Convention on the Rights of the Child.

105. *Executions and accountability*

(a) There are no systematic police statistics recording extrajudicial executions.[90] An annual register should be published and strong disciplinary measures applied to those who fail to report fully, promptly and accurately all deaths at the hands of police;

(b) Professionally staffed and well equipped forensic laboratories should be established in key regional centres without delay;

(c) Armed robbery per se should be removed as a capital offence which warrants a shoot-to-kill response. Its current classification has pernicious effects far beyond any benefits that result. The rules regarding the use of firearms by police officers (Police Order No. 237) should be amended immediately as recommended above.

106. *Police reform*

(a) There should be an independent external review of the Police Service Commission, taking account of recent South African reforms, designed to establish an effective police accountability system. The Commission needs (i) commissioners committed to achieving results; (ii) the capacity to collect and disseminate information on police misconduct; (iii) independence from the Nigeria Police, including its own investigative capacity; (iv) assured funding; and (v) an obligation to publish its results;[91]

(b) Petty, everyday, police corruption is a constant reminder to the populace that justice can be bought, that the police cannot be relied upon for protection, and that police and criminals are all too often involved in the same enterprise. "Nipping points" symbolize the rampant corruption. Initiatives to eliminate them have been loudly proclaimed but pathetically under-implemented. Routine checkpoints should

be abolished immediately and senior officers demoted when their forces are caught "rogering";[92]

(c) The Nigeria Police should issue an order that no medical professional will be prejudiced as a result of providing urgent life-saving treatment to a wounded person without first obtaining police authorization;

(d) Linked to these reforms, police pay and conditions, especially for the lowest ranks, should be greatly improved. Existing salary levels invite corruption.

107. ***Vigilantes and community policing***

(a) The corruption and unreliability of the police force provides a convenient excuse for efforts to marginalize it: use of the military for policing, hiring "supernumary" police by oil companies, and support of vigilantes gangs. But these developments further undermine the community standing of the police and make reforms even less likely. The police, at all levels, must begin to see that it is in their own interests to clean up their act. The recently launched Community Policing Initiative has huge potential to obviate the need for vigilantes and to link the police to local communities. It should be greatly expanded;

(b) Tackling the vigilante problem is especially urgent. The Federal Government should prepare and publish an authoritative inventory of all vigilante groups enjoying any form of official support and playing any role whatsoever in law enforcement. Each state Government concerned should promulgate rules regulating the activities of such groups. And the relevant authorities must investigate and prosecute any illegal vigilante activities involving torture, detention or executions.

108. ***Development assistance***

Support for these recommendations must also come from the international community. Rule of law programmes have been too narrowly defined,[93] **and the taming of high-level corruption, as vital as it is, seems to represent the total picture for some agencies.**

109. ***The armed forces***

The Nigerian Armed Forces are essentially unaccountable except to the President and he will rarely call them to account. Legislation should be enacted making it an offence for police and military officers to fail to cooperate with official inquiries into alleged extrajudicial executions.

110. **A follow-up report will evaluate all measures taken by the Government to implement these recommendations.**

Notes

[1] Throughout this report the term "extrajudicial executions" is used to refer to executions other than those carried out by the State in conformity with the law. As noted elsewhere "[t]he terms of reference of this mandate are not best understood through efforts to define individually the terms "extrajudicial", "summary" or "arbitrary", or to seek to categorize any given incident accordingly." Rather, "the most productive focus is on the mandate itself, as it has evolved over the years through the various resolutions of the General Assembly and the Commission." E/CN.4/2005/7, para. 6.

[2] See the report of the Special Rapporteur on Freedom of Religion or Belief on her visit in 2005, E/CN.4/2006/5/Add.2. It should also be noted that Nigeria has reported to both the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination in the course of 2005. For the respective concluding observations adopted by each committee see CERD/C/NGA/CO/18 and CRC/C/15/Add.257.

[3] "Nigeria: Obasanjo admits extrajudicial killings by police, pledges action", available at http://allafrica.com/stories/200508190726.html and also at http://www.reliefweb.int/rw/RWB.NSF/db900SID/KKEE-6FEP6X?OpenDocument.

[4] "Extra-Judicial Killings on the Increase in Nigeria", This Day (Lagos), 31 Oct. 2005, available at http://allafrica.com/stories/200511010208.html.

[5] The victims were: Anthony Nwokike, Chinedu Meniru, Ifeanyi Ozor, Ozor, Issac Ekene, Paul Ogbonna and Augustina Arebu. Their ages ranged between 20 and 28.

[6] "Blood chilling tales", *Newswatch*, July 11, 2005.

[7] A leading NGO, Access to Justice, implied that the inquiry had been set up partly because of the Special Rapporteur's visit in order to show the Government in a good light ("to launder the … Government's very disappointing record" in response to executions). Apo Police Killings: Federal Government's Indulgent Attitude to Extrajudicial Killings Produced the Apo Killings, available at http://www.humanrightsnigeria.org/sitenews/news/news_item.asp?NewsID=22.

[8] The men were: Murphy Opara, Emeka Madubosa, Uchenna Asogwa, Ikechukwu Asogwa, Chimezie Ugwu and Kelechi Chukwu. The Special Rapporteur heard evidence and received documents from the families and legal representative of the deceased.

[9] "Millionaire Robbers; Police Smash gang which stole N28m from bank," *The Sun*, May 12, 2005.

[10] Letters were sent to the State Police Commissioner on 31 March, to the Federal Attorney-General on 5 May, and to the National Human Rights Commission on 6 May.

[11] "Police Shoot Suspected Equity Bank Robbers?", *The Starlite*, Monday, June 27, 2005.

[12] Figures provided by the Inspector-General of Police, 2 July 2005. While the police would suggest that all of the deceased were killed in "shootouts", the figures provided did not reflect the actual circumstances of the various shootings.

[13] See Human Rights Watch, Revenge in the Name of *Religion: The Cycle of Violence in Plateau and Kano States*, p. 62.

[14] Jurisdiction applies to "[e]very person who is a Muslim and/or every other person who voluntarily consents to the exercise of the jurisdiction of the Shari'ah Courts …". See e.g. Kaduna State, *The Shari'ah Penal and Criminal Procedures Codes, 2002*, Section. 3(1).

[15] See Human Rights Watch, *Political Shari'a? Human Rights and Islamic Law in Northern Nigeria* (September, 2004).

[16] Hisbah Committees are groups of mostly young men who patrol neighbourhoods with the aim of preventing crime and arresting individuals suspected of committing crimes against the Shari'a. The committees are largely unregulated and untrained, although they are often provided with vehicles, uniforms and an office by the local or state government. Although they are not authorized to carry out punishments, there have been numerous reports of Hisbah Committees flogging and beating suspected criminals. The role of the Hisbah Committees is discussed below under the heading "Vigilantes".

[17] Reported in Online Nigeria, 9 Dec 2005, available at http://nm.onlinenigeria.com/templates/?a=6318&z=12.

[18] At least one prisoner has been on death row in Lagos since 1981.

[19] Further discussion of prison conditions can be found below under the heading "The prison system and deaths in custody".

[20] I thus fully endorse the recommendation to this effect contained in *The Report of the National Study Group on Death Penalty*, Abuja, August 2004, p. 81. In terms of the legal practicalities of such a measure see *Sibiya and Others v DPP*, Constitutional Court of South Africa, Case CCT 45/04, 7 Oct. 2005.

[21] Ibid., para. 3.4.1.1.

[22] It is noteworthy that some Nigerian Islamic legal scholars have been strongly critical of the official entrenchment of the approach of one particular school of interpretation. According to one commentator it has the effect of "unduly restricting the scope and regenerative mechanism of Islamic law". Abdulmumini Adebayo Oba, "The Sharia Court of Appeal in Northern Nigeria: The Continuing Crises of Jurisdiction", 52 *American Journal of Comparative Law* 859, at 879 (2004).

[23] These were recited in a 2004 report of a National Study Group which observed, in relation to charges of adultery, the accused will not be stoned to death:

Where there are not up to 4 male witnesses;

- Where the witnesses are not eligible witnesses;
- Where the witnesses contradict themselves;
- Where even one witness (out of four) is not certain as to the act committed;
- Where the suspect(s) did the act because of some mistake as to the identity of the partner or under the supposition that the partner was lawful to him/her;
- Where the woman was given "consideration" for the act because, as some jurists argue, that represents a type of "marriage";
- Where the suspect is unable to defend his case by advancing a justification/excuse for his act because he is dumb;
- Where the judge does not cross-examine the witnesses thoroughly as to details of the act committed;
- Where the suspect is not given the opportunity to defend his case.

In all such cases, a lesser penalty (ta'zir) is to be prescribed at the discretion of the court. See *The Report of the National Study Group on Death Penalty*, Abuja, August 2004, p. 69.

[24] For a lengthy analysis see Vanessa von Struensee, "Stoning, Sharia and Human Rights".

[25] This approach is based on the Maliki.

[26] This Day, *Shari'a Convict Gets Reprieve* (November 11, 2004) (reporting the acquittal of Ms. Ibrahim); Vanguard, *Sharia Court Nullifies Death Penalty on Woman* (December 11, 2004) (reporting the acquittal of Ms. Adamu).

[27] See Article 6(2) of the International Covenant on Civil and Political Rights, the relevant jurisprudence of the Human Rights Committee, and the 1984 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty. The latter provide that "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 other extremely grave consequences".

[28] One of the curious aspects of both the Lawal and Ibrahim cases was the fact that the alleged father was released on the basis of his own denial (and the absence of four witnesses) while the mother was initially found guilty primarily on the grounds of pregnancy.

[29] See Vincent O. Nmehielle, "Sharia Law in the Northern States of Nigeria: To Implement or not to Implement, the Constitutionality is the Question", 26 *Human Rights Quarterly* 730 (2004) at 754-57.

[30] In responding to communal violence in Kano, for example, the police were loaned unmarked vehicles from the Governor's office, without which they would have been unable to respond. The use of unmarked vehicles makes it very difficult to identify alleged wrongdoers in any subsequent investigation of human rights violations.

[31] Information provided to me by the Inspector-General of Police indicated that the entry level salary for a Nigerian Police officer is 65,700 Naira (approximately $500 USD) per year. This figure, however, is misleading in that it does not include standard allowances that take the annual salary to around 100,000 Naira ($760) per year.

[32] The lead editorial in a security-focused magazine observed that the "[o]peratives of Nigeria Police are dreaded agents of death who decimate human lives at will." The editorial continued: "Looking scruffy and ferocious in different shades of gear, operatives of Nigeria Police would storm the roads armed with guns, horsewhips and batons … . It is business time. And the road and its users no longer know peace. From [the police] standpoint, everybody is a criminal and every crime has a price." W.A. Johnson, "A Memo to Mr Ehindero", Security and Safety, Issue 65, 2005, p.3.

[33] "Hordes of policemen are seen engaged in illegal activities, using their uniforms and other official paraphernalia to confer legitimacy on their criminal pursuits". W.A. Johnson, "A Memo to Mr Ehindero", *Security and Safety,* Issue 65, 2005, p.3.

[34] In order to fit this approach anyone arrested with a gun seems to be automatically classified as an armed robbery suspect. "Police Recover 35,979 Ammunitions, 1,082 Firearms", *This Day*, 2 Jan. 2006, available at http://www.thisdayonline.com/nview.php?id=37147.

[35] See notes 8-11 above.

[36] Amnesty International, *Security Forces in Nigeria: Serving to protect and respect human rights*? (December 2002) at p. 14.

[37] It is appropriate to quote the full text of Paragraph 9 of the Basic Principles:

> Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

[38] The Centre for Law Enforcement Education estimates that the police kill one in 20 motorists who refuse to pay a bribe at a checkpoint. A communication submitted to the African Commission on Human and Peoples' Rights by Access to Justice, provides details of various such cases.

[39] Thus one traditional leader has characterized checkpoints is a major impediment to commerce with neighbouring states and a phenomenon which "portrays us as a nation at war". Oba Akran of Badagry, "Too Many Checkpoints Portray us as a Nation at War", *Security and Safety*, Issue 65, 2005, p. 13 at p.15. According to another commentator, the practice is "killing the commercial psyche and energy of the people". W.A. Johnson, "A Memo to Mr Ehindero", *Security and Safety*, Issue 65, 2005, p.3.

[40] Between 2000-2004, in a country awash with arms, only 3,180 weapons were recovered at checkpoints, and no armed robbers seem to have been captured in this way. See note 12 above (police letter of 2 July).

[41] A much favoured technique is to tie the individual's hands behind his back or under his knees and then to hang his entire body from the ceiling for a significant period of time, while at the same time beating him. After several such sessions, confessions miraculously emerge.

[42] One State Police Commissioner strenuously denied that any such rule existed but virtually confirmed the practice by adding that it would be only prudent for a doctor first to seek police advice rather than giving treatment and risk being an accomplice to crime.

[43] For a detailed analysis of these issues see Human Rights Watch, *"Rest in Pieces": Police Torture and Deaths in Custody in Nigeria*, July 2005, Chapter X.

[44] Nnaemeka Ugwuoke and Izuchukwu Ayogu.

[45] In addition to meeting with the fathers of the boys and hearing evidence from their legal representative, the Special Rapporteur was provided with a copy of the official Police Report into the incident entitled, "Detailed Police Investigation Report, Re: Case of Suspected Murder", signed by the Deputy Commissioner of Police, Enugu State Command, 9 April 2002. The case has also been widely reported on in the press and by civil society. See e.g. Civil Liberties Organization, I Can Kill You and Nothing will Happen: A Report of Extra-Judicial Killings and Impunity by Law Enforcement Agencies in Nigeria between May 1999 - June 2005, pp. 12-13; and "Nsukka Killings - Recurring Cry for Justice", *Vanguard*, 6 August 2003, and "Justice Delayed", *The News*, 22 March 2004.

[46] The inquiry also indicted a range of other police for complicity in various aspects of the incident. Enugu State Police Command report entitled, "Detailed Police Investigation Report re. case of suspected murder. Complaints: 1. Chief Nicholas Ugwoke 2. Chief Reuben Ayogu. Suspects: 1. Mr. Gambo Sarki (SP) and others. Deceased: 1. Nnaemeka Ugwoke (m) 2. Izuchukwu Ayogu (m)."

[47] See also, "Nsukka Killings - Recurring Cry for Justice," *Vanguard*, August 6, 2003 and "Justice Delayed", *The News*, March 22, 2004.

[48] Quoted in W.A. Johnson, "A Memo to Mr Ehindero", *Security and Safety*, Issue 65, 2005, p.3.

[49] Democratic policing is characterized by: respectful conduct, effective performance and transparency and accountability to the different clients or consumers of policing. D.H. Bayley, *Democratising the*

Police Abroad: What to Do and How to Do it, (Washington DC, National Institute of Justice, US Department of Justice, 2001).

[50] See Open Society Foundation for South Africa, Strengthening oversight of police in South Africa. Report on the workshop on police accountability held on May 10th 2004 in Cape Town, available at: http://www.policeaccountability.co.za/Publications/Pub-Categories.asp?PubCatID=23.

[51] http://www.nigeriapolice.org/10pointprogramme.html.

[52] A proposal pending in 2005 is to establish a new Police Public Complaints Bureau for the purpose of receiving public complaints lodged against police officers. The Bureau would be granted independent powers of investigation and prosecution and have its own investigative department staffed by a permanent police squad and security service. It is unclear whether this initiative will be adopted or will be pursued independently and funded adequately. *See, The Police Public Complaints Bureau (Establishment) Bill 2005, in particular, Sections 6 and 12*.

[53] T. Jones, "The Governance and Accountability of Policing" in Tim Newburn (ed), *The Handbook of Policing*, (Devon, Willan Publishing, 2003) p. 603.

[54] Some of its members are alleged to have accepted official cars provided by the Police Force whose behaviour they are supposed to monitor.

[55] For a detailed analysis of many of these arrangements see *"Rest in Pieces"*, note 43 above.

[56] This pattern is exemplified by the killing of Lawan Rafa'i Rogo, described above. The official Committee of Inquiry reported that the army failed to reply to its inquiries into the incident. The Governor of Kano informed me that only one such incident had come to his attention in relation to the 2004 violence in Kano, but that there was insufficient evidence to mount a prosecution.

[57] A letter to the Minister of Defence of 28 June 2005 seeking information as to complaints procedures, disciplinary measures and rules of engagement remains unanswered.

[58] Agence France-Presse, *Nigerian Town Razed by Army after Oil find Triggers Local Feud* (March 21, 2005).

[59] Id.

[60] This Day, *Senate Committee Justified Odiama Destruction* (March 10, 2005).

[61] Similarly, the commission of inquiry set up following the attack on Odioma in Bayelsa State earlier this year submitted its report to the Bayelsa State government in May. The report has not been made public and there appears to be no intention to publish this report. The Governor informed that it was his intention to study the report and respond by issuing a white paper.

[62] *Report of the Administrative Committee of Inquiry on May 11, 2004 Kano Sectarian Crisis*.

[63] See Human Rights Watch, *Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States*, p. 62.

[64] Kano Report, note 49 above, para. 3.6.4.

[65] O. Ezigbo, "25,000 Inmates Awaiting Trial", *This Day*, September 2, 2005, at http://allafrica.com/stories/200509050323.html.

[66] Section 35(1) of the Nigerian Constitution provides that "…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 longer than the maximum period of imprisonment prescribed for the offence." This serves to highlight the perversity of making the generic offence of armed robbery a capital offence. The result is that a petty thief can be jailed for ten years or more while (forlornly) awaiting trial.

[67] For a description of this incident see Human Rights Watch, *The "Miss World Riots": Continued Impunity for Killings in Kaduna* (July, 2003).

[68] For a description of this incident see Human Rights Watch, Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States" (May, 2005).

[69] *Id.*

[70] World Organization Against Torture and Centre for Law Enforcement Education, *Hope Betrayed? A Report on Impunity and State-Sponsored Violence in Nigeria*, 14 (2002). *See also,* Human Rights Watch, *Revenge in the Name of Religion*, at 8.

[71] For example, it was reported that even though special units had been set up following earlier violent attacks in Kaduna in order to respond to future such incidents, these units were not deployed when the 2002 violence first broke out. Human Rights Watch, *The Miss World Riots*, at 24. Similarly, the report of the Administrative Committee of Inquiry investigating the 2004 violence in Kano observed that, although "it was obvious that tension was building up two to three weeks before the Kano Crisis" due to the earlier violence in Plateau State, security forces failed to act pre-emptively to prevent the violence from spreading to Kano. See Kano Report, note 52 above, pp. 6-7.

[72] One list provided to me identified 48 "high profile attacks, murders and assassinations" between Sept 1999 and March 2004. See generally Civil Liberties Organisation, *Clear and Present Danger: The State of Human Rights and Governance, Year 2004* (Lagos, 2005). One example was Chief Lamidi Adedibu, a prominent politician in Ibadan, the Oyo State capital, who was shot dead in his car on 16 July 2005. The assailants escaped. "Suspected assassins kill Adedibu's associate" *The Punch*, Monday, July 18, 2005.

[73] Section 14(1) of the Nigerian Criminal Procedure Act provides that "…Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to

a police officer, or in absence of a police officer shall take such person to the nearest police station." This limited power of arrest is far exceeded by many vigilante groups who have even established their own detention centers.

[74] *The Anambra State Vigilante Service Act No. 9, 2000.*

[75] See notes 58-60 above.

[76] Amnesty International, *Nigeria, Ten years on: Injustice and Violence Haunt the Oil Delta*, AI Index: AFR 44/022/2005, 3 Nov. 2005, p. 14.

[77] Ibid., p. 3.

[78] When asked about such issues the Governor of Bayelsa State argued that the oil companies had "come to divide and rule the people" and had wreaked environmental havoc. In relation to the corruption flowing from the practice of oil bunkering (estimated to be worth up to $4 billion per year) he implied the connivance of the Federal police. Several months after this discussion the Governor was charged in London with money-laundering, and subsequently absconded from bail in the United Kingdom.

[79] See note 12 above (police letter of 2 July) p. 2.

[80] *Bayo Johnson v. Olufadeju* (2002) 8NWLR Part 768, 192-222 (cited in Human Rights Law Service, *Travesty of Justice: An Advocacy Manual Against the Holding Charge* (2004)).

[81] Thereafter the suspect would be entitled to release unless good cause is shown for a further 30 day remand. Human Rights Law Service, *Travesty of Justice: An Advocacy Manual Against the Holding Charge* (2004) pp. 52-57.

[82] For a similar criticism see Human Rights Law Service, *Travesty of Justice: An Advocacy Manual Against the Holding Charge* (2004) p. 55.

[83] *The Report of the National Study Group on Death Penalty*, Abuja, August 2004 p. 82.

[84] Udo Jude Ilo & Oluwaseye Ajayi, *On the Gallows* (May 2005) at 4.1.3.

[85] Note verbale No. 144/2005 from the Permanent Mission of Nigeria, 16 June 2005.

[86] In a similar vein, the Government responded to a complaint submitted to the African Commission on Human and Peoples' Rights alleging a consistent pattern of extrajudicial executions by asserting that they were "generally unfounded, baseless and lacking substantiation". The remainder of the reply asserts that domestic remedies have not been exhausted and that they would have provided ample remedies. None of this is consistent with the findings of the present report. Access to Justice v. Federal Republic of Nigeria, African Commission on Human and Peoples' Rights, Communication 270-/2003; Response by Mrs Eudora E. Ekwueme, Director, International and Comparative Law, Federal Ministry of Justice, Nigeria, Nov. 2004.

[87] See *Our Common Interest: Report of the Commission for Africa* (2005), available at http://www.commissionforafrica.org/english/report/thereport/english/11-03-05_cr_report.pdf, Chapter 4.5.

[88] Nigeria is ranked 152nd out of 158 countries on the Corruption Perceptions Index prepared by Transparency International in 2005. The Index measures "perceptions of the degree of corruption as seen by business people and country analysts". Available at http://www.transparency.org/cpi/2005/cpi2005.sources.en.html. Only Haiti, Myanmar, Turkmenistan, Bangladesh and Chad received lower rankings than Nigeria.

[89] In March 2005 the Inspector-General of Police, the Minister for Education and the Speaker of the Senate were dismissed for corruption. Charges have subsequently been brought against each of them.

[90] The Inspector-General of Police confirmed that no statistics were kept in relation to extrajudicial executions. See note 12 above.

[91] See generally Themba Masuku, *Strenghtening Democratic Policing in South Africa: Enhancing and Coordinating the Internal and External Accountability Systems of the South African Police Service*, (Braamfontein, Centre for the Study of Violence and Reconciliation, 2005).

[92] The local slang for demanding a bribe.

[93] Stephen Golub, "Less Law and Reform, More Politics and Enforcement: A Civil Society Approach to Integrating Rights and Development", in Philip Alston and Mary Robinson (eds.), *Human Rights and Development: Towards Mutual Reinforcement* (2005) 297.

Appendix

Programme of the visit

This report is based upon interviews conducted in the States of Lagos, Kano, Rivers State and Bayelsa State as well as in the Federal Territory of Abuja. In addition, account has been taken of a large amount of information provided by both the Federal and State Governments of Nigeria, and by international organizations, civil society groups, and transnational corporations operating in Nigeria. In particular, information was also obtained from individuals involved in all parts of the criminal justice system, ranging from Attorneys-General and Solicitors-General, through Chief Judges, Directors of Public Prosecutions, Prison Commissioners and legal advocates, to the relatives of victims and a great many prisoners (including those convicted, those on remand, and well over 100 on death row).

I am grateful for the logistical support provided by various members of the United Nations Country Team and especially by officials of the UNDP.

In the Federal Territory of Abuja, I met with officials from the Ministry of Foreign Affairs (Ambassador Chike Amigbo and Abdul Bin Rimdap), the Minister of Justice (Chief Akin Olujimi), the Minister of Defence (Chief Roland L. Oritsejafor), the Inspector General of Police (Mr. Sunday Ehindero), representatives of the Police Service Commission (Justice Olajide Olatawura and Ms. Ayo Obe), the Executive Secretary of the National Human Rights Commission (Mr. Bukhari Bello), and a member of the House of Representatives (Mr. Bala Ibn Na'allah). I also benefited from briefings by the United Nations Resident Coordinator (Tegegnework Gettu), the country representative of the United Nations Children's Fund (Ayalew Abai) the Chief for Child Protection at UNICEF (Robert L. Limlin), the Country Director of the World Bank (Mr. Ghanem), the Security Component manager and Police Advisor of the United Kingdom Department For International Development (Mr. Blair Davies,) and from several other representatives of the diplomatic community.

In Kano, I met with, *inter alia*, the Governor (Mr. Alh. Ibrahim Shekarau), the State Attorney General (Chief Akinlolu Olujimi, SAN), the Deputy Grand Khadi (Mr. Ahmed Umar Ahmed), and the State Police Commissioner (Mr. Ganiyu Alli Dawodu). I also visited the Kano central Prison and held private interviews with inmates. I am particularly grateful to those who assisted in providing interpretation for those interviews.

In Lagos, I met with the Commissioner for Home Affairs, the Solicitor General (Mr. Fola Arthur Warey), the Director of Public Prosecution (Ms Bola Okiklolu Ighile), and the State Police Commissioner (Mr. Ade A. Ajakaiye). I also met with the External Affairs Director of the Shell Petroleum Development Company of Nigeria (Mr. Precious Sotonye Omuku) and the Social Responsibility Officer (Mr. Epomi). In addition I visited the Ikoyi prison and conducted private interviews with detainees. I am very grateful to

representatives of the Prisoners Rehabilitation and Welfare Action for their help in conducting such interviews.

In Port Harcourt, I met with the Governor (Dr. Sir Peter Odili), the Attorney-General (Mr. Odein Ajumogobia SAN), the State Police Commissioner (Mr. Samuel A. Adetuyi) and the

Chief Judge (Mr. Iche Ndu) and several judges of the State High Court. I also visited the Port Harcourt prison to inspect its facilities in the aftermath of a June 2005 jailbreak and to interview inmates.

In Yenagoa, I met with the Governor (Dr. DSP Alamieseigha) and members of his Executive Council, and with the State Police Commissioner (Mr. Oliver Osuchukwu).

Round table and individual consultations with representatives of non-governmental organizations were organized in almost all locations that I visited. I am grateful to the Legal Defence and Assistance Project (LEDAP) as well as the Civil Liberties Organisation for their help invaluable help in facilitating those meetings. I also held meetings with many individuals and numerous NGOs. Among the latter were: the Prisoners Rehabilitation and Welfare Action, Centre for Democracy and Development, the Academics Associate Peaceworks, the Constitutional Rights Project, Global Rights, Legal Research Initiative, the Even development Project, Access to Justice, Centre for Law Enforcement Education, MOSOP and Stakeholder Democracy Network, Ijaw Council for Human Rights, Women's Aid Collective, the Human rights Centre and the Institute of Human Rights and Humanitarian Law. The dedication and energy of these members of civil society was immense and their contribution to the promotion of respect for human rights is a major one.

Finally, in each location I visited I was privileged to hold private meetings with witnesses and family members of victims of extrajudicial executions.

I concluded my visit by briefing the representative of the Minister for Foreign Affairs and holding a press conference at the UNDP offices in Abuja.

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