

Civil Liberties Organisation

13 SOJI ADEPEGBA CLOSE OFF ALLEN AVENUE PO BOX 11682 IKEJA LAGOS NIGERIA Tel : 00 234
1 774 6694 or 00 234 1 493 9325 Fax : 00 234 1 493 9324

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

67th Session of the Committee on the Elimination of Racial
Discrimination
August 2005

With the support of the INTERNATIONAL FEDERATION FOR
HUMAN RIGHTS (FIDH) & MINORITY RIGHTS GROUP
INTERNATIONAL (MRG)

TABLE OF CONTENTS

Introduction

I. Article 1: Definition of discrimination

LAWS AND POLICIES

REALITY

The Osu Caste System

Section 42 of the Nigerian Constitution and foreigners

II. Article 2: Policy of eliminating racial discrimination

LAWS AND POLICIES.

REALITY

Indigeneship

Citizenship

The citizenship of children whose one of his/her parents is Nigerian.

III. Article 3: Apartheid and racial discrimination

LAWS AND POLICIES

REALITY

Oil Doom and AIDS Boom in the Niger Delta

Fiscal Federalism In Nigeria.

Resource Control

IV. Article 4: Condemnation of all propaganda and all organisations which promote racial hatred and discrimination

V. Article 5: Enjoyment of human rights

LAWS AND POLICIES

REALITY

The Sharia Question

Ethnic-religious conflict prevention and management

Health

VI. Article 6: Human rights protection

LAWS AND POLICIES

REALITY

Lacuna in the Legal Aid Act.

Hindrances to human rights protection

The National Human Rights Commission

The Human Rights Investigation Panel

**Status of the Implementation of International Convention on the Elimination
of All Forms of Racial Discrimination in Nigeria: an Alternative Report**

The Code of Conduct Bureau

The Law Reform Commission

**The Independent Corrupt Practice and others Offences
Commission (ICPC)**

VII. Article 7: Education, teaching, culture and information

EDUCATION: LAWS AND POLICIES

REALITY

The quota system

TEACHING, CULTURE AND INFORMATION: LAWS AND POLICIES

Conclusion

Recommendations

**Status of the Implementation of International Convention on the Elimination
of All Forms of Racial Discrimination in Nigeria: an Alternative Report**

INTRODUCTION

The last time Nigeria's report was considered by CERD was in July 1995. The report due to be considered covers the fourteenth, fifteenth, sixteenth, seventeenth and eighteenth periodic reports due on 4 January 1996, 1998, 2000 and 2004 respectively. Nigeria acceded to ICERD on 29, October 1993. Nigeria is a dualist country so every treaty must be adopted into her domestic laws before advantage can be taken of them by virtue of section 12 of the 1999 Constitution. Like many other international human rights instruments Nigeria has ratified, it is yet to domesticate ICERD. This implies that no citizens can enforce the rights protected under ICERD.

A careful perusal of Nigeria's report tends to give a near perfect situation especially in part 1 where it was stated that problems relating to ethnic, religious, cultural and/or indigenous populations or populations of mixed descent rarely manifest themselves within the country. This is very misleading given the fact that problems relating to ethnic, religious and cultural crisis have bedeviled the nation in the last two decades.

There is general restiveness in the Niger Delta due to neglect of that area by the government. The people of the Niger Delta (minorities) are clamouring for resource control and the argument in support of the agitation includes the discriminatory measure of the government in reducing the revenue formula from 50% to 13% which was not the case when Nigeria on agricultural produce from the three major ethnic groups. At that time, these regions controlled the 100% of the resources and paid tax amounting to 50% to the central government. But when Nigeria's revenue depended on oil from the Niger Delta a minority region, the Nigerian government promulgated the Land Use Act of 1978¹ which vests all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold it in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments. The implication is that the owner of the land owns everything above or

¹ Cap 202 Laws of the Federation of Nigeria 1990 now Cap L.5 Laws of the Federation of Nigeria., 2004

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

underneath the land². The Petroleum Act³ seals this age long principle of law. The Act vests the ownership of, and all on-shore and off shore revenue from petroleum resources derivable there from in the Federal Government and for all other matters incidental thereto. These laws help to perpetuate government's discriminatory practices along ethnic grounds in terms of allocation and control of economic resources. As the federal government now has direct control of the oil resources to the exclusion of the region and consequently pay 13% as revenue to the State where oil is drilled from.

Whilst it may be correct to state that problems relating to mixed descent do not manifest themselves, this does not eliminate the fact that some persons are suffering in silence. The general legal framework within which human rights are protected leaves much to be desired. Little or nothing is being done to eliminate racial discrimination as defined in the convention. Those that are mostly affected are the minorities with women and children and the poor being double discriminated against. More specifically those in the oil communities have since the discovery of oil in that region played host to various multinational companies who explore oil from the region with apparent disregard to adhering to internationally acceptable standards and without regards to sustainable development. Amenities provided by these oil companies are not seen as part of corporate social responsibility.

Government has not been able to manage ethnic-religious crisis with a view to preventing conflict and putting in place early warning systems. A recent US security report alludes to the fact that the nation stands the chance of falling apart if the status quo remains.

This shadow report is, therefore, an attempt to supplement the government's report in order to put the issues in proper perspective.

² the latin maxim is quid quid planteteur solo solo cedit

³Cap 350 Laws of the Federation of Nigeria, 1990 now Cap P.10 Laws of the Federation of Nigeria, 2004

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

I. ARTICLE 1: DEFINITION OF DISCRIMINATION

LAWS AND POLICIES

Under Chapter IV of The Constitution of the Federal Republic of Nigeria⁴ (hereinafter referred to as the Constitution), the right of non discrimination is guaranteed to a citizen of Nigeria⁵ simpliciter. Section 42(1) of the Constitution states:

“A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person-

- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
- (b) be accorded either expressly by, or in the practical application of any law in force in Nigeria or any such executive administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions”

The provisions of Chapter IV are justiciable⁶. Nigeria has also ratified the International Covenant on Civil and Political Rights (ICCPR) although she is yet to domesticate it like ICERD as required by section 12 of the Constitution.

REALITY

The Osu Caste System - Despite this provision the Osus found in the South Eastern Nigeria are socially discriminated. The Osu Caste system evolved out of the cultural/religious practices in Ibo land. The ‘Osu Caste System’ is an ascribed or imposed status. It is an endogamous status

⁴ The Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) Cap C23 Laws of the Federation of Nigeria, 2004. Its Chapter IV is entitled “Fundamental Rights”. It guarantees all due process rights in addition to right to peaceful assembly and association, right to freedom of movement, right to acquire and own immovable property any where in Nigeria, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press restriction on derogation from fundamental rights, .

⁵ Section 42

⁶ See Section 46 of the Constitution

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

group which places culturally defined limits upon the individual member in terms of mobility and interaction, and on his nature as a person. Serious relationship of love or intermarriage between the lower caste and the rest of the community is usually forbidden. At best, the society's contact with the caste group is purely superficial. The Ibo culture has influenced the behaviour of the people, and the pace of its socioeconomic development. The prejudice amongst the Ibos is still very strong that the Osus are sacrificial lambs to the gods or dedicated to the gods. This impacts negatively on the rights of persons in this group in several respects. For instance, Osus that are interested in public office do not get the necessary support from the community except where they were appointed by the Federal Government. Many communities may not even elect the best politician from this group to represent them. A priori, such a person may be twice as efficient as his "non-Osu" counterpart, yet he will not be supported. This undeniably, prevents them from contributing as they ordinarily would to the socio-political and economic development of their communities. In other words, they are being denied the opportunity to fully participate in the political, economic and social life of the community. And this hinders their social upward mobility in the community. Some avid supporters of the caste system would not even buy whatever they have for sale in the market. Socially, marriage and relationships of love with the rest of the community is abhorred. The caste system is anti social, because it hinders people's free social interaction. Everybody in the designated Osu area is automatically pariah, irrespective of one's beauty, level of education or wealth. They are regarded as the lowest species of mankind and are treated with contempt. In a society such as Nigeria where laws are disregarded, they are often exposed to public ridicule. The subjection of an entire community to perpetual social misery is an irrational human behaviour, which has brought the entire democratic ideal to ruin. The abrogation of this evil practice in Nigeria is not a repudiation of any meaningful traditional and democratic values that engender moral and spiritual development in any society. The Osu Caste System obviously negates freedom from every form of discrimination.

Ardent supporters of this tradition threaten the rights of individuals whose private attitudes are against the caste system. Such individuals who resist social pressure by refusing to hate and avoid the prescribed groups may be greeted with derision or social persecution. Some of them might even vote against him if he is running for public office. No Osu is also elected as a traditional ruler. The foregoing is that it infracts on the right to freedom of association.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

Although Osus are more educated than the free born⁷, the discrimination restricts their level of social attainment or self-actualization. The practice makes all Osus to be in the minority, however, the practice impacts negatively more on women. Ordinarily women are not effectively represented in government. Osu women face double discrimination as no Osu woman will get elected into political office when she faces a freeborn at the polls. This reduces the chances of evolving policies that will eliminate the prejudices. Consequently, they do not have a platform to express their views and resentment about the social prejudices. Even when the Federal Government appoints them into public office, they are circumscribed within the Federal sphere whereas the prejudices are at the state level.

The Eastern regional government enacted the Osu Abolition Law of 1958. This law has been adopted by the five states created out of that region over the years. Though the law exists on paper it has not succeeded in removing the prejudices because of lack of enforcement mechanism; furthermore nobody has been prosecuted since the coming into being of the law.

Section 42 of the Nigerian Constitution and foreigners.

This right to freedom from discrimination does not appear to extend to foreigners. By implication the right to freedom from discrimination is itself discriminatory in so far as it does not extend to foreigners. Since Nigeria is yet to domesticate⁸ ICERD this means that foreigners cannot take advantage of the convention to enforce their rights under ICERD. It, therefore, means that since the law is yet to be domesticated, foreigners that have been discriminated against cannot seek legal redress in our law courts, because no remedy will be available to them that is known to Nigerian law. In effect a foreigner can be discriminated against on grounds of colour or national origin although racial discrimination based on colour is not prevalent in Nigeria because the sectors where this should have been prevalent are enjoyed by foreigners.⁹

To the extent that section 42 of the Constitution only guarantees every Nigerian citizen freedom from discrimination the provision offends

⁷ A term used to denote those that do not belong to the caste group.

⁸ By virtue of Section 12 of the 1999 Constitution, "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

⁹ Labour, housing and the health care delivery system are sectors where foreigners are often discriminated against in many countries but in Nigeria employment is rife so most foreigners engage in private business and they live in choice areas.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

Article 1 because when non citizens are discriminated against they are likely to encounter hindrances in the full enjoyment of human rights and fundamental freedoms. Except the provision of section 42 of the Constitution is amended the enjoyment of the right to freedom from discrimination will not be in accord with the General Recommendation XXX on discrimination against non-citizens adopted by CERD at its sixty-fifth session.¹⁰ Thus it is expedient to make the scope of the right to freedom from discrimination to extend to every person and not in its restrictive form to only a citizen of Nigeria. Unfortunately, the Anti Discrimination Bill 2004, which aims to extend the laws that prohibit discrimination in Nigeria, omits to include discrimination based on colour although it includes race. This makes it fall short of the grounds covered by ICERD despite the fact that the rationale of the Anti Discrimination Bill 2004 was for it to take account of other forms of discrimination recognized by other international instruments like ICERD.

RECOMMENDATIONS:

- The National Assembly Joint Committee on the Constitution, set up to review the Constitution, should adopt a definition of non discrimination that will include every person resident in Nigeria. This will adequately take care of citizens and non-citizens resident in Nigeria.
- The Scope of the Anti Discrimination Bill should be extended to foreigners.
- Government should revisit the Osu Caste System.

¹⁰ Held between February 21 – March 11, 2005 at Office of the High Commissioner for Human Rights Palais Wilson, Geneva.

II. ARTICLE 2: POLICY OF ELIMINATING RACIAL DISCRIMINATION

LAWS AND POLICIES.

The lacuna in the Constitutional provision of the right to freedom from discrimination raises serious concerns on the ability of the State to undertake and pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

Section 15 of the Constitution, which comes under Chapter II of the Constitution and titled Fundamental Objectives and Directive Principles of State Policy¹¹ provides for the political objectives on the State of Nigeria. Section 15(2) states:

“Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

(3) For the purpose of promoting national integration, it shall be the duty of the State to-

- (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation;
- (b) secure full residence rights for every citizen in all parts of the Federation;
- (c) encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties; and.....”

The foregoing implies that free movement of persons within Nigeria is encouraged as residence rights for every citizen in all parts of the Federation is secured. However, this right of residency carries with it incidental right to work to give fulfillment to right to residence otherwise the right will be porous.

Subsection 3(d) of section 15 “encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association.” This means that the matrimonial home will be in the place of origin of one of the spouses or in a neutral place given that the Constitution encourages free mobility and that government has the

¹¹ Chapter II of the Constitution is non-justiciable.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

duty to secure full residence rights of every citizen in all parts of the Federation.

REALITY

Indigeneship

But the reality is a far cry from the beautiful letters of the law. In Nigeria, non-indigenes of a constituent State in Nigeria find it very difficult to get employment in the civil service of a State where they do not originate. Where such persons get employed their promotion have a sealing. For instance, some southerners who accepted judicial appointment in the north were never promoted Chief Judge of the State. They remained Acting Chief Judge because they do not originate from that State. In Lagos State last year, Lagos State indigenes seriously opposed the appointment of Cybil Nwaka who hails from Delta State as a Judge of Lagos High Court despite the fact that the judge lived all her life in Lagos State and worked for no other State but Lagos. She remains the only non-indigene judge in Lagos State. In many States of the Federation such persons are advised to go back to their States of origin. More pathetic are Nigerians who originally reside in their State of origin but found them selves belonging to another State upon creation of more States from the existing ones. Many of such persons were advised to leave the employ of their erstwhile State and seek employment in their new State. Many couples were badly affected. One Mrs B who preferred to remain anonymous hails from Anambra State and worked with the State Television Service in Enugu and also resides in Enugu the capital of Anambra State. Anambra State was later split into two namely Anambra State with capital at Awka whilst Enugu State has its capital at Enugu. The State creation saw Mrs B belonging to Anambra State. Consequently, the Enugu State Television Service relieved her and several other persons from Anambra State of their jobs because they were no longer belong to Enugu State.

This dislocates the family at times for career minded couples and in most cases women pay dearly for it because many of them quit their jobs to stay with their husbands. In the long run the women become economically dis-empowered and it has overall impact on women's self actualization and development. With the high rate of inflation, their spouses are unable to provide for every conceivable need of the family. This often brings disaffection and at times wife battery.

The practice is counter productive because it is discriminatory and it is antithetical to the government's responsibility of securing rights of residence to every Nigerian. This right carries with it the right to gainful

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

employment if we are to give meaning to the right to livelihood, the right to life and dignity of the human person. The practice offends the right to freedom of movement.¹² It also offends Article 2(1)(c) of ICERD.

Citizenship

Another noticeable area where government practices racial discrimination is in the area of citizenship.¹³ Foreign women and men married to Nigerians also face discrimination. Section 26 of the 1999 Constitution, which confers citizenship by registration, does not apply to foreign men married to Nigerian women, it only applies to foreign women married to Nigerian men. This discriminates against foreign men and ultimately that has a negative impact on the Nigerian woman whose husband is a foreigner because non-conferment of citizenship by registration will deny him of some rights such as the protection offered under section 42 of the Constitution and political rights. The President may make regulations, not inconsistent with Chapter III prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of Chapter III, and for granting special immigrant status with full residential rights to non-Nigerian spouses of citizens of Nigeria who do not wish to acquire Nigerian citizenship.¹⁴ In so far as this law and policy on citizenship remains unamended, it is capable of frustrating any effort the Nigerian government may wish to take to discourage anything which tends to strengthen racial discrimination and eliminating other means of eliminating barriers between races.¹⁵

The foregoing therefore means that the President cannot make any regulation that can improve the lot of foreign men married to Nigerian women. This is racial discrimination against foreign men married to a Nigerian woman also discriminates against Nigerian women by extension and this infracts on the enjoyment of their matrimonial right of consortium with their husband. The continued application of section 26 of the Constitution subjects women to various forms of disabilities, restriction or disadvantages. The implication is that a Nigerian woman married to a foreign man must make the husband's country her matrimonial domicile if she does not want her marriage and husband to suffer any form of disabilities. There is an administrative provision in Nigeria that a non - ECOWAS alien must pay an annual fee or levy of 350 US\$ per annum to the Federal Government. The circular to this effect was dated 14th August 1994 issued by Comptroller General, Nigerian

¹² Section 41 of the 1999 Constitution.

¹³ See Chapter III of the 1999 Constitution.

¹⁴ See Section 32(1) 1999 Constitution

¹⁵ See Article 2 (e) ICERD

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

Immigration Service with reference No. IMM/S/33/T/138 which applies only to foreign women married to Nigerian men (Niger wives) and not to foreign men married to Nigerian women.. There was a Notice of a Circular notifying the general public of the 350 US\$ residency permit already imposed on foreign wives of Nigerian men.¹⁶ This constitutes a violation of the fundamental right of a Nigerian wife of a non-Nigerian to family life and freedom of association¹⁷ and to non-discrimination.¹⁸ The law and practice of conferment of citizenship by registration as it stands amounts to racial discrimination against foreign men married to Nigerian wife in so far as it does not confer the same right it confers on a foreign woman married to a Nigerian citizen. This issue is a subject of litigation in SUIT NO: FHC/L/CS/547/2003 BETWEEN MRS VAYOLA SEARS & ANOR VS. ATTORNEY- GENERAL OF THE FEDERATION & ANOR. The matter is before Justice Mustapha, Court 2 of the Federal High Court, Ikoyi, Lagos.

The citizenship of children whose one of his/her parents is Nigerian.

The Nigerian society is patriarchal so the rights and citizenship of children born into such marriages poses no problems if the father is Nigerian, whereas if the father is a foreigner whilst the mother is Nigerian, the child might probably face indigeneship problem although he is Nigerian by virtue of section 25(1) of the Constitution. This is capable of preventing such a person from contesting for political office since his surname will probably disclose his nationality more especially if they have not been fully integrated into system and assimilate some cultural norms and ethos of the society through socialization. Be that as it may the Constitution does not discriminate against such children.

RECOMMENDATON.

- Constitutional review should include amendment of its discriminatory provisions on citizenship.

¹⁶ See This Day Newspaper Publication of 14th August 2002.

¹⁷ Section 37 of the Constitution

¹⁸ Section 42 of the Constitution.

III. ARTICLE 3: APARTHEID AND RACIAL DISCRIMINATION

LAWS AND POLICIES

Nigeria is a country comprising of about 250 ethnic groups. The Hausa/Fulanis, the Igbos and Yorubas constitute the three major ethnic groups. Section 14(3) of the Constitution states:

‘The Composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that Government or in any of its agencies’

Prior to the discovery of oil in commercial quantities in Nigeria in 1956 at Oloibiri, west of Port-Harcourt, in present - day Bayelsa State, Nigeria’s economy was largely dependent on ground nut, cotton, hides and skin from the north, palm oil from the south east and cocoa from the south west. These three areas make up the major ethnic groups. The revenue allocation principle then was 50% and this was entrenched in the 1963 Constitution, but after the civil war Nigeria’s economy then became heavily dependent on oil such that revenue generated from oil accounts now for over 90% of Nigeria’s earnings. But the revenue allocation has nose dived to 13%.

Section 16 of the Constitution states the economic objectives of the State of Nigeria as

‘The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution –

- (a) harness the resources of the nation and promote national prosperity and efficient, dynamic and self –reliant economy;
- (b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and opportunity’

Subsection 2 states:

‘The State shall direct its policy towards ensuring-

- (a) the promotion of a planned and balanced economic development;
- (b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;’

Section 17 (1) states:

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

'The State social order is founded on ideals of Freedom, Equality and Justice.

(2) In furtherance of the social order –

(c) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented;'

REALITY

The structure of the Government of the Federation or any of its agencies has fallen short of the ideals set out in Chapter II of the Constitution. Many ethnic minorities have been marginalized in political/elective offices. All the Presidents of Nigeria have been indigenes of the dominant ethnic groups in Nigeria be it under military or civilian regime. This has far reaching implications for development for the groups not represented in government. The ethnic groups that produce the oil have suffered the most from this arrangement as their non-inclusion in decision-making have deprived them from influencing the sitting of development projects in their communities. Most development projects are sited in areas outside the Niger-Delta region. In fact revenue from oil was used to develop Abuja¹⁹ from the scratch, build good roads in the north, even rocks were blasted to be enable the building of roads in the north whilst soil erosion that has created gulleys in the southeast have not been given the attention it deserves. This is not unconnected with the fact that that part of the country has never had a person from that region to occupy the Office of the President or be the Federal Minister for Works and Housing.

Underdevelopment shows ethnic imbalances as a result of lopsidedness of access to power at the center, which has been concentrated in the major ethnic groups, especially the north more particularly amongst the Hausa/Fulanai. This inevitably influences the allocation of economic resources and development. This does not augur well for a balanced economic development as the Nigerian experience has shown. This has consequently led to unrest in the Niger-Delta region as the exploitation has so far not been for the community good per se as they have been consistently been marginalized from political representation and economic development whilst the rest of the country, the multinational oil corporations and their home governments through taxes have largely profited from the misfortune of the people of Niger-Delta.

Government has over the years failed to address issue of sustainable development in the Niger Delta but is always quick to respond to

¹⁹ The New Federal Capital of Nigeria, which is in the middle belt of Nigeria.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

problems created by draught in the north. For instance although the Federal Government set up five different developmental commissions²⁰ in the past to look into how the problems of the Niger Delta could be solved, and that these commissions were headed by persons from the Niger-Delta, they failed because government starved them of funds where as the Petroleum Trust Fund (PTF) set up by General Sanni Abacha in the 1990s to improve the infrastructure that were in a state of decay and headed by General Mohammadu Buhari from Katsina, State, (a Hausa-Fulani person) enjoyed more funding.

The current government of Chief Olusegun Obasanjo has met with the representatives of the oil producing communities and the oil companies with a view to looking at ways of resolving or minimising the incessant crisis in the region. He has subsequently set up another commission, the Niger Delta Development Commission²¹ (NDDC) with the mission to produce a Master Plan that will eventually lead to a 'Road Map' for the development of the area. It might fail because of the following reasons namely corruption, lack of feedback loop and poor organisational structure. It is disturbing that the Federal Government does not bother to wade into the inter-ethnic conflicts that are claiming lives in that region. The reason may not be unconnected with the fact that to do otherwise would give the region the required cohesiveness to fight the Government. Resolution of the conflict is imperative since government is to provide justice, equity and protection for the people irrespective of their demands.

Oil Doom and AIDS Boom in the Niger Delta

The situation in the Niger-Delta is largely due to the lopsidedness of the number of constituencies each State of the federation has at the House of Representatives or their representation in government during the military era. Unlike the Senate where each State has three senatorial districts, the House of Representatives do not have equal number of constituencies. This makes some States to have comparative advantage in passing a bill into law or in influencing policies that will attract development to their constituencies.

Figure 1: HOUSE OF REPRESENTATIVES

²⁰ These Commissions are the Oil Mineral Areas Development Commission (OMADC), the Niger Delta Development Board (NDDDB), the River Basin Development Authority (RBDA), the Presidential Task Force on Niger Delta Development (PTFNDD), and Oil Mineral Producing Area Development Commission (OMPADEC).

²¹ The NDDC Bill was eventually signed into law on March 9 2000.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

S/N	States	Number of Constituencies	Zone	Majority or Minority
1.	Abia	24	South east	Majority
2.	Akwa-Ibom	26	South south/Niger Delta	Minority
3.	Anambra	30	South east	Majority
4.	Bauchi	31	North east	Majority
5.	Bayelsa	24	South south/Niger Delta	Minority
6.	Benue	29	North Central	Minority
7.	Borno	28	North east	Majority
8.	Delta	29	South south	Minority
9.	Edo	24	South south	Minority
10.	Ekiti	26	South west	Majority
11.	Enugu	24	South east	Majority
12.	Gombe	24	North east	Majority
13.	Imo	27	South east	Majority
14.	Kaduna	34	North west	Majority
15.	Kogi	26	North Central	Minority
16.	Kwara	24	North Central	Minority
17.	Lagos	40	South west	Majority
18.	Niger	27	North Central	Minority
19.	Ogun	26	South west	Majority
20.	Ondo	26	South west	Majority
21.	Osun	26	South west	Majority
22.	Plateau	24	North Central	Minority
23.	Rivers	32	South south	Minority
24.	Taraba	24	North east	Minority
25.	Adamawa	25	North east	Minority
26.	Cross River	25	South south	Minority
27.	Ebonyi	24	South south	Minority

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

28.	Jigawa	30	North west	Majority
29.	Kano	40	North west	Majority
30.	Katsina	34	North west	Majority
31.	Kebbi	24	North west	Majority
32.	Nasarawa	24	North Central	Minority
33.	Oyo	32	South west	Majority
34.	Sokoto	30	North west	Majority
35.	Yobe	24	North east	Minority
36.	Zamfara	24	North west	Majority

The table above shows that most of the States that belong to the ethnic minority groups have less representation at the House of Representatives whilst many of the States in the majority ethnic groups have higher representation. Given that political representation have direct impact on resource allocation which further impact on poverty and development, it is, therefore, not surprising that the Niger Delta region does not have much development projects sited in the region because of the fewer representation at the House of Representatives because they do not have the required voice to influence the allocation of the much needed resource to improve the lot of the people. Consequently, poverty and squalor have characterized the Niger Delta having been marginalized over the years.

The presence of oil workers have made the standard of living in these communities to be very high that to survive the residents need extra funds. This impacts negatively more on women and children who are doubly discriminated against. Many women resort to commercial sex to make ends meet thus making them to be vulnerable to sexually transmitted infections and diseases like AIDS which they acquire from multinationals and other young Nigerians that rush to the region in search of non-existent oil jobs. It is disturbing that the governments' AIDS campaign programme has not addressed the causes of AIDS in this region from this perspective in order to make it a sustainable development issue for that that particular region whereas government expended so much funds on educating Nigerians particularly the north on Vesico Vaginal Fistula (VVF) a health issue common amongst married under aged girls during child birth, a phenomenon that is prevalent in northern Nigeria. 

Fiscal Federalism In Nigeria.

When Nigeria depended on agricultural produce from the three major ethnic groups namely cocoa from the south west, cotton, ground nut and hides and skin from the north, and palm oil from the south east,

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

these regions controlled the resources 100% and paid tax amounting to 50% to the central government. Development in these regions was very apparent and competitive because of the availability of resources to meet such development projects. The South-west for instance could boast of free education. But shortly after independence and particularly after the Nigerian civil war (1967 – 1970) Nigeria's revenue now depended mainly on oil from the Niger Delta a minority region. The Nigerian military government promulgated the Land Use Act of 1978²² which vests all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold it in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments. The implication is that the owner of the land owns everything above or underneath the land²³. The Petroleum Act²⁴ seals this age long principle of law. The Act vests the ownership of, and all on-shore and off shore revenue from petroleum resources derivable there from in the Federal Government and for all other matters incidental thereto. These laws help to perpetuate government's discriminatory practices along ethnic grounds in terms of allocation, control of economic resources and the citing of development projects. The federal government now has direct control of the oil resources to the exclusion of the region and consequently pay 13% as revenue to the State where oil is tapped from, yet there is near absence of development projects in the States and in particular the communities where oil is tapped from.

The disparity in revenue allocation regarding the share that accrue to the federal government between the two revenue regimes and the near absence of infrastructure in the communities that produce the oil when compared with the development in the major ethnic regions when Nigeria depended on agricultural produce has led to agitation of resource control by the people of Niger Delta. It is believed that the disparity, which is not favourable to the people of Niger Delta, is a by-product of the non-representation of these persons in decision-making especially during the military era. This view is reinforced by the fact that both the Independence and Republican Constitutions of 1960 and 1963 respectively included fifty percent of proceeds to region of mineral

²² Cap 202 Laws of the Federation of Nigeria 1990 now Cap L.5 Laws of the Federation of Nigeria., 2004

²³ the latin maxim is *quid quid plantetur solo solo cedit*

²⁴Cap 350 Laws of the Federation of Nigeria, 1990 now Cap P.10 Laws of the Federation of Nigeria, 2004

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

extractions, thirty percent to all regions including the resource producing region and twenty percent to the Federal Government. This subsisted until 1970 when General Yakubu Gowon's military government enacted the Offshore Oil Revenue Decree No. 9 of 1971²⁵ that extinguished the rights of resource bearing states in respect of derivative accruals. Decree 3 of 1991, increased derivation percentage from 1.5 to 3 and allocated 25 percent to states, 20 percent to local government while the central government controlled the rest. During the Constitutional Conference of 1994/95, the people of the Niger Delta demanded for a minimum of fifty percent derivation formula that was rejected in favour of thirteen percent approved by General Sanni Abacha. The 1999 Constitution upheld this in its Section 162 (2)²⁶ and the current government has commenced payment since March 2000, though only 7.8 percent, which is unacceptable to the people²⁷.

The present Obasanjo administration seems ready and willing to ameliorate the sufferings of the people of Niger Delta, judging by his payment of the derivation fund whether adequate or not, and the constitution of the NDDC with the goal of producing a Road Map despite its short-comings. The positions of the communities in the current struggle reflect the desire to regain ownership, control and management of their land and its resources.

Resource Control

The incursion or advent of the military into politics led to the increasing financial subjugation of the regions to the central government. Resource control gives individuals, communities or states the right of ownership, control, use and management of land and natural resources found there. This assumes control is a right and limits this to natural inhabitants of the geographical area bearing the resources. The demands for resource control, though presently mainly associated with the oil-bearing communities in the Niger Delta area, extend to other natural resources but it is not enforced in other areas where other minerals are available.

The people of the Niger Delta see Section 162(2) of the 1999 Nigerian Constitution as a constitutional *coup d'état*. This section prescribes the

²⁵ Darah G.G. The Niger Delta Manifesto, (The Guardian Newspaper, Lagos Nigeria, wed, Feb 26, 2003.
<http://www.waado.org/NigerDelta/Essays/Politics/NigerDelaManifesto-Darah.html> 20 May 2004

²⁶ Op cit, Adileje, Chuma pp 360

²⁷ Special Supplement, Africa Today Magazine, The Resource Control Campaign: Niger Delta fights for justice, (Africa Today, Supplement, 2001), pp 12.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

manner in which the revenue will be distributed taking into account the principles of population, equality of states, internal revenue generation and so on. The issue of derivation is added as a proviso to this subsection that 'not less than' 13 percent of the revenue will be paid to the natural resource bearing communities²⁸. The fraudulent implications of these principles are manifest in the failure of the constitution to define what natural resources are and the current offshore/onshore clause, which tends to reduce this. It thus means that the president can determine the area of operation of the principle, at present in the area of oil and gas. Meanwhile, there are other natural resources that the government has for now turned blind eyes to. A good example is illegal mining activities going on in the north. Government has allowed individuals in connivance with foreigners to mine solid minerals in the north without exercising the necessary control as it has done in the Niger Delta. This is discriminatory. The question also being raised is how was the 13 percent derivation formula arrived at? Were the stakeholders involved in that decision when even the 1999 Constitution did not involve the participation of the public or was done in a hurry by the outgoing regime? The communities are calling for the abrogation of this clause and for the government to repeal the Land Use Decree of 1978 since they were both enacted under dictatorial regimes²⁹ now that Nigeria is a democracy. At the moment, the multinational oil companies receive 40 percent of the money generated from oil and gas while the Federal Government appropriate 60 percent. It is out of this 60 percent that the Niger Delta is supposed to receive 13 percent (13% of 60 % = 7.8% of the total revenue). This is shown in Figure 2.

²⁸Darah, G.G. Niger Delta: The Case for Federalism and Resource Control, in Africa Today, special Supplement, September, 2001.

²⁹ These dictatorial regimes were headed by persons that were mainly from the north – the Hausa/Fulanis with the exception of General Obasanjo, General Ironsi and Chief Earnest Shonekan all from major ethnic groups from south west, south east and south west respectively.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

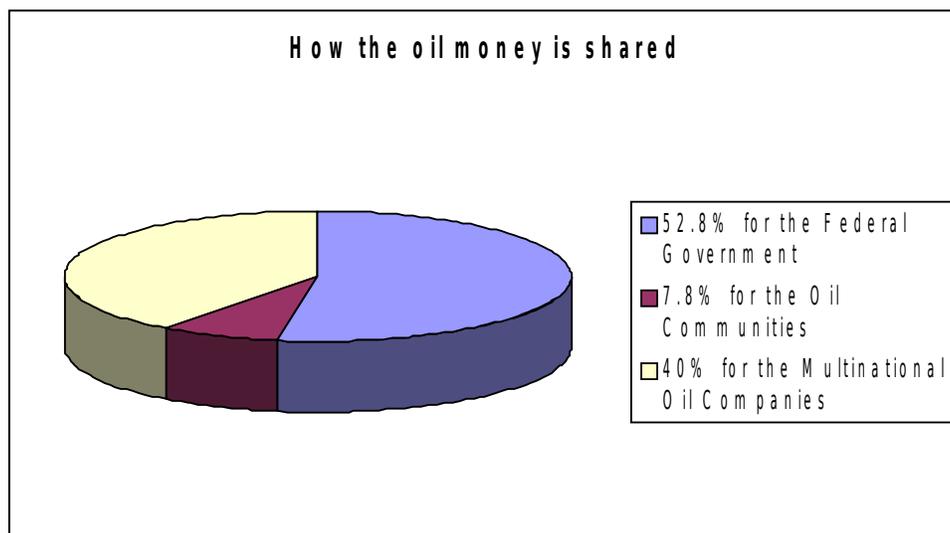


Figure.2 :How the oil and Gas money is shared
Source: Author.

RECOMMENDATIONS

- There should be a Niger-Delta territory that will have a Minister that will sit in the National Executive Council (NEC) to represent the interest of the people of the Niger-Delta.
- The Federal Government should ask Shell Petroleum Development Corporation to revive the Niger-Delta Environmental Survey, which they sponsored, enumerates the development of the physical structure of the area.
- The Federal Government, State governments in the Niger-Delta region and oil companies should empower the State Education Ministries so that the youths can be educationally empowered.
- The Federal Government should disclose its earnings from oil.
- The Federal should publish the release of funds to the States to make to make the Governors more accountable to the people.

IV. ARTICLE 4: CONDEMNATION OF ALL PROPAGANDA AND ALL ORGANISATIONS WHICH PROMOTE RACIAL HATRED AND DISCRIMINATION.

A concept that is gaining grounds in Nigeria is environmental racism. This is the deliberate implementation of economic and sometimes non-economic activities by Trans National Corporations (TNCs) and their institutions that have negative impact on the people, the environment and other occupiers of environmental space in a manner that creates a dis-benefit for the present and future. A recent example of environmental racism is the historical double standard as to what is acceptable in certain communities, villages, cities and countries and not others. Double standards of environmental protection, extraction methods, and the dumping of toxic wastes occur in the Niger-Delta specifically and throughout many parts of Nigeria. Failure by the agents of government saddled with the responsibilities and TNCs to carry out environmental impact assessment before locating industries generally constitute environmental racism. These industries are situated in environments predominantly inhabited by the poorest of the poor and the wretched of the earth. This has resulted in a disproportionate share of the burden of environmental deterioration being borne by certain ethnic and indigenous peoples. Environmental devastation such as this has turned many of our living areas (NigerDelta in particular) into toxic wastelands with the resulting effects on human health and economies. Niger Delta communities are afflicted with respiratory and degenerative diseases, including cancer, stillbirth and stunted growth among children³⁰. In effect the government has reneged in its duty to enforce environmental laws and effectively mobilize the Federal Environmental Protection Agency (FEPA). No TNCs has been charged to court or sanctioned for damage done to the environment.

Despite the fact that oil contributes more than 75% to the nation's revenue, government seems to care less about halting the great damage inflicted on oil communities since commercial export started more than 40 years ago. Contrary to what obtains in other parts of the world, government has demonstrated that it lacks the political will to check TNCs from degrading the environment and devastating the lives and health of the people. Since 1969, the Federal Government has failed to implement laws that sanction gas flaring. The payment of pittance as penalty for gas flaring gas only encouraged firms to prefer to pay fines than put in place the right technology for a clean oil environment.

³⁰ See The Punch Editorial, Monday June 20, 2005 page 16

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

Government has over the years demonstrated lack of seriousness about the plight of the people of Niger Delta. This might have emboldened TNCs to continue with unhealthy production practices that are forbidden and heavily sanctioned in their home countries. The Government has thrice shifted the zero-flare dates in the past six years. In fact government has said that the 2008 deadline for oil companies to stop flaring hazardous gas may be shifted forward again. Government's Special Adviser on Petroleum and Energy, Dr. Edmund Daukoro, explained that the 2008 deadline was just a guide to oil firms to put in place their gas utilization projects, such as gas-flared power plants, toward converting the flared gas into economic assets. Shell Petroleum Development Company (SPDC) on its part has explained that activities in this regard was slowed down due to Federal Government's failure to properly fund gas-gathering projects in Shell's joint venture with the Nigerian National Petroleum Corporation (NNPC). The failure of government to properly fund the gas gathering projects testifies to a curious lack of capacity to protect the citizens against violent environmental attacks by oil firms³¹. This points to one irresistible conclusion that the government is comfortable with the status quo where the people of the Niger Delta have been pauperised by the damage done to the fresh water and farmlands, the trauma of constant gas flaring that condemns them to the ravages of acid rain, permanent day light, new and unknown diseases and untimely death.

The attitude of the TNCs towards the indigenous environment is a clear departure from what is obtainable in the developed world where the TNCs have their offices. While utmost respect is paid to the protection of the environment in the developed world, TNCs generally give little or no regard to the protection of the environment and the indigenous population in developing countries (in this case Nigeria) where they operate.³² In short TNCs fail to adequately maintain its facilities in the Niger-Delta. It digs burrow pits indiscriminately, uses divide and rule strategies which have enabled the them to penetrate and destabilize political formations in the area, and its recourse to explaining its acts of negligence resulting in environmental disasters as sabotage³³. The attitude of TNCs towards the environment and the indigenous population is further reinforced by the lack of political will on the part of the government to sanction TNCs. This has been made possible by the fact that past Nigerian rulers are not indigenes of these communities that suffer environmental degradation, but benefit more from revenue generated from oil as can be gleaned from money starched away to

³¹. Ibid

³² See Blood Trail p. 88

³³ See generally Blood Trail

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

foreign countries and used in developing other parts of the country at the expense of the indigenous people/communities. To worsen matters, the compensation paid by TNCS when they choose to pay is very marginal³⁴ and the money is paid to the elites who also divert the money for their personal use.

There appears to be a deliberate effort on the part of the government to ensure that this region is not developed, This is informed by the fact that much interest is taking in providing nomads education whilst no corresponding measure is taken to provide fishermen and women from the Niger Delta itinerant education in addition to lack of a methodological approach to ending the restiveness amongst the youths in the Niger-Delta. Many of them are not employed into senior cadre in these oil companies because they are not qualified due to poor level of education of many of the youths of this region. This is borne out of the realization that education will further awaken the peoples' consciousness to the deprivation they suffer and this will exacerbate their agitation. It is therefore not surprising that the Federal Government has not deemed it fit to site tertiary institutions in any of the communities where oil is obtained.

Environmental degradation, poverty in the midst of plenty, dearth of basic amenities for the indigenous people, failure of oil companies to employ a significant percentage of the indigenous people has led to protests in the Niger-Delta communities. For example the percentage of Ogonis in Shell's total workforce is not more than 5% so the Ogonis want increased quota for Ogonis as junior and senior staff in Shell Petroleum. Other grievances of the people of the Niger-Delta is the apparent lack of development and government presence in their communities and the disparity in revenue allocation formula that the country adopted when compared with what was the revenue formula when the country dependent on cocoa from the south west and ground nut from the north.³⁵

The targets of these protests have been the Federal Government and TNCs and government have come heavily upon the Protesters whilst government's enforcement agents burnt down houses, sacked

³⁴ See Blood Trail: Repression and Resistance in the Niger-Delta. A Publication of the Civil Liberties Organisation 2002 p. 22

³⁵ The derivation formula was 50% to the southwest that was producing cocoa and 50% to the north for groundnut whereas the derivation formula is now 13%. This amounts to discrimination. The delegates from the South South zone at the just concluded National Political Reform Congress staged a walk out when their agitation for 50% revenue allocation was not acceded to.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

communities such as Odi and Choba and raped women even in the presence of their children and siblings.³⁶ Sadly the government is not repentant of these acts and it is not uncommon to find government agents threatening certain oil communities that Odi would be mere child's play after dealing with the said communities under reference.

In politics, the Niger-Delta has not been adequately represented. Despite the fact that the region produces over 90% of Nigeria's export earnings, that region has never produced the President of this country yet every other geo-political zone³⁷ has produced the President³⁸. More specifically the Ogonis have been marginalized in the federal system. Although Ogonis are the major ethnic group in Rivers State, it is the minority as regards decision-making or representation in government. The reason for this is not unconnected with the poor level of education and poor economic empowerment of the Ogonis due to government's neglect of the area. Secondly, the agitation of the Ogonis for self-determination has contributed to the failure of successive military governments to appoint an Ogoni person into the federal cabinet and by extension the State cabinet because Nigeria was for the better part under civilian regime. However, the civilian administration of Chief Peter Odili³⁹ has four Ogoni indigenes in his cabinet. Whilst the efforts of Governor Odili is commendable, there has been undue recognition given to those who fought for the struggle and are more inclined to Ogoni 13. Meanwhile, Government initiated the Peace and Reconciliation Committee in 2004. It is headed by B.M. Wifa S.A.N. After series of consultation a U.K. based negotiation group has been consulted to conduct the negotiation proceedings to reconcile all the factions and interests in Ogoni.

RECOMMENDATIONS

- The consultation and negotiation should be broad based even to the least Ogoni person and not selective. This is informed by the fact that the key problem of implementing policies in Ogoni is that it has always been selective.
- The process should not be shrouded in secrecy.

³⁶ See Blood Trail.

³⁷ Nigeria has six geo-political zones.

³⁸ From the first Prime Minister to several dictators that emerged from 1966 through 1998, all but only three are Northerners. Gen J.T.U. Ironsi (South west), President Obasanjo (1976-1979)(1999-2007) and Earnest Shoneka who was an interim President for three months during the political explosions following the ignoble annulment of June 12, 1993 free and fair elections.

³⁹ Executive Governor of Rivers State 1999 – 2003, 2003 - 2007

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

- There should be a balanced recognition of all parties/factions. The Rivers State government should give a fair balanced recognition to all groups in Ogoni in according them privileges, benefits and rights from both the National and State governments.

V. ARTICLE 5: ENJOYMENT OF HUMAN RIGHTS.

LAWS AND POLICIES

Chapter IV of the 1999 Constitution is titled “FUNDAMENTAL RIGHTS”. It provides for civil and political rights. Section 46(1) allows any person who alleges that any of the provisions of Chapter IV has been, is being or likely to be contravened in any State in relation to him/her may apply to a High Court in that State for redress. Pursuant to Section 46(3) of the Constitution the Chief Judge of the Federation has made the Fundamental Human Rights (Enforcement Procedure) Rules with regard to the practice and procedure of a High Court for the purpose of protecting these rights. The Nigerian Constitution does not provide for economic, social and cultural rights strictly speaking. The closest to economic, social and cultural rights can be located in Chapter II of the Constitution. It is titled FUNDAMENTAL OBJECTIVES AND DIRECTIVE PRINCIPLES OF STATE POLICY. Section 6(6)(c) of the Constitution makes Chapter II non-justiciable. It states:

“The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this Constitution extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution”.

By virtue of Section 6(6)(b) of the Constitution the judicial powers “shall extend to all matters persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person”.

REALITY.

The Constitution does not give equal protection to human rights despite the 1993 Vienna Declaration that human rights are inter-related, inter dependent and indivisible. The law in Nigeria seems to operate to give classification of rights as first, second or third generation rights. This appears to be the case as the Constitution recognizes the enforceability of only civil and political rights whilst socio-economic rights are not justiciable. The implication is that depending on the right that is violated a person might to get equal treatment before the law. Even where the

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

same category of rights is violated, the poor and poorest of the poor are not guaranteed equal treatment before the law because of their inability to facilitate the administration of justice system. This has resulted in mainly the poor being prosecuted for criminal offences whilst many influential persons are left off the hook at the investigation stage because they have the means to influence criminal investigation in most cases. The situation is aggravated by lack of funding of the criminal justice system which impacts negatively on the investigation process.

Although civil and political rights are protected and guaranteed by Chapter IV of both the 1979 and 1999 Constitutions, which govern the period under review, there are obstacles to the enjoyment of these rights which government has made no effort to address. This is not unconnected with the fact that the status quo helps in perpetuating discriminatory practices against oppositions, which include ethnic groups like the Movement for the Actualisation of the State of Biafra (MASSOB). The Ibos are also referred to as Biafras. Members of MASSOB who were arrested last year while watching a foot ball match organised to commemorate the birthday of MASSOB leader were arrested and detained and denied bail via the use of the holding charge. A charge of treason was framed against them. To worsen matters they were taken before a court without competent jurisdiction who remanded them in prison custody pending when police conclude their investigation and legal advice obtained from the Office of the Director of Public Prosecution (D.P.P.) But Muslim fundamentals involved in religious crisis in the north which resulted in the destruction of lives and properties were granted bail when arraigned before a magistrate court. This is disturbing because a trumped up charge was framed against MASSOB members., yet they were denied bail whereas actual offenders who stand the chance of committing the offence they have been charged for while on bail were granted bail. This clearly shows a case of discrimination on grounds of ethnicity and religion. The judiciary that should be an impartial arbiter in matters like these and protect the rights of accused persons have become a willing tool on the part of the State to pervert the cause of justice. The Constitution under Section 35 is clear on an accused person's right to liberty. Yet, magistrate courts rely on the provision of Section 236 of the Criminal Procedure Act, which permits the magistrate court to remand an accused person even where such courts have no jurisdiction to try the matter pending the conclusion of police investigation and pending when the legal advice is obtained from the Director of Public Prosecution.

The judiciary is ill equipped, its personnel lack requisite on the job training. It is not properly funded and it also lacks independence. This

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

makes it susceptible to corruption and executive interference even though we are in a democracy. Widespread use of frivolous ex-parte injunctions to over-reach opponents is rampant. The dismissal of high court judges like Stanley Nnaji of Enugu State High Court, Wilson Egbo-Egbo of the Federal high court, Abuja, Hopenu Wusu of Lagos high court by the National Judicial Council for various offences, represents the attempts by the judiciary to sanitize itself. But in spite of the efforts, the system is still corrupt. This can be inferred in the judgment of the Supreme Court involving Governor James Onanife Ibori of Delta despite the overwhelming evidence that he was an ex-convict and should not occupy the seat of the governor. Corruption pervading the administration of justice beginning from the police, the office of the Director of Public Prosecution, the law courts have led to widespread loss of faith on the justice system especially on the part of the poor. The justice system works hardship against the poor. It is discriminatory as access to justice eludes the poor since the government has failed to provide a functional legal assistance programme for the poor to enforce their rights. This has made people to resort to self-help as means of crisis resolution and has given fillip to the spread of ethnic and nationalist militias. These militias to a large extent have in turn fuelled ethnic violence and crisis. The dysfunction in the administration of justice is capable of leading to de facto racial discrimination and feed popular discontent as the MASSOB case when juxtaposed with the case of Muslim fundamentalists in the north. Furthermore, the case of James Ibori reinforces the view that the poor are actual victims of the criminal justice system. This is capable of leading to ethnic violence especially in an already volatile State like Delta State where ethnic violence over land ownership and resource control have degenerated into series of ethnic conflicts.

The Sharia question - The practice of Sharia in 12 Northern states of Nigeria has led to certain discriminatory acts against the poor and women in particular. More disturbing, however, is government's apparent discriminatory based silence over the issue and its failure to go to court and seek the interpretation of section 10 of the Constitution that prohibits state religion. This is against the backdrop that the Federal Government was quick to rush to court over the interpretation of section 162(4) of the Constitution on the distributable pool account as the Niger Delta people made demands on resource control. Nigeria is not a secular state but a multi – religious state hence the provision of section 10 of the Constitution to eliminate the preference of one religion to another. The introduction of Sharia in the north informed peaceful, non- violent protests by Christians. This peaceful demonstration led to serious conflict in the north where thousands of non Muslims were killed.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

Many non-Muslims had to flee from the north. The non-Muslim journalist who wrote an article on Miss World Beauty pageant which the Muslim community found blasphemous fled the country as a result of the fatua or fear of fatua to be declared on her.

Ethnic-Religious Conflict Prevention and Management

Nigeria is comprised of more than 250 ethnic groups. However, the following are the largest and most politically influential: Hausa and Fulani 29%, Yoruba 21%, Igbo (Ibo) 18%, Ijaw 10%, Kanuri 4%, Ibibio 3.5%, Tiv 2.5%. Amongst these groups the Hausa and Fulani found in the North are mostly Muslims have dominated the political scene at the center more than any other ethnic group. The Ibos found along the southeast are predominantly Christians whilst the Yorubas are mixture of Muslim and Christianity. Thus Nigeria is highly stratified along ethnic, religious and cultural lines. This makes conflict, wherever they occur to have coloration peculiar to a region. Ethnic - religious crisis are prevalent in the north and Lagos whereas conflict in the Niger Delta is linked to land tussle and economic whilst that of the east has ethnic coloration. What is disturbing is government's attitude towards these conflicts that tends to be discriminatory. The North has been known to be crisis prone. In 1996 in Kano, one Gideon Akaluka was beheaded by Muslim zealots in prison for allegedly desecrating their Holy Quran. Over 300 lives were lost in this crisis. Same year in Kaduna, EL Zak Zaky followers razed Kaduna Central market, police stations and disembowelled pregnant women while protesting the arrest and detention of their leader Ibrahim EL Zak-Zaky. In 2000 a peaceful demonstration against the plan to introduce the Sharia legal system by Christians in Kaduna State was countered by Muslims adherents, which led to violent crises. In 2002 a publication by THIS DAY newspaper during the Miss World contest was considered blasphemous against Prophet Mohammed by Muslim faithfuls and the violence that erupted caused the organisers to stage the contest outside Nigeria. The government did nothing about the matter. No panel of investigation was set up and if any was set up the report has never been made available to the public. But the Jos riot in 2003/2004 led to the unconstitutional imposition of a State of Emergency in Plateau State on May 18, 2004. What is even more disturbing in the State of Emergency that was declared in Plateau State was that the government did not follow the democratic process lay down in Section 305(4) of the Constitution. The State of Emergency was also not ripe as the conditions stipulated by Constitution were not present. The State of Emergency was therefore politically inexpedient or unreasonable. As at the time of the declaration, only one local government in Plateau State was engulfed in the crisis and the parties to the conflicts and the political actors in the state were

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

in a dialogue to abate the crisis. Prior to the ethno-religious crisis in Plateau State, there were rioting in Kano, Kaduna, and the low intensity war in the Niger Delta since the inception of the Obasanjo government in which several lives and properties were lost, yet he did not see the need in those wanton destruction to declare a state of emergency. When Obasanjo attempted to impose a State of Emergency in Lagos State in 2000 at the wake of the OPC crisis the Governor of Lagos, Senator Bola Ahmed Tinubu warned him sternly against it and he complied.

Problems relating to ethnicity, religion and culture easily manifest themselves in politics and gender. Northern Nigeria erroneously believes that political power is their sole prerogative. That was the major reason why the June 12, 1993 Presidential election was annulled because the election was won by late Chief M.K.O. Abiola, who is from the Yoruba ethnic group in Southern Nigeria whereas he contested against a Northern Fulani, Alhaji Ibrahim Tofa. Thus since the annulment of the June 12, 1993 general elections acclaimed to be the freest ever in Nigeria's political history, there has been a renewed clamor for a sovereign national conference. The sovereign national conference is a conference of all the representatives of ethnic nationalities in Nigeria, religious groups, women folk, the civil society groups, the professionals and the mass based organizations. Its aim is to restructure Nigeria in all its ramifications. Government is also expected not to tinker with its recommendations and same should form the basis of the political existence of Nigeria. President Obasanjo has set up the National Political Reform Conference (Confab) by executive fiat without passing through the National Assembly. This gives the impression that he will influence the outcome of the decision. The President and the Chairman of the Confab have been engaged in hot exchange of words over 6 year single tenure. It is reported that the president is insisting that the confab adopts the 6 year single term whilst the Chairman has refused to do the President's bidding⁴⁰.

Health

Section 17 (3)(d) of the Constitution States that the "The State shall direct its policy towards ensuring that there is adequate medical and health facilities for all persons.

The health care system is worst than it was in 1983 when it was described as mere consulting clinic"⁴¹. The health care delivery system does not conform with the four A principle namely that it should be

⁴⁰ OBJ, Tobi in hot exchange of words. Saturday Sun June 25 2005 at page 8-9

⁴¹ The broadcast speech of the military junta on December 30, 1983 when the civilian regime of President Shehu Shagari was overthrown.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

available, accessible, adequate and not affordable. Many health personnel working in Nigerian hospitals have left the shores of Nigeria for greener pastures abroad due to lack of incentive and poor salary package. The situation is worse in the Niger Delta where there is near absence of development and provision of basic amenities to attract health workers. Consequently this area has been badly hit by years of neglect of the area in general and the health sector in particular and brain drain. This means that adequate health care delivery system is not available. Even where government provides these facilities, they are located in towns and not in the rural areas where a great percentage of the indigenes live, so these facilities are not easily accessible by roads and many had died on their way to the hospitals on speedboats. Furthermore, most of the people are so impoverished that they cannot afford to pay hospital bills. This is pathetic because many of them suffer from diseases caused by exposure to gas flaring and toxic substance that have found their way into drinking water and agricultural produce. As mentioned in the discussion on Article III, circumstances force women from this locality into prostitution and this has made many of them to be living with HIV/AIDS, yet anti retro viral drugs is far from their reach. The consequence of the foregoing has been increased death toll thus impacting negatively on human development.

RECOMMENDATIONS

- Government should amend the Constitution to make all human rights justiciable especially economic, social and cultural rights.
- The Nigerian government should investigate all ethnic-religious conflicts, bring perpetrators of human rights violation resulting from recent ethnic and religious violence to justice, and compensate victims and their families in accordance with Resolution adopted by the African Commission on Human and Peoples' rights dated 4 June 2004, therefore putting an end to the culture of impunity.
- Government should make public all the reports of previous panels of investigations of ethnic/religious violence and take appropriate disciplinary actions against culprits and restore the confidence of the people in the rule of law.
- National legislation shall be brought into full compliance with the provisions of the Convention, in particular regarding a definition of racial discrimination, prohibition of racist organisations and propaganda activities that promote and incite racial discrimination, the effective enjoyment of the rights set forth in Article 5 of the Convention, and the provision of effective

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

- protection and remedies to everyone within the jurisdiction of the State Party against any acts of racial discrimination.
- The Government should establish disaggregated statistics on the ethnic composition of the society.
 - Government should make the right to education and health justiciable.
 - Government should provide adequate funding for the health sector and ensure equitable distribution of medical and health facilities and personnel..
 - Government should make health delivery system available, adequate, accessible and affordable.
 - Provide free anti retro viral drugs for HIV/AIDS patients.

VI. ARTICLE 6: HUMAN RIGHTS PROTECTION

LAWS AND POLICIES

Nigeria is a signatory to many international and regional human rights instruments. Nigeria ratified both the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1993, but she has not domesticated these instruments. Nigeria has also ratified the Convention on the Elimination of all Forms of Racial Discrimination Against Women (CEDAW). At the regional level Nigeria has ratified and domesticated the African Charter on Human and Peoples' Rights.

The Federal Government established the Legal Aid Council⁴². LAC is charged with the responsibility of providing free legal assistance and advice to indigent citizens whose income do not exceed certain minimum wage; those whose income may be above but cannot otherwise afford the services of Private Legal Practitioners; and in cases specified in Schedule Two to the Legal Aid Act viz:

- Murder or culpable homicide punishable with death
- Manslaughter or culpable homicide not punishable with death
- Maliciously or willfully wounding or inflicting grievous bodily harm or grievous hurt
- Assault occasioning actual bodily harm or criminal force occasioning actual bodily hurt
- Stealing or theft
- Affray
- Rape
- Aiding or abetting or counseling or procuring the Commission of, or attempting or conspiring to commit any of the offences listed above
- Civil claims in respect of accidents
- Damage for breach of Fundamental Human Rights as guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999.

The inclusion of the last item would appear to be in fulfillment of section 46(4) (i) of the 1999 constitution, which enjoins the National Assembly to make provisions 'for *the rendering of financial assistance to any indigent*

⁴² Established pursuant to the Legal Aid Decree No. 56 of 1976.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

citizen of Nigeria where his right under this chapter has been infringed with a view to enabling him to engage the services of a legal practitioner to prosecute his claim”.

Under this section a citizen is only entitled to financial assistance where a citizen's right under Chapter IV of the 1999 Constitution has been infringed. That is where the infraction has been consummated. It does not seem to cover cases of where there is likelihood that the right would be breached. This is in sharp contrast to section 46(1) of the 1999 Constitution. By this section, access to court can be invoked under three headings: where a breach has occurred; where the process of the breach is still on and where there is a likelihood of breach of the right. The power conferred on the National Assembly in the said section does not extend to making laws for rendering financial assistance in respect of any breach of fundamental rights that is a continuing one or that is imminent.

REALITY

Lacuna in the Legal Aid Act.

The Act discriminates against accused persons standing trial for armed robbery. Whereas the law provides legal assistance for persons accused of murder it does not provide legal assistance for those standing trial for armed robbery. This is not unconnected with the odium by which the society views crime. Nevertheless, it is discriminatory given the fact that most people charged with the offence are the poor. It is disturbing given the shoddy way police investigate crime, apparent lack of funding which makes complainant who fund criminal investigation to easily influence the outcome of a criminal investigation. Most of these accused persons are never tried and are remanded in detention for upward of ten years and above. Most of these victims are men and it this leaves up keep of the family squarely for their wives. These suddenly makes the women to be single parents and are consequently forced into prostitution in order to provide for the family.

Hindrances to human rights protection

Despite the human rights instruments that Nigeria has ratified that ought to ensure effective protection and remedies against any act of racial discrimination, their guarantee cannot be assured for reasons that transcend from the provision and operation of the legal regime to corruption that pervade the judiciary.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

Generally speaking most victims of human rights violations are the poor and these people cannot afford the services of a lawyer because of the prohibitive cost of lawyers' fees. Unfortunately the government's legal aid scheme does not cover civil cases and it does not even apply to all criminal matters and it applies to indigent persons whose income do not exceed the minimum wage, and those whose income are above but cannot otherwise afford the services of the private legal practitioners and in cases specified in Schedule Two of the Act. The implication is that other indigent citizens whose rights have been violated and those whose rights are not covered by the Act, will have no means of enforcing their rights. Even, the services provided by Legal Aid Council, does not guarantee effectiveness. In *Udofia v. The State*⁴³ the Supreme Court frowned at the practice of assigning a murder case to a lawyer on National Youth Service Corps.

The Council has office in each state of the Federation, besides establishing supervisory offices in eight geo-political zones of Abuja, Jos, Yola, Kaduna, Lagos, Ibadan, Owerri and Enugu. It relies heavily on budgetary allocation from the Federal government, but this is inadequate for the realization of the lofty ideals of the scheme. Under funding of the scheme has seriously impacted on the efficiency and effectiveness of the scheme, as the scheme is poorly staffed due to paucity of funds to recruit lawyers into the scheme. Thus the Council strives to sustain one-lawyer to-a-state posting arrangement. This makes the lawyers to work under serious constraints even at the risk of their lives in the quest to enhance access to justice. The scheme also relies on the services of private legal practitioners who have registered with the Council and are desirous of accepting legal aid briefs on payment of a token fee on completion. The scheme also uses legal practitioners for the time being serving in the National Youth Service Corps Scheme posted to the Council.

As seen above many problems plague the Scheme, which range from under funding which has manifested itself in high staff turnover. Absence of uniform standard of service delivery, uneven distribution of skills, low morale of personnel and a near absence of continuous education/training to keep personnel updated to current developments. At present the Council does not have enough lawyers to provide a responsive customer service.

Despite the limited services provided by the Council, many Nigerians are still not aware of the existence of the Legal Aid Council and those who

⁴³ (1988) 3 NWLR Part 84 p. 541.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

are aware are skeptical about the ability of the Council to deliver on its mandate. As a result the public do not make full use of the services that the Council provides.

Given the above, the Federal Government of Nigeria cannot lay claim to providing a viable institution to ensure a society that is free from all forms of discrimination because the law courts and access to justice remain the conduits toward enforcing these rights in the event of any violation.

The role of our law courts in promoting the enjoyment of human rights generally to ensure that the Nigerian society is free from all forms of racial discrimination is suspect. This is against the backdrop of allegation of corruption that pervades the entire strata of our law courts⁴⁴. The valedictory speech of a retiring Supreme Court Judge, Justice Uwaifo lends credence to this when he said:

“ A corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street; while the man with the dagger can be restrained physically, a corrupt judge deliberately destroys the foundations of society and causes incalculable distress to individuals through abusing his office, while still being referred to as honourable⁴⁵.

The consequences are far reaching for the rule of law and portend great danger for the promotion and protection of human rights, more particularly the elimination of racial discrimination.

Another impediment to the protection against racial discrimination is lack of knowledge of human rights issues that under pin the adjudicatory function of a judge. The curriculum of the National Judicial Institute is not challenging enough to meet the demands of human rights adjudication especially in areas like Racial Discrimination and Minority Rights.

The National Human Rights Commission

The government's National Human Rights Commission (NHRC), which ought to investigate and document human rights violations and take appropriate steps to redress wrongs has not been as effective as it should be for obvious reasons. The NHRC is a creation of a military Decree during the regime of late General Sani Abacha⁴⁶. It is yet to enjoy

⁴⁴. SEARCHLIGHT ON THE JUDICIARY. ARE JUDGES CORRUPT? THIS DAY Newspaper Publication January 30, 2005

⁴⁵ Ibid.

⁴⁶ It was established by Decree in 1995.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

any Constitutional backing six years into civilian rule. It was clearly designed as an attempt to head off international criticism of continued military rule in Nigeria and the repressive policies of the Abacha government. The political context in which it was established impacted negatively on its activities. Thus the repressive political environment in which it operated and the conditions under which it was created strictly limited and still limits the activities of the NHRC. For instance, the NHRC issued no criticism on major human rights issues of the day including the flawed transition program put in place by General Abacha, supposedly to end military rule, and a number of high profile show trials of opponents of military rule. But it did carry out useful work, especially in relation to prison conditions. It facilitated the cooperation some NGOs enjoyed with some government institutions in respect of some trainings⁴⁷ The setting up of the Human Rights Investigation Panel by the Obasanjo's regime to investigate human rights atrocities of past military regimes casts doubt on the credibility the NHRC enjoys from the present civilian regime.

Since its inception up until now the NHRC does not possess the requisite legal mandate and accompanying powers to function effectively. This is against the backdrop that the powers a NHRC possesses is critical to its ability to pursue protection activities. The legal framework of the NHRC suffers serious structural defects. This impacts on its ability to function autonomously and independently. It is grossly underfunded. The criteria and selection process of members of the Governing Council is not transparent and is not reflective of the inclusivity of inputs from the CSOs.

Presently, it has not effectively pushed other State bodies to uphold their responsibilities with regard to human rights promotion and protection. The NHRC is yet to become a central element in the government's overall institutional framework for the promotion and protection of human rights. Government agencies have not been regarding all the recommendations of the NHRC and have also been thwarting the efforts of the NHRC to carry out its mandate. It does not possess quasi-judicial powers especially the ability to investigate complaints freely and to forward their findings to the relevant administrative or judicial authorities in order that criminal charges or other appropriate actions can be taken against alleged human rights violators.

⁴⁷ The CLO was able to commence its Human Rights and Administration of Justice Programme with Lower Court Judges in Nigeria in 1998 after NHRC assured the National Judicial Institute (NJI) that the training is not anti government. The involvement of NHRC at the workshops discouraged the usual harassments of State Security operatives at many workshops organized by the CLO.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

The Human Rights Investigation Panel

The Human Rights Investigation Panel was set up to investigate the human rights abuses under the past military governments. It was popularly called the Oputa Panel. The panel sat in different parts of the country and received representations from victims and perpetrators and made recommendations as well. While the work of the Panel was quite commendable and received popular applause from the generality of Nigerians, the refusal of past heads of States like General Mohammadu Buhari, General Ibrahim Badamosi Babangida and General Abdulsalami Abubakar to appear before the panel in response to the summons of the panel clearly gave the impression that the rich and the powerful in the society can with impunity refuse to answer questions with regards to human rights atrocities they committed while occupying public offices. The inability of the panel to bring these past Heads of States before its sitting even in cases where ordinary citizens such as the Maroko evictees could not get the opportunity preparing their case before the panel is a clear pointer of the discrimination of the panel in favour of the rich and powerful and against the poor and vulnerable.

The Code of Conduct Bureau

The Code of Conduct Bureau is a creation of the Constitution⁴⁸. It is to instil discipline in the system and discourage corruption amongst public office holders. An allegation of the contravention of the Code of Conduct for Public Officers⁴⁹ is made to the Code of Conduct Bureau. The essence of the Code of Conduct for Public Officers is to ensure that every elected or appointed officer whether in the National, State or Local Government level declares his or assets before being sworn into office, and thereafter at the end of every four years; and at the end of his/her term of office submit to the Code of Conduct Bureau a written declaration of all his properties, assets and liabilities and those of his unmarried children under the age of eighteen years. Any statement that is found to be false by any authority or persons authorised in that behalf to verify it shall be deemed to be a breach of this Code⁵⁰. Any property or assets acquired by a public officer after any declaration required under this Constitution and which is not fairly attributable to income, gift or loan approved by the Code shall be deemed to have been acquired in breach of this Code unless the contrary is proved⁵¹. The Code of Conduct for Public Officers

⁴⁸ See Paragraph 12, Fifth Schedule Part I of Constitution

⁴⁹ *Ibid*

⁵⁰ *Ibid* para 11(2)

⁵¹ *Ibid*

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

also prohibits public officers from operating foreign accounts⁵². Amongst the public office holders in Nigeria, over 99% did not declare their assets. Many if not all of them also operate foreign accounts. Worse still, the accounts of the various strata of government are not published for public inspection. Only a few public office holders accused of corrupt practices are facing trial⁵³. Prior to this they are not prosecuted. Where the government decides to prosecute any public officer it is for witch hunting purposes. A case in point is the prosecution of Governor Dariye of Plateau State. The trial of Governor Dariye is a contravention of Section 308 of the 1999 Constitution, which grants immunity to Governors from criminal prosecution. For the avoidance of doubt, this report is not against trial of persons found to have breached the law, however, due process must be strictly adhered to so as to eliminate any colouration of discrimination on ethnic grounds such as the instant case where a particular Governor has been singled out for an offence his colleagues are also guilty of.

Given the above, the immunity clause in the 1999 Constitution⁵⁴ negates the Code of Conduct Bureau in so far as certain public officers like the President and his Vice, the Governors and their Deputies were found to have contravened the provisions of the Code of Conduct Bureau, but cannot be prosecuted while in office. For instance Governor Chimaroke Nnamani of Enugu State is alleged to have killed Sunday Ugwu, elder brother of Hon. Nwabueze Ugwu, former member of the Enugu House of Assembly. Up until now he has not been prosecuted. He is also accused of corruption. He has also not been prosecuted by the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC). He did not declare his assets before assuming public office and he has not published any audited account of the State Government. He also owns a lot of private assets after assuming office. For example he owns RAINBOWNET, a telecommunication outfit, COSMO Radio and Television and Automobile Company along Station Road, Enugu. He also has an International College called MEAMATTER Elizabeth International College at Agbani his home town. He also owns a construction company that handles all the construction work of the Enugu State government under his administration. He also built a multi billionaire edifice in his hometown, Agbani whereas he had no such property in his community before assuming office.

⁵² Ibid para 11(3)

⁵³ An example is Tafa Balogun the former Inspector General of Police

⁵⁴ See Section 308 of the Constitution

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

Two Senators, Senators Jonathan Zwingwina and Senator Ibrahim Mantu in 2003 demanded ₦54 million bribe from Alhaji El-Rufai before the Senate could clear him as a Minister nominee. El-Rufai was invited by the Senators to clear the allegations and he did. Up until now none of the Senators has been tried. Also the ₦300 billion-contract fraud alleged against the former Minister for Works, Chief Anthony Anenih was also swept under the carpet. Instead of investigating the crime, he was appointed the acting Chairman of the Peoples' Democratic Party (PDP) Board of Trustees⁵⁵. The same scandal is also hanging on the neck of the current Minister for Works, Chief Ogunlewe. He is being accused of having embezzled over ₦300million set aside for the rehabilitation of roads in South Eastern Nigeria. The road was not rehabilitated and he has also not been prosecuted.

From the foregoing, it is clear that the Bureau is quick to harass low-level public officials whilst high ranking officials are hardly queried, harassed or prosecuted by the Code of Conduct Bureau except where such officials fall out of favour with the powers that be. The impression is that the Bureau exists solely for the purpose of bringing the poor to book or punishing the poor.

The Law Reform Commission

The Nigerian Law Reform Commission Act establishes the Nigerian Law Reform Commission. It is an Act set up to undertake the progressive development and reform of substantive and procedural law applicable in Nigeria by way of codification, elimination of anomalous or obsolete laws and general simplifications of the law in accordance with general directions issued by the Government from time to time⁵⁶. Unfortunately, the Commission is grossly under funded and this impacts negatively on its service delivery. Thus the Commission can be best described as a lame duck law reform commission. Our statute books such as the Criminal Code and Criminal Procedure Act applicable in the Southern Nigeria, The Penal Code and Criminal Procedure Code applicable in Northern Nigeria, largely inherited from the British colonial masters at independence in 1960 have not undergone any reform since then despite advancement in international human rights law which ought to change the landscape of some of these laws. At best the laws aid human rights violations as they remain in our statute books.

The Independent Corrupt Practice and others Offences Commission (ICPC)

⁵⁵ PDP is the ruling party

⁵⁶ Cap. N118 Laws of the Federation of Nigeria, 2004

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

The ICPC like the Economic and Financial Crimes Commission (EFCC) was set up by the Federal Government as part of the efforts of the civilian regime of President Olusegun Obasanjo to combat corruption and money laundering respectively in Nigeria. ICPC is not yet operational. More specifically, the EFCC is now being used to witch hunt perceived political opponents for instance it helped President Obasanjo in checkmating the Governors and National Assembly members in giving blind support to arbitrary government policies in return for not being exposed. A good example is the former governor of Kogi State.

The seriousness of the intentions of government setting up the EFCC was seriously questioned when Mrs Nenadi Usman failed to publish names of the governors whom she claimed proceed on overseas trips after collecting their state revenue allocations. The refusal to publish the names of affected state governors despite repeated challenge from CSO testify to the fact that the EFCC is ostensibly used to black mail those governors who fall out of favour with the President. A good example is Governor Dariye and Governor Orji Kalu.

ICPC has been known since its inception to harass and intimidate opponents of the government in power and to prosecute low levels government officials. Since inception not a single high-ranking government official has been convicted on the basis of the ICPC Act.

RECOMMENDATIONS

- Government should pursue a national campaign to sensitize the public regarding the existence of the Legal Aid Council.
- Government should increase the budgetary allocation for the Scheme in order to improve service delivery.
- Reform in the legal framework of the Legal Aid Act to expand the scope of the legal aid scheme to include civil actions and other criminal matters where accused persons are unable to afford legal services.
- Decentralization of the offices and activities of the Legal Aid Council to benefit those in the rural areas more so when most lawyers are concentrated in urban centers.

VII. ARTICLE 7: EDUCATION, TEACHING, CULTURE AND INFORMATION

LAWS AND POLICIES

Education

Section 18 of the 1999 Constitution provides for the educational objectives of the State. Section 18(1) states:

“Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

(2) Government shall promote science and technology

(3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide –

(a) free compulsory and universal primary education;

(b) free university education

(c) free adult literacy programme”

Three branches of government administer education. Primary education is under the control of local governments. Secondary schools fall under the jurisdiction of the state governments except for the so-called “Unity Schools” which are administered by the Federal Government. Both the federal and state governments administer higher education. In giving meaning to the educational objectives, the Federal Government launched the Universal Basic Education in 2000 after the failure of the Universal Primary Education (UPE) adopted by the federal government in the 70s. UBE like UPE is aimed at ensuring that every Nigerian gets basic education. Generally the medium of instruction in schools is the local language for the first three years of primary education for all pupils in public schools, thereafter, English⁵⁷ is used⁵⁸ although special status is conferred on the development and study of the languages of the three major ethnic groups in Nigeria such that they form part of the national curriculum and are taught from primary to university education. Furthermore, the three major ethnic languages are given constitutional recognition by virtue of section 55 of the Constitution, which states “The business of the National Assembly shall be conducted in English, and in Hausa, Ibo and Yoruba when adequate arrangements have been made therefore”

REALITY

⁵⁷ English is the official language in Nigeria.

⁵⁸ www.wes.ewenr/04/ept/practical.htm.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

The provision fall under Chapter II of the Constitution. The implication is that they are not justiciable. Education is not free and compulsory at all levels as can be inferred from the provisions of section 18 of the Constitution. There is disparity between schools owned and controlled by the federal government and those owned and controlled by the states and private bodies. In general the federal universities are better funded and more autonomous than the state institutions⁵⁹. Be that as it may the Federal Government has persistently ignored UNESCO recommendation that each country should commit at least twenty –six percent of its annual budget to education. Government cut down the share of education from 11.2% in 1999 to 8.8% in 2000, to 7% in 2001 and to its present 1.83%⁶⁰. This has serious implication to the poor state of educational infrastructure in the minority areas especially the Niger – Delta

The literacy rate is 57%⁶¹. However, this literacy rate is not evenly distributed⁶². Indigenous and Minority groups in the Niger Delta are more disadvantaged due to lack of funding which is more pronounced in the Niger Delta which is even aggravated by damage done to the environment coupled with the pittance that accrue to the state in the form of revenue allocation when compared to the sum that needs to be expended on education for these communities. Bundu Universal Primary Education Model Primary School, Port-Harcourt⁶³ in the Niger Delta is a clear metaphor for the ramshackle state of primary education in Nigeria.. Many of the classrooms have no roofs at all and many more had badly damaged roofs with gaping holes open to the sky and the elements. The teachers have no staff room and the headmistress made her office in the corner of a classroom. The roofs are so badly damaged that the teaching schedule was determined by the weather. Said Mrs Marino Oporikomo, assistant head teacher, “Its just twelve noon but we’ve closed for the day because its about to rain.”Another teacher confirmed her words “if it starts raining, we send classes one to three home and teach only four to six. We cannot do any effective teaching here.”⁶⁴ The concern shown by the federal government to the educational aspiration of the people of Niger Delta could be taken as deliberate, being a ploy to perpetually subjugate that region to under development bearing in mind that education will only liberate the people

⁵⁹ ibid

⁶⁰ Ibid

⁶¹ ibid

⁶² Naanen, Ben (2003): Progress of the Ogoni People in Nigeria towards the attainment of the International Development Targets n(IDTs) for poverty, education and health.

⁶³ See Clear and Present Danger: The State of Human Rights and Governance Year 2004: A Publication of the Civil Liberties Organisation, 2005 p. 270

⁶⁴ Ibid

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

the more and facilitate their demand for fair share of the revenue that accrue from oil. This is against the backdrop that the federal government is committing much attention and money to nomadic education in the north whilst nothing is being done for migrant fishermen of communities that produce the nation’s oil wealth. The Special Education Programme for migrant fishermen is barely non-existent in practice. There are no policies on ground to development and study of ethnic minority languages in schools like the major ethnic languages. Consequently, there is problem with devising instructional material in these ethnic minority languages⁶⁵. This is discriminatory.

Another great obstacle to combating racial discrimination through education is poor staffing and discriminatory school fees. In Zamfara State, while tuition remained free for children of Zamfara state indigenes in secondary schools, children of non-indigenes were to pay a flat rate of twenty five thousand naira per term. Furthermore, a directive to school heads required female primary school pupils to pay ten thousand naira per term, This is twice the five thousand naira per term their male counterparts were to pay. The practical effects in the immediate would be to heighten ethno-religious antagonism in the state, while their effects in the next ten to twenty years would be to widen the educational and social gaps between men and women and between the upper and lower classes.

The quota system

The federal government adopts the quota system for admission into all its universities⁶⁶ Student placement is shared thus 45% on merit, 35% for applicants for the area where the institution is situated, 20% for educationally disadvantaged states.

Figure 3: Distribution of Federal Universities, Universities of Agriculture and Federal Universities of Technology According to Ethnic Groupings

Name of groups	Hausa/ Fulani/ kanuri	Yoruba	Igbo	Southern Minorities	Northern Minorities

⁶⁵ www.wes.org/ewenr/04/ept/practical.htm

⁶⁶ See the 1981 National Policy on Education which was revised in 1998

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

No. of Fed. Universities	3	4	2	4	1
No. of Universities of Agriculture		1	1		1
No. of Universities of Technology	2	1	1		1
Total	5	6	4	4	3

Source: Joint Admissions and Matriculation Board Universities Matriculation Examination/Direct Entry Brochure 2003/2004

Figure 4:

Hausa/Fulani/Kanuri 5
 Yoruba 6
 Igbo 4
 Southern Minorities 4
 Northern Minorities 3

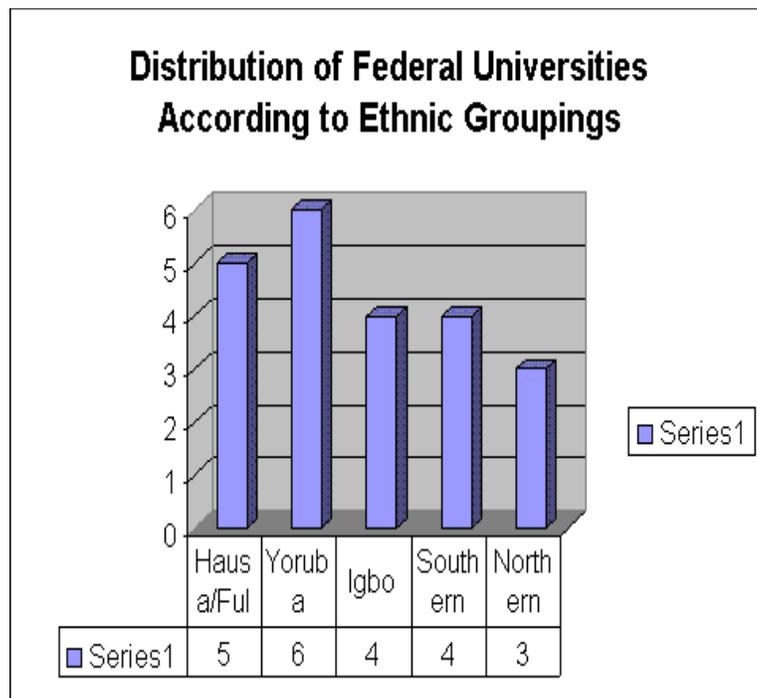


Figure 5:

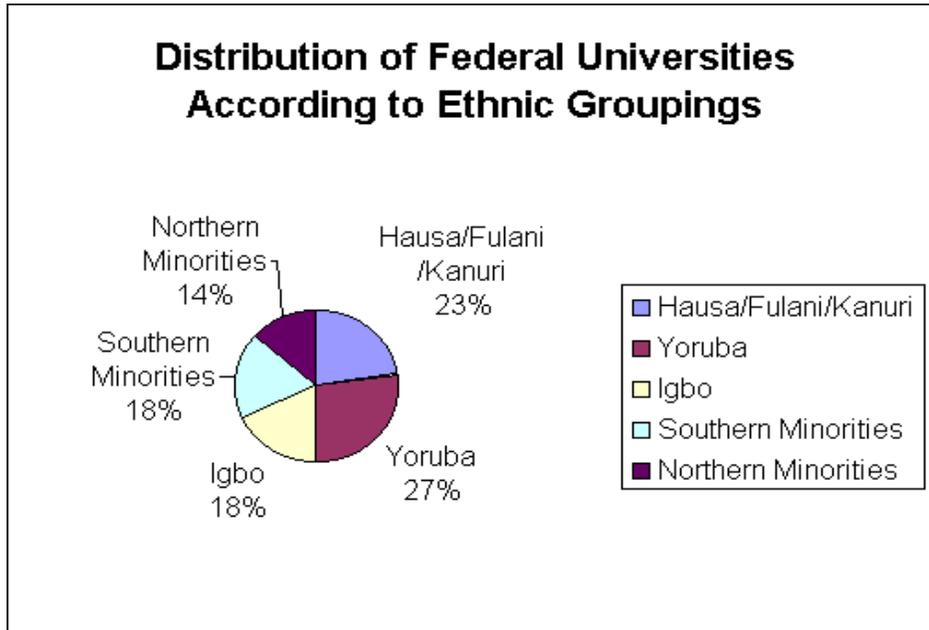
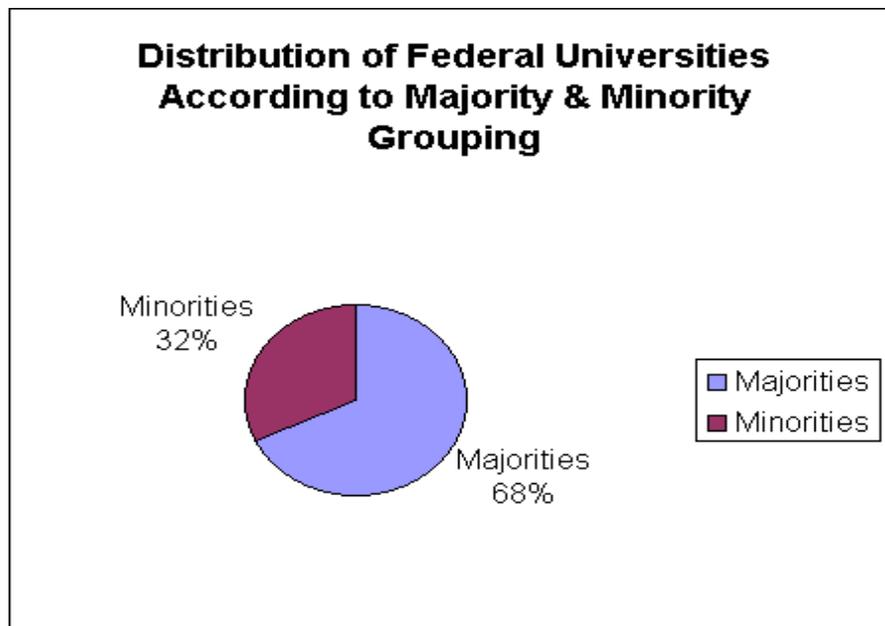


Figure 6:



Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

From the table above 68% of federal universities (15 out of 22) are situated in the three major ethnic groups whilst 32% of federal universities (7 out of 22) are situated in the entire minority groups in Nigeria. This reduces the enrollment of indigenes from minority states that will be admitted on catchment basis to federal universities since they have just 38% of the available universities sited in the minority areas despite. This alone erodes the cohesiveness purpose of adequate educational opportunities stated in the Constitution⁶⁷ and it is discriminatory against the minorities.

Women in these communities bear the brunt more because absence of education reduces their chances of gainful employment, which ought to provide decent, dignifying and meaningful living. The consequence of this is that many of them go into prostitution thereby exposing them to HIV/AIDS and unwanted pregnancy. This facilitates the vicious circle of poverty and under development.

TEACHING, CULTURE AND INFORMATION

LAWS AND POLICIES

Section 21 of the 1990 Constitution States:

“The State shall –

- (a) protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and
- (b) encourage development of technological and scientific studies which enhance cultural values.”

The language of any nation or people remains part of their cultural heritage. Unfortunately the federal government’s language policy discriminates against ethnic languages. It only has a programme to preserve the major ethnic languages. To this end, the country’s language curriculum recognizes the study and development of the three major ethnic languages from primary to university level. Students are encouraged to learn one of the major languages other than his won mother tongue⁶⁸. Other languages are not developed. This National Policy on Education stipulates that the initial language in primary schools must be the mother tongue of the child, or the language of the

⁶⁷ Section 18(1)

⁶⁸ The three major languages that the government recognizes are Hausa, Igbo and Yoruba.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

immediate community. The official language, English was to follow later⁶⁹. These major languages are also taught and used on the national television and the three languages also benefit from state sponsored language development. This is disturbing because information is knowledge and knowledge is power and the end could be disastrous for any group of persons that are not in possession of vital knowledge.

What is more, section 55 of the Constitution makes provision for the business of the National Assembly to be conducted in English and in future for the three major languages without making a similar provision for minority languages. This provision appears to give constitutional superiority to these three major languages and it is discriminatory. This is capable of hindering the fundamental freedoms of persons from the ethnic minority groups and in terms of gender representation given that the Niger Delta women for instance are already disadvantaged by inequitable distribution of basic amenities such as schools and development that should attract capable human resources. In the final analysis the combined effect of the nation's language curriculum, section 55 of the constitution will constantly work against the realization of section 21 of the constitution because language is part of the culture of every human being. It is an identity, which enhances the well being of every person. Failure to develop one language at the expense of the other is inimical to the realization of section 21 of the Constitution in particular and Chapter II of the Constitution. Until every language is taught and preserved in Nigeria realization of section 21(b) of the Constitution may never be possible.

RECOMMENDATIONS.

- Government should make the right to education and health justiciable.
- Government should make education free at all levels in all its ramifications for rural dwellers.
- Government should adhere strictly to the UNESCO recommendation regarding the budgetary allocation to education.
- Government should actively pursue national cohesion through multi cultural and integrative education.
- Government should pursue a national policy for the development and promotion of all ethnic languages in Nigeria.

⁶⁹ Mustapha Abdul: Ethnic Minority Groups in Nigeria: Current Situation and Major Problems. Working Paper for the UN Working Group on Minorities; Office of the High Commissioner for Human Rights, Geneva, January 2003.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

CONCLUSION

If persons are to enjoy the provisions of the convention there is urgent need for Nigeria to domesticate the Convention on Elimination of Racial Discrimination and other human rights instruments she has ratified but yet to be domesticated since Nigeria is a dualist country. Although there is a draft bill on Anti Discrimination, the draft bill did not reflect the definition of racial discrimination as stated in the Convention. The freedom from discrimination provision in the Constitution is also not broad and expansive enough. It is, therefore, important that CERD appeals to the Nigerian government to ensure its laws comply with international instruments that protect eliminate racial discrimination.

Persistent conflicts in Nigeria are a threat to world peace. Most of the conflicts in Nigeria are by products of discriminatory practices that the government has deliberately condoned or encouraged in order to favour or dis-favour a particular group. The sign posts of conflicts are always ominous, government should, therefore, embark on conflict prevention rather than conflict resolution and particularly address the root causes of conflict from the minorities' perspectives and take advantage of early warning systems in order to prevent conflict in Nigeria in general and in the volatile Niger Delta region. CERD should therefore urge the Nigerian government to investigate and make public the findings of all ethnic conflicts and institute a body that will also include civil society organizations to ensure the implementation of the recommendations of the panel of investigation.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

RECOMMENDATIONS

CLO make the following recommendations to the authorities of Nigeria:

Article 1 of ICERD

- The National Assembly Joint Committee on the Constitution, set up to review the Constitution, should adopt a definition of non discrimination that will include every person resident in Nigeria. This will adequately take care of citizens and non-citizens resident in Nigeria.
- The Scope of the Anti Discrimination Bill should be extended to foreigners.
- Government should revisit the Osu Caste System.

Article 2

- Constitutional review should include amendment of its discriminatory provisions on citizenship.

Article 3

- There should be a Niger-Delta territory that will have a Minister that will sit in the National Executive Council (NEC) to represent the interest of the people of the Niger-Delta.
- The Federal Government should ask Shell Petroleum Development Corporation to revive the Niger-Delta Environmental Survey, which they sponsored, enumerates the development of the physical structure of the area.
- The Federal Government, State governments in the Niger-Delta region and oil companies should empower the State Education Ministries so that the youths can be educationally empowered.
- The Federal Government should disclose its earnings from oil.
- The Federal should publish the release of funds to the States to make the Governors more accountable to the people.

Article 4

- The consultation and negotiation should be broad based even to the least Ogoni person and not selective. This is informed by the fact that the key problem of implementing policies in Ogoni is that it has always been selective.
- The process should not be shrouded in secrecy.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

- There should be a balanced recognition of all parties/factions. The Rivers State government should give a fair balanced recognition to all groups in Ogoni in according them privileges, benefits and rights from both the National and State governments.

Article 5

- Government should amend the Constitution to make all human rights justiciable especially economic, social and cultural rights.
- The Nigerian government should investigate all ethnic-religious conflicts, bring perpetrators of human rights violations resulting from recent ethnic and religious violence to justice, and compensate victims and their families in accordance with Resolution adopted by the African Commission on Human and Peoples' rights dated 4 June 2004, therefore putting an end to the culture of impunity.
- Government should make public all the reports of previous panels of investigations of ethnic/religious violence and take appropriate disciplinary actions against culprits and restore the confidence of the people in the rule of law.
- National legislation shall be brought into full compliance with the provisions of the Convention, in particular regarding a definition of racial discrimination, prohibition of racist organisations and propaganda activities that promote and incite racial discrimination, the effective enjoyment of the rights set forth in Article 5 of the Convention, and the provision of effective protection and remedies to everyone within the jurisdiction of the State Party against any acts of racial discrimination.
- The Government should establish disaggregated statistics on the ethnic composition of the society.
- Government should make the right to education and health justiciable.
- Government should provide adequate funding for the health sector and ensure equitable distribution of medical and health facilities and personnel..
- Government should make health delivery system available, adequate, accessible and affordable.
- Government should provide free anti retro viral drugs for HIV/AIDS patients.

Article 6

- Government should pursue a national campaign to sensitize the public regarding the existence of the Legal Aid Council.

Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report

- Government should increase the budgetary allocation for the Scheme in order to improve service delivery.
- Reform in the legal framework of the Legal Aid Act to expand the scope of the legal aid scheme to include civil actions and other criminal matters where accused persons are unable to afford legal services.
- Decentralization of the offices and activities of the Legal Aid Council to benefit those in the rural areas more so when most lawyers are concentrated in urban centers.

Article 7

- Government should make the right to education and health justiciable.
- Government should make education free at all levels in all its ramifications for rural dwellers.
- Government should adhere strictly to the UNESCO recommendation regarding the budgetary allocation to education.
- Government should actively pursue national cohesion through multi cultural and integrative education.
- Government should pursue a national policy for the development and promotion of all ethnic languages in Nigeria.