

UNIVERSAL PERIODIC REVIEW OF NIGERIA

OCTOBER 2013

***SUBMISSION BY CIVIL SOCIETY COALITION ON MINORITY PROTECTION,
INDIGENOUS PEOPLES ISSUES AND CHILDREN'S RIGHTS***

INTRODUCTION

The Civil Society Coalition on Minority Protection, Indigenous Peoples Issues and Children's Rights (CS-COMIC) is a Nigeria-based civil society coalition involved in research and advocacy on issues affecting some of the most marginalised and vulnerable groups in the society largely minority communities, Indigenous peoples and Children.

The coalition was established after a three-day training workshop on the UPR organised by the National Human Rights Commission in January 2013 at Enugu, Nigeria. The coalition is comprised of three active organisations working in the areas of Indigenous peoples issues, Minority Rights and Children's Rights namely *The Movement for the Survival of the Ogoni People (MOSOP)*, *African Network for Prevention and Protection Against Child Abuse and Neglect (ANPPCAN)* and *Health for the Society, Justice and Peace Initiative*

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17TH SESSION OF THE UPR WORKING GROUP, OCTOBER 2013

CHILD RIGHTS, INDIGENOUS PEOPLES ISSUES AND MINORITY RIGHTS

1. FOLLOW UP TO THE PREVIOUS REVIEW

Discrimination continues to be a challenge to the attainment of the noble objectives of the UPR in Nigeria. Whilst we note improvements in some areas since the last UPR of Nigeria in 2009, much work still needs to be done on the part of government and other actors responsible for the elimination of discrimination.

Despite the request to Nigeria in 2005 by the CERD to define discrimination along the lines of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), as contained in its observations and recommendations during its review in 2005, and reinforced by the United Kingdom in UPR Recommendation 103.30 where it called for a review of issues surrounding the terms "Indigene/Indigenous", the government has failed to undertake such a review.

CHILDREN'S RIGHTS

The situation of children in Nigeria remains precarious. Whilst the government took the encouraging step on the 27th October 2010 to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in response to UPR recommendation 103.1 made by Brazil, the government has failed to establish a robust mechanism to address the increasing incidence of sale of children, child prostitution and child pornography that had been observed in the country. The government has also failed to ratify the Optional Protocol on the involvement of children in armed conflict, as also recommended by Brazil in the 2009 UPR.

On the issue of enactment of laws against FGM, Nigeria has not taken definitive actions as required by UPR recommendation 103.18 on awareness raising campaigns to eradicate FGM, made by Austria. The coalition notes that at the national level, efforts aimed at promoting the passage of a law against FGM has failed, whilst a considerable number of states in Nigeria, particularly all the states in the Niger Delta, have passed legislation to outlaw the practice of FGM directed at the girl-child. There has been lack of remarkable progress in carrying out awareness-raising campaign against the practice of FGM at all levels of government in the country.

The Holy See had in UPR outcome recommendation 103.17, during the UPR in 2009, requested the Nigeria government to vigorously apply the law that was put in place in Akwa Ibom State concerning the situation of child witches. Unfortunately, this law has not been vigorously applied and the number of prosecutions in respect of violations of the law remains abysmally low.

MINORITY AND INDIGENOUS GROUPS

POLITICAL PARTICIPATION

During the period of review, we note that some progress was made in terms of enhancing the status of some vulnerable groups, such as minorities and Indigenous peoples in the country, as required by UPR recommendation 103.30, made by Germany, relating to taking steps to ensure adequate political participation of ethnic minority groups in the political life of the country.

The Ijaw minority group in the Niger Delta of Nigeria for the first time in the political process was able to produce a democratically elected President of the Nigerian Federation, although the various arms and institutions of government remain heavily unequal in terms of ethnic distribution.

LOSS OF LAND, PROPERTY AND RESOURCES

Whilst some gains were recorded in the area of political participation, the government failed in guaranteeing other aspects of UPR recommendation 103.30. This recommendation had further called on the government to take measures to effectively prevent the loss of land, property and resources of ethnic minority groups. Within the period under review, this was observed more in its violations than in its prevention as proposed. Almost all the states in Nigeria, particularly in the Niger Delta, have been involved in a massive seizure of lands from communities and individuals without proper consultation that meets internationally accepted standards and without adequate compensation.

CONSTITUTIONAL REGULATION OF MINORITY AND INDIGENOUS RIGHTS

In addition, we note that there remains the unaddressed legislative and constitutional gap for the protection of minority groups and indigenous rights by the government, as recommended during the UPR.

UPR recommendation 103.30, proposed by Slovenia, called on the Nigeria government to regulate minority and indigenous rights on the constitutional and legislative level, including the establishment of a National Minorities Commission and the National Policy on the Promotion and Protection of Minority Languages. However, the government has failed to take any action regarding providing a constitutional and legislative protection for minorities and Indigenous peoples. It has also not initiated any policy for the protection of minorities and failed to establish the National Minorities Commission, as recommended.

POVERTY AND SOCIO-ECONOMIC RIGHTS ISSUES

The UPR recommendation 103.30, made by the Netherlands, had called on the government to ensure that the political and socio-economic rights of minority groups in the Niger Delta are improved and that efforts should be carried out to promote effective consultations amongst the various minority groups in the region to address the challenges of poverty in the area.

The coalition notes that there has not been a concerted and coordinated effort by the government to address the growing incidence of poverty amongst the various minority and indigenous communities in the Niger Delta region which has given rise to the poor enjoyment of economic, social and cultural rights by these peoples. The unemployment level in the Niger Delta remains one of the highest in the country despite the region's enormous wealth and has been the real incubator of militancy in the region. The infrastructural development in the region remains poor, particularly the non-completion of the East-West Road, a critical infrastructure which have the capability to jump-start the economic revival of the region.

2. THE NATIONAL HUMAN RIGHTS FRAMEWORK

Nigeria has made some progress in the development of its national human rights framework, particularly in the area of children rights.

CHILDREN'S RIGHTS

CONSTITUTIONAL OBLIGATIONS

The Nigeria Constitution in Section 15 prohibits discrimination on all grounds including status.

The government has also passed various laws such as:

The Child Rights Act 2003 including its version passed in some states of the Federation.

The Children and Young Persons Law

The Universal Basic Education (UBE) Law

The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Act 2003 amended in 2005

INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Nigeria has also ratified several international human rights instruments relating to rights of the child. These include:

Convention on the Rights of the Child

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

African Charter on Human and Peoples' Rights

The African Charter on the Rights and Welfare of the Child

NATIONAL PROGRAMMES AND POLICIES ON THE CHILD

There exists in Nigeria several programmes and policies directed at promoting children's rights. Some of these include:

National Policy on Education

National Programme of Action for Nigerian Children

Child Rights Information Bureau

The Nigeria Children's Parliament

The National Youth Service Corps

The National Human Rights Commission and its Special Rapporteur on Children's Rights

GAPS IN CHILD RIGHTS DOMESTIC AND INTERNATIONAL LEGISLATIONS/POLICIES

Whilst the Nigeria Constitution in Section 15 prohibits discrimination on all grounds including status, its failure to specifically address the issue of children has created some gaps that are exploited by some states and non-state actors against children.

The poor implementation of the existing laws relating to Children's rights has exacerbated the situation of children in the country. The coalition notes that there has not been any serious prosecution of culprits involved in Female Genital Mutilations and the stigmatization of children as child witches even though laws against the practice exist in most states of the Federation.

The institutions for child offenders are not adequately provided in the country. At present, the three borstal training institutions in the country are grossly inadequate considering the size of the country.

On the international front, Nigeria has not ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as recommended by the UPR recommendation 103.1, made by Brazil.

The government has failed to invite the Special Rapporteur on Trafficking of Persons, especially in Women and Children, and the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography to visit the country, as recommended by the Committee on the Rights of the Child since 2010.

Until recently, the National Human Rights Commission was not very effective in addressing violations of children's rights largely resulting from the fact that it was poorly resourced and had weak institutional capacity.

MINORITY AND INDIGENOUS RIGHTS

CONSTITUTIONAL OBLIGATIONS AND DOMESTIC LEGISLATIONS

The 1999 Nigeria Constitution in Section 15 prohibits discrimination on all grounds including ethnicity. However, the proposition in the same Constitution in Section 55 that the *business of the National Assembly shall be conducted in English and in Hausa, Ibo and Yoruba when adequate arrangements have been made therefore* is manifestly discriminatory and amounts to reification of some languages above others.

Section 153.1 of the 1999 Constitution emphasises the Federal Character Principle. However, the Federal Character Principle has not served well to address the issues of marginalisation of Minorities and Indigenous peoples because this Principle is based on the logic of state quota in the distribution of federal appointments which still tip the balance in favour of the majority ethnic nationalities which have a multiplicity of states created for them.

INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Nigeria has adopted/signed/ratified several international human rights instruments relating to protection of Minorities and indigenous peoples. These include:

United Nations Declaration on the Rights of Minorities (UNDM)
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
Convention on the Rights of the Child
The Convention on the Prevention of Genocide
International Covenant on Civil and Political Rights
International Covenant on Economic, Social and Cultural Rights
African Charter on Human and Peoples' Rights

NATIONAL PROGRAMMES AND POLICIES ON MINORITIES AND INDIGENOUS PEOPLES

There is presently no clear programme or special measures in the country directed specifically at protecting the rights of minorities and Indigenous peoples. In fact, some of the existing policies and programmes reinforce the discrimination against minority and indigenous communities. These policies and programmes include:

The National Policy on Education highlights that *apart from preserving the peoples' culture, the Government considers it to be in the interest of national unity that each child should be encouraged to learn one of the three*

majority languages other than his own mother tongue. The government considers the three major languages in Nigeria to be Hausa, Igbo and Yoruba.

The National Programme of Action for Nigerian Children does not address the disproportionate fate that has befallen minority and Indigenous children in different parts of the country as a result of the disproportionate distribution of educational facilities like universities and other tertiary institutions in the country.

Whilst we applaud the strengthening of the National Human Rights Commission with the passage of the National Human Rights Commission Amendment Act of 2011, the Commission is presently weak in respect of the protection of minority and Indigenous peoples' rights. The Commission has failed to identify minority and indigenous peoples as "vulnerable groups" to be given necessary attention in its programme of work as is the case with women and children.

The country's fiscal and revenue allocation policy is one area where the marginalisation of minorities and Indigenous Peoples has been systematic and poignant. From 1954, the principal criterion for the allocation of revenue to the regions was the principle of derivation. Under this principle, regions were entitled to 50% of revenue collected from their territories.

However, from the 1970s when crude oil, found in the minority and Indigenous territories of the Niger Delta, gradually replaced agricultural produce as the main sources of government revenue, the fiscal policy changed. In 1971, states in the Niger Delta and other littoral states lost their right to 45 percent of the revenue from offshore oil operations. Gradually, the government has abandoned the principle of derivation which had been a mainstay of regional fiscal autonomy. Derivation, as a principle of revenue allocation, has declined from 50 percent in 1969, to 2 percent in 1981, and to 1 percent in 1989. Following agitations in the Niger Delta region in the 1990s, this was increased to 3 percent in 1992 and 13 percent in 2000 which still applies till date

In respect of international instruments, Nigeria remains one of two African countries that abstained from voting for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the United Nations General Assembly in September 2007.

The CERD had in 2005 recommended to the Nigeria government to sign and ratify the ILO Convention 169 relating to Indigenous Peoples. This, the government has not done till date.

In 2010, the Committee on the Rights of the Child urged the Nigerian government to conduct a study analysis in order to respond adequately to the needs of children of minority and indigenous communities, particularly the Ogoni community, and to ensure that children of minority groups be given equal access to education and equal chances to develop qualifications through the introduction of appropriate and adequate curricula which recognises their right to use and receive education in their own language. This has not been done.

The government has refused the request of the Independent Expert on Minority Issues to visit the country contrary to its pledge and voluntary commitments to the Human Rights Council on the occasion of its bids for election to the United Nations Human Rights Council in 2006 and 2009. It has also not invited the Special Rapporteur on Indigenous Peoples to visit the country.

3. THE HUMAN RIGHTS SITUATION ON THE GROUND

Current Situation of Children in Nigeria

Addressing the issue of children in Nigeria is still a daunting challenge. Research¹ has indicated that within the reporting period, many cartels involved in the sale of children have been discovered, particularly in Enugu, Imo, Abia, Rivers and Akwa Ibom States. On November 28, 2012, the Police arrested two prophetesses by name Mrs. Loreta Emmanuel and Sylva in Aba, Abia State. The both of them hailed from Owerri in Imo State. They were arrested on charges of stealing and selling a day-old baby girl, the child of one Ms. Grace, from Abiriba in Ohafia Local Government Area of Abia State.²

In the same vein, on 9th June 2008, Mrs. Bene Aguocha was arrested by officials of the Nigeria Security and Civil Defence Corps (NSCDC) at the Holy Ghost Park in Enugu, the capital of Enugu State of Nigeria with a day-old baby bound for Lagos. Upon interrogation, Mrs. Aguocha confessed that she bought the baby from one Dr. Kenneth Akunne, who operated a maternity home at 3-6, Anyaegbunam Street, Uwani, Enugu.

Similarly, the cases of child trafficking are also reported to have been on the increase within the reporting period. In a recent study³ conducted in Lagos, Calabar, Uyo and Port Harcourt, it was found that 42% of children involved in street hawking were actually trafficked children.

Reports⁴ have also shown that following the economic crisis and unchanging cultural attitudes, most families, particularly low-income families, are exposing their children to abuse through street hawking, child labour and physical violence.

Within the period, there have been reports⁵ of witchcraft stigmatization of children in many states, particularly Akwa Ibom, Bayelsa and Edo States. In Akwa Ibom State, three members of a family from the village of Abiakelibi were banished from the community on wrongful accusations of witchcraft in March 2009. Amongst the three family members were two children namely, Etim Asuquo, 12, and Lucy Asuquo, 11. The children were accused of killing their mother through witchcraft.

CURRENT SITUATION WITH MINORITIES AND INDIGENOUS PEOPLES

Minorities and Indigenous Peoples in Nigeria continue to face issues of political marginalisation, economic strangulation and environmental degradation.

Indigenous peoples and minority groups also face non-recognition by the Constitution and there has been no constitutional and legislative arrangements made to regulate this as required by UPR Outcome Recommendation 103.30 made to Nigeria 2009 Slovenia. The present constitutional review process has also refused to take this on board.

Whilst some gains have been recorded in the political arena with the election of a minority person as the President of the country in 2011, the fact that most institutions and structures of government are in the hands of

¹ Martha Agbani: *A Review of Incidences of Sales of Children in South-South of Nigeria* December 2012

² *Daily Sun Newspaper*, November 29, 2012

³ Prof. Peter O. Ebigbo, Ph.D, *Child Trafficking in Nigerian Southern Border Towns: The Nigeria Child Rights Monitor Vol 1 No. 3* page 60

⁴ Prof. Peter O. Ebigbo, Ph.D, *Street Children : The Core of Child Abuse and Neglect in Nigeria: The Nigeria Child Rights Monitor Vol 1 No. 3* pages 10-15

⁵ See *Stepping Stones Nigeria et al: Report on Accusations of Witchcraft Against Children in Akwa Ibom State, Nigeria* December 2012: <http://www.experts.com/content/articles/gfoxcroft1-Accusations-Witchcraft-Against-Children.pdf>

the majority groups have not conduced to the effective functioning of the President.

The Niger Delta as one of the hotbeds of minority agitations is still ravaged by poverty and politics without accountability that is replicated across board in the region and leading to violence which has led to some degree of insecurity in the region.

This has led to a situation where the Niger Delta had become one of the areas with the highest rate of extrajudicial executions by security outfits such as the Joint Task Forces, established in all the states of the Niger Delta and implicated in several cases of extrajudicial killings.

Despite several efforts, the lack of critical infrastructure in the region and the absence of region-wide economic stimulation programmes have contributed to accentuate the sense of despair and hopelessness in the region.

In 2011, the United Nations Environment Programme (UNEP) released its report on the Environmental Study of Ogoniland which acknowledged large-scale despoliation of the Ogoni environment. This report presents a graphic picture of the situation in the rest of the Niger Delta.

4. RECOMMENDATIONS FOR ACTION BY NIGERIA

In recognition of the foregoing, our coalition urges the Nigeria government to:

On Child Rights Issues

- (a) Create a national agency for the protection of children's rights which will be saddled with the coordination and monitoring of the implementation of best practices and policies in relation to children's rights in the country.
- (b) Make accusations against children of witchcraft and the commission of FGM at all levels a criminal offence for prosecution.
- (c) Establish family courts in all states and ensure that they are provided with adequate staffing and financial resources.
- (d) Strengthen the juvenile criminal justice system as it relates to the rehabilitation and training of child offenders through the creation of more well-equipped borstal centres
- (e) Strengthen the investigative capacity of NAPITIP for the prosecution of those involved in sale and trafficking of children through training.
- (f) Make education at the Primary and Secondary levels free for all Nigeria children.
- (g) Ensure the inclusion of the Child Rights Act in the concurrent legislative list as part of the constitutional review process.

On Minority and Indigenous Peoples Issues

- (a) Ratify ILO Convention 169 as recommended by CERD in 2005 and adopt the United Nations Declaration on the Rights of Indigenous Peoples of 2007
- (b) Make constitutional and legislative provisions for the recognition and protection of the rights of minorities and indigenous peoples.
- (c) Stop the ongoing incidents of land grabbing in minority and Indigenous peoples' territories.
- (d) Take special measures for the establishment of deliberate programmes and mechanisms aimed at the economic empowerment and effective participation of Indigenous peoples and minorities of the Niger Delta in the economic and political life of the country.
- (e) Establish the National Commission on Minorities and Indigenous Peoples and the National Policy on Minority and Indigenous languages, as recommended to Nigeria during its 2009 UPR.
- (f) Review and amend the current revenue allocation formula on the Principle of Derivation from 13% to 25% as was recommended to the government of Nigeria by the Niger Delta Technical Committee in its report in 2008.
- (g) Review aspects of the Constitution that reinforce discrimination against minority and Indigenous peoples, particularly sections of 55 and 253.1 of the Constitution.
- (h) Bring to justice all security officers involved in the various incidences of extrajudicial killings in the Niger Delta.
- (i) Carry out the full implementation of the UNEP report in regard to the clean-up of Ogoniland.