

Advance unedited version

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Human Rights Committee**Draft list of issues in absence of the second periodic report of Nigeria*****Constitutional and legal framework within which the Covenant is implemented (art.2)**

1. With reference to section 12 of the Constitution, please clarify the status of the Covenant in the domestic legal system and in particular, whether its provisions can be invoked directly before the courts. Provide information on the practical application of the provisions of the Covenant in the domestic legal system, including examples of cases in which the provisions of the Covenant have been referred to by national courts. With reference to the federal structure of the State party, provide information on the measures taken to ensure that both federal and state legislations are in line with the Covenant. Provide information on measures to ensure that the different legal systems (Islamic Law, Common Law, Customary law) comply with Covenant. Provide information on the availability and accessibility of remedies for individuals claiming violations of the rights contained in the Covenant and the Constitution. Specify the measures taken to ensure that information on the Covenant is disseminated among judges, lawyers, prosecutors, law enforcement officials and the public.
2. Please provide information on the National Human Rights Commission and specify the process of selection, appointment and dismissal of its members, its powers, staffing levels, offices outside of the States' capital, budget and the actions it has already undertaken to protect Covenant rights. Provide information on other State human rights institutions and specify the measures to ensure that they have sufficient financial and human resources to carry out their missions.

The fight against corruption and natural resources management (arts. 1, 2 and 25)

3. Please provide information on the anti-corruption legal framework, on measures to ensure its enforcement and on any other measures aimed at combating corruption that weakens the rule of law and leads to violations of provisions of the Covenant. Specify all measures to ensure transparent natural resources and in particular oil management in compliance with art. 1 para. 2 of the Covenant.

State of emergency and counter-terrorism measures (arts. 2, 4, 7, 9 and 14)

4. With reference to article 305 of the Constitution, please: (a) provide information on the legal frameworks governing states of emergency; (b) report on the conformity of such existing regulations with article 4 of the Covenant; and (c) clarify whether derogations from non-derogable provisions of the Covenant during states of emergency are explicitly prohibited. With reference to the state of emergency declared in May 2013 in the States of Adamawa, Borno and Yobe, comment on allegations that security forces have committed serious human rights violations during the state of emergency in the northeast of the country in the context of counter-terrorism measures against Boko Haram, including extra-judicial executions, enforced disappearances and arbitrary detentions. Provide information on

* Adopted by the Committee at its 124th session (8 October-2 November 2018).

measures taken to investigate and ensure non-repetition of such violations. With reference to the Terrorism Prevention Act of 2011, provide further information on the counter-terrorism legal frameworks, including the definition of terrorism and terrorist activities and the legal safeguards for persons suspected of or charged with terrorist activities or related crimes.

Non-discrimination (arts. 2, 3, 7, 9, 17 and 26)

5. Please provide information on the national legal framework regarding discrimination. In addition to the Constitutional provisions on discrimination, please indicate whether specific laws or other measures that deal with discrimination exist in the domestic system and if so please provide details. Please clarify whether domestic law: (a) provides a definition of discrimination that includes a comprehensive list of prohibited grounds of discrimination including race, colour, property, birth, sexual orientation, gender identity, language, health, social and other status; (b) covers direct, indirect and intersecting forms of discrimination; and (c) provides for effective judicial and administrative remedies. Describe the measures taken to combat and prevent acts of discrimination, stigmatization and violence specifically against: (a) persons with albinism; (b) persons affected by leprosy; (c) single mothers and children born out of wedlock; (d) persons belonging to minorities, in particular Hausa, Igbo and Yoruba; (e) persons with disabilities, in particular women with disabilities; and (f) LGBT persons. With regard to the last issue, indicate whether the State party intends to revise: (a) article 214 of its Criminal Code, which criminalizes sexual acts between persons of the same sex and provide for up to 14 years of imprisonment and assimilates such acts with bestiality; and (b) the 2014 Same Sex Marriage (Prohibition) Act that prohibits a marriage contract or civil union between persons of the same sex. Comment on allegations that since the adoption of the Same Sex Marriage (Prohibition) Act, LGBT persons have been subject to increased harassment, threats and mob violence. Comment on allegations on torture, sexual violence, arbitrary detention and extortion committed by law enforcement agents on LGBT persons, based on their perceived sexual orientation or gender identity.

Gender equality (arts. 2, 3, 14, 25 and 26)

6. Please provide information on the status and progress in the adoption of the Gender and Equal Opportunities Bill. Report on measures to enhance the representation of women in political and public life, including senior leadership and decision-making positions. Provide information on measures to address women's access to justice, education and employment, land and property rights. With reference to the work of the Nigerian Law Reform Commission, provide information on the measures aiming at reviewing discriminatory provisions against women, in particular with regard to: (a) the transmission of nationality; and (b) polygamy, repudiation, adultery and inheritance rights in the States that apply Sharia law.

Violence against women and harmful practices (arts. 2, 3, 7 and 26)

7. With reference to the 2015 Violence Against Persons (Prohibition) Act, please provide information on measures aimed at ensuring its full implementation in all states of the State party and the level of knowledge and understanding of the Act among members of the judiciary, the police and general public. Please comment on allegations of sexual violence against women and girls, and provide information on the measures to eradicate impunity for sexual violence, in particular those measures intended to: (a) do away with taboos and women's fear of being stigmatized and encourage victims to file complaints; (b) provide the police, hospital staff and legal professionals with training on issues related to sexual violence; and (c) assist women victims of violence, in particular by establishing shelters and care facilities. Please report on measures throughout the State party taken to address, prohibit and eliminate female genital mutilation, early marriage and other harmful traditional practices. Please provide information on the number of complaints, prosecutions, and convictions handed down for those practicing female genital mutilation.

Maternal mortality, reproductive rights and termination of pregnancy (arts. 2, 3, 6 and 7)

8. In view of the high maternal mortality and teenage pregnancy rates, please provide updated statistical data on maternal and infant mortality. Describe efforts to ensure access to safe and affordable contraceptive methods, as well as to prevent teen pregnancies. Provide information on measures taken to improve access to health services for pregnant women and respond to allegations that some women seeking maternal health services are detained in hospitals post-delivery or denied access to services for failure to pay bill. Indicate the estimated number of clandestine termination of pregnancies per year and indicate whether the State party intends to amend its legislation in order to ensure safe and legal access to abortion where carrying the pregnancy to term could cause the pregnant woman or girl substantial harm or suffering, especially in cases where the pregnancy is the result of rape or incest or when it is non-viable.

Death penalty (arts. 6, 7 and 14)

9. Please indicate the crimes which remain subject to the death penalty, also under Sharia law, and provide information on: (a) steps to ensure that the death penalty, if imposed, is imposed only for the “most serious crimes” as specified in article 6 (2) of the Covenant, meaning acts of intentional killing; (b) the methods of execution (is it correct that stoning is still used?); (c) laws imposing mandatory death sentences; and (d) measures to enforce the prohibition of capital punishment for persons who were under the age of 18 when they committed capital offences in all states. Please comment on the allegation that there are currently more than 2 000 people on death row. Indicate the number of persons who in the reporting cycle: (a) have been executed; (b) have been granted pardon; and (c) have been afforded protection under the Vienna Convention on Consular Relations when being sentenced to death abroad. Provide information on measures in place to review death sentences pronounced in violation of the right to a fair trial, in particular where forced confessions were used. Indicate whether steps have been taken towards establishing an official moratorium with a view to abolishing the death penalty and ratifying the Second Optional Protocol to the Covenant, as recommended by the National Study Group on the Death Penalty.

Excessive use of force by law enforcement agents (arts. 6, 7, 9 and 14)

10. Please identify and describe the legal standards under domestic law on the appropriate use of force and firearms by law enforcement and security forces, during arrest, demonstrations, in custody, in anti-terrorism or anti poaching operations, and under any other circumstances where force may be used. Please comment on whether laws on the use of force are in conformity with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990. Please comment in particular on the compliance of the Criminal Procedure Act of 1945, the Criminal Procedure Code 1960, the Administration of Criminal Justice Act of 2015 and Police Order 237 with the Basic Principles. Comment on allegations of brutality among law enforcement agents and of excessive use of force against demonstrators leading to deaths and report particularly on: (a) allegations on the killing of more than 150 members and supporters of the Indigenous People of Biafra (IPOB), during the Operation Python Dance, at the occasion of non-violent gatherings between August 2015 and November 2016; and (b) allegations on the killing of 350 supporters of the Islamic Movement of Nigeria in response to their blockage of roads blocking the passage of military convoy in December 2015. Provide information on: (a) measures taken to investigate, to ensure prosecution and adequate punishment ; and (b) on reparation granted to victims. Provide further information on any measure to ensure the law enforcement agents’ compliance with human rights obligations, to fight impunity and ensure the accountability of all law enforcement agents.

Intercommunal and ethnic based violence (arts. 3, 6, 7, 17, 24 and 26)

11. In view of the longstanding conflict between nomadic cattle herders, in particular the Fulani herders and associated militia, and farmers, notably in the middle belt region, leading to thousands of deaths and displaced persons, please provide information on measures taken

to: (a) ensure safety and security in the region; (b) to investigate, prosecute, adequately condemn those responsible and ensure the end of impunity for perpetrators; and (c) provide victims, in particular women and children, with safe shelters infrastructures. Provide information on the number of investigations, prosecutions and convictions, and information on the sentences and reparations awarded to victims. Respond to allegations that the responsible authorities have received advance warnings of upcoming attacks without taking effective preventive action. Respond to allegations of excessive use of force by the Nigerian air force, sending fire rockets at villages in order to counter spiralling communal violence leading to the death of at least 35 persons and the destruction of at least 3 000 homes.

Conflict with Boko Haram and civilian protection (arts. 2, 3, 6, 7, 8, 9 and 24)

12. In view of the violence and widespread human rights abuses committed by Boko Haram since 2009 in large parts of north-east of the State party, please provide information on measures aiming at strengthening and extending the protection of the civilian population, in particular from: (a) executions and abductions; (b) torture and other cruel, inhuman or degrading treatment; (c) rape and other forms of sexual violence; (d) use of children in hostilities; and (e) indiscriminate attacks against civilian and protected objects. Provide further information on measures to: (a) rescue all of the “Chibok girls” kidnapped in 2014 and all persons abducted by Boko Haram, including the oil workers abducted in Magumeri in July 2017; (b) ensure that abducted and released persons are not assimilated to Boko Haram fighters and charged with terrorism offences; (c) assist and rehabilitate abductees, in particular survivors of sexual violence perpetrated by terrorist groups; and (d) ensure that survivors of sexual violence are not stigmatized. Indicate all measures to: (a) ensure that all perpetrators of violations of human rights and international humanitarian law are held accountable; and (b) provide victims with appropriate and effective remedies. Please respond to allegations that security forces do not consistently deploy in cases where civilians came under attack by Boko Haram.

13. Please indicate all measures to ensure that the Nigerian security forces and the Civilian Joint Task Force’ activities are in compliance with the Covenant. Respond to allegations that in the course of security operations against Boko Haram, military forces have committed large scale, serious human rights violations, including: (a) indiscriminate attacks causing civilian casualties; (b) extrajudicial killings; (c) enforced disappearances; (d) arbitrary arrests; (e) acts of torture; (f) deaths in detention; and (g) rape and sexual violence. Provide information on: (a) measures of investigations in order to identify individual and command responsibility for these violations; (b) measures of prosecutions and the number, names and ranks of persons condemned as well as the condemnations imposed; and (c) measures of reparation granted to victims.

14. In view of the large number of displaced persons in the State party, please provide information on the legislative, policy and institutional framework for the protection and assistance of internally displaced persons. Please provide updated information on: (a) the national budget devoted to internally displaced persons since 2009; and (b) the number of internally displaced persons in the State party as well as on the number of camps welcoming internally displaced persons. Provide information on all measures aimed at: (a) protecting vulnerable groups and in particular, women and unaccompanied children that appear to be exposed to prostitution, sexual exploitation and survival sex; and (b) ensuring the safe and voluntary return or safe and voluntary reestablishment of internally displacement persons. Respond to allegations that: (a) Civilian Joint Task Force members and members of military forces are involved in harassment, extortion, exploitation and abuses, including sexual abuses of internally displaced persons; and (b) the Nigerian Air force would have bombed in January 2017 a camp of internally displaced persons killing at least 167 persons. Provide information on measures to investigate, prosecute and adequately sanction those responsible.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, treatment of persons deprived of their liberty (arts. 2, 6, 7, 9 and 10)

15. With reference to the 2017 Anti-torture Act and the 2015 Administration of Criminal Justice Act, please provide information on the steps taken to ensure their effective implementation in all states and their wide dissemination, particularly among judges, lawyers

and law enforcement agents, and ensure their effective implementation. Clarify whether: (a) the use of confessions obtained through torture or other ill treatment as evidence is prohibited by law and whether this is respected in practice; and (b) provisions for the rehabilitation of victims are contained in the new acts. Please respond to the allegations that torture is commonly used by law enforcement agents in military and police custody, in particular by the Special Anti-Robbery Squad' agents (SARS), for extortion of confession but also for money. With reference to the establishment of the Complaint Response Unit in 2015, provide further information on measures aimed at: (a) reinforcing police internal mechanisms in order to prevent and adequately sanction the perpetration of torture; and (b) ending impunity among law enforcement agents perpetrating torture. Provide data on the number of reported cases of torture and ill-treatment during the reporting period, the number of investigations and prosecutions initiated, the number of convictions, the sentences imposed and the remedies granted to victims.

16. Please provide information on measures in order to improve detention condition in police station cells, military detention facilities and other places of detention, in particular regarding overcrowding, sanitary conditions, access to medical care, food and water. Provide current data on the total prison population and the official prison capacity, disaggregated by facility and provide information on measures to address in particular overcrowding. Clarify whether: (a) an independent mechanism has been established to regularly monitor and inspect all places of detention; and (b) whether monitoring of conditions of detention by independent organizations is permitted.

Liberty and security of person (arts. 2, 9 and 14)

17. With regard to the Administration of Criminal Justice Act of 2015, please clarify whether individuals can be arrested without warrant and specify the conditions and legal safeguards to limit abuses of arbitrary arrests by law enforcement agents. Respond to allegations that: (a) law enforcement officials as well as Civilian Joint Task Force members often arbitrarily arrest persons without evidence and request bribes from detainees; (b) military would have detained a large number of women without charge, for alleged linked with Boko Haram members; (c) persons are commonly held for lengthy pre-trial detention periods; and (d) persons are detained incommunicado. In this regard, please provide information on the whereabouts of Ibrahim El-Zakzaky and his wife, arrested in 2015 and remained in incommunicado detention. Respond to allegations that: (a) persons are commonly detained for longer than 48 hours without being presented before a judge and do not have an occasion to challenge the lawfulness of their detention; (b) fundamental legal safeguards, such as the right to be informed of the charges brought against, the right to communicate with a lawyer or to notify family members, are commonly denied; and (c) the granting of bail remains discretionary and can be arbitrary refused, in particular for political opponents.

Administration of justice, independence of the judiciary and the right to a fair trial (arts. 7, 9 and 14)

18. Please describe the measures taken to strengthen the capacity of the judicial system, in particular to: (a) combat political influence and corruption and ensure that the justice is free from any pressure or interference; (b) strengthen the role of the national Judicial Council and ensure the monitoring of judges and courts, at federal, state and local level; and (c) reduce delays in the administration of justice and address the lack of resource and staff. Describe measures to restore the citizens' trust in the justice system and provide information on the reasons and outcomes of arrests of judges of the Supreme Court and High Court. Provide information on measures taken to ensure access to the courts to everyone, including through the development of an effective legal aid system. Provide information on the role of the customary and Sharia courts and clarify in particular whether: (a) non-Muslims can refuse to be tried before Sharia courts in practice; (b) customary and Sharia courts can be involved in criminal cases and impose punishments such as caning, amputation and death by stoning; and (c) customary and Sharia courts' judgments can be challenged before common law appellate courts in practice. Provide information on measures undertaken to ensure the respect of the rights to a fair trial and respond to allegations that: (a) courts commonly hear cases in absence of legal counsels; and (b) suspects of terrorism acts are commonly denied

fundamental rights in particular the right to legal representation and the right to due process. Please report on the existence of remedies for persons whose right to a fair trial has been violated.

Communication surveillance and right to privacy (art. 17)

19. Please provide information on the legal and regulatory frameworks governing communications surveillance and report on its compatibility with human rights standards. Clarify whether surveillance measures and practices undertaken under the Terrorism (Prevention) Act of 2011 and the Cybercrimes Act of 2015 respect the principles of legality, necessity, proportionality, judicial authorisation, independent oversight and users' notification. Respond to allegations of: (a) massive surveillance of mobile phones in the State party's capital; and (b) an increased monitoring of online activities by government actors, particularly on social media. Clarify whether the State party intends to adopt data protection legal frameworks and regulations.

Family life and right to privacy (arts. 6, 7, 9, 17 and 25)

20. Please provide information on the large-scale evictions and demolition of homes in particular in the Lagos States, in the Ilubirin and Otodo-Gbame communities, having allegedly affected 50 000 people since 2013, particularly in 2016 and 2017. Respond to allegations of excessive use of force by law enforcement agents and unidentified armed men assisting demolition teams leading to deaths and destruction through fires during these events. Provide information on measures undertaken to: (a) investigate these allegations and grant victims adequate reparation; (b) ensure adequate safeguards and effective participation in order to avoid forced evictions; and (c) ensure the provision of alternative accommodations.

Freedom of religion (arts. 2, 6, 12, 18, 20, 21, and 26)

21. Please provide information on measures to ensure non-discrimination against religious minorities and respond to allegations that: (a) Christians in the Northern States experience abuse of power by the Hisbah (Sharia Police); and (b) religious minorities, in particular Christians in Northern States, experience discrimination in the access to education, employment, including state jobs, promotions and land permits to build churches. Clarify whether, in practice, apostasy is allowed and can be practiced without punishment or social pressure. Provide information on measures to prevent and adequately respond to hate speech, incitement to religious hatred and mob violence, particularly in Northern State against Christian minorities. Respond to allegations that authorities commonly restrict activities, freedom of movement and of association of the Islamic Movement in Nigeria' members, the largest Shia group. Provide information on the pending bill in Kaduna State that would require all preachers to obtain preaching licences or risk fines or imprisonment and respond to allegations that such a bill would allow in practice authorities to restrict churches activities.

Freedom of expression, assembly and association and human rights defenders (arts. 6, 7, 19, 21 and 22)

22. Please provide information on the mandate of the national Broadcasting Commission and on any legal safeguards to ensure that its activities comply with article 19 of the Covenant. With regard to Chapter 7, Sections 50 (2) and 60 of the 2004 Criminal Act, specify whether the State party intends to review its legislation regarding libel, slander and defamation. Provide detailed information on Section 13 (9) of the 2016 Digital Rights and Freedom Bill and its use in practice. Respond to allegations that: (a) accusations of libel are used by State authorities in retaliation for negative reporting against journalists; and (b) Section 24 of the 2015 Cybercrime Act is used to arrest bloggers critiquing the government. Comment on Government official's declarations in 2017 that the military would monitor social media for hate speech, anti-government and anti-security information and respond to allegations that such a declaration could discourage free expression and encourage self-censorship. Respond to allegations that bloggers, journalists, activists and human rights defenders critical of government officials or activities are arrested, detained, tortured, especially when they cover corruption scandals, human rights violations, separatist and

communal violence. With regard to human rights defenders, clarify whether the State party intends to adopt legislation or policy measures aimed at recognizing, promoting and protecting their work.

23. With regard to the 2005 Public Order Act, please clarify the process to obtain a licence to organize peaceful assemblies or gatherings and whether the current system establishes a system of prior authorization or of notification. Provide data on the number of applications made for peaceful assemblies and the number of applications granted within the reporting period. Clarify the status of the “NGO Bill”, introduced in June 2016, aiming at regulating and monitoring the activities of all civil society’s organisations in the State party and clarify whether the State party intends to adopt such a legislation in the future and in such case, which legal safeguards would ensure its compatibility with article 22. With reference to the 2005 Trade Unions Act, respond to allegations that the current frameworks create barriers to the establishment and activities of trade unions, in particular regarding Section 3 (2) that gives to the Minister a wide liberty to refuse the registration of a union and Section 3 (1) that requires a minimum of 50 members for the registration. Respond to allegations of threats, harassment, arbitrary arrests and killings of trade unions’ activists.

Participation in public affairs (arts. 3, 25 and 27)

24. In view of the upcoming presidential and legislative elections in 2019, please provide information on the efforts made to ensure that: (a) problems identified during the last elections are being addressed; (b) elections are held on schedule, free from violence, transparent and fair; and (c) a large number of vote registrations is achieved and that registered electorate will effectively vote. Provide information on the regulations governing primary elections for political parties to select their candidates. Provide information on the mandate of the Independent National Electoral Commission, on the appointment of its members, on the conditions for referral to it, on its staffing levels, and annual budget.

Rights of minorities (arts. 2, 6, 20, 26 and 27)

25. Please clarify whether the State party intends to adopt a comprehensive policy and strategy to protect all rights of ethnic minorities, including in terms of languages. Comment on reports that ethnic minorities are discriminated against in various aspects of their lives, segregated from society, mistreated and targeted for acts of violence, while perpetrators are not prosecuted. Elaborate also on the meaning of “indigene” in article 147-3 of the Constitution, the purpose of the distinction between “indigene” or “settler” status and their definition. Please provide information on measures to: (a) prevent advocacy for racial hatred, particularly against Igbos; and (b) to ensure representation of ethnic minorities at governmental levels and participation in decisions, particularly regarding natural resources.
