

State of Human Rights in Northern Nigeria

Abridged version

Global Rights

Kano Human Rights Network (KAHRN)

Bauchi Human Rights Network (BAHRN)

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Chairman, BAHNRN
March, 2011

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Preface

Rights violations in northern Nigeria, like in most parts of the country, are known to occur but are rarely documented. This lack of credible documentation makes it difficult for civil society organizations to advocate for appropriate redress with authorities who are much more inclined toward denial than acceptance. Accordingly, the Bauchi Human Rights Network (BAHRN) and the Kano Human Rights Network (KAHRN) collaborated in this initiative to monitor and document human rights violations in Kano and Bauchi states with assistance from Global Rights and support from the John D. and Catherine T. MacArthur Foundation.

This initiative is part of Global Rights' ongoing work to build local capacity for monitoring and documentation of human rights violations. Prior to commencing the present work, Global Rights held discussions with local civil society groups in the north on where amongst the twelve northern states would be best to situate the pilot project. The general agreement was to select two states that demonstrate both urban and rural challenges. Consequently, Bauchi and Kano states were selected as representing these criteria.

The monitoring and documentation of human rights violations requires not only legal knowledge and technical skills, but also a good understanding of the terrain and local community dynamics. To this end, Global Rights partnered with the Bauchi Human Rights Network (BAHRN) and the Kano Human Rights Network (KAHRN)- both networks with in-depth knowledge of the communities in which their member organizations having worked for several years.

In the first year of this project, we provided them with a series of trainings in basic human rights education, monitoring, documentation and report writing skills. The two networks in turn conducted step-down trainings for their membership and other stakeholders in their respective states, and carried out several activities geared towards human rights education in their respective states. In the second half of the first year and throughout the second year, these partners to begin the actual capturing of data of violations in their communities, with technical assistance from Global Rights in four thematic areas:

1. Violations of women's rights, including barriers to political participation, domestic violence, sexual violence, discrimination in marriage, inheritance, and penal prejudice under *Shar'ia* law;
2. Violations of children's rights, including denial of the right to education for girls, corporal punishment, physical abuse, child labour and trafficking, and sexual abuse;
3. Violations in the justice sector, including unlawful arrests, extra judicial killings, and denial of due process as a result of judicial corruption; and
4. Violations of the rights of the disabled, in particular relating to access to public places, the media, education and employment, discrimination, and denial of voting rights.

The four areas were agreed upon by the networks based on the thematic areas most recurrently, widely, and deeply felt in the states.

Fifteen monitors from each of the states were trained by the networks to capture violations in each thematic area and submit their reports to the network secretariats, where a staff member was employed to specifically oversee the process. The secretariat served as a collection center for the compilation of

reports from the monitors for all the sectors monitored. Violations were monitored for two years by the networks to provide them with systematic data on the types of violations, patterns, rate of recurrence, geographic concentration, and gender bias, if any. The third year of the project was spent in data analysis, preparing a final publication, and charting a way forward for the networks.

Using the data collected and the present publication, the networks will continue to advocate for government action to reduce human rights violations in the targeted states in northern Nigeria beyond the life of the project. With their newly developed skills in documenting and monitoring human rights violations, as well as producing a report focusing on rights violations documented in Kano and Bauchi states, local human rights organizations will be equipped with the technical skills to continue this important work beyond the life of the project.

Global Rights, Nigeria

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Chapter One: Introduction

1.1 Background on the State of Human Rights in Nigeria Post 1999

Thirty-three years of military dictatorship had dire consequences for Nigerians, One of which was the long-standing pattern of flagrant human rights violations. The basic focus of the Nigerian civil society during this era was to flush out military dictatorship, believing that a democratically elected government held the panacea for human rights protection and promotion. Eventually in 1999, the polity birthed a democratically elected government. It was victory for the people of Nigeria; however, the real battle was far from won. The key grievances against the military dictators by civil society in Nigeria besides the non-participatory nature of military governments, was that they violated human rights, were corrupt, unaccountable and unresponsive to the polity. A few years later, civil society in Nigeria soon found itself making the same criticism of democratically elected government. It then became obvious to Nigerian CSOs that their work was not completed. The need to build the capacity of civil society groups to increase advocacy for participative governance and human rights remains critical. Given intimidation of journalists¹ and attempts to restrict freedom of information and of the press,² despite constitutional guarantees to the contrary, human rights groups cannot merely rely on the news media to monitor and document abuses, Rather, civil society must have an active presence on the ground to respond quickly to reported violations, conduct initial investigations, refer cases to the appropriate authorities or civil society service providers, and pressure government to fulfill its obligations to respect, protect, and fulfill human rights.

1.2 Focus on Northern Nigeria

Northern Nigeria is generally much less developed in terms of resources, infrastructure, literacy levels and civil society structures than the southern parts of the country. The absence of a vibrant civil society combined with a long standing culture of impunity, has also resulted in structures too weak to sustain participatory governance. The challenge of rights protection within the context of religion and culture is inherent in this region. A second and perhaps the most important cause of human rights abuses is the climate of impunity for government officials, law enforcement and non-state actors, which is permitted by government corruption, complicity and complacency. Even since the transition to democracy, the most blatant violations most often go uninvestigated or excused by government.³

¹ For example, on 4 July, 2004, Kola Oyelere, the Kano State correspondent for the privately-owned Nigerian Tribune newspaper, was arrested by the police in Kano State. He was detained and reportedly tortured before being charged with publishing false information. See International Freedom of Expression Exchange (IFEX), (http://www.ifex.org/Nig/2004/07/07/journalist_arrested_tortured_and/).

² For example, see the Nigerian Press Council and the Practice of Journalism in Nigeria Bill 2009, which was the subject of a 2009 statement by the African Commission on Human and Peoples' Rights, as well as the political stalemate that has prevented the passage of a Freedom of Information Act since 1999. Amnesty International Annual Report: Nigeria 2010. (<http://www.amnestyusa.org/research/reports/annual-report-nigeria-2010?page=3>); Nigeria: Amnesty International Submission to the UN Universal Periodic Review Fourth Session of the UPR Working Group, February 2009, p. 3 (http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/AI_NGA_UPR_S4_2009_AmnestyInternational.pdf).

³ For example, on October 22 and 23, 2001 at the onset of the democratic leadership of President Olusegun Obasanjo, the army massacred a community of between 300 and 500 civilians and destroyed various properties at Zaki-Biam in Benue state and at Odi in Bayelsa state. These extra-judicial killings followed an attack and murder of military personnel deployed to the area on a peacekeeping mission. The government denied responsibility for the attacks and later excused the massacre as a way of 'dealing with citizens who killed security personnel'. Environmental Rights Action/Friends of the Earth, Nigeria, A Blanket of Silence: Images of the Odi Genocide (<http://www.eraction.org/publication/silence.pdf>).

In the north, the occasions for abuses of power and use of excessive force against the populace have been exacerbated in recent years by the threats of the religious extremist groups and inter-communal violence, particularly around elections. These disturbances are often used by government as excuses or justifications for government actions that curtail or outright violate fundamental and human rights. In fact, such incidents and the limited government investigations after the fact add to the culture of impunity, rendering it particularly severe in northern Nigeria.

For instance, in July 2009 in Bauchi, Kano, Yobe and Borno states, hundreds of persons were arrested and some summarily executed, based upon little or no evidence that they were involved in a fight between security forces and militant members of the Islamic extremist sect, Boko Haram. Also, up until September of that year, about 58 persons had been arrested for alleged involvement with Boko Haram were being held without bail. The sect leader, Muhammad Yusuf, was also executed by the police, who later claimed that Muhammad was killed while trying to escape. Contrary to this story, videos of the execution, which showed an unarmed and handcuffed Yusuf being shot, went viral on the internet. Yusuf's father-in-law, Baba Muhammad, and one Buji Fai suspected of funding Boko Haram were also reportedly killed in detention. There has been no public release of an investigation into these killings in spite of the government pledged to do so.

In November 2008, the police and army were implicated in the unlawful killing of approximately 700 civilians while responding to the election-related violence in the Jos North local government area in Plateau state. The government allegedly set up a panel to investigate the killings but no one has been charged or punished for the killings to date⁴. Similarly in December 2009, in the northern state of Bauchi, a clash between members of the extremist Islamic sect Kala-Kato, town residents and security forces resulted in the death of approximately 40 persons, including children⁵.

Adding to the culture of impunity is the government's intolerance and excessively violent responses political demonstrations by citizens in northern Nigeria. For instance, in 2009, in a protest of a hundred unarmed motorcycle riders about the enforcement of required crash helmets at Biu in Borno state, two of the protesters were killed by the police⁶. In 2008, four unarmed demonstrators were killed in Kaduna state. Also on 24th February, 2010, during a peaceful demonstration by students of College of Education Kumbotso in Kano state, Security Aides and political vanguards of the state governor violently dispersed the demonstration following which many of the students were seriously injured⁷. Similarly, on 16th January, 2010, the police in their attempt to disperse the peaceful protest staged by students of the College of Environmental Studies, Gwarzo in Kano State, used tear gas to disorient the students and later shot one student identified as Atahiru Tahir⁸. The students were said to be demanding for justice over the death of one of their colleagues Aliyu Aliyu, who was allegedly killed by another student from the Government Secondary School, Gwarzo.

Nationwide, but particularly in the northern states, the government has continued to demonstrate insufficient political will to reform the police and other security forces through discipline when they fail to respect the rights of citizens as in the instances above. Calls for reform and an end to impunity can still

⁴ US Department of State, (2009 Human Rights Report on Nigeria) Bureau of Democracy, Human Rights and Labor, Washington, DC (<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135970.htm>) 2-13

⁵ Ibid., p.2

⁶ Ibid., p.4

⁷ Report monitored and documented by KAHRN

⁸ Student Killed, 3 others injured in protest: Reported at <http://www.naijapals.com/modules/naijapals/dis-life!/student-killed-3-others-injured-in-protest/>.

trigger severe repression. For instance, the Guardian newspaper journalist, John Nnia Nwodo was arrested and detained in August 2009 by officers of the State Security Service after he allegedly made a speech urging army officers to speak up when they saw a need for political changes to be made⁹.

1.2.1 Implementation of Shar'ia Law

The introduction of the Shar'ia penal system to 12 of the 19 states of the region, in spite of Section 10 of the Constitution of the Federal Republic of Nigeria, which prohibits the adoption of any religion as a state religion by either the federal government or state came with inherent tension between self-determination of a people, which leads to the local establishment of a faith-based or cultural legal system, and the protection and promotion of the fundamental human rights guaranteed by the federal constitution and international instruments ratified and domesticated by Nigeria. Proponents of *Shar'ia* argue for their right of choice and reason that the implementation of *Shar'ia* penal code does not contradict the legality of the principle contained in the federal constitution, since offences and their punishments under *Shar'ia* are founded in written law. They further argue that, where *Shar'ia* has been adopted by a state, it is applicable only to Muslims and "those who profess the Islamic faith". Finally, according to proponents, *Shar'ia* penal provisions have always been a part of the penal code and have now only been made an autonomous statute, so that in effect therefore, nothing has really changed.

In practice, however, the implementation of the *Shar'ia* penal code has been subject to abuse and in most circumstances led to human rights violations especially those of women. In addition, certain penalties prescribed under *Shar'ia* law, such as flogging, stoning and amputation, amount to torture or cruel, inhuman and degrading treatment¹⁰.

The advent of Shar'ia in these states has occasioned numerous controversial cases which have included cases like that of Amina,¹¹ who was sentenced to death by stoning for the *Shar'ia* stipulated crime of adultery, the case of Jagaba,¹² who had his wrist amputated for stealing, the trial of 18 young men in Bauchi for sodomy,¹³ and many others. At least one recorded case of such severe punishment has been overturned by the appeal courts¹⁴. Some states have introduced Hisbah groups¹⁵ to enforce the *Shar'ia* code, which further denies the criminally accused his due process rights as guaranteed under Section 36 of the Constitution and human rights instruments domesticated in Nigerian law.

Despite the political debate over *Shar'ia*, most schools of thought agree that the *Shar'ia* system must be brought into line with the federal constitution and prevailing human rights law. A challenge for civil society organizations in states where the *Shar'ia* penal code is in force, then, is to identify when its application violates fundamental and human when these rights are violated to monitor and document the

⁹ US Department of State op cit p. 11

¹⁰ There has been one recorded case of amputation and other severe forms of punishments such as death by stoning and flogging which have been overturned by the appeal courts. See " Fact Sheet: Women's Rights under Shar'ia in Northern Nigeria," National Organization for Women (<http://www.now.org/issues/global/082202Shar'ia.html>) August 22, 2002

¹¹ Religious Tolerance: Punishment for Non-Marital Sex in Islam, examples of convictions under Shar'iah law from (http://www.religioustolerance.org/isl_adul1.htm).

¹² <http://rezaei.typepad.com/hassan-rezaei/files/islamic-criminal-law-nigeria-en.pdf>

¹³ International Gay and Lesbian Human Rights Commission: Dispatch from Bauchi, Nigeria, (<http://www.stevenmilverton.com/2008/02/16/dispatch-from-bauchi-nigeria-february-2008>).

¹⁴ " Fact Sheet: Women's Rights under Shar'ia in Northern Nigeria," National Organization for Women (<http://www.now.org/issues/global/082202Shar'ia.html>) August 22, 2002.

¹⁵ Hisbah Groups (<http://www.armed-groups.org/Modules/NSAGPrint.aspx?sectionid=6&id=86>).

violations, and to use the data obtained as an advocacy tool to engage the state and non-state actors in addressing these challenges.

1.2.2 State actors' impunity

Violations occasioned by the introduction Shar'ia law form only a very small fraction of human rights abuses in northern Nigeria. Most violations occur through the impunity of government officials, law enforcement and non-state actors, backed by government's complacency.

1.3 Organization of this Report

The present report details the information collected between 2009-2010 by two grass-roots human rights networks, BAHRN and KAHRN, with training and other support from Global Rights. Monitoring by these human rights networks in Bauchi and Kano States identified and documented violations in four thematic areas:

1. Violations of women's rights, including barriers to political participation, domestic violence, sexual violence, discrimination in marriage, inheritance, and sentencing under *Shar'ia* law;
2. Violations of children's rights, including denial of the right to education for girls, corporal punishment, physical abuse, child labour and trafficking, and sexual abuse;
3. Violations in the justice sector, including unlawful arrests, extra judicial killings, and denial of due process as a result of judicial corruption; and
4. Violations of the rights of the disabled, in particular relating to access to public places, the media, education and employment, discrimination, and denial of voting rights.

The results of the monitoring exercise in each of these four thematic areas will be presented below, with additional analysis in light of legal framework applicable to each. Further, each section will present recommendations, which are drawn from these networks' observations and informed by Global Rights' broader advocacy efforts across northern Nigeria.

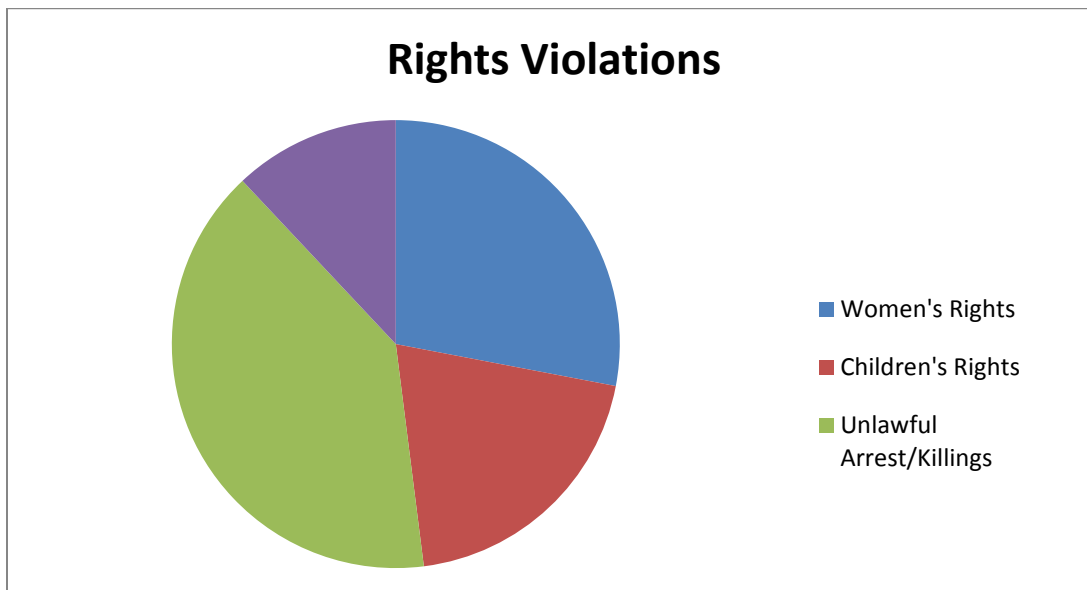


Figure 1: Frequency of the different categories of violations monitored in Kano and Bauchi

Chapter Two: Nigeria's Democracy on Human Rights Scales

Has post democratic Nigeria fared better than it did under military dictatorship? Judge for yourself:

On October 22 and 23, 2001 at the onset of the democratic leadership of President Olusegun Obasanjo, the army massacred a community of between 300 to 500 civilians at Zaki-Biam, Benue state¹⁶ and at Odi in Bayelsa state¹⁷ respectively. The extra-judicial killings followed an attack and murder of military personnel deployed to the area on a peacekeeping mission. The government initially denied responsibility for the attacks and later excused it as 'dealing with citizens who killed security personnel'¹⁸.

In July, 2009 in Bauchi, Kano, Yobe and Borno states, hundreds of persons were arrested and some summarily executed, with little or no evidence of involvement in a fight between security forces and militant members of the Islamic extremist group Boko Haram. Up till September of that year, about 58 persons had been arrested were being held without bail. It was alleged that the sect leader, Muhammad Yusuf was executed by the police who later claimed that Muhammad was killed while trying to escape. Videos of the execution which showed an unarmed, handcuffed Yusuf being shot went viral on the internet. Yusuf's father-in-law, Baba Muhammad, and one Buji Fai suspected of funding Boko Haram were also reported killed in detention. There has been no public release of any investigation into these killings in spite of the government pledged to do so.

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Nationwide, incessant reports of torture and other cruel, inhuman and/or degrading treatment by the police and other security forces with impunity have been recorded. For instance on 24th February, 2010, a peaceful demonstration by students of College of Education Kumbotso, Kano state, was violently dispersed Security Aides and political vanguards of the state governor in the course of which many of the students were seriously injured²². Similarly, on 16th January, 2010, the police in their attempt to disperse a peaceful protest staged by students of the College of Environmental Studies, Gwarzo in Kano State, used

¹⁶ Human Rights Watch: 2002 World Report on Nigeria

(<http://www.waado.org/nigerdelta/FedGovt/HumanRights/HRWReport2002.html>).

¹⁷ Odi Massacre available at: http://en.wikipedia.org/wiki/odi_massacre.

¹⁸ Environmental Rights Action/Friends of the Earth, Nigeria, A Blanket of Silence: Images of the Odi Genocide (<http://www.eration.org/publication/silence.pdf>).

¹⁹ US Department of State, (2009 Human Rights Report on Nigeria) Bureau of Democracy, Human Rights and Labor, Washington, DC (<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135970.htm>) 2-13

²⁰ Ibid., p.2

²² Report monitored and documented by KAHNRN

tear gas to disorient the students and shot a student identified as Atahiru Tahir²³. The government has continued to demonstrate insufficient political will to reform the police and other security forces to respect the rights of citizens.

In spite of the constitutional provision guarantying the freedom of speech, government continues to harass the press to impede public criticism. There have been reported cases of beatings, torture, detention, and harassment of journalists, who reported on issues political office holders consider as putting them in bad light. Resultantly, journalists are cowered into practicing self-censorship, steering away from bad governance issues. . In November, 2009, the African Commission on Human and Peoples' Rights urged the federal government to withdraw the Nigerian Press Council and the Practice of Journalism in Nigeria Bill 2009, which would restrict freedom of expression if passed²⁴. The Freedom of Information Bill which was first presented to the senate in 1999 is at the time of this report, still pending before the National Assembly. The same Bill was passed by the previous House of Representatives in 2004 and subsequently by the Senate in November, 2006, but was not signed into law by the then President Obasanjo before the change in government. In 2008, the Bill was again reintroduced in both the senate and House of Representatives, but was rejected by the House of Representatives. As at ast count, the Bill had been rejected five times²⁵

²³ Student Killed, 3 others injured in protest: Reported at <http://www.naijapals.com/modules/naijapals/dis-life!/student-killed-3-others-injured-in-protest/>

²⁴ Amnesty International Annual Report: Nigeria 2010. (<http://www.amnestyusa.org/research/reports/annual-report-nigeria-2010?page=3>).

²⁵ Nigeria: Amnesty International Submission to the UN Universal Periodic Review Fourth Session of the UPR Working Group, February 2009 (http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/AI_NGA_UPR_S4_2009_AmnestyInternational.pdf) P.3

Chapter Three: Women's Rights

3.1 The legal framework for protection of women's rights in Nigeria

Nigeria has signed and ratified several international human rights instruments which guarantee women's rights and their freedom from discrimination. General provisions for the protection of women's rights can be found in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. More specific instruments on the protection of women's rights are:

- The Declaration on the Elimination of Discrimination Against Women, and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW);
- The African Charter on Human and Peoples Rights; and
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

CEDAW, the strongest international instrument protecting and promoting the rights of women, was ratified by Nigeria on June 13, 1985 without reservations along with its Optional Protocol on November 22, 2004. However, 25 years later, this instrument is yet to be domesticated by Nigeria, which under the constitutional framework means that, although binding on the Nigerian state, it is not enforceable in Nigerian courts. It is noteworthy that, to date, only two of the international human rights instruments ratified by Nigeria (the African Charter on Human and Peoples Rights and the Convention on the Rights of the Child) have been domesticated as required by section 129 of the Constitution. Thus, CEDAW can only have persuasive influence on the domestic legal system.

By ratifying these instruments, even when not domesticated, the Nigerian government has undertaken to ensure the fulfillment and protection of the rights of women they enumerate. In practice, however, the government has not been entirely fervent in meeting its obligations to respect, protect, and fulfill women's rights. While issues of culture, religion and patriarchy are the main culprits in the violation of the rights of women, the government must also be faulted for lacking the political will to protect women through its policies, laws, and enforcement efforts or by otherwise creating an enabling environment for the advancement of women. Bauchi and Kano states are also yet to domesticate any of the international human rights instruments Nigeria has ratified.

Nigeria's constitution provides for freedom from discrimination, explicitly including discrimination on the basis of sex, under section 42. However, the Constitution itself contradicts this guarantee. Examples of these discriminatory provisions can be found in section 26(2), which limits the rights of Nigerian women to transmit Nigerian nationality to foreign spouses. Also, section 29(4)(b) assumes a female to be of majority once she is married, though there is no corresponding provision for males. This provision allows for the marriage of under-aged girls, since once married they are no longer deemed under-age ***[so that their husbands escape prosecution what would otherwise have been a violation of the law]***.

Nigeria runs a tripartite legal system comprised of statutory, customary law, and *Shar'ia*. These three bodies of law are laced with contradictions and inconsistencies which make the protection of human rights subject to ambiguities and conflict of laws, particularly as relates to the rights of women. Notably, each of these legal systems has provisions that discriminate on the basis of gender.

Despite these negative laws however, there have been some positive legal developments in recent times. Several initiatives, laws and policies aimed at eliminating gender-based discrimination and to bridge the

gap between men and women have been formulated and passed at national and state levels. These include the National Policy on Women; National Human Rights Commission's Gender Desk; National Action Committee on Women in Politics; the Trafficking in Persons Prohibition, Enforcement and Administration Act of 2003; and the Prohibition of Early Marriages Act in Kebbi state. Of particular interest to the focus of this report, Kano and Bauchi states, along with two other northern states of Borno and Gombe, have passed state-level Retention in School and Against Withdrawal of Girls from School Acts. The problem with all these laws and policies, however, is the lack of political will and genuine efforts aimed at their enforcement.

One factor in poor enforcement, observed in the course of this project, was that there was a very low level of awareness among government officials, elected public office holders and citizens about the instruments and laws that protect women's rights. Access to justice requires that citizens are aware of their rights and the mechanisms by which rights violations can be redressed and have unhindered admittance to these institutions.

3.2 Political participation

Women are yet to make significant strides in participation in governance and decision making in northern Nigeria. Their political party membership rates are abysmally low due to social, cultural and religious prejudices, coupled with fear of violence, intimidation and lack of financial backing to enable women to run for office. The actual percentage of women representatives in Nigeria particularly in the Northern states remains marginal and lags far behind the 30 percent benchmark established in the national Affirmative Action Principle policy as well as the National Policy for Women.

The 2007 general election results confirm the gross under-representation of women in politics. In Bauchi and Kano states, no woman was elected into the Federal Senate and House of Representatives and just two women out of the total 71 seats in the two states Houses of Assembly.

States	Federal Senate	Federal House of Representatives	Federal Ministers	Governors/ Deputy Governors	State Houses of Assembly
Bauchi	0/3	0/12	0/1	0/2	2/31
Borno	0/3	0/10	0/1	0/2	0/28
Gombe	0/3	0/6	1/1	0/2	0/24
Jigawa	0/3	0/11	0/1	0/2	0/30
Kaduna	0/3	1/16	0/0	0/2	2/34
Kano	0/3	0/25	0/2	0/2	0/40
Katsina	0/3	0/15	0/1	0/2	0/34
Kebbi	0/3	1/8	1/1	0/2	0/24
Niger	1/3	0/10	0/1	0/2	2/27
Sokoto	0/3	0/11	0/1	0/2	0/30
Yobe	0/3	0/6	0/1	0/2	0/24
Zamfara	0/3	0/7	1/1	0/2	0/24
Totals	1/36	2/137	3/12	0/24	6/360

Table 1: Female representation in selected offices from northern states in 2007

3.3 Gender based violence

Gender based violence has been identified **worldwide** to be the major cause of death and disability for women between the ages of 16 and 44²⁶. The Committee on the Elimination of Discrimination against Women in General Recommendation 19 to CEDAW identified gender based violence as a form of discrimination against women and defined it to include “violence that is directed against a woman because she is a woman or that affects women disproportionately”. It includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty,²⁷ such as domestic violence, sexual violence, trafficking in persons and female genital mutilation.

In Northern Nigeria, the most common forms of gender based violence include intimate partner violence, sexual violence, verbal abuse, and financial deprivation, food deprivation, child/forced marriage, torture and stigmatization on alleged involvement in witchcraft. The application of *Shar’ia* laws may also amount to gender based violence, where for example it mandates widows to fulfill a compulsory mourning period of four months and 10 days before the expiration of which they not permitted to marry. The stated justification for the law is to prevent women pregnant by their late husband from getting married to other men. Muslim women who disobey this law can thus be accused of adultery and punished accordingly.

3.3.1 Domestic violence

Domestic violence is a particularly endemic form of gender based violence that inordinately affects women over men²⁸. Under the current legal framework in Bauchi and Kano states, there are neither specific laws nor policies prohibiting domestic violence or otherwise protecting victims. As a matter of fact, Section 55 of the Penal Code permits wife beating as a form of chastisement as long as it does not inflict grievous bodily harm²⁹. This law allows quite severe and repeated domestic violence to go unpunished.

Moreover, the police are often hesitant to intervene in cases of domestic violence citing that it falls within the purview of privacy within the sanctity of family relationships. Devoid of protection from the law and law enforcement agencies, women in Bauchi and Kano continue to suffer the violation of their rights.

The Kano and Bauchi Ministries of Women Affairs have not paid sufficient attention to the spate of domestic violence within their jurisdictions. Neither ministry has a Legal Aid Center to help indigent women seeking legal redress.

The Legal Aid Council under the states’ Ministries of Justice, apart from lacking the capacity to render legal aids services, limits its services to defendants in criminal cases who are unable to afford legal

²⁶ Violence against Women – Facts and Figures: United Nations Development Funds for Women

²⁷ www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm

²⁸ Most sources claim 85% of victims of domestic violence are women

²⁹ Under the Penal Code of Northern Nigeria, grievous bodily harm is defined as “emasculatation; permanent deprivation of sight, hearing, or speech; loss of a limb; permanent disfiguration of the head or the face; the fracture or dislocation of a bone or tooth; or a harm that is life-threatening, or which causes the victim to suffer for 20 days either incapacitated or in severe physical pain.” Section 241 Penal Code, Cap. 89, Laws of Northern Nigeria 1963.

representation. A victim of forced marriage, who is not a defendant in a criminal matter, is not entitled to government funded legal aid service. Some private paralegal services do exist however for women in Bauchi and Kano states facilitated by the Women Empowerment Initiative in Nigeria WEIN and Hotoro Women Development Association respectively, with support from Global Rights.

There are no reliable statistics on domestic violence in our focal states or elsewhere in the entire nation. This is because women rarely report cases of domestic violence and, when they do, the police tend to mediate rather than treat them as any other criminal case. Cultural norms in this region also discourage women from discussing 'family issues' in the public sphere. Victims of domestic violence are also discouraged from seeking legal protection against their husbands for fear that they would suffer even more violence and lose financial support or custody of their children.

Another reason victims of domestic and sexual violence in these states are reluctant to use the justice system is that it is neither user-friendly nor affordable. Most women cannot afford to hire the services of a lawyer or to bribe the police to file complaints in court. Where their cases do get to court, they are often left bewildered and intimidated by the language and procedure in court.

Without sufficient protection from police or access to legal services and courts for redress, victims of domestic violence are often left to the mercy of patriarchal customary and religious practices and institutions. These institutions and cultures often turn a blind eye on domestic and sexual violence claiming that the women must have provoked their violators.

Box 1: Cases of domestic violence monitored and a in Kano and Bauchi states³⁰

Jumei, age 37, supports her family by managing a restaurant. Her unemployed husband, Alh Sule, suspected that she was having illicit affairs with her customers and often assaulted her based on this suspicion. On 22nd July, 2010, his rage got out of control and he inflicted cuts on her body, including her private parts, and fractured her left leg and left arm. KAHRN's intervention led to Alh Sule's arrest and criminal charge against him, while Jumei received treatment at a hospital in Kano.

Catherin, age 34, was a victim of domestic violence and lived in constant fear throughout her pregnancy. Her husband James resisted all intervention efforts from their landlord, ward head, and even their parents to get him to stop abusing his wife. Left to defend her life with no protection from the law, Catherin finally solicited the assistance of BAHRN field monitors to file for divorce and the custody of the children.

19-year-old Rekia's education ended abruptly when she was forced into marriage at the age of 15 to a 40-year-old man named Mallam Isa. Her parents arranged the marriage to consolidate both families' long standing relationship. In the course of the marriage, Rekia had two daughters. Neither attends school nor has a prospect of education because Rekia's husband believes that educating a woman is a waste of time and investment. Rekia says her husband treats her with utter disrespect and as though she is completely insignificant. Her ordeal is further compounded by the frequent beatings she receives from her husband, particularly when she asks for food or money for upkeep. Mallam Isa would return home drunk late every night and abandoned Rekia and their children to fend for themselves or starve to death. Rekia's parents refused to intervene in the matter, which they considered a private family affair, and insisted that Rekia

³⁰ Names have been changed to protect the identity of victims.

should not disclose the problems in her marriage to anybody. They also did not support Rekia's wish to file for divorce, compelling Rekia to remain in the marriage even after Mallam Isa married a second wife. Rekia says her condition is unbearable, but fears to push the matter since her faith frowns on revealing marital disharmony. Rekia believes her life would have been better if she had gone to school and had not been married off so early to a man she never loved. She is forced to live in silence through her marriage with her oppressive husband and hoping that Allah will someday help her.

Aisha, age 37, is a victim of domestic violence with multiple scars to show for it. She frequently reported to her village head, but on each occasion her husband refused to allow the village heads to address the issue. The village head also seemed to lack the political will to back her taking criminal action against her husband, in spite of her fears that he might eventually kill her.

Hawa, age 24, had been married to Abdullah Musa for six years and had three children. On the 23rd of January, 2010, Hawa was severely beaten up by her husband who was reportedly provoked when she persistently demanded for an upkeep allowance. She was so brutalized that she had to be admitted at the hospital. No criminal charge was brought against her husband.

On the 13th of June 2010, Titi, age 30, approached KAHRN for protection from escalating domestic violence. She had not received attention from the police when she approached them because she could not afford to pay the bribe they demanded to secure their intervention. With assistance from KAHRN, Titi was willing to take the matter to court to seek legal redress.

3.3.2 Sexual violence

Sexual violence was of major interest in this project given its prevalence and lack of responsiveness from the state in prosecuting offenders or creating a secure environment for women and children. Although the law recognizes and criminalizes these offences by providing penalties for those convicted of the offence, however societal pressure and the stigma associated with sexual violations ultimately affects the number of reported cases. For example, the four female students of the Gwallameji Federal Polytechnic, Bauchi, allegedly raped by a gang of male students on the 13th of March, 2010 refused to press charges or allow BAHNRN to take up the case for fear of stigmatization. Most women were also unwilling to admit information received about their husbands or male relatives who sexually molested their daughters and wards fearing that the girls would be stigmatized.

The laws of Nigeria and particularly those applicable in the north are also a barrier to prosecutions of rape or sexual assault. The definition of rape in the Penal Code applicable to northern Nigeria³¹ is not as strong as the provision under the Criminal Code applicable in southern Nigeria states, because it only

³¹ According to Section 282 of the Penal Code applicable to Northern Nigeria, "A man is said to commit rape who . . . has sexual intercourse with a woman in any of the following circumstances:

- (a) against her will;
- (b) without her consent;
- (c) with her consent, when her consent has been obtained by putting her in fear of death or hurt;
- (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- (e) with or without her consent, when she is under fourteen years of age or of unsound mind."

includes the penetration of the vagina with a penis³² and thus precludes penetration with other objects, sodomy, fellatio or other invasive acts that ought to fit within the definition of rape³³. This provision also bars the assertion that men can be raped.

The Evidence Act has very strict evidentiary requirements to prove the crime of rape, making conviction for the crime almost impossible. Section 178(5) of the Evidence Act requires corroborative evidence, particularly where the rape victim is a child, before the courts can enter a conviction. This requirement is difficult to meet since sexual assaults are rarely committed in public. Moreover, the prosecutor bears the burden of proving lack of consent as one element of the offense. Consequently, the victim is also expected to establish her lack of consent³⁴, which is difficult to do when rape offences take place where there are no witnesses.

Under *Shar'ia* law, the burden is even higher. A woman alleging rape must produce four witnesses to the rape. If her allegation of rape is not proved, she could instead be punished for adultery with a prison sentence or flogging³⁵.

Box 2: Cases of sexual violence monitored in Kano and Bauchi

Jessica, age 19, is a mute special school student in Bauchi. She had left home to buy groceries. After waiting for hours for her return, her parents made frantic efforts to trace her and stumbled on information that she was last seen at a police officer's residence in the neighbourhood. When they knocked at the door of the described house, the police officer responded "I'll soon be through with the job", thinking he was speaking to a friend who saw him lure Jessica into the room. Jessica's parents forced the door open and discovered that the police officer was raping their daughter. The matter was reported to the police outpost in Gwalameji, but no criminal action was initiated against the offender.

Hadija, age 22, was raped by Donatus, resulting in pregnancy. She did not tell her parents for fear of been physically beaten or tortured. Hadija could not report to the police for fear of stigmatization if the matter was prosecuted. Donatus on learning of Hadija's pregnancy, pleaded with Hadija to abort. When she refused, he lured her into the waiting hands of six friends, who forcefully carried out an abortion on her using crude instruments. No action has been taken against Donald to date.

Hanatu, age 17, was raped by a police officer attached to the Tafawa Balewa Unit in Bauchi. She concealed the incident from her parents who later learned of it when became clear she was pregnant. Her parents reported the case to the offender's police unit, hoping that he would be prosecuted for the crime. But their hope for justice was dashed when the police command opted for a negotiation and settlement without resorting to criminal action. Hanatu has had her baby, yet the offending officer has not provided her with any financial support and has refused to comply with the terms of settlement with impunity. There has been no further development to this case.

Nkiru, age 18, Aladi, age 19, Chika, age 19, and Yetunde, age 20, are all students of Federal Polytechnic

³² Explanatory notes to Section 282 (1) Penal Code op cit.

³³ <http://www.amnesty.org/en/library/asset/AFR44/020/2006/en/qZWIWxAyYBAJ>.

³⁴ Ito, E.A., (2007). Domestic Violence and Legal Reform in Nigeria: Prospect and Challenges *Cardozo Journal of Law & Gender* (Vol. 14:21) Pg. 38 at http://www.cardozolawandgender.com/uploads/2/7/7/6/2776881/14-1_eze-anaba.pdf.

³⁵ Africa for Women's Rights, Ratify & Respect! Nigeria: pg. 95(<http://www.fidh.org/IMG/pdf/dossierofclaims0803eng.pdf>).

Gwallameji in Bauchi state. They were victims of gang rape, which was reported to the BAHRN office. On the day the alleged crime was committed, the victims were in class to read for their forthcoming exams. Seven unidentified men (who were believed to be students of the same institution), overpowered the victims, brandishing weapons, and gang raped them. A staff from the security department of the school confirmed the incidence to BAHRN and also gave the name of the victims who have pleaded not to be exposed for fear of being stigmatized. There was no official report of the matter to the police.

Aminatu, age 27, was raped and assaulted by a police officer who was said to be Aminatu's boyfriend. Her abuser also confiscated some of her household items, including electronics. Aminatu is yet to make a formal report to the police for fear of reprisal from him and his colleagues.

3.4 Discrimination in Marriage

A number of laws and policies in Nigeria fail to recognize the equality of men and women in marriage and discriminate on the basis of gender. For instance, a married woman cannot obtain an international passport from government without her husband's consent. A woman married to a non-Nigerian also cannot transfer her citizenship on to her husband or children. Even where she marries a Nigerian, she cannot transfer the citizenship of her state of origin on to their children. Moreover, as earlier pointed out, a man is permitted under the Penal Code to chastise his wife using force.

Polygamy is a widespread practice in Nigeria under customary law and Islamic law. It is estimated that nearly one third of Nigerian women are in polygamous unions, a trend most prevalent in the northern part of the country³⁶. However, only men are allowed to have multiple partners. Where women attempt to practice the same, they will be regarded as adulteresses and prosecuted under *Shar'ia* law.

Shar'ia law recognizes four types of divorce.

- The Talaq
- The Mubarah
- The Khul'
- Judicial divorce

The Talaq, which is the repudiation of marriage by the husband, is the most prevalent form of divorce in northern Nigeria, known for its informality. The Talaq can only be initiated by the husband and allows him to repudiate the marriage by announcing out loud that he intends to divorce his wife. The manner in which the Talaq has been practiced adversely affects the rights of women. Some of the most common form of abuse of the Talaq procedure include:

- Pronouncing the Talaq at prohibited times such as during the woman's menstrual period;
- Threatening the wife with Talaq for frivolous reasons, such as her insistence on her right to maintenance; and
- Pronouncing of the first, second, and third Talaqs at one sitting as opposed to at three separate sittings, which by implication is permitted under chapter 2: 129 of the Qur'an.

³⁶ Ibid

On the other hand, the Khul' procedure, which is settled in court, allows a woman to repudiate a marriage or to request a divorce by paying a "ransom" to her husband in order to terminate the marriage. The effect is that women must pay a high price to divorce their husbands, while their husbands can divorce them at will. This violates the principle of equality in marriage as guaranteed by CEDAW³⁷ and the constitutionally protected right of non-discrimination on the basis of gender³⁸.

Customary and Islamic traditions allow for child marriage, resulting in girls been married off at the onset of puberty (between the ages of ten and fourteen). With no laws to mitigate and transform this tradition, child brides are confronted with a myriad of challenges. Their young bodies unable to cope with pregnancy often results in prolonged labour and accounts for the high percentage of Vesico Vaginal Fistula (VVF). Also, because they do not stay in school long enough to acquire sufficient skills to earn a livable income, they become prone to poverty.

3.5 Inheritance

Under *Shar'ia* law and customary law, there are various forms of discrimination against women with regard to their inheritance rights. Under most customary law, a wife is not allowed to inherit her husband's property after his death. In such cases, women are denied inheritance rights by family members of their deceased husbands and do not have the protection of the law or access to justice. Under *Shar'ia* law, a childless woman inherits 1/4th of her late husband's property, while a woman who has children inherits 1/8th. On the other hand, a husband of a childless marriage inherits half of his late wife's property, while if they had children, he would inherit 1/4th. A son inherits a share equivalent to that of two daughters³⁹, a full brother inherits twice as much as a full sister, and a son's son inherits twice as a son's daughter⁴⁰.

Box 3: Cases of inheritance discrimination monitored in Kano and Bauchi

Judith, age 35, was married to her husband for 15 years before he died. They had six daughters in the course of their marriage. Her late husband owned a house and a provision store to which her brothers-in-law denied her inheritance rights because she had no male child.

Monica, age 32, a graduate of the Federal Polytechnic Bauchi, was not allowed by her late husband to take up paid employment. While she was attending her husband's funeral, her brothers-in-law locked up the apartment she had occupied with the late husband and their two children. Their reason was that her late husband had willed all of his properties to his father. She was not shown a copy of the said will. Neither was Monica allowed to benefit from the late husband's gratuity that was paid, since according to her brothers-in-law, she was not the late husband's next of kin. Indigent, she is unable to afford legal assistance to bring her case to court.

Jamila, age 38 and a petty trader with five children, lost her husband two years ago and has had to fend for her children singlehandedly ever since. Jamila was denied inheritance of her late husband's property

³⁷ See Article 16 (1a – h) of CEDAW

³⁸ See section 42 of the 1999 Constitution of Nigeria

³⁹ Quran 4:11

⁴⁰ Islamic Laws of Inheritance at <http://www.islam101.com/sociology/inheritance.htm>.

by her in-laws and cannot afford the cost of litigation.

Ladi, age 52 and a petty trader, lost her husband about five years ago, leaving her to care for her six children. Her late husband's relatives denied her inheritance rights to what was left of her late husband's property. None of her children goes to school as she lacks the financial capacity to pay for their education. There has been no intervention from any quarter to resolve the issue.

3.6 Enforcement of *Shar'ia* Law Against Women

The Hisbah groups are Islamic vigilante groups commissioned by the government in some *Shar'ia* practicing states to enforce adherence to the *Shar'ia* penal and moral codes. The Arabic term 'Hisbah', means "an act which is performed for the common good or with the intention of seeking a reward from God"⁴¹. In some cases, these groups have the power to arrest but are required by law to hand over suspects to the police. In practice, however, they are often the 'police, the jury and the judge'. The Task Force on *Shar'ia* Implementation in Bauchi State considers the Hisbah organization to be the backbone of the *Shar'ia* judicial system⁴². The Hisbah groups active in Kaduna, Kano, Katsina, Bauchi and Zamfara states often violate the rights of poor and vulnerable groups, especially women, in these states.

There have also been several reports of vicious attacks on women who are considered 'inappropriately dressed' by the Hisbah group. Northern Nigeria is predominantly Muslim but has a sizeable population of Christian⁴³ and other non-Muslim settlers. Most Hisbah victims are Christians, southerners and western dressed northerners. Thus, most non-Muslim women have also been forced to adopt the Islamic dress culture to avoid harassment and physical assault from the Hisbah groups.⁴⁴

In July 2005, the heads of tertiary educational institutions in Kano state were directed by the Governor to enforce an Islamic dress code for their female students so as to prevent them from being harassed by the Hisbah. The Governor added that the Hisbah group has been empowered to monitor every part of the state to arrest *Shar'ia* violators⁴⁵.

In January 2009, the Kano state Hisbah Board reportedly ordered the Voice of Widows, Divorcees and Orphans of Nigeria (VOWAN), a non-governmental organization concerned with the welfare of widows and divorcees, to refrain from staging a rally to advocate for a legislation that would improve the lives of

⁴¹ Hisbah Groups op cit pg.7

⁴² Ibid., pg.2

⁴³ Based on a 2009 World Religious Survey (Mapping out the Global Muslim Population), 50.4% of Nigeria's population are Muslims who dwell mostly in the north while, 48.2% of the population are Christians who dwell in the middle-belt and south of the country. http://en.wikipedia.org/wiki/Demographics_of_Nigeria#Religious.

⁴⁴ For example, in February 2006, the chairman of the Zamfara state Hisbah Board reiterated the position of the board that it would arrest 'indecently dressed' women and charge them in court. Such threats have a highly coercive effect on all women living in the territory controlled by a Hisbah group. Ostien, P., (2007) *Shar'ia* Implementation in Northern Nigeria. A Source Book: Vol.III, Ibadan: Spectrum, p. 107.

⁴⁵ Note that similar actions have been taken by governors across the northern states. For example, in February 2004, the Zamfara state Governor announced an Islamic dress code for female corps members who were undergoing their one year mandatory National Youth Service. Ibid.

female divorcées, calling the intended rally ‘un-Islamic⁴⁶’. The women were therefore deprived of their right to freedom of association⁴⁷, freedom of speech⁴⁸ and self determination⁴⁹.

⁴⁶ US Department of State op cit pg.13

⁴⁷ See section 40 of the 1999 Constitution

⁴⁸ Ibid, section 39

⁴⁹ Ibid

Chapter Four: Children's Rights

Children in sub-Saharan Africa generally have more to contend with than children in most parts of the world. They are more likely to die before the age of five⁵⁰ and continually struggle with challenges that diminish their quality of life as they journey to adulthood. Recent statistics reveal that Nigeria has the highest number of children who are not in school⁵¹ and long standing high maternal and infant mortality rates⁵². Endemic poverty and underdevelopment of infrastructure make children susceptible to diseases, malnutrition, lack of clean water, insecurity and violence. They are also the first and most vulnerable victims of ethnic and religious conflicts in the highly volatile northern states. The greatest challenge to the protection of their rights is that they are often invisible within the public sphere and because they are not 'represented' in government, their voices are rarely heard.



Violation of children's rights is a major threat to national development as well as the attainment of the Millennium Development Goals (MDGs). Most children's rights are abused within the context of their everyday lives: at home, school, on the streets, in the workplace, in juvenile detention centers, and other institutions. The failure to protect their rights lies with the government and with primary caretakers. Because of the minimal resources allocated to the protection and promotion of children's rights, the mechanisms for enforcement remain weak and uncoordinated.

4.1 Legal Framework for Children's Rights

General human rights instruments are often inadequate when it comes to the protection of children's rights because of issues peculiar to them. Hence the international community developed an instrument specifically tailored to meet the human rights needs of children hence, the Convention on the Rights of the Child (CRC).

Nigeria ratified the CRC on April 16th 1991, and domesticated it into national law as the Child Rights Act in 2003. It also signed but did not ratify the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict and signed and very recently ratified the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography. At the regional level, Nigeria has also ratified the African Charter on the Rights and Welfare of the Child Unfortunately, both the Optional Protocols and the African Charter are only persuasive authority in Nigerian courts, since they have not yet been

⁵⁰ Despite an overall worldwide reduction, 49.6% of deaths in children younger than 5 years occur in sub-Saharan Africa, 33.0% occur in Asia with less than 1% of deaths occurring in high-income countries.

<http://www.thelancet.com/journals/lancet/article/PII80140-6736>.

⁵¹ See http://www.unicef.org/education/files/00SCI_flyer_FINAL.pdf.

⁵² According to UNICEF and the Population Reference Bureau (PRB), child mortality rate in Nigeria under age 5 is 133 per 1000 live births while, maternal mortality rate is 1,100 per 100,000 live births <http://www.populationinstitute.org/external/files/Nigeria.pdf> and also http://www.unicef.org/infobycountry/nigeria_statistics.html.

domesticated. Nevertheless, the broad provisions of the Child Rights Act may offer protections in some of the areas which they would cover.

Apart from these international and regional instruments which Nigeria has ratified or signed, some other general national laws make provision to protect and promote the rights of children: the general human rights provision in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, and Section 42, which provides for freedom from discrimination on the grounds of ethnic group, origin, gender, religion, circumstances of birth, disability, or political opinion, lend support to children's right to education and to protection against exploitation. Also relevant are the Compulsory, Free Universal Basic Education Act of 2004 and the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, which among other provisions prohibits child trafficking and child labour.

The Child Right Act, which replaced the Children and Young Persons Law, is the most comprehensive body of law on the rights of children in Nigeria. The Act defines a child as any person under the age of 18⁵³ and mandates that a child's best interest should be a guiding consideration at all times.⁵⁴

Some highlights of the Child Rights Act are:

- ✓ Freedom from discrimination on the basis of ethnicity, sex, place of origin, religion, circumstances of birth, disability⁵⁵;
- ✓ Right to dignity and political opinion⁵⁶;
- ✓ Freedom from psychological injury, abuse or neglect, maltreatment, torture, inhuman or degrading punishment, attacks on his/ her honour or reputation⁵⁷;
- ✓ Right to leisure and rest and the enjoyment of the highest level of physical, mental and spiritual health⁵⁸;
- ✓ Progressive realization of reduction in infant mortality rates, medical and health care, adequate nutrition, safe drinking water, sanitary environments by every level of government⁵⁹;
- ✓ Provision for and protection of special needs children (including street children, mentally and physically challenged children)⁶⁰;
- ✓ The duty of every parent / guardian to ensure children under the age of two years are immunized against childhood diseases⁶¹;
- ✓ Provision to be made for expectant and nursing mothers⁶²;
- ✓ Prohibition of the betrothal or marriage of children⁶³;
- ✓ Prohibition of female genital mutilation, tattoos or scarification⁶⁴;
- ✓ Prohibition of exposure of children to pornography' harmful publications and narcotics⁶⁵;

⁵³ Child's Right Act, CAP C50, 2003, section 21

⁵⁴ Ibid, section 1

⁵⁵ Ibid, section 10

⁵⁶ Ibid, section 11

⁵⁷ Ibid, section 11

⁵⁸ Ibid, section 12

⁵⁹ Ibid, section 13

⁶⁰ Ibid, section 16

⁶¹ Ibid, section 13(4)

⁶² Ibid, section 13(3)(f)

⁶³ Ibid, section 21 and 22

⁶⁴ Ibid, section 24

⁶⁵ Ibid, sections 25 and 35

- ✓ Prohibition of trafficking in children, use of children in criminal activities, in forced labour, heavy labour or employment as domestic servants⁶⁶;
- ✓ Prohibition trading in children for the purpose of begging, hawking, or prostitution;
- ✓ Prohibition of sexual abuse⁶⁷;
- ✓ Prohibition of recruitment into the armed forces⁶⁸; and
- ✓ Protection of the child and unborn children through criminal legislation⁶⁹.

While the federal government has enacted the Child Rights Act, because the issues it covers fall under the list of matters for concurrent state and federal legislation, state legislatures still need to adopt it for it to become applicable only 16 states of the Federation have adopted to date; Bauchi and Kano states are amongst those that have not enacted this law.

In Bauchi state, there are existing legislation relevant to the protection of children’s rights, particularly child labour, which is referred to as the Hawking by Children (Prohibition) Edict of 1985 (CAP 58) and the Retention in School and against Withdrawal of Girls from School Act to prevent early marriage and child labour. Kano state has enacted a similar law on the Retention in school and Against withdrawal of girls from school Act⁷⁰. In addition, the Kano state Shar’ia Penal Code protect children by providing for the punishment of crimes that cause injuries to unborn children, expose of infants to danger, as well as cruelty to children, concealment of births, abduction of children and young persons, sexual exploitation of and trafficking in the girl child, and forced labour⁷¹. While all these laws seek to protect children in these states, their provisions are not as comprehensive as those provided in the federal Act.

At the federal level, the following institutions/agencies have been established to monitor and implement child rights issues throughout the country:

- National Child Rights Implementation Committee;
- Child Development Department in the Federal Ministry of Women’s Affairs; and
- National Agency for the Prohibition of Traffic in Persons (NAPTIP).

At the state level, the following institutions/agencies generally exist:

- State and local government area child rights implementation committees; and
- Child development departments in state ministries of women’s affairs.

4.2 Forced/ Underage Marriage

The marriageable age for females has continued to be a controversial issue in northern Nigeria, a predominantly Muslim region. Muslim traditions allow the marriage of preadolescent girls⁷². It is

⁶⁶ Ibid, sections 26, and 28

⁶⁷ Ibid, section 30

⁶⁸ Ibid, section 34

⁶⁹ Ibid, section 17

⁷⁰ This law is intended to prevent early marriage as most girls are withdrawn from school and given out in marriage in some parts of the country.

⁷¹ See: Federal Ministry of Women Affairs, Abuja: Country Report on Violence Against Children (the UN General’s Independent Expert on the Study on Violence Against Children) Abuja, July/August 2004 pg.5

<http://www2.ohchr.org/english/bodies/CRC/docs/study/responses/Nigeria.pdf>.

⁷² Qur’an Suratul Talaq, verse 4

common practice among Muslim communities in Northern Nigeria to marry off preadolescent girls and delay the consummation of their marriage. But it is nearly impossible to delay consummation once marriage is contracted. This practice also infringes upon these girls' rights to self determination and to bodily integrity. In both Bauchi and Kano states, girls can be married off as young as 14 years, contrary to the 21 years stipulated under the Child Rights Act of 2003. Early marriage is also one major factor inhibiting the education of female children in northern Nigeria.

Jamila Abdul Mummuni's plight, as monitored by BAHRN, is an all-too-common example of the ordeals of child marriage consistently confronted through the course of this project. Jamila, aged 13, had lost her mother at infancy. Unable to care for her on his own, her father, who lived and worked in Bauchi, left her in the care of a relative in Plateau state. Jamila did not enjoy the benefit of a formal education, but instead hawked goods on the streets for her guardian. In December 2009, her guardian arranged to give her in marriage to an elderly man without her consent. She ran away to her father in Bauchi, hoping she could count on his support to thwart her guardian's plan. Unfortunately, her father consented to her guardian's plan to give her away in marriage and compelled her to return to her guardian. The case is currently the subject of litigation with support from BAHRN.

Muslims are not the only victims of child marriage, as illustrated in Martha's case. Martha, a 14-year-old orphan who lived with her uncle in Kagadama, Bauchi state, almost became a victim of forced marriage when her uncle gave her in marriage to a man who already had a 16-year-old daughter. Her uncle, who failed to educate her, hoped that by marrying Martha to an affluent man, he would receive financial assistance for his business. Luckily, Martha was rescued by the timely intervention of her pastor and the community head of Kagadama.

On 15th June, 2010, 15-year-old Hafsat Amadu, from Kwankwaso town, Kano state, ran away from home to avoid being forced into marrying a man who was about sixty years old. KAHRN attempted unsuccessfully to mediate the matter between her and her father, who adamantly held on to his 'right' to marry off his daughter to whomsoever he pleased, whenever he pleased. The matter was referred to the Hisbah Board where Hafsat was temporarily accommodated.

4.3 Denial of the Right to Education

Despite the Federal Government of Nigeria's guarantee of free, universal basic education, many children are denied the right to education. This is often because of poverty or, in the case of girl children, because of discrimination. Both of these problems are particularly pronounced in northern Nigeria. Children are often kept out of school and are forced to hawk on the streets by their parents or guardians to assist in supplementing their family incomes. In Nigeria, it is estimated that 40 per cent of school aged children do not attend school⁷³ and the lowest attendance rates, particularly for girls, have been recorded in northern Nigeria.

To tackle the interconnected problems of girls' education and forced underage marriage, the Federal government, UNICEF, and other partners in 2008 launched the Girls' Education Initiative Project in an effort to enroll more girls in school and to reduce gender disparities in primary and secondary school. This initiative has, however, not been very effective in keeping girls in school and out of early or forced

⁷³ UNICEF Nigeria at: http://www.unicef.org/nigeria/children_1937.html.

marriages⁷⁴, as evidenced by stories such as those presented in the previous section, which were all too common during this monitoring project.

Another class of children often deprived of their right to education, as well as adequate nutrition, health, shelter and social protection, are *almajiris*⁷⁵. *Almajiris* are children who live and study under Islamic teachers. These Islamic teachers, saddled with the responsibility of accommodating, feeding and caring for these young children, who are often sent from rural to urban areas to get an Islamic education, are often themselves indigent and unable to meet the children's needs. It is not unusual for a mentor to have as many as 100 pupils. Consequently, these children are regularly sent out by their benefactors to beg for alms on the streets. Often destitute, these young school-aged children are left to fend for themselves. The problem is traceable to the colonial era when the British colonial system established schools through Christian missionaries to replace the already existing Islamic educational system in the predominantly Muslim north. There were no deliberate policies aimed at integrating the Islamic educational system with the western system which continued even after Nigeria attained independence. The result was the informal Islamic educational system without government support, for which funding is often very meager and inadequate to care for either teachers or children.

On April 15, 2010, three *Almajiri* boys from Kano state narrated their ordeal to BAHRN. The boys, Yakubu Illiasu, age 9, Ibrahim Abdul, age 13, and Musa Ibrahim, age 10, stated that they had been in the regular primary school in Kano, but were forcefully brought to Bauchi by their parents to study under Islamic teachers. They alleged frequent maltreatment in the hand of their teachers and solicited the assistance of BAHRN to go back to their homes.

3.4 Physical Abuse and Corporal Punishment

Corporal punishment for children that amount to torture and ill-treatment are legal in northern Nigeria. Section 55 (1)(a) of the Penal Code (North) stipulates, "Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done: by a parent or guardian for the purpose of correcting his child or ward being under eighteen years of age". This provision seems to leaves children without protection from all but the most extreme forms of corporal punishment at home or in schools. The Kano state Penal Code also explicitly permits parents, guardians, schoolmasters and masters to physically discipline their children, wards, pupils and servants, as long as such castigation does not amount to grievous bodily harm⁷⁶ and is not unreasonable in kind or degree.⁷⁷

Below are some graphic examples from KAHRN and BAHRN's monitoring efforts of the abuses children regularly suffer in the region.

⁷⁴ http://www.unicef.org/infobycountry/media_43620.html.

⁷⁵ See <http://library.thinkquest.org/06aug/00168/syndromes.html>.

⁷⁶ Section 241 Penal code of Northern Nigeria defines grievous bodily harm as "emasculatation; permanent deprivation of sight, hearing, or speech; loss of a limb; permanent disfiguration of the head or the face; the fracture or dislocation of a bone or tooth; or a harm that is life-threatening, or which causes the victim to suffer for 20 days either incapacitated or in severe physical pain.

⁷⁷ Section 76, Kano Penal Code

Box 4: Cases of Physical Abuse monitored in Kano and Bauchi

Some incidents occur in schools with punishments inflicted by teachers. For instance, in July 2010, a 13-year-old boy was given fifteen strokes by his private tutor. The boy, Cosmo Haruna, sustained serious injuries on his back and buttocks from the lashes, making it very difficult for him to sit or lay on his back for about two weeks. No charges were filed against this teacher.



Marks from Hadi Adamu's beating by his teacher. (up).

On 8 January, 2010, in Kano state, 9-year-old Hadi Adamu, an *almajiri*, was severely whipped by his teacher, Mallam Gambo, for turning in a small sum of money from begging. Hadi suffered injuries as a result of the whipping. According to Hadi, he received similar treatment, each time he failed to turn in sufficient income.

Similar incidents also occur in homes. Six-year-old Rita Bitrus of Rafin Zurfi in Bauchi, suffered second degree burns in May 2010 when her stepmother deliberately poured hot water on her. Falling under the category of parent or guardian, her stepmother was not prosecuted because Rita's injuries do not meet the high threshold of "grievous bodily harm".

Little Rita with hot water burns on her right arm and upper abdomen (right).



4.5 Child Labour and Trafficking

In spite of Nigeria's war on child trafficking, domestic child trafficking persists. More difficult to monitor than cross-border trafficking, children are frequently moved from rural to urban areas to work as domestic servants, nannies, street vendors, factory workers, bus conductors, *almajiri beggars*, etc. Even without the trafficking component, child labour is widespread. In rural areas, children are often engaged in farm work, spending long hours in tasks far beyond their physical capacity. Often, these children do not get an opportunity to go to school and their earnings are exploited by others.

Box 5: Child Labour Cases Monitored in Kano and Bauchi

Mary Sarkin Pawa, a 13-year-old girl from Tiri Kafin village in Ganjuwa local government area was brought to Bauchi town by a woman who claimed to have received Mary's parents' consent to be her guardian and to send her to school. The woman later arranged to send her to Abuja to work as a domestic servant. Mary, however, got wind of these plans and ran away from the woman's home. She got lost in her bid to escape but was discovered and handed over to the police. Mary was taken back to her parents, escaping her fate, but the would-be trafficker was not prosecuted.

15-year-old Fatima was trafficked from Kano to Sagamu in Ogun State and made to hawk food on the streets. Fatima was often sexually harassed while hawking. When the situation became unbearable, she fled Sagamu to Kano State to seek refuge at the house of the ward head in her village.

4.6 Sexual Assault Against children

Sexual assault is still shrouded in secrecy in northern Nigeria and cases are rarely reported to the police, especially where a minor is involved, for fear of stigmatization. The harrowing experiences these children go through are often negotiated away with apologies, monetary compensation and forced marriages arranged between parents and offenders, often with police complicity and without the acquiescence of the children. Such silence is a festering ground for pedophiles. For example, in August 2010, an 18-month-old girl was raped by 62-year-old man named Malam Zubairu Immam. At the time he was apprehended, he was known to have defiled no fewer than five other girls whose ages ranged between 3 and 4 years.

In Kano state, between June and December 2008, the police and government officials reported that a total of 54 cases of child rape were recorded, a number which police claim is two thirds higher than that recorded in the first six months of 2007. The Kano zonal coordinator of NAPTIP, Alhaji Ahmed Bello, said that his agency received 42 child sex abuses cases for the year 2010. The suspects were usually aged between 45 and 70 years, while their victims' median ages were between 3 and 11 years.

Citing examples of the agency's successes, Bello said that, in July 2010, a 39 year old man received a two years sentence for raping a four-year-old girl. In another case, NAPTIP secured a 14-year jail sentence from the Federal High Court in Bauchi, against one Mohammed Bello for raping a 12-year-old girl. Another man received a 5-year sentence for sodomizing a 9 year-old boy. Alhaji Bello further disclosed that his agency had a total of 14 cases of child abuse pending before the Federal High Court in Kano. While this shows some determination to prosecute and convict those who sexually abuse children, none of these punishments are commensurate to the damage done to these children.

Alhaji Bello also revealed that in 2009, an 11 year old girl was raped and impregnated by a neighbour who tested HIV positive and that his agency had four 13 year old girls who were pregnant as results of sexual assaults in their custody.⁷⁸

⁷⁸ <http://tribune.com.ng/sat/index.php/features/1889-62-year-old-man-sleeps-with-little-girlsothers-rape-18-month-old-baby-underaged-girls-for-money-rituals-aids-cure.html>.

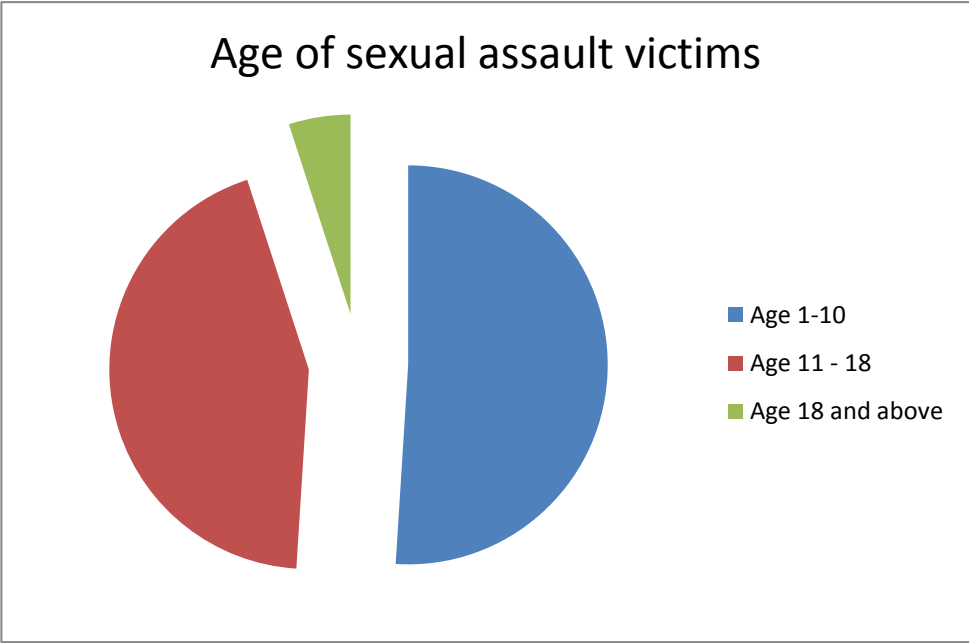


Figure 2: Ages of sexual assault victims in Bauchi and Kano state⁷⁹

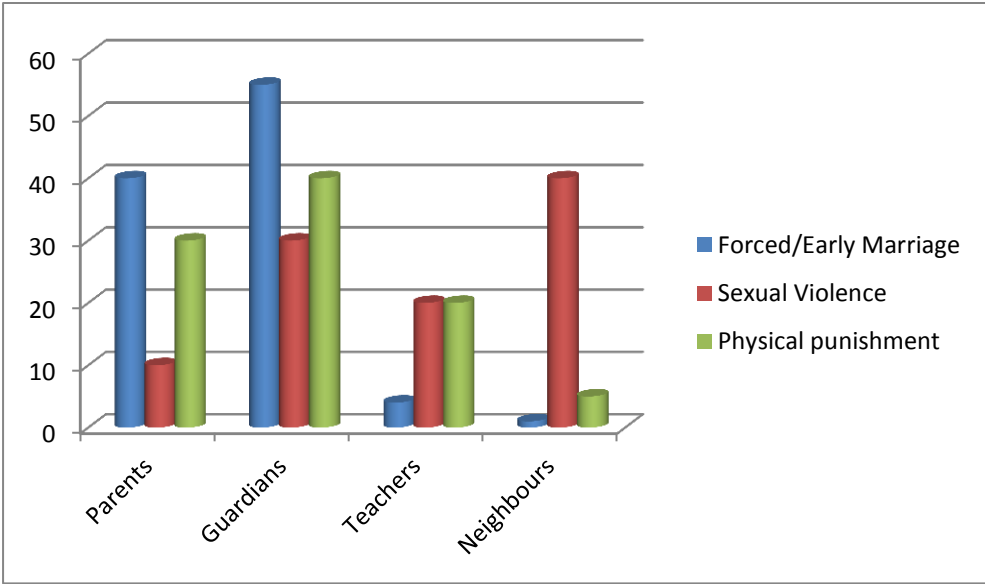


Figure 3: Distribution of persons who perpetrate violence against children in Kano and Bauchi states⁸⁰

⁷⁹ The Bauchi and Kano Human Rights Network's Assessment Report and Analysis: op cit

⁸⁰ The Bauchi and Kano Human Rights Network's Assessment Report and Analysis op cit

4.7 Recommendations

Given the prevalence of violence against children in Bauchi and Kano states, it is essential to conduct awareness-raising on the problem of violence against children with a view to facilitating preventive actions and to encourage reporting of acts of violence by child victims.

Provision of social security measures to indigent families should be made to support and protect children who are more vulnerable to violence.

Efforts should also be made to put in place a policy framework for violence free environment at all levels including the provision of basic education which will facilitate the establishment of sustainable interventions to address violence against children.

Chapter Five: Judicial and Law Enforcement Limitations (Corruption, Unlawful Killings, Unlawful Arrest and Detention)

5.1 The Judiciary and Limitations on Due Process

Nigeria's formal justice system consists of courts of first instance, comprising the magistrate or district courts, area courts, customary courts, *Shar'ia* courts and the federal and state high courts; and the appellate courts, comprising the federal and state courts of Appeal, the *Shar'ia* and customary courts of appeal, the Industrial Court and the Supreme Court of Nigeria (the apex court). A large proportion of litigants in northern Nigeria initiate legal proceedings at the *Shar'ia* or customary courts because they are cheaper, faster, often located at closer proximity, and the language of the court (Hausa) is easier to understand.

Trials in the regular courts are public and are guided by constitutional provisions on due process, and respect for certain rights including the right to be presumed innocent until proven guilty, right to have access to government-held evidence, right to present evidence and to confront witnesses as well as the right to be represented by a legal practitioner of one's choice, all of which are relevant in criminal cases. As evidenced by monitoring in Kano and Bauchi, however, these rights are not always respected.

An independent judiciary is widely regarded as an essential requirement for a functional democracy, key to enhancing social harmony and good governance. As with most public institutions in Nigeria, decades of military rule negatively impacted the judiciary. The doctrine of separation of powers, provided for under the Nigerian constitution, was grossly undermined during that period. The executive arm of government exercised, and to some degree still exercises, undue influence and control over the judiciary.

The judiciary's limited independence is been strongly linked to corruption⁸¹ which is often politically induced. In September 2010, the Chief Justice of Nigeria, while speaking at the swearing-in of eight Abuja High Court judges, admitted that the nation's judiciary was not immune from the malaise of corruption, which had contributed to the nation's present state of underdevelopment⁸².

In Bauchi and Kano states judicial corruption manifests itself in different forms, including but not limited to the wrongful exclusion of evidence to justify the acquittal of a defendant of high political or social status, granting of frivolous injunctions, unnecessary adjournments, deliberate delays in rulings or judgment, the willful stealing or destruction of files or exhibits to weaken evidence, the assumption of jurisdiction over matters that are not within the jurisdiction of the court, prosecutors obstructing avenues for legal redress for crime victims or sensitive cases, particularly those involving the government or any of its officials. Such barriers on the path to justice are most often products of corruption or other forms of political pressure⁸³.

In the course of our monitoring the judiciary, we found that it was regular practice for court clerks to demand for gratification to provide basic services such as service of process, information on adjournment

⁸¹ United Nations Office on Drugs and Crime: Assessment of Justice System Integrity and Capacity in three Nigerian States, Technical Research Report conducted by GPAC and UNODC in collaboration with NAILS. May 2004 pg.103 at:

http://www.unodc.org/pdf/crime/corruption/Justice_Sector_Assessment_2004.pdf.

⁸² Chief Justice Calls Corruption a National Malaise Vanguard, Newspaper (Abuja) July 16, 2010 pg. 1

⁸³ Report monitored and documented by BAHNRN and KAHRN

dates, and typing or photocopying relevant documents. In other instances, judicial clerks fraudulently request for non-existent or inflated filing fees or other court related costs⁸⁴.

Poor and erratic remuneration of judicial staff, resulting from underfunding of the judiciary, has also been a challenge in both Bauchi and Kano states and has led to frequent strikes. For example, in January 2010, the Kano state Judiciary Staff Union of Nigeria (JUSUN), embarked on a strike which lasted for almost three months to demand a wage increase and better working condition. Similarly, the Bauchi state chapter of JUSUN embarked on a three months strike from November 2009 to February 2010 also demanding for better remuneration and decent working conditions. The magistrate courts, *Shar'ia* courts, and high courts remained closed during the period. As a consequence, the delivery of justice was delayed and, in a number of cases, completely denied.

Corruption and strikes resulting from poor remuneration of the judiciary are not the only factors obstructing justice in Kano and Bauchi states. Other products of underfunding of the judiciary include overloaded case dockets for harried judges, outdated transcribing machines, understaffing, erratic power supply and lack of effective communication channels with the police and prison authorities, all of which contribute to slow or ineffective judicial recourse.

5.2 Unlawful arrest and detention

The Nigerian criminal justice system is bedeviled by problems of arbitrary arrest and lengthy pre-trial detention. The federal government's pledge in 1999 to reform the system⁸⁵ has brought few results. In 2004, the government commenced a review of the 1990 Police Act, but has yet to come out with a new law. Under section 4 of the act that remains in effect, the police generally require a warrant to effect an arrest, but have the power to arrest without a warrant if they have reasonable suspicion that a person has committed an offence. In practice, the police often abuse these powers and arbitrarily arrest innocent citizens on trumped up charges.

The 1999 Constitution provides due process guarantees to those arrested on criminal charges. An accused person must be informed of charges against him/her at the time of arrest and must be taken before a court within a reasonable time thereafter. Specifically, police may detain a suspect for a maximum period 24 hours where there is a competent court within a radius of 40 kilometers from the place the alleged crime was committed; where there is no court within this distance, the maximum period increases to 48 hours of pre-trial detention. The criminally accused are also entitled to release on bail where the offence is bailable and to engage a legal practitioner of their choice to defend them.

In practice, however, these constitutional rights are rarely upheld by the police. Most suspects in police detention are detained beyond the constitutional time limits, without knowing the charges brought against them, and often are kept incommunicado for long periods without access to their family members or legal representatives. Many detainees are denied bail for bailable offences with the intention of pre-trial punishment. Others simply cannot afford the unreasonable and illegal amounts demanded by the police to secure bail which ordinarily should be free⁸⁶. The police are often financially induced by aggrieved persons to illegally detain suspects for long periods as a personal vendetta against the person detained. There are other instances reported to our networks in which the police deliberately arrest

⁸⁴ Ibid

⁸⁵ Amnesty International Fourth Session of the UPR Working Group op cit pg.6

⁸⁶ Note that the illegal monies collected for bail is not officially reported and goes into private police pockets

innocent citizens on trumped up charges to extort money from them or else make arrests in purely civil matters not subject to criminal prosecution.

Pre-trial detention in northern Nigeria as in other parts of the country, are prone to grave human rights abuses. Detainees have been known to be held in detention for as long as five years and longer without a single charge brought against them⁸⁷. Most detainees end up spending longer in pre-trial detention than the total sentence for the crime of which they are accused. Muhammed Sambo, for example, has been awaiting trial at the Kano Central Prison for the past 10 years⁸⁸ on suspicion of robbery⁸⁹. Others like him have died in detention while awaiting trial.

The conditions of detainees in prisons in both states are appalling. Prisons and police cells are incredibly overcrowded, largely due to long delays in the justice system. According to Amnesty International, 7 of 10 inmates in Nigerian prisons are pre-trial detainees, many of whom had been held for years awaiting trial⁹⁰. and related conditions led to a clash in 2007 between prison guards and detainees at the Kano central prison, resulting in the deaths of three guards and two detainees and the hospitalization of more than twenty inmates. Similar incidents occurred in Kano state in October 2009 and February 2010.

Criminal cases in both states are delayed by continuous adjournments, repeated replacement of judges or prosecution, and frequent reframing of charges. Sometimes, detainees who have been released are re-arrested on the same charges for which they have been absolved, violating the double jeopardy principle enshrined in section 36(9) of the Constitution. For example, in December 2009, in Kano, Hajiya Asabe, was after being twice acquitted for the same robbery charges by two different courts in Gidan Murtala, was re-arrested by police in Goron Dutse, on same charges.

The Federal Government of Nigeria, responding to international embarrassment over long delays in trials, commenced a prison decongestion program employing over 2,000 lawyers to represent prisoners and detainees. The projected impact of the scheme is however yet to be realized as prison congestion and delays in prosecution do not seem to have improved in the states monitored. The government-funded National Legal Aid Council lacks adequate funding and capacity to effectively handle the growing numbers of prisoners and detainees in Bauchi and Kano states as well as across the north of the country. It has fewer than 100 lawyers nationwide. in most northern states, the Legal Aid Council has only one lawyer to serve detained populations that average over 3 million. Many detainees consequently have no legal counsel to challenge the prosecution's requests for inordinately long adjournments or otherwise offer proper criminal defense.

⁸⁷ KAHRN confirmed about 16 cases of detainees some of which have been awaiting trial for up to seven years in Goron Dutse prison within the period of January and March 2010 while about 726 others are detained at the Kano Central Prisons.

⁸⁸ Under the constitution, trial for a person detained must commence within two months of arrest, and within three months in any event.

⁸⁹ Report monitored and documented by KAHRN

⁹⁰ <http://developingnigerianow.blogspot.com/2010/06/amnesty-international-2010-report.html>.

Box 6: Cases of Unlawful Arrest and Detention Monitored in Kano and Bauchi

On 29 December 2009, many persons including children were arrested and detained by the police in Bauchi state following the altercation between security agents and the Kala-kota religious sect. The crisis, which occurred in Zango village, in Bauchi state⁹¹, witnessed the killing, arrest and subsequent detention of youths by the state's police command. After weeks of detention, the Nigerian Red Cross managed to secure the release of 14 of the detainees and reunited them with their families.

On 7 June 2010, six students of the Tatari Ali Polytechnic, Bauchi were arrested by the police and detained for three days for participating in a peaceful demonstration over the poor infrastructural development in the school. They were detained for this period without charges being brought even though there are numerous courts close by in Bauchi metropolis. They were released when fellow students made a protest march to the police station demanding their release.

In Ita Gadau and Katagum local government areas of Bauchi state, four women and six men were arrested at their homes on the 15th of June, 2010 by the Hisbah Group and handed over to the police. The women were charged with prostitution based on the sole fact that they were living alone without a visible means of livelihood, while the men were charged with gambling. They were detained for four days before they were charged before a *Shar'ia* court and then acquitted and ordered to daily report to the police station for another three weeks.

On 5 May, 2010, about 206 members of a youth group from Duguri in Alkaleri local government of Bauchi state were arrested when they turned out to welcome Senator Bala Kaura, an indigene who was appointed as the new Minister of Federal Capital Territory. They were detained for three days at the Bauchi state police command on the allegation of breach of peace and disrupting traffic flow on the tarmac of the Bauchi airstrip. Their arrest appeared to have been politically motivated as the Governor of Bauchi State was not on cordial terms with the Minister.

On 22 March, 2008, a popular actress, Zainab Umar, and her friend were forcibly arrested by the Hisbah Group and detained for 20 hours in the Hisbah headquarters for "living in a house without suitable relation,"⁹² as Hisbah frowns at single women living alone in a house.

5.3 Extra-judicial killings

Failure to prevent and punish assassinations, armed communal conflicts, vigilante group killings, and mob actions; a failed national health care system; and the generally poor security and infrastructure are various ways in which the government has been complicit in deprivation of the right to life in Nigeria. However, the most disturbing violations of the right to life are extra judicial killings by the police forces. Daily, the newspapers in Nigeria publicize incidents such as those detailed below which were documented during the present monitoring project. Many cases go uninvestigated and the officers responsible go unpunished, while the families of the victims do not get any form of redress or justice.

The Constitution⁹³ guarantees the right to life and forbids intentional killing save in execution of a judgment by a court of law or in certain exceptional circumstances involving self defense, to prevent

⁹¹ 38 dead in Bauchi Violence: The Nation, Tuesday, (Bauchi) 29 December, 2009 pg.7

⁹² Not living with a man or husband

escape during a lawful arrest, or to suppress a riot. The right to life is bolstered by Article 4 of the African Charter on Human and Peoples' Rights, as domesticated into Nigerian law. However, the police and other security personnel have in numerous cases summarily executed persons arrested or in their custody in violation of these guarantees. Killings of unarmed civilians by the police and other security personnel in northern Nigeria have been rampant. The following are examples of such extra judicial killings from the monitoring exercise in Kano and Bauchi states:

Box 7: Extra judicial killing cases monitored in Kano and Bauchi

The unlawful killing of Muhammad Yusuf, the leader of the Boko Haram sect, and hundreds of his followers in July 2009, during and after the fight between the security forces and militant members of the sect in Bauchi, Kano, Yobe and Borno states⁹⁴.

The December 2009 killings of approximately 40 persons in the Bauchi state, following a clash between members of the Kala-Kato Islamic sect, town residents and security forces⁹⁵.

The January 2010 killing of Attahiru Tahir by the police during a peaceful demonstration by students of the College of Environmental Studies Gwarzo in Kano state over the killing of one of their colleague Aliyu Aliyu by unknown assailants⁹⁶.

The January 4, 2010 killing of 2 suspected drug dealers by the agents of the National Drug Law Enforcement Agency at Kofar Nasarawa, Kano state⁹⁷.

Beyond the general culture of impunity for such incidents, discussed at the outset of this report, the legal framework governing police and other security forces offers many excuses for extrajudicial killings. It is therefore common practice for the police to offer such excuses to justify extrajudicial killings, while in reality an unarmed victim was killed in custody or during arrest. These excuses are rarely properly investigated, letting the police quite literally get away with murder. Where killings are investigated by the Police Service Commission,⁹⁸ they only appear in a quarterly report forwarded to the President. These reports are not published and the public never gets a chance to know if the killings were truly justified.⁹⁹

⁹³ Section 33

⁹⁴ U.S Department of State op cit

⁹⁵ 38 dead in Bauchi Violence: The Nation Tuesday, (Bauchi) 29 Dec. 2009 pg.7

⁹⁶ Report monitored and documented by KAHRN

⁹⁷ Kano Drug Clash: Two Feared Dead, 7 Arrested: This Day Friday, (Kano) 26 June, 2009 pg.5

⁹⁸ The body responsible for the discipline of erring police officers

⁹⁹ Commission on Human Rights Sixty-second session, Item 11 (b) of the provisional agenda: Mission to Nigeria

E/CN.4/2006/53/Add.4 7 January, 2006 pg.16 <http://daccess-dds-ng.un.org/doc/UNDOC/GEN/G06/106/4/PDF/G0610640.pdf?openElement>.

Chapter Six: Rights of Persons Living with Disabilities

Persons living with disabilities are confronted with a myriad of challenges in Nigeria as are their counterparts in most developing countries. Their challenges are further compounded by social bias, taboos, lack of social or physical infrastructure to cater for their special needs, and the near complete absence of legal or policy frameworks and policies to support their rights in Nigeria.

The term “disability” encompasses physical, cognitive/mental, sensory, emotional and developmental impairments. According to the World Health Organization (WHO), it is “...an umbrella term, covering impairments, activity limitations, and participation restrictions. ...Impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task action; while a participation restriction is a problem experienced by an individual involvement in life situations¹⁰⁰.” A disability may be present from birth or may result from an event or develop gradually during a person’s life time.

The 2006 national census figures¹⁰¹ estimated that there were 3,253,169 persons living with disability in Nigeria, while WHO estimates this number to be closer to 19 million¹⁰². The census figures represent 2.32 per cent of the total population nationwide. The census data reports 239,377 persons with disabilities living in Kano state and 100,000 in Bauchi state. This is in line with the census’s showing of far higher rates of persons living with disabilities in the North East than in the South West, which had the lowest rates. The census revealed that there are more male disabled persons than female disabled persons in Nigeria, and 45 percent of disabilities reported were sight related and 15 percent auditory related¹⁰³. Note that the numbers recorded in this monitoring project showed very different frequency rates in Kano and Bauchi, with over 35 percent mobility related, about 27 percent seeing related, and about 12 percent auditory, with other disabilities at lower rates as shown in Figure 4.

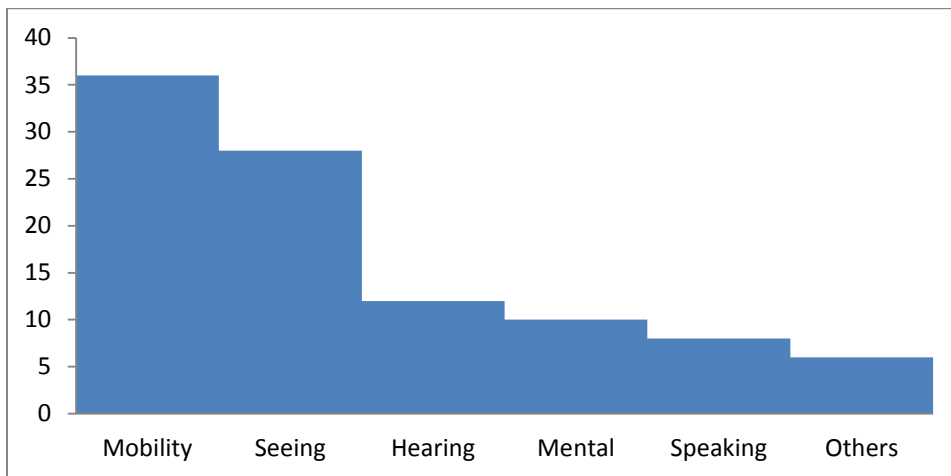


Figure 4: Ratio of the forms of disability occurring in Kano and Bauchi¹⁰⁴

¹⁰⁰ <http://www.who.int/topics/disability/en/>.

¹⁰¹ Prepare for Over Two Million Physically Challenge: This Day Friday, (Lagos) 20 August, 2010 pg.9

¹⁰² 20% of the nation’s population

¹⁰³ Prepare for Over Two Million Physically Challenged. op cit

¹⁰⁴ The Bauchi and Kano Human Rights Network’s Assessment Report and Analysis op cit

In northern Nigeria, most disability cases are related to infectious diseases such as river blindness, leprosy, or polio. The polio virus mostly affects children under the age of five¹⁰⁵. Cases of persons crippled or blinded from such diseases were particularly high in the monitoring project in Kano and Bauchi states, especially in the rural areas¹⁰⁶. Other causes of disabilities include birth defects, which may result from genetic malformations, malnutrition, lack of prenatal care, or delivery related injuries, and hostile living conditions.

In the past, cultural and religious practices in the north of Nigeria frustrated government efforts at combating polio. Immunization was viewed as a western idea and considered as a ploy to induce infertility and reduce procreation. The federal and state governments have more recently, however, made concerted efforts to eradicate polio in the country, joining other West and Central African countries in a synchronized campaign to immunize more than 85 million children under the age of five¹⁰⁷. In March 2010, the 57 million doses of vaccine procured with UNICEF support were used to immunize more than 45.5 million children across the country. As at the end of the exercise in mid-April 2010, only 8 cases of polio were reported, in sharp contrast to the figure reported in 2008, when Nigeria had more than 85% of all cases in Africa¹⁰⁸. While these important efforts have hopefully put Nigeria on the path to eradicating the disease, those who are disabled as a consequence of recent times when polio rates were still high, or from other causes, still struggle to realize their rights. The discussion below explores the legal and policy framework and the types of cases involving violations of the rights of the disabled monitored in Kano and Bauchi.

6.1 Legal and policy framework for the rights of physically challenged/disabled persons

In 1993, the then military government promulgated the Nigerians with Disability Decree, which made comprehensive provisions for the protection of the human rights of the people with disabilities.¹⁰⁹ Unfortunately, this was one military decree that did not remain in force after the 1999 transition to democracy, and prior to that year, little had been done to implement its detailed provisions.

In 2007 and 2010, respectively, Nigeria signed and ratified the UN Convention on the Rights of Persons with Disabilities, along with its Optional Protocol¹¹⁰. However, it has failed to domesticate this law through national legislation. In fact, the unsuccessful struggle for passage of a post-democracy national law on the rights of the disabled dates to 2000, when two bills were presented to the National Assembly, but failed to pass. These bills were for an Act to Establish a National Commission for the Handicapped persons and for an Act to provide Special Facilities for the Use of Handicapped Persons in the Public Buildings. In 2009, the Discrimination against Disabled persons (Prohibition) Bill of 2003 was passed by the National Assembly, but is still awaiting presidential assent to make it law. Thus, at present, there is

¹⁰⁵ <http://www.fundinguniverse.com/Company-histories/March-of-Dimes-Company-History.html>.

¹⁰⁶ Report monitored and documented by BAHN and KAHRN

¹⁰⁷ UNICEF – At a glance: Nigeria http://www.unicef.org/infobycountry/nigeria_53350.html.

¹⁰⁸ Nigeria Immunizes Children Against Polio: This Day, Wednesday, 8 December 2010. Vol. 15 pg. 43

¹⁰⁹ These provisions included, *inter alia*, Section 2: Equal rights and privileges; Section 4: Right to free healthcare and exemption from taxation for disability related purchases; Section 5: Right to free education at all levels; specialized institutions and schools; Section 6: Reservation of 10% of all employment opportunities for persons living with disability; Section 7: Government policies to favour housing needs of disabled persons; Section 8: Accessibility of public institutions and facilities for disabled persons; Section 9: Free and accessible public transportation for disabled persons; Section 10: Supportive social services; Section 11: Sports and Recreational development; Section 12: Accessibility to telecommunication and the media; Section 13: Voting access; and Section 14: Provision of legal clinics for the disabled; establishment of the National Commission for People with Disabilities.

¹¹⁰ Available at <http://www.un.org/disabilities/convention/conventionfull.shtml> as at July 10, 2011

almost no legal or policy framework for the disabled in Nigeria. The most fundamental negative right for the disabled is a guarantee against discrimination. Unfortunately, section 42 of the Constitution, which provides for freedom from discrimination, does not specify disabilities as a class to which this protection extends. Nevertheless, some argue that section 42 ought to apply to protect disabled Nigerians against discrimination.¹¹¹ Such an argument is bolstered by article 2 of the African Charter on Human and Peoples' Rights, as domesticated into Nigerian Law, which provides for non-discrimination on the basis of any class. However, this guarantee could certainly be strengthened and the breadth of its application should be tested and expanded through legal action.

Although the current Electoral Act of 2010 mentions persons living with disability, it did not adequately ensure their ability to exercise their civic right to vote. This is a cause for great concern given that, according to the 2006 census figures, more than two million disabled Nigerians are old enough to vote and be voted for¹¹². Section 56(2) of the Act states that "the commission *may* take reasonable steps to ensure that voters with disabilities are assisted at the polling place by the provision of suitable means of communication. . ." [emphasis added]. The use of permissive language implies that making such provisions for the disabled is not a duty and thus not mandatory. This inadequate provision and what it portends has led to agitations by the physically challenged for full realization of their civic right to vote.

Without any legal framework requiring social protections and physical infrastructure for the disabled, it is unsurprising that policies and institutions for the disabled also remain largely underdeveloped. In 2008, the UK's Department for International Development (DFID)¹¹³ identified the main problems of government interventions for those living with disability in Nigeria to be:

- Poor public participation in policy making;
- A focus on short-term projects rather than permanent programs;
- Failure to attend to underlying social exclusion and poverty issues;
- Failure to complete a large proportion of these projects; and
- Monitoring that focuses on input of information and not outcomes.

The consequences are quite clear. There has been no visible effort on the part of government to make public buildings and facilities accessible to persons with disability. Without ramps in public buildings that do not have elevators, persons confined to wheelchairs cannot access these buildings or the services rendered within them. Public transportation in Nigeria also does not make provision for persons confined to wheelchairs. Similarly, there is no apparent consideration for disabled persons in mass communications. Government owned media does not provide for sign language translation, subtitles, or braille government gazettes or newspaper facilities. While there are some schools for the disabled in Nigeria, they are often over populated and under equipped to meet their special needs. Finally, rising overall unemployment rates in Nigeria and poorly equipped public facilities make persons living with disabilities particularly vulnerable to employment bias, even when they have the capacity to perform the tasks required. Laws and policies to address these issues, along with those to strengthen the guarantee against non-discrimination and ensure that persons with disabilities can exercise their civic rights, are urgently needed in Nigeria.

¹¹¹ See, e.g., Jegede Ademola Oluborode, Human Rights Crisis in Nigeria, Pambazuka News, Issue 369, 2008 (<http://www.pambazuka.org/en/category/comment/47079/print>).

¹¹² Prepare for Over Two Million Physically Challenged op cit

¹¹³ Raymond Lang et al. Scoping Study: Disability Issues in Nigeria DFID 2008 pg. 38

6.2 Focus on Kano and Bauchi states

Reflecting the national climate, Kano and Bauchi states also lack adequate legal frameworks and policies for protecting and promoting the rights of the disabled. The only existing law on persons with disability in either state is the Kano state Emergency Relief and Rehabilitation for the Disabled Board Law of 2008, which makes provisions for the supply of relief materials in times of disaster and for skills acquisition assistance for disabled persons. Nevertheless, implementation is poor, as evidenced by the dilapidated buildings of the Social Rehabilitation Center for the physically challenged in Kano.

State-supported social protection services and institutions to disabled people also remain poor. Very few specialized services are available to physically challenged persons in Kano state. Despite the creation of the Office of the Special Adviser to the Governor on Disabled Persons' Affairs, the office's role seems to be redundant. Due to mounting frustration, there was on 25 August, 2010 an open confrontation between people living with disabilities and the Special Adviser, which was witnessed by KAHRN monitors. On 7 September, 2010, 24 disabled persons involved in the altercation were ordered by an Upper Shar'ia Court to be remanded in custody for attacking the Special Adviser. While responding to the charges, one of the accused told the court that the governor's aide attacked one of them and he fell from his wheelchair. As the witness said, *"We just couldn't stand by and watch him attack one of us, so we descended on the man until people came and rescued him"*.

There has, however, been significant civil society campaign aimed at reducing stigma and discrimination against physically challenged persons and non-governmental programs to improve their vocational and technical skills as well as business development assistance in Kano, with the help of organizations like the Community Participation for Action in the Social Sector (COMPASS) and the Kano Polio Victims Trust Association (KPVTA) project. The latter project, funded in 2006 by USAID in collaboration with the Leahy War Victims Funds, has recorded great success in providing KPVTA members and other polio victims in Kano state with life skills to help them become self-reliant. Indirectly, as the tenor of the confrontation with the Special Adviser may evidence, such services also may help with building empowerment, a sense of community, and awareness of rights.

In Bauchi state, the government has a special needs school for the physically challenged. A nongovernmental organization, Challenge Your Disability Initiative, spends N500,000 monthly to feed indigent physically challenged persons who participate in a skills acquisition program at its center. The organization, which was initiated by the wives of the Bauchi state governor in 2009, empowered and graduated over 300 disabled persons in its first year. The program also has a community rehabilitation component and has been taken to about 7 local government areas in the state, aiming especially to reach rural dwellers as well.

Nevertheless, although there are promising developments led by civil society in both states, such initiatives cannot supplant the provision of broader services by government and the need for a legal framework to protect and promote the rights of the disabled in Nigeria.

Chapter Seven: The Way Forward

One of the most important instructions from the human rights monitoring and documentation exercise in Kano and Bauchi is that victims of human rights violations are not interested in just having violations documented. They want remedies. While civil society can help to point out violations, proffer solutions and champion the cause of victims, the crux of the solution must come from government. Both at the federal and state levels, government must respond appropriately, with active pressure from a watchful polity that demands transparency and accountability. Herein lies the connection between good governance and human rights. Our challenge as civil society organizations is to sustain advocacy efforts that demand government response and ensure its accountability to citizens, especially with regard to their fundamental rights.

In order for government to fulfill its mandate of protecting, promoting and fulfilling rights in northern Nigeria, the three arms of government must wake up to their duties and be proactive. Legislators must ensure citizens rights are fully protected under the law; the executive arm of government must ensure the full implementation of laws and policies; while the judiciary must be accessible and independent in its delivery of justice. There must also be efforts to identify and repeal discriminatory laws, rules, procedures, and practices and to align future legislation with human rights standards¹¹⁴. While it is true that Nigeria as a developing country has certain resource limitations, a first step is for government to respect and create an environment that enables individuals to fully exercise their rights. Thereafter, where proactive government action is needed, as with positive rights, ingenuity, diligence and accountability on the part of elected officers, government employees and institutions can go far in unleashing resources for the progressive realization the full human rights framework.

An agency that is critical to the respect and enforcement of human rights is law enforcement, especially the police force. From our monitoring exercise, it was obvious that police are not only lax in fulfilling their duty to protect; they were all-too-often perpetrators of human rights abuses. Their most common violations documented were torture, inhuman and degrading treatment, unlawful arrest and detention, sexual assault, and extra-judicial killings.

One major problem is that most officers lack basic knowledge of human rights and a command structure that demands adherence to protocol and investigates and punishes alleged abuses. Therefore human rights and gender sensitivity education for police officers should be re-introduced. The government also needs to create a more conducive environment at police stations and barracks, making them more humane for both officers and detainees. A visit to most police stations evidences deplorable conditions for all present. Poor hygiene, overcrowding, paucity of equipment and furniture seem to trademark police stations in Nigeria. Psychologically, this environment does not encourage respect for rights or sensitivity. The absence of human rights desks at the police divisions also means that most victims are unable to report violations by law enforcement officers because they fear further violations. The Police Service Commission, thus, must create a safe and accessible avenue for complaints to be made against officers without fear of reprisal.

¹¹⁴ For instance, the Section 55 of the Penal Code that permits 'the reasonable physical chastisement of the wife' ought to be repealed

The National Human Rights Commission is another agency that can further promote rights and check violations. The Commission arose out of the specific mandate of the Vienna Declaration of 1993, which instructs all member states to establish institutions to guarantee the promotion and protection of the rights and liberty of their citizens, independent of government control and interference. The Commission is empowered to receive complaints on violations of individual and collective rights, investigate, and take action, such as providing legal assistance to help victims obtain redress. Due to lack of funding, however, the Commission has not been able to establish an office in each state in the federation, making access difficult for most citizens.

The judiciary, which is often said to be the last hope of the common man, needs to be completely transformed from its present state in order to regain its lost credibility and integrity. The government must devote proper resources to the judiciary so as to expand the avenues of justice, ensure that cases are speedily dealt with and that the judiciary can remain independent. Moreover, provisions must be made to eliminate barriers, such as language and (sometimes hidden) costs of litigation, do not prevent the poor and most vulnerable from seeking justice. The judges and court staff must consciously abide by the rules of professional conduct in the performance of their duties while striving to live above corruption; Because such a transformation of long-standing behaviours cannot be expected to happen of its own accord, investigations and penalties for those who violate the rules are necessary. This is the only way by which the public can again repose their trust and confidence in the judicial system. The National Judicial Council charged with the discipline of judicial staff must be proactive in meting out punishments instead of the long delays in investigations that often peter out owing to loss of interest by the public occasioned by delays.

The almost total absence of policies and laws to specifically address the problems of discrimination and neglect suffered by physically challenged persons in Nigeria demands urgent attention. For example, the only existing law for the disabled in Kano state, the Emergency Relief and Rehabilitation for the Disabled Board Law of 2008, is merely a directive and neither confers on any individual an actionable right by which to hold the government accountable for non-performance.

For both children and persons living with disabilities, the right to education does not appear to be a high government priority. Schools are overcrowded and underequipped; teachers are unmotivated and do not receive adequate training to provide quality education, especially for children with special needs. Government must show a change on this front by increasing budgetary allocations to schools and special needs education programmes. They must also work with the legislature to ensure there is a compulsory school leaving age and that no section of the society is educationally disenfranchised. For girls, particularly in the north, this means proactively and directly addressing long-standing cultural practices, such as underage marriage and notions that women do not require education. For the poor, this means acknowledging that many families see school as a trade-off against feeding their children; creative solutions, such as free school lunch programs, have been shown to increase school attendance among poor children elsewhere¹¹⁵ and may do the same in Nigeria.

Nigeria's nascent democracy is growing alongside conditions that threaten to undermine and scuttle the nation's fragile peace: human rights violations, disregard for the rule of law, corruption, and underdevelopment. Human rights protection and promotion are not collateral matters, but rather are essential to democracy, the rule of law, curbing corruption, and promoting sustainable national

¹¹⁵ See, for example, the Mid-Day Meal Scheme implemented by order of the Supreme Court of India.

development. It is therefore the collective duty of both the government and the citizens of Nigeria to deal with these conditions proactively by engaging through public discussion and concerted actions.

Organized civil society plays an essential role in bridging the gap of discussion between the government and citizens. When human rights activists and community based organizations are able to collaborate to monitor, document, and demand for the protection of the rights of individuals as well as remedies where there have been breaches, as we have done in this exercise, then the respect for human rights stands a fighting chance in northern Nigeria.