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Nigeria: Whether the police in Nigeria detain family members of wanted persons, including sexual and gender minorities; the manner in which these persons are treated; legal recourse available to them (2016-November 2019) [NGA106375.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Arrest of Family Members of Wanted Persons

Sources report that arrests in lieu, arrests in/by proxy or substitutional arrests take place in Nigeria (CLEEN 8 Nov. 2019; Executive Director of RULAAC 28 Oct. 2019; Sahara Reporters 28 July 2019). Sources explain that these may happen when the police cannot find a suspect: they may then arrest a family member or friend instead of the suspect (CLEEN 8 Nov. 2019; Executive Director of RULAAC 28 Oct. 2019). The purpose of this is to use the person as enticement to convince the suspect to come forward (Executive Director of RULAAC 28 Oct. 2019; Waziri-Azi Dec. 2017, 115). In a telephone interview with the Research Directorate, the Executive Director of the Rule of Law and Accountability Advocacy Centre (RULAAC) [1] explained that "it is commonly known as 'hostage taking'. The police are trying to use the relative to draw out the person they are looking for. They may take a man's wife or children and keep them hostage until the man appears, or take a man as bait to draw out his wife" (Executive Director of RULAAC 28 Oct. 2019).

According to the same source, it is a "very common practice" (Executive Director of RULAAC 28 Oct. 2019). A journalistic report funded by the Premium Times Centre for Investigative Journalism (PTCIJ) [2] and published on Sahara Reporters [3] states that there may be "hundreds, and possibly thousands of cases of arrest in lieu" in Adamawa State alone (Sahara Reporters 28 Jul. 2019). In correspondence with the Research Directorate, however, a representative of the CLEEN Foundation (CLEEN) [4] indicated that "a pocket of" or "several reports" suggest that police officers still make substitutional arrests in Nigeria (CLEEN 8 Nov. 2019).

Information on specific cases of arrests of family members of wanted persons in Nigeria was scarce among the sources consulted by the Research Directorate within the time constraints of this Response. Some Nigerian media sources reported on the unlawful arrest by the police, in Osun State, of the wife and son of a school administrative employee who had allegedly committed an offence (*The Punch* 1 May 2019) related to

the issuance to a senator of a school testimonial (*This Day* 30 Apr. 2019; *Daily Independent* 29 Apr. 2019). The journalistic report published by Sahara Reporters describes six cases of persons arrested in Adamawa State when the police could not find either their son, suspected of homicide, murder or kidnapping, or some youths from their community, accused of mobbing and vandalizing (Sahara Reporters 28 July 2019). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Executive Director of RULAAC provided the example of a case RULAAC has dealt with in October 2019, where a man was arrested by the police in lieu of his brother, who was suspected of stealing a car but whom the police could not find, and who was then taken away from Lagos to Anambra, where he is still held in custody (Executive Director of RULAAC 28 Oct. 2019). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1 Arrest of Relatives of Sexual and Gender Minorities

Information on the arrest of relatives of sexual and gender minorities could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. The Executive Director of RULAAC stated he did not know of cases of family members or friends being detained "specifically in relation to someone being gay" (Executive Director of RULAAC 28 Oct. 2019). The representative of the CLEEN Foundation similarly stated that they did not "have any facts to show that family members of LGBTI [persons] were being arrested by the police indiscriminately" (CLEEN 8 Nov. 2019).

2. Treatment of Detainees

Two of the sources who reported on the aforementioned arrest of the relatives of the school administrative employee report that the victims claimed they were tortured by the police (*This Day* 30 Apr. 2019; *Daily Independent* 29 Apr. 2019). Nigerian daily newspaper *The Punch* further reports that they were kept in "inhuman" conditions and had to be hospitalized after their release (*The Punch* 1 May 2019).

Concerning the case monitored by RULAAC, the Executive Director indicated, in correspondence with the Research Directorate, that, according to his wife, the arrested man was "beaten and tortured" by two police officers, taken to a hotel instead of the police station for questioning, and then held there for a few days before being released (Executive Director of RULAAC 1 Nov. 2019).

In the six cases of arrests by proxy described in the journalistic report, the arrested persons were taken into custody and detained for three to "more than one week" (Sahara Reporters 28 July 2019). One of the arrestees reported to the journalist that he was detained "in a dark, overcrowded and stinking cell" and that his family had to bring him food (Sahara reporters 28 July 2019).

The representative of the CLEEN Foundation stated the following:

It is important to mention that there is a possibility of extrajudicial activities that can ensue from substitutional arrest made by police officers. There have been reports alleging the torture of people that were substituted for an alleged person in order to give up the location or whereabouts of the alleged person. (CLEEN 8 Nov. 2019)

The Executive Director of RULAAC similarly explained the following:

Once you are in custody in Nigeria, the police are holding you to extract information or confessions. And the usual method of extracting information is torture, inhuman and degrading treatment. They also extort money as a commission. People are tortured to admit to certain statements that the police often draft and pressure them to sign. [Victims may] be forced to sign a letter saying their family member is a criminal/kidnapper, etc. Police subject them to terrible conditions that make them willing to do anything to get free. [They] [t]hreaten them with false allegations, and fear makes them willing to part with money to get their freedom. (Executive Director of RULAAC 28 Oct. 2019)

In the cases described by Sahara Reporters, persons were released on bail, on occasion after paying a fee, and under certain conditions, sometimes including the commitment to find the missing suspect (Sahara Reporters 28 July 2019). One of the arrestees indicated that the police officers continued to visit him after his release, inquiring if he had found his son and leaving only when he had paid a bribe (Sahara Reporters 28 July 2019). The Executive Director of RULAAC similarly indicated that persons arrested by proxy have to pay bail to be released (Executive Director of RULAAC 28 Oct. 2019).

Australia's Department of Foreign Affairs and Trade (DFAT) states the following:

The *Federal Criminal Procedure Act* 1990 authorises members of the [Nigeria Police Force (NPF)] to arrest individuals without first obtaining a warrant where they have reasonable suspicion that the person has committed an offence. Police may detain suspects for 48 hours before charging them with an offence. The arresting officer is required to inform the accused of charges at the time of arrest, to transport the accused to a police station for processing within a reasonable time, and to allow the suspect to obtain counsel and post bail. Even under a state of emergency, detainees are legally required to be brought before a magistrate within 48 hours and have access to lawyers and family members.

... Despite these legal protections, DFAT understands that the NPF routinely detains suspects without informing them of the charges or allowing access to counsel and family members. Police officers reportedly seek bribes from detainees to secure release or presentation before a court. Most citizens are not aware of their legal rights in these situations. (Australia 9 Mar. 2018, para. 4.14-4.15)

The same source further reports that "[l]ocal and international observers have accused the NPF of using disproportionate force, of arbitrarily arresting and detaining people, and of torturing criminal suspects and insurgents," and that the "[p]olice use torture to extract confessions" (Australia 9 Mar. 2018, para. 5.7).

According to the Executive Director of RULAAC, the intervention of a lawyer or human rights organization may allow a person to be released by the police (Executive Director of RULAAC 28 Oct. 2019). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Protection

3.1 Legislation

3.1.1 *Administration of Criminal Justice Act (ACJA), 2015*

Sources indicate that the *ACJA*, which prohibits arrest by proxy, was passed in 2015 (CLEEN 8 Nov. 2019; *Premium Times* 9 Aug. 2018; Waziri-Azi Dec. 2017, 113, 115). Section 7 of the *ACJA* 2015 provides that "[a] person shall not be arrested in place of a suspect" (Nigeria 2015). According to the representative of the CLEEN Foundation, the *ACJA* represents a "significant redirection" of the criminal justice system in Nigeria (CLEEN 8 Nov. 2019).

According to Nigerian media sources, 11 states have domesticated [5] the *ACJA*: Kaduna, Ondo, Ekiti, Lagos, Oyo, Rivers, Anambra, Enugu, Cross-River, Abuja and Akwa-Ibom (*The Nation* 22 Oct. 2019; *Premium Times* 9 Aug. 2018). However, according to NGO Rule of Law and Empowerment Initiative [6], 25 out of 36 states had passed the *ACJA* as of 27 June 2019, including, in addition to the above-mentioned states, the states of Delta, Kogi, Ogun, Plateau, Osun, Kwara, Adamawa, Bayelsa, Kano, Nasarawa, Benue and Jigawa (Rule of Law and Empowerment Initiative n.d.a). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.2 Enforcement of the Law

Information on prosecutions or investigations under *ACJA* 2015 was scarce among the sources consulted by the Research Directorate within the time constraints of this Response. Australia's DFAT "assesses that instances of police abuse are rarely investigated and perpetrators are infrequently held to account in Nigeria" (Australia 9 Mar. 2018, para. 5.8).

The Sahara Reporters article states that "the police have continued to arrest and detain family members of wanted suspects, in flagrant abuse" of the *ACJA* (Sahara Reporters 28 July 2019). The same source also states that "[w]hen asked if they were aware of an act prohibiting arrest in lieu, all the [six] victims interviewed responded in the negative" (Sahara Reporters 28 July 2019).

Some of the articles reporting on the arrest of the wife and son of the school administrative employee, however, state that the victims are bringing the police authorities to court over the unlawful arrest, detention and torture of the wife and son of the suspect (*This Day* 30 Apr. 2019; *Daily Independent* 29 Apr. 2019), and the *Punch* reports that the NPF is investigating the case (*The Punch* 1 May 2019). However, according to the same sources, the victims are prosecuting according to sections 34 and 35 of the 1999 Constitution of the Federal Republic of Nigeria (*This Day* 30 Apr. 2019;

Daily Independent 29 Apr. 2019). Articles 34 and 35 of the Constitution prohibit "torture," "inhuman or degrading treatment," establish the "procedure permitted by law" for conducting arrests and detentions, and provide compensation for unlawful arrests (Nigeria 1999, sec. 34 and 35). The Sahara Reporters article similarly quotes a lawyer and human rights activist as saying that victims "can seek redress in a law court" and advised them to come before a court of law citing section 35(6) of the 1999 constitution to seek compensation (Sahara Reporters 28 July 2019).

Further and corroborating information on the outcome of the case could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Nigerian newspaper *The Guardian* reports, in an August 2019 article, that the Enugu State Commissioner of Police indicated to the State Working Group on "'Promoting Accountability and Transparency in the Administration of Criminal Justice System in Enugu State'" that he had "reminded personnel of the command that arrest by proxy remains unlawful and an offence in the force" and that he had undertaken to punish those at fault (*The Guardian* 8 Aug. 2019). According to an article published in the Nigerian daily *The Nation*, the Lagos State Director of Public Prosecution, speaking at the graduation ceremony of police officers trained on human rights, "warned policemen to desist from arresting people in place of a suspect" (*The Nation* 22 Oct. 2019). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.3 Recourse

Australia's DFAT reports the following:

In January 2013, the NPF introduced a voluntary Code of Conduct in response to allegations of extrajudicial killings and other abuses. The Code provides a set of guiding principles and standards of behaviour for police officers. The NPF has increased the number of women in the police force and introduced human rights officers at all police stations. However DFAT understands that the human rights officers are unable to prevent human rights abuses for various reasons, including a lack of authority at the local level. (Australia 9 Mar. 2018, para. 5.9)

The representative of CLEEN Foundation noted that the "criminal justice administration in Nigeria is still in its developing form and therefore accommodates things that are condemnable and illegal" (CLEEN 8 Nov. 2019).

Australia's DFAT also states:

Three government agencies oversee the NPF: the Nigerian Police Council, the Police Service Commission (PSC) and the Ministry of Police Affairs. The PSC is responsible for preventing and investigating police abuses. The PSC suffers from inadequate resources and a lack of independence. Without an effective internal investigation function, the judiciary is generally unable to prosecute police officers for abuse of authority. (Australia 9 Mar. 2018, para. 5.8)

The Executive Director of RULAAC similarly stated that "[a]t the official level, the police oversight body is [the] Police Service Commission ... which can report misconduct," but added that "the commission is ineffective and has not been able to exercise its mandate of discipline and oversight" (Executive Director of RULAAC 28 Oct. 2019). The same source also indicated that the National Human Rights Commission (NHRC) is mandated "to support civilians and promote and defend the human rights of people [and that] one of its powers is to investigate the police and visit places of detention," but that "[p]oor funding and lack of independence and capacity, lack of autonomy, lack of training on human rights issues for [its] staff has made it ineffective" (Executive Director of RULAAC 28 Oct. 2019). Australia's DFAT similarly states that the NHRC "has not been an effective mechanism for investigating police misconduct" (Australia 9 Mar. 2018, para. 5.8).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The Rule of Law and Accountability Advocacy Centre (RULAAC) is "a not-for-profit non-governmental human rights advocacy organisation" which promotes "law enforcement accountability, transparent and responsible policing, and respect for human rights and rule of law ... through monitoring, research, investigation, documenting, publicizing and publication, campaign and advocacy, networking, partnership and engagement with local and international non-government and intergovernmental organizations and relevant government institutions" (RULAAC n.d.).

[2] The Premium Times Centre for Investigative Journalism (PTCIJ) is a Nigerian NGO that promotes the independence of the media and the advancement of "fundamental human rights, good governance and accountability in West Africa through investigative journalism, open data and civic technology" (PTCIJ n.d.).

[3] Sahara Reporters is a news website that "encourages citizen journalists to report ongoing corruption and government malfeasance in Africa"; it aims at informing and prompting activists to act in the fields of impoverishment of its citizenry, defilement of the environment, and disregard of democracy (Sahara Reporters n.d.).

[4] The CLEEN Foundation (formerly known as Centre for Law Enforcement Education) is a non-governmental organization created in 1998 with the aim of "promoting public safety, security and accessible justice through the strategies of empirical research, legislative advocacy, demonstration programmes and publications, in partnership with government, civil society and the private sector" (CLEEN n.d.).

[5] In Nigeria, for a federal law to apply in a state, the state government and house of assembly have to "domestic[ate]" the Act (Executive Director of WINET 5 Oct. 2019).

[6] The Rule of Law and Empowerment Initiative, also known as Partners West Africa Nigeria (PWAN), is a Nigerian NGO that aims at "enhancing citizens' participation and improving security governance in Nigeria" through "research, collaborative advocacy, capacity building, dissemination of information and integrating the implementation of government policies" (Rule of Law and Empowerment Initiative n.d.b).

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Oral sources: Access to Justice; assistant professor of sociology at a Canadian university, whose interests include gender inequality; associate professor of political science in an American university, whose interests include Nigeria and political institutions; Bisi Alimi Foundation; Centre for Legal Rights Advancement; Civil Liberties Organisation; Civil Society Legislative Advocacy Center; Committee for the Defence of

Human Rights; The Crest Partnership; Cure Nigeria; Global Rights Nigeria; Human Rights Law Service; International Federation of Women Lawyers; lecturer in criminology and penology in a Nigerian university; Legal Defence and Assistance Project; Network for Justice; Network on Police Reform in Nigeria; Nigeria – Public Complaints Commission Headquarters; Open Society Initiative for West Africa; Peace Insight Centre for the Advocacy of Justice and Rights; professor of strategic studies in a Nigerian university; Queer Alliance Nigeria; The Initiative for Equal Right.

Internet sites, including: Amnesty International; ecoi.net; Freedom House; Human Rights Watch; *Independent*; International Crisis Group; *The Sun*; Transparency International; UK – Home Office; UN – Refworld; *Vanguard*; Voice of America.

ecoi.net summary:

Query response on detention of family members of wanted persons (2016 - November 2019)



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