

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	713
Land:	Nigeria
Kilde:	Prisoners' Rehabilitation and Welfare Action (PRAWA) og International Rehabilitation Council for Torture Victims (IRCT)
Titel:	Report on the Human Rights Situation in Nigeria
Udgivet:	2023
Optaget på baggrundsmaterialet:	11. juni 2024

REPORT ON THE HUMAN RIGHTS SITUATION IN NIGERIA

BY

PRAWA and IRCT

1. Prisoners' Rehabilitation and Welfare Action (PRAWA) is a nongovernmental organisation whose vision is the emergence of a humane and secure society that corrects and empowers to prevent crime, violence and torture. PRAWA works in three thematic areas which include Security and Justice, Social Development and Rehabilitation, and Research and Documentation. PRAWA has a wealth of experience spanning over 26 years with commendable track records in implementing practical and innovative prisons/corrections and justice sector reform interventions in Nigeria and other African countries.
2. Nigeria has made commendable progress in enacting legislations that criminalize and prohibit torture but the major challenge remains inadequate implementation of the laws.
3. The following are PRAWA's concerns on the human rights situation in Nigeria based on the recommendations accepted at the UN Human Rights Council.
 - I. **Access to justice: arbitrary arrests and detention, and pre-trial detention**
 - II. **Torture, extrajudicial executions, investigation and reparations**
 - III. **Conditions of detention and overcrowding**
 - IV. **Election-related violence**

I. Access to justice: arbitrary arrests and detention, and pre-trial detention

The Nigeria Police Force and other law enforcement agencies continue to arbitrarily arrest and detain suspects beyond the legally allowed period of detention. Hence, access to justice remains challenging for many people, especially for individuals who lack the financial means to afford the services of lawyers and have limited knowledge of legal provisions. Because of the delayed administration of justice, many accused persons spend up to 5 years in custody waiting for their trial.

1. Arbitrary arrest of suspects on flimsy charges and civil wrongs continues despite the provision of section 32(2) of the new Police Act 2020 that prohibits arrest based on civil wrong or breach of contract. Suspects are arrested and detained for weeks and months without charging them in clear contradiction of the provisions of the law.
2. Laws that criminalize petty offences are still in existence and judicial officers utilize imprisonment for petty offences despite the provision of non-custodial alternatives in part 2 of the Nigerian Correctional Service Act, part 44 of the Administration of Criminal Justice Act 2015, and the Administration of Criminal Justice Laws of different states of the Federation. Overutilization of detention has resulted in severe overcrowding in Nigeria's custodial centres especially in urban centres.
3. In 2019, the federal government of Nigeria passed the Nigerian Correctional Service Act. The objectives of the Act¹ are to ensure compliance with international human rights standards and effective/sound correctional practices as outlined in the Mandela Rules, and enable the implementation of non-custodial measures such as community service, parole, probation and restorative justice. Restorative justice, in line with Section 43 of the Act, provides for victim-offender mediation and resolution of grievances in the community. The implementation of restorative justice would increase access to justice and divert minors and/or petty offenders away from detention. Additionally, the Act enhances the focus on corrections and promotion of reformation, rehabilitation and reintegration of offenders, and establishes institutional, systemic and sustainable mechanisms to address the significant number of individuals awaiting trial, which currently constitutes 70% of the custodial population. Some inmates spend between 5 – 10 years awaiting trial for offences that will attract lesser number of years if they are convicted. Furthermore, in 2015, the Administration of Criminal Justice Act was passed, aiming to promote efficient management of criminal justice institutions, expedite the dispensation of justice, and protect of the rights and interests of the suspect, the defendant and the victim.

¹ Section 2 of the Nigerian Correctional Service Act, 2019

4. Unfortunately, despite this legislation, serious human rights violations continue in relation to all aspects of the administration of justice. Many of these issues, which will be outlined below are interrelated and have a mutually reinforcing effect leading to a critical state of crisis in the Nigerian detention system.

5. RECOMMENDATIONS

- a) Fully commit to improve the Nigerian Criminal Justice System by taking all necessary steps to implement fully the Nigerian Correctional Service Act 2019, the Police Act 2020, and the Administration of Criminal Justice Law 2015;
- b) Establish a system that will ensure continuous capacity building and sensitization of judicial officers on the provisions of non-custodial measures and their benefits, and training of all police investigators and other law enforcement agencies on the provisions of the Law regarding arrest, detention, bail and prosecution;
- c) Only use imprisonment as a measure of last resort and should be for serious offences;
- d) Limit the use of pre-trial detention by providing support for the effective implementation of non-custodial measures and restorative justice processes, including for detainees with special needs (young offenders and mentally ill inmates).

II. Torture and extrajudicial killings

The use of torture and ill-treatment by security agencies remains widespread and systemic in places of detention and during arrests and interrogations of criminal suspects. The existing accountability mechanisms are weak and inadequate in holding perpetrators liable for their crimes and providing reparations for victims.

In addition, there is limited independent monitoring and oversight of places of detention due to the ineffectiveness of the National Preventive Mechanism and denial of access for civil society monitors.

6. The existing anti-torture law in Nigeria has significant gaps², particularly in relation to investigations and victims' rights to reparation and rehabilitation. The law also fails to criminalize attempts to commit torture and lacks an explicit provision precluding the application of a statute of limitation for the crime of torture.

² Section 7, Anti-torture Act 2017

7. The Government recently reconstituted the National Committee on Prevention of Torture to regularly monitor the treatment of persons deprived of their liberty in custody. However, the presence of law enforcement and security agencies in the committee does not provide the independence needed for the committee to discharge its mandate. Other challenges that may hamper the effectiveness of the committee include: lack of knowledgeable professionals, inadequate resources; lack of a central database or register of all places of detention, their location, and number of detainees; and lack of access to all places of detention.

The Federal and State governments constituted independent panels with the mandate to investigate allegations of human rights abuses perpetrated by the Nigeria Police Force. Although these panels have concluded their investigations, punishment of responsible officers remains unfulfilled while reparations for victims, especially at the state level, are yet to be enforced.

8. Despite the criminalization of torture and the disbandment of the Special Anti Robbery Squad (SARS) as well as the report provided by the investigative panel constituted to investigate human rights violations by police personnel, instances of torture and ill-treatment remain widespread. Indeed, the #ENDSARS panel revealed that police officers resort to torture as a mean to extract confessions from detainees and extort bribes from them, which is a flagrant breach of the anti-torture act 2017 that prohibits and criminalizes torture. A total of 72 policemen were indicted for various degrees of human rights violations, 28 recommended for prosecution, 25 for dismissal, 15 for different disciplinary actions, and 4 for reduction of rank. However, these sanctions are yet to be fully complied with.
9. Unfortunately, while federal government and 28 states³ of the federation set up panels to investigate these allegations, only the federal government and few states have released the report of the investigations and many are yet to provide reparation and rehabilitation to victims.

10. RECOMMENDATIONS

- a) Provide an efficient and effective framework for the enforcement of the anti-torture legislation and the laws against police brutality;
- b) Amend the Anti-torture Act 2017 to provide for the following: criminalization of the attempt to commit torture; removal of the statute of limitation for prosecuting offences of torture; and comprehensive rehabilitation in accordance with the international standards as contained in article 14 of the UN convention against torture;

³ <https://leadership.ng/endsars-2-years-after-states-fail-to-implement-judicial-panels-recommendations/>

- c) Establish a systemic, institutional and sustainable structure for the rehabilitation of victims of torture. This structure should provide holistic medical and psychological care, legal and social services to victims and survivors;
- d) Partner with relevant international and national bodies such the National Human Rights Council in the provision of rehabilitation services to victims;
- e) Publish and facilitate access to the report of the states' independent investigative panels and take steps for comprehensive rehabilitation of victims and payment of reparations, including prosecuting and sanctioning police officers and state officials found guilty by the panel.
- f) Align the National Preventive Mechanism with the requirements of Article 18 of the OPCAT to ensure functional independence and inclusion of individuals with required capabilities and professional knowledge.

III. Conditions of detention

In most places of detention, especially in urban centres, inmates are suffering from overcrowding and alarming detention conditions, as a result of the failure to promptly dispense justice. Some custodial centres in places like Lagos, Port Harcourt and Kano have exceeded their capacity by as much as 200%. Overcrowding compromises detainees' access to essential services and increases the risk of violence and abuse.

11. The Nigerian Correctional Service Act of 2019, specifically Sections⁴ 12(4) – (12) provide measures to prevent overcrowding. Despite these provisions, many custodial centres do not comply with the Mandela Rules and are significantly overcrowded. For instance, the custodial facility in Port Harcourt has over 200% overcrowding.
12. Sections 34 and 35 of the same Act establish the requirement for separate facilities for young offenders and women. There are only 3 functional borstal institutions across the federation leading to young adults being locked up in adult facilities without adequate facilities for their education, recreation and rehabilitation. Besides, there are only 3 exclusive female prisons in Nigeria. Because they constitute a minority of the population in custody, women do not receive adequate attention from government. Nonetheless, women in detention have special needs such as medical and nutritional needs, including pregnant women, nursing mothers and babies in custody. Section 248 of the Child's Rights Act provides for the establishment of a special mothers' center, a dedicated facility to care for expectant, nursing mothers and their children who are in custody. Still, this provision has not been implemented to this day.

⁴ Nigerian Correctional Service Act, 2019

13. RECOMENDATIONS

- a) Improve physical detention conditions in police cells, custodial centres and other holding facilities, including with regard to the proper ventilation, access to adequate food and sanitary hygiene;
- b) Review existing domestic operational procedures to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);
- c) Undertake steps to build separate facilities for female inmates in compliance with Section 34 of the Nigerian Correctional Service Act 2019, and provide all necessary facilities with resources to address their special needs, including a special mothers' center;
- d) Undertake steps to build borstal institutions in all states of the federation in line with section 35 of the Nigerian Correctional Service Act 2019 and ensure they adequately meet children and youth's needs in terms of education, recreation and rehabilitation in custody, including establishing to a great extent the approved children's institutions provided for in section 247 of the child's rights Act for their training and reformation;
- e) Establish a tamper proof register of the details of all individuals placed under arrest and develop a comprehensive database encompassing all places of detention, including their location, number of detainees held and their compliance with international human rights standards;
- f) Establish a monitoring system that ensures unhindered access to all places of detention for detainees' families, legal counsels, medical doctors and NGOs, and complete tracking of the whereabouts of all detainees from point of arrest to discharge.

IV. Election-related Violence

Instances of organized violence to intimidate the general public, oppress political opponents and hinder the exercise of voting rights were documented during the 2023 presidential elections. This included disruptions of political rallies, politically motivated killings, property destruction and widespread acts of violence orchestrated by sponsored individuals.

14. In 2022, Nigeria enacted a new legislation to regulate the conduct of elections with the objectives of ensuring free, fair and credible elections, and eliminating

electoral violence. Section 125 of the Electoral Act 2022 outlines electoral offences and prescribes sanctions against offenders. However, the implementation of the law was lacking in the 2023 general elections, leading to documented incidents of violence across the nation. These acts of violence were predominantly instigated by politically sponsored individuals, deployed with the intention to intimidate opponents, obstruct opposition campaign activities, and deter supporters and voters from participating in the electoral process by creating a precarious environment.

15. According to data from the Centre for Development and Democracy's Election Violence Tracker⁵, between January 2023 and March 10, 2023, 109 individuals lost their lives as a result of election-related violence.⁷ The European Election Observation Mission, in its post-election report, noted coordinated violent attacks on rallies by organized gangs, allegedly hired by political parties. Perpetrators of election violence often enjoy protection from politicians who use them as thugs to disrupt voting, creating difficulties for the families of victims to seek justice.
16. The Inspector General of Police, in a press statement on 27th March 2023, reported a total of 781 arrests related to 578 electoral offences made by the Police. However, the inability and/or reluctance to prosecute those involved in electoral violence has resulted in impunity, a situation enabling politicians to engage in manipulative and violent practices without fear of sanctions.

17. RECOMMENDATIONS

- a) Investigate all cases of electoral violence and try perpetrators in accordance with the electoral Act and other extant laws.
- b) Establish an electoral offences commission and give it all the necessary support to investigate and prosecute electoral offenders, to review the recommendations of independent electoral observers and to promote fair, transparent and safe elections in the future.
- c) Provide victims of electoral violence and their families with comprehensive rehabilitation and reparations.
- d) Improve the transparency of the electoral process and provide equal conditions for all political parties and candidates.

⁵ European Union Election Observation Mission NIGERIA 2023 Final Report

⁶ <https://www.premiumtimesng.com/news/top-news/588325-nigeria-recorded-109-deaths-in-three-months-linked-to-2023-elections-cdd.html>

⁷ European Union Election Observation Mission to Nigeria Preliminary Report