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AVOCATS SANS FRONTIERES
France

Là où la défense n'a plus la parole

Nigeria

AVOCATS SANS FRONTIERES FRANCE SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 45TH SESSION OF THE UPR WORKING GROUP, JAN-FEB 2024

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Avocats Sans Frontières France¹ (ASF France) is an international solidarity organization founded in 1998 which contributes to the respect of fundamental rights throughout the world, anywhere it is useful and necessary. ASF France mission is to:

- Promote access to Justice for vulnerable persons, those arbitrarily detained or tortured.
- Defend anyone deprived of a free and independent defense and human rights defenders threatened or abused in the exercise of their functions and,
- Strengthen the capacity of local (Judicial and CSO) actors in the defense and promotion of human rights.

General summary:

Despite Nigeria's democratic progress and critical efforts by key actors and civil society in the human rights landscape, its citizens continue to experience from various human rights violations. Human Rights abuses and violations in Nigeria cut across the entire spectrum of rights and includes; systemic torture and other ill-treatments, arbitrary arrests and detentions, extra-judicial killings, restriction of movement, violation of freedom of expression and privacy (online and offline), enforced disappearances, forced evictions, imposition of the death penalty, abuse of power and office, abuse of the rights to association and peaceful assembly etc².

In 2020, Nigeria witnessed the largest and most sustained protest in its history against police brutality, torture, ill-treatment, arbitrary detention and extra-judicial killings in form of the #EndSARS protests, largely galvanized by the youthful populace of the nation. The protests which started from the pages of twitter to the streets of cities in Nigeria called for the disbanding of the Special Anti-Robbery Squad (SARS), a notorious unit of the Nigerian Police with a long record of abuse on Nigerian citizens. The protests, which were socially driven generated over 28 million tweets on twitter alone. The worrisome nature of the protests reached climax when a mass-shooting of peaceful protesters occurred at the Lekki Tollgate in Lagos State on October 20, 2020. Key findings from the report of the Judicial Panel of Inquiry and Restitution on the Lekki Toll Gate shooting incident and cases of police brutality as well as human rights violations revealed that there were 48 casualties of the shooting incident, out of which nine (9) people were dead, four (4) were presumed dead and twenty-four (24) were injured³.

¹ <https://www.avocatssansfrontieres-france.org>

² <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/>

³ https://en.wikipedia.org/wiki/End_SARS

<https://businessday.ng/news/article/key-points-from-the-endsars-lagos-state-panel-of-inquiry-report/#:~:text=November%2015%2C%202021.-,The%20panel%20made%20public%20its%20findings%20on%20the%20ugly%20incident,dead%20and%2024%20were%20injured>



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Legislative and regulatory framework in Nigeria:

The legislative framework of Nigeria is based on the country's constitution, as well as several international treaties and conventions that Nigeria has ratified. The constitution establishes a federal system of government, with the federal government and the 36 states sharing power. The exclusive list in the constitution, lists the powers that are reserved for the federal government. This list includes national security, defence, and immigration. As a result, security agencies fall under the exclusive list and are not subject to the laws of the state governments. These laws set out the powers of security agencies, as well as the limits on those powers. They also establish procedures for investigating and prosecuting allegations of abuse by security agencies.

However, there are several challenges to the effective implementation of the legislative framework for security agencies. One challenge is the lack of political will to address these issues. There have been a number of reports of abuse by security agencies, but there have been few prosecutions of those responsible. This lack of accountability sends a message that these crimes are tolerated, and it discourages victims from coming forward.

Another challenge is the lack of transparency and accountability within security agencies. These agencies are often shrouded in secrecy, which makes it difficult to monitor their activities and to hold them accountable for their actions.

Despite these challenges, there are several organizations working to promote human rights in Nigeria. These organizations are working to raise awareness of these issues, to advocate for legislative reform, and to provide support to victims. With their continued efforts, it is possible to make progress in the fight against abuse by security agencies in Nigeria.

While Nigeria has made significant improvements to the quality of its elections since the 1999 transition to democratic rule, the 2019 presidential and National Assembly elections, which saw President Muhammadu Buhari re-elected and the All-Progressives Congress (APC) regain its legislative majority, were marred by irregularities. Corruption remains endemic in the key petroleum industry. Security challenges, including insurgencies, kidnappings, and communal and sectarian violence in the Middle Belt region, threaten the human rights of millions of Nigerians. Military and law enforcement agencies often engage in extrajudicial killings, torture, and other abuses. Civil liberties are undermined by religious and ethnic bias, while women and LGBTQ+ people face pervasive discrimination. The vibrant media landscape is impeded by criminal defamation laws, as well as the frequent harassment and arrests of journalists who cover politically sensitive topics. The statistics from freedom house scores Nigeria as partly free (43/100) ⁴

Human rights situation in Nigeria

Arbitrary detention

Arbitrary arrests are serious human rights violation that is prohibited under international law. The Nigerian government has ratified the International Covenant on Civil and Political Rights, which guarantees the right to be free from arbitrary arrest. Despite this, there are credible reports that arbitrary arrests are still being carried out by Nigerian security forces. In 2020, Amnesty International documented 110 cases of arbitrary arrests by SARS.

⁴ <https://freedomhouse.org/country/nigeria/freedom-world/2023>



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The victims of arbitrary arrests in Nigeria are often young men who are suspected of being criminals. They are often arrested without a warrant and detained incommunicado. Once in detention, they may be subjected to torture or other ill-treatment. The Nigerian government has taken some steps to address the problem of arbitrary arrests. In 2020, the government passed the Police Act, which requires police officers to obtain a warrant before arresting someone.

According to the Human Rights Council's country report, Nigeria is committed to reforming its judicial system to improve efficiency, accessibility, accountability, transparency and fairness. These include training for prison staff and the Code of Conduct and Prosecutorial Guidelines for Federal Prosecutors. Nigeria's prisons are currently being modernized.

The Federal Ministry of Justice, in collaboration with the Organization for the Defense of Civil Liberties and other civil society organizations, has undertaken to monitor police activities. Committees have been set up to examine complaints against the police.

Finally, in partnership with the Nigerian Council, the Centre for Rights Respect and Public Law and the Open Society Justice Initiative, the police have also set up a system of duty lawyers in police stations, enabling people who are arrested or detained to benefit from free legal services.⁵

Recommendations from the last UPR

Country	Recommendations	Assessment
Singapore	Continue to review and reform its criminal justice system in order to strengthen the rule of law in Nigeria	Nigeria had made some efforts to review and reform its criminal justice system to strengthen the rule of law.
Azerbaijan	Continue efforts to develop a database of missing persons in Nigeria	Nigeria has faced significant challenges regarding missing persons, particularly in areas affected by conflicts, insurgency, and communal violence.
United Kingdom	Obey court orders to free Ibrahim and Zeenat El Zakzaky and convict those responsible for the murder of 347 members of the Islamic Movement in Nigeria	Ibrahim El-Zakzaky is the leader of the Islamic Movement in Nigeria (IMN) and has been in detention since December 2015.

Recommendations

- 1. Reforming the legal framework for detention:** The Nigerian government should reform the legal framework for detention to make it clearer and more consistent.
- 2. Improving the training of law enforcement officials:** The Nigerian government should improve the training of law enforcement officials in the laws governing detention.
- 3. Establishing an independent mechanism to investigate allegations of arbitrary detention:** The Nigerian government should establish an independent mechanism to investigate allegations of arbitrary detention.
- 4. Strengthen the independence of the NHRC** and provide it with the resources it needs to investigate allegations of arbitrary detention.

⁵ <https://www.amnesty.org/fr/location/africa/west-and-central-africa/nigeria/report-nigeria/>



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Torture

The practice of torture within the definition provided by the United Nations Convention against Torture and other Forms of Cruel Inhuman and Degrading Treatment or Punishment (UNCAT) is seemingly institutionalised in Nigeria. This is notwithstanding the fact that this practice is prohibited all forms of cruel inhuman and degrading treatment. Nigeria ratified the UNCAT in 2001 and the Operational Protocol to the United Nations Convention against Torture and other Forms of Cruel Inhuman and Degrading Treatment (OPCAT)

The passage of the Anti-Torture Act 2017 ⁶which was passed into law in 2019 provides ample provisions for the proscription against torture, which is practised with such a high level of impunity in Nigeria⁷.

Torture is also defined in the Act in similar wordings as the United Nations Convention against Torture to refer to any act of pain or suffering is intentionally inflicted on a person to obtain a confession from him or a third person, punish the person for an act committed either by himself or a third party or to or coerce him or a third person for any reason based on discrimination.

The Anti-Torture Act as at the date of this report is yet to be implemented because of the failure of the Attorney-General of the Federation to carry out the duty imposed on his office under Section 12. It provides that the Attorney-General of the Federation with the approval of the President, make the necessary guidelines and regulations for the effective implementation of the Act.

The Committee which was later renamed to be known as **National Committee Against torture (NCAT)** has been unable to discharge its duties majorly due to lack of funding. This challenge flows directly from the lack of independence of the Committee which is situated in the Federal Ministry of Justice.

Recommendations from the last UPR

Country	Recommendations	Assessment
Norway	Establish an independent national human rights institution with the mandate to investigate all allegations of torture and ill-treatment effectively and impartially.	No concrete steps have been taken to address SGBV in detention centres across the country.
Australia	Strengthen efforts to prevent torture and ill-treatment by providing effective training to law enforcement officials and raising awareness about human rights standards.	
United States	Establish an effective complaint mechanism to promptly investigate allegations of torture and hold perpetrators accountable.	Complaints mechanisms exists in Nigeria but challenges remain in terms of their effectiveness, accessibility, and their implementation.

Recommendations

⁶ <https://laws.lawnigeria.com/2018/05/10/anti-torture-act-2017/>

⁷ <https://niji.gov.ng/wp-content/uploads/2020/11/Obiagwu-SAN-paper.pdf>



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1. **Adequate measures and systems** should be put in place to ensure rehabilitation of torture victims.
2. There is need for **immediate and full implementation of anti-torture Act** to ensure that perpetrators of torture are held accountable.
3. Need to **guarantee access to Police stations** and other detention centers for lawyers as a torture prevention mechanism.
4. Need to **guarantee access to Police stations for stakeholders** and bodies like the NHRC, National Committee Against torture and the Administration of Criminal Justice monitoring committee as an additional torture prevention mechanism.

Death penalty

Nigeria still retains the death penalty in its legislation. The Supreme Court has ruled that the application of the death penalty is constitutional. Crimes punishable by death vary according to the legislation of each state, including armed robbery, murder, treason, incitement to invade Nigeria, forgery leading to the death sentence of an innocent person, aiding the suicide of a child or a lunatic. Sharia penal laws applicable to 12 states in northern Nigeria also provide for the death penalty for offences such as zina (adultery), rape, sodomy, incest, witchcraft and juju.

Nigeria has ratified the following treaties: the International Covenant on Political Rights, the International Covenant on Economic and Social Rights, the African Charter on Human and Peoples Rights and the Conventions on the Rights of the Child⁸.

However, these instruments limit the category of offences punishable by death. Furthermore, it should be emphasized that an international treaty concluded by the government is only applicable once it has been promulgated by the National Assembly of Nigeria. Thus, only the African Charter is applicable in domestic law in Nigeria⁹.

The international instrument aiming at the total abolition of the death penalty, the Second Optional Protocol to the International Covenant on Civil and Political Rights, has neither been signed nor ratified by Nigeria.

The number of prisoners under sentence of death (over 3,167) is by far the highest in sub-Saharan Africa, and one of the highest worldwide. Some of these people have been awaiting execution for years, even decades, and live in inhuman conditions¹⁰.

Recommendations from the last UPR

Country	Recommendations	Assessment
France	Establish a moratorium on the death penalty with a view to its abolition - There have still been no capital executions.	No official moratorium has been instituted.
Ireland	Introduce a moratorium on executions, commute	Nigeria has not carried out executions

⁸ [World Report - Amnesty Internationale - Death sentences and executions, 2019, 2020,2021,2022](#)

⁹ [World Coalition Against the Death Penalty - THE DEATH PENALTY, FACTS AND FIGURES, 2022](#)

¹⁰ [Press release - OHCHR - "UN rights experts urge Nigeria to overturn death sentence for singer who shared song on WhatsApp", September 28, 2020](#)



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	all death sentences to terms of imprisonment and abolish the death penalty for all crimes.	for several years, the death penalty remains codified in Nigerian law.
Spain	Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and reform the Constitution to ban the death penalty.	Nigeria had neither signed nor ratified the Second Optional Protocol.

Recommendations

1. **Establish an official moratorium** on the death penalty as a step towards its complete abolition
2. **Ratify the Second Optional Protocol** to the International Covenant on Civil and Political Rights and reform the Constitution to ban the death penalty.

Digital Rights

The existence of digital rights in Nigeria has precipitated the advanced access and usage of diverse telecommunications networks, digital media and technologies, and the internet to foster various schemes towards a global exploit. However, with the upsurge in digital rights violations such as the unlawful arrests and intimidation of online users, delinquent blockages of the internet, shutdown and restriction of digital applications and online platforms as seen recently in the nationwide ban of Twitter in Nigeria leading the ECOWAS court to declare the ban as unlawful and direct the Federal Government of Nigeria to lift the ban, it is necessary to state that there is a dire need for effective legislative frameworks on digital rights that uphold the fundamental human rights of freedom of expression and access to information of every Nigerian.

The Nigerian Data Protection Regulation 2019 (NDPR, 2019); The primary purpose of the NDPR is to protect the rights of natural persons to data privacy. The agency which was enacted by the 2019 regulation is obliged to address the issue of the rampant breaches of data belonging to individuals and companies and also mandated to prevent any possible manipulation to the detriment of the data subject, to foster safe conduct for transactions involving the exchange of personal data¹¹.

The Cybercrimes Act 2015; This is already a law in Nigeria. It is not as though it was a digital rights-oriented law, but from its name, the Cybercrimes Act clearly focuses on addressing cyber criminality. However, this law has a notorious provision in section 24 which has been the most potent tool and basis for the violation of digital rights, especially freedom of expression online since its enactment.

Recommendations from the last UPR

Country	Recommendations	Assessment
Tunisia	Guarantee a favourable climate for the activities of human rights defenders, journalists and other actors in civil society	This recommendation has been partly implemented. There is a relatively favourable climate for the activities of human rights defenders, journalists and other

¹¹ <https://paradigmhq.org/report/digital-rights-and-freedom-bill-2019/>



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		actors in civil society, although severe threats still exist.
Canada	That the rights of journalists to report, comment on and criticize government policy freely and without fear, be respected.	Whereas journalists who criticize government policy in Nigeria are largely free to do so, the atmosphere around freedom of expression remains tenuous..
France	Ensure that freedom of expression is respected and that Nigerian journalists may take on their mission of providing information without suffering harassment	

Recommendations

1. The new administration of the Federal Government can **take ownership and support** the process of the amendment of the Cybercrime Act 2015 to ensure that section 24 of the bill is repealed. This section has been the most potent tool and basis for the violation of digital rights, especially freedom of expression online since its enactment.
2. The incoming administration should **ensure an effective accountability** model for surveillance practices in Nigeria through judicial and public accountability.
3. The Federal Government of Nigeria through its National Orientation Agency (NOA) and other orientation mediums should invest in **sensitizing citizens and officers** of all digital technology regulation agencies on the provisions of the newly signed Data Protection Bill to improve its level of compliance and implementation.