



ABSOLUTE PROHIBITION OF TORTURE IN NIGERIA: WORDS WITHOUT DEEDS?

JOINT ALTERNATIVE REPORT

**Submitted in application to article 19 of the UN Committee against Torture and
cruel inhuman and degrading treatment**

72nd session of the UN Committee against Torture for the examination of Nigeria

NIGERIA – 2021

CIVIL SOCIETY ORGANISATIONS PRESENTING THE REPORT

PRAWA

PRAWA is a non-governmental organization with the mission to promote institutional reforms in formal and informal sector for access to justice, rehabilitation, and social development of prisoners, ex-prisoners, torture victim and youth at risk. Established in December 1994, PRAWA exists to provide practical support services to prisoners, ex-prisoners, survivors of torture, youth-at-risk, and their families. PRAWA's main focus is on promoting transformative justice models that recognize healing and accessible justice for victims, offenders and the community. PRAWA carries out its programmes through capacity building of criminal justice agents on human rights and good practice, policy advocacy, research, public awareness, and provision of correctional/community-based support services for target groups. PRAWA hosts the secretariat for the CSO Forum on Detention and Corrections. It is also the coordinating center for of the Network of Specialized Rehabilitation Centres for the Treatment of Torture Survivors in Nigeria, and a member of the Sub-Saharan Network against Torture and Organized Violence (SANTOV) and the regional hub for the African Security Sector Reform Network (ASSN).

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CLEEN FOUNDATION

CLEEN Foundation is a nongovernmental organization registered with corporate affairs commission in Nigeria. CLEEN Foundation has over 20 years' experience working on justice sector reforms and human rights in Nigeria. CLEEN is a member of several national and international networks including the establishment of the Network on Police Reform in Nigeria, a coalition of 34 civil society groups working on issues of police transformation in Nigeria. Our expertise as a thought leader within civil society working on security sector governance and reform cuts across public safety and security, research, accountability and justice working with critical security actors, law enforcement and their oversight bodies, civil military relations, law and criminal justice, countering violent extremism and other transnational organized crimes including human trafficking. CLEEN Foundation has observer status with the African Commission on Human and Peoples' Rights based in Banjul, Gambia and a special consultative status with the Economic and Social Council of the United Nations.

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INTERNATIONAL ORGANISATIONS ASSISTING THE PRODUCTION AND ENDORSING THE REPORT

INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS (IRCT):

As a network of 161 torture rehabilitation centers across 76 countries, we are the world's largest membership-based civil society organization providing rehabilitation to victims, preventing torture, increasing access to justice and fighting impunity. Our membership supports more than 50,000 torture victims each year to rebuild their lives through holistic medical, psychological, socio-economic and legal rehabilitation.

We help victims tell their stories whether through forensic evidence or by documenting patterns and practices of torture in society providing an evidence-base for legal, judicial, public and social advocacy. Our network is diverse, but we have a common commitment. Every member is rooted in civil society; each provides services to at least 50 torture victims annually; and each is dedicated to sharing its experiences with others. Together, we are a movement working in solidarity to advocate for the rights of victims, to shine a light on torture wherever it occurs and to end it.

WORLD ORGANIZATION AGAINST TORTURE (OMCT):

OMCT is the main coalition of NGOs fighting against torture and ill-treatment. Its movement has more than 200 local organizations, members of the SOS-Torture Network and active in more than 90 countries around the world. Motivated by the needs of its members, OMCT works in all areas of work against torture - prevention, fight against impunity, direct assistance, rehabilitation, reparation and protection - for victims and their families, for human rights defenders so that everyone can live in a world free from torture. OMCT is an independent, non-political and non-denominational international NGO, founded in Geneva in 1985. Its international secretariat is based in Switzerland, and it has offices in Tunisia and Belgium. OMCT is also a member of the European Mechanism for the Protection of Human Rights Defenders at Risk and enjoys consultative status with the United Nations Economic and Social Council (ECOSOC) and the African Commission on human and people's rights (ACHPR).

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Methodology

This report is the result of a preparatory workshop carried out from September 26 to 30, 2021 in Abuja, bringing together around 27 civil society organizations acting throughout the country and committed to the protection of human rights and the fight against torture, the fight against violence against women and the protection of children and the protection of migrants. This workshop took place in the presence of the National Human Rights Commission (NHRC), and representatives of various government institutions including the Ministry of Justice, the Ministry of Foreign Affairs and the Defense and Security Forces.

During this workshop, participants worked on the specific issue of torture in a country which today constitutes the epicenter of violent extremism. They shared their experiences, documentation, and recommendations. The verification of the information shared was made by the NGOs drafting the report. The drafting committee also incorporated information from available reports concluding observations from other treaty bodies and press articles.

The report was finalized through a validation workshop on the 11th of October 2021 gathering all the partner organizations, the government representatives, and the National Human Rights Commission.

List of organizations that participated to the consultative workshop:

Prisoners Rehabilitation and Welfare Action (PRAWA)

CLEEN Foundation (Centre for Law Enforcement Education in Nigeria)

Amnesty International

Global rights

CISLAC

ANEEJ

Nigerian Bar Association (NBA)

LEDAP

Partners West Africa (PWAN)

Access to Justice

Scale of Justice Foundation

Hope Behind Bars

NULAI

Keen and Care Initiative

FIDA

Free Criminal Defence Foundation

CLERD

Dream Again Foundation

GLOBAL HOPE FOR WOMEN AND CHILDREN FOUNDATION (GLOHWOC)

Prison Fellowship of Nigeria

Lawyers Alert

Human Rights Writers Association (HURIWA)

Center for Democracy and Development (CDD)

GAFA

Boabab for Women Human Rights

GAVEL

Grassroots initiative for Gender and Development – GRID

Overview of Torture and Ill Treatment in Nigeria:

Nigeria has a strong legal framework prohibiting torture, cruel, inhuman and degrading treatment. The Nigerian State ratified the United Nations Convention against Torture and the Optional Protocol in the year 2001 and 2009 respectively. Commendably, the country enacted the Anti-torture law of 2017 in compliance with the requirement of enactment of a national law prohibiting torture. Nigeria has also a National Committee on the Prevention of Torture. Unfortunately, in spite of these legal steps, the use of torture by security agencies in Nigeria remains widespread and systemic. Accountability mechanisms for perpetrators of torture remains weak or non-existent. Physical, mental /psychological torture and cruel inhuman and degrading treatment are regularly used at different levels of arrest/interrogation and in places of detention. Unfettered access to detention facilities remains a huge challenge negatively affecting oversight and monitoring activities. There are no established government mechanisms for the rehabilitation of Torture victims/ survivors. Generally, the COVID -19 pandemic aggravated issues of torture as the social distance protocols limited access to detention facilities. Activities of non-state actors and terrorist groups in the country introduced disturbing dimensions to the issues of torture especially as it concerns who can perpetrate torture vis a vis the obligations of law enforcement agents in Nigeria.

Torture as a crime solving tool

Torture remains a regularly used tool by law enforcement officers despite the laudable enactments prohibiting torture and the commendable safeguards against torture as captured in both substantive and procedural laws of the country.

As far back as 2007 the Special Rapporteur on torture, cruel, inhuman and degrading treatment issued findings after a visit to Nigeria stating that torture and ill-treatment is widespread in police custody; particularly systemic in the Criminal Investigation Departments and that torture is an intrinsic part of the operations of law enforcement officers within the country.

The enactment of the Anti-torture Act of 2017 has not changed the situation as torture remains a crime solving tool for security and law enforcement agencies. Suspects who have been detained and accused of crimes ranging from petty theft to armed robbery and murder are those most vulnerable to torture and death in custody.

Torture is used to extract signed confessional statements from suspects which are mostly dictated by the investigating police officer. According to a report by Human Rights Watch, many victims describe signing a statement without knowing what it said, either because they were illiterate or because the document was withheld from them.

Regular feedbacks from Pro bono lawyers and Paralegals working with PRAWA, a non-governmental organization in Nigeria providing legal and other support services to indigent inmates detail bitter experiences of torture, cruel, inhuman and degrading treatment in the hands of security agents.

The #EndSARS protest of 2020 which unfortunately ended in the extrajudicial killing of young protesters was also a response to overuse of torture by the disbanded Special Anti-Robbery Squad (SARS) of the Nigeria Police Force and other Specialized Units of the Nigerian Police Force and other security agencies.

III treatment of persons in Correctional centers (prisons) and other detention conditions:

Use of Torture and ill treatment manifests both during arrest/interrogation and in conditions of places of detention in Nigeria. Despite several legal safeguards against torture in Nigerian National laws, the high level of over-crowding prevalent in Custodial Centers in urban areas of the country demonstrates that these safeguards are not effectively implemented. The conditions of detention in these facilities are not in conformity with the United Nations Standard Minimum Rules for treatment of prisoners (The Mandela Rules). There are several circulated images of inmates sleeping on bare floors with little spaces in-between them. Most custodial facilities interning inmates beyond their capacities expose inmates to very poor water and sanitary hygiene conditions, poor quality of food and other inhuman and cruel treatment. The cost of feeding each inmate per day inclusive of cost for firewood or gas is four hundred and fifty naira (N450.00) an equivalent of less than a dollar about .008 dollars as at the time of writing this report. This is the case for many other detention facilities across the country. There is equally a crisis as a result of pre-trial detention. The true picture of this can be gleaned from the statistics provided by the Nigerian Correctional Service as at March 1st, 2021 which showed that the total custodial capacity of the Nigerian correctional service is 56105 and the overall number of inmates is 65997 and of this population 47730 (72.32%) are the Awaiting Trial persons (ATP).

III treatment of mentally ill persons within the Criminal Justice Institutions and Mental health institutions

Mentally ill persons in Nigeria are faced with a lot of challenges both socially and legally. The procedure for detaining mentally ill persons is plagued with arbitrariness and a lack of due process and the condition of detention/imprisonment do not comply with international standards. There is no record of independent review procedures for assessing cases in which mentally ill persons are being detained in prisons. This leads to a violation of the fair trial procedures and the principles of natural justice.

Often, mentally ill persons receive no psychiatric evaluation and treatment. Sometimes they are locked up in solitary cells and in chains. Even when medications are prescribed, funds are not made available to purchase the medications. These conditions worsen the state and well-being of mentally ill persons in custody. Most of them sleep on bare floors in custody or on torn mattresses and blankets. There is also no clear segregation between the “civil lunatics” and the “criminal lunatics”, or between juveniles and adults, or between convicted and remanded. Even

those with babies have no special units. The guiding principles that decide where an inmate is housed seem to be based on manageability and availability of cells.

The Nigerian correctional service Act of 2019 has however made very progressive provision under Section 24 in terms of procedure for handling and managing persons that are mentally ill. There is a need to encourage the full implementation of Section 24 which also provides for the establishment of State Review Boards in all the States of the Federation for proper handling of mentally ill persons.

Pandemic induced torture

The lock down period as a result of COVID 19 aggravated, reckless harassment, assault, torture and extra judicial killing of citizens in Nigeria by security agencies. Several cases of police brutality were recorded across Nigeria during this period, in less than two weeks of the lockdown 18 persons were killed extra-judicially across the nation. The National Human Rights Commission of Nigeria reported 33 incidents of torture, inhumane and degrading treatment across the nation.

As reported by CLEEN Foundation during the covid-19 pandemic project, several deaths were recorded from extra-judicial killings of innocent Nigerians by law enforcement agencies within the COVID-19 lockdown and relaxation period (March - August 2020). There were thirteen (13) documented cases of extrajudicial killings in the southeast region. Eight cases leading to the deaths of eight persons involving security agencies were recorded in Abia state. One of such incidences which happened at Ebem Ohafia, Abia State triggered a violent protest leading to the burning down of a police station and a magistrate court. In Anambra state three deaths were recorded, two were caused by security operatives enforcing government directives and one by the state task force. More so, in Imo state two persons were extra-judicially killed by security officers one at Ngor Okpala LGA, and one at Banana Junction Orlu LGA. The House of Representatives, in May 2020 directed security agencies in Nigeria to bring to justice the officials who were involved in the killings and other human rights violations committed by law enforcement personnel during the lockdown but till date none of the perpetrators has been brought to book.

Established human rights oversight mechanisms also found it difficult to operate at this time because of the challenges of restriction of movement.

The regulations / laws made by the Nigerian government restricting the movement of persons and social interactions to curb the spread of the virus unfortunately affected some vulnerable persons disproportionately. These were mostly the poor and needy, those that must move and work on daily basis to put food on their tables. These persons were placed in difficult situation of either staying indoors and dying of hunger or moving out to find food and be left at the mercy of law enforcement agents who were given the responsibility of enforcing the COVID-19 Regulations.

Some of the regulations were urgently made and the provisions crafted in a way that gave security agents the latitude to over-reach themselves and abuse the rights of the citizens. Nigerians were therefore exposed to different levels of human rights abuses ranging from harassment, assault, rape, torture, inhuman and degrading treatment in the hands of security agents.

Another major issue of concern was the fact that the restriction of movement made it very difficult for victims to access rehabilitative, legal and other services. The period also deepened the epidemic status of Sexual and Gender Based Violence and the failure of Law Enforcement officers to protect the victims. This exposed the gap that there are no structured and safe means of reporting torture and receiving the required support and justice.

Article 1 and 4: Improve on the Anti-torture Act and ensure its effective implementation

Although Section 34 of the Constitution states that No person shall be subjected to torture or to inhuman or degrading treatment; it did not explicitly state that the freedom from torture, cruel and inhuman treatment is a non-derogable right. The Anti-torture Act 2017 fills the existing legislative gaps by explicitly making the right to freedom from torture, cruel, inhuman and degrading treatment a non-derogable right, criminalizing torture and protecting victims and witnesses of torture.

However, notwithstanding the existence of this law which criminalizes acts of torture and other cruel inhuman and degrading treatment, the use of torture by law enforcement and security operatives to solve crime through confessional statements and as punishment have remained rampant in the country and the law fails to provide an effective framework for victims to seek reparation.

Section 12 of the National law mandates the Attorney General of the Federation to make rules and regulations for the effective implementation of the law. Despite this, the undersigned organisations are not aware of any prosecutions for torture under the new law and no action has been taken by the Office of the Attorney General to make the much-needed rules for the effective implementation of the Anti-Torture Act in accordance with the provision of Section 12 of the Law.

Section 10 also mandates the Attorney General and other law enforcement and investigative agencies to ensure that the function of overseeing the implementation of the law is specifically assigned to a particular office or unit of the agency concerned. Presently steps are yet to be taken towards the actualization of the above.

Section 11 of the Anti-torture Act mandates the Attorney General of the Federation to ensure education / training of law enforcement personnel and such other persons involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment on the prohibition against torture and the specific content of the law. However, law enforcement and security operatives remain unaware of the existence of the law and its provisions. The few that are aware of the content of the law have acquired their knowledge through capacity building and awareness campaign carried out by civil society organizations.

Finally, the Act does not particularly create an obligation on the Government of the Federal Republic of Nigeria to provide and ensure an all-round redress for victims of torture. For instance, there is no provision in the Act that ensures that victims of torture get restitution, rehabilitation and

satisfaction and guarantees of non-repetition. Of all the 5 forms of reparation for torture victims it only provided for a right of a torture victim to claim compensation which is barely enough.

Recommendations:

The Nigerian Government should:

1. Make regulations to operationalize the Anti-Torture Act with specific rules to guide the procedures and processes for the documentation, investigation and prosecution of torture and other cruel inhuman and degrading treatment
2. Amend the Anti-torture Act to provide for holistic/full rehabilitation for torture victims and support institutional and sustainable structure for its effective implementation. In the interim pending the recommended amendment of the law, include rehabilitation in the standard operating guideline for the implementation of the Anti-torture Act.
3. Integrate specialized and holistic rehabilitation services into Public Health System
4. Amend the Anti-Torture Act to include the criminalization of ill treatment not amounting to torture by public officials
5. Prioritize and adequately fund training of public officials on the Anti-torture Act and in particular the prohibition and definition of torture, the obligation to investigate and prosecute and how to ensure that victims receive justice and reparation.

Article 2: Improve preventive measures

National Preventive Mechanism

The Nigerian government ratified the OPCAT in July 2009 and established a ‘National Committee against Torture’ as a step towards fulfilling its obligations under the OPCAT. However, the mandate of the committee does not comply with the standards set out in the OPCAT. The Committee against torture has been unable to function effectively due to lack of independence. The committee does not have a legislative mandate. The instrument that constituted the committee aside not being a legislative text did not spell out the powers, selection process, terms of office, funding, and lines of accountability of the committee. The committee lacks operational independence as well as financial independence as they are placed under the institutional control of the Federal Ministry of Justice.

The NPM was established with a term of reference¹ issued by the Federal Ministry of Justice as opposed to a proper legislative text. This goes to affect the independence of the committee

¹ See the copy @ <http://www.bris.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsreference.pdf>

because the Federal Ministry due to the nature of the document can at any point easily alter or withdraw the mandate of the committee.

The committee is charged with the duty to receive and consider complaints on torture; conduct visits to places of detention and examine allegations of torture, prevent torture by reviewing the treatment of persons in detention, put in place a national anti-torture policy. However, lack of legal and operational independence and limited funding have prevented NCAT from carrying out its work effectively.

Recommendations:

The Nigerian government should-

1. Review the mandate of the NPM and ensure compliance with the standards set out in the OPCAT
2. Ensure the functional independence of the NPM by Promulgating a law establishing the NPM, setting out their compositions, sphere of competence
3. Allocate sufficient funding and resources for the NPM to carry out their mandate
4. Create an obligation on competent authorities/institutions/agencies to examine the recommendations of the NPM and its implementation

Monitoring of places of detention

The ACJA provides that the chief judge of each state, or any magistrate designated by the chief judge, shall conduct monthly inspections of police stations and other places of detention within the magistrate's jurisdiction, other than prisons, and may inspect records of arrests, direct the arraignment of suspects, and grant bail if previously refused but appropriate.

On the other hand, the Nigeria Correctional service Act also makes provision for there to be official visitors to custodial centers. These official visitors are to inspect the wards, cells, journals, registers and books of the custodial centers, receive complaints from inmates and call the attention of the superintendent to any irregularity including structural defects discovered during the visit. The Legal Aid Act of 2011 also mandates the council to conduct inspections of prisons, police cells and other places of detention to assess the circumstances under which such persons are detained.

The above notwithstanding, there are no regular monitoring visits to police stations, custodial facilities (prisons) and other places of detention. There is also limited monitoring of detention places by independent nongovernmental observers. Where some of the visits or inspections mentioned above in accordance with the law do take place often times the body carrying out the visits are not able to ascertain the real situation of those persons deprived of their liberty because before the visit the detention facility concerned would have removed and destroyed every evidence that will point to or suggest that torture or any irregularity takes place there.

Recommendations

The Nigerian Government should-

1. Ensure civil society access to and monitoring of places of detention
2. Provide support in gathering and assessing accurate statistics of who and who are in places of detention
3. Ensure the bodies/agencies given the mandate to visit and monitor places of detention have the actual power to choose freely the places to visit and have unrestricted access to all parts of the premises and facilities. This should include the power to interview all persons in detention without the presence of the authorities
4. Prioritize and provide funding and adequate resources to all government established bodies with the mandate to monitor places of detention.

Lack of implementation of essential safeguards

The Nigerian government has made some progress towards prohibition and prevention of acts of torture by security and law enforcement agents through the enactment of laws. The constitution of the Federal Republic of Nigeria creates a right of freedom from torture. The Anti-torture Act expressly criminalizes acts of torture perpetrated by public officials². The Administration of Criminal Justice Act and laws for states that have domesticated the same and the Evidence Act³ makes inadmissible statements obtained from accused persons/defendants through torture. Furthermore, the Administration of Criminal Justice Act as a form of safeguard against torture provides for the use of visual or audio recording whilst obtaining a volunteered confessional statement from a suspect⁴.

The Nigerian Correctional Service Act also gives the superintendent of a custodial facility (prison) the power to refuse to admit any person brought in with severe bodily injury into the custodial facility.⁵ The above notwithstanding, acts of torture have persisted in Nigeria. There are daily reports of torture of suspects by police, military and other law enforcement agencies, to elicit confessional statements.

To a large extent, these cases of torture and ill-treatment by the police and other law enforcement agencies are often accompanied by serious violations of the due process of law like acceptance of coerced confessions contrary to the provisions of the law. The suspects are not given the opportunity to inform the court that they had been tortured and the obligation to ensure that a

² Section 9(1) Anti-Torture Act 2017

³ Section 29 (2) Evidence Act

⁴ Section 15(4) Administration of Criminal Justice Act 2015 Furthermore, Section 17 of the Act provides for the taking of the statement of a suspect who wishes to make statement in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice.

⁵ Section 13(3)(a) Nigerian Correctional Service Act, 2019

suspect's lawyers is present during confessional statements and that these are video recorded is not implemented in practice.

Absence of Legal representation facilitates the use of torture and other forms of ill treatment during interrogation. The police would less likely torture a suspect who has legal representation. The Legal aid Act obligates the Nigeria police to inform suspects of their entitlement to legal services from the moment of arrest and where such suspect cannot afford the services of a legal practitioner to notify the Council to represent him if he so desires. This provision is rarely complied with; in fact, most of the officers of the force are not even aware of the existence of this provision of the law. From the point of arrest, the police typically do not inform suspects of their right to a lawyer and the suspects often times do not seek legal advice, either because they were not aware of their right to do so or could not afford to pay a lawyer.

The Legal Aid Council of Nigeria (LACON) like many other bodies set up by the Nigerian government is seriously under-funded and unable to provide services in all but only a small number of cases. The Legal Aid Council has offices in each of Nigeria's thirty-six states, but the capacity of these offices is extremely limited.

Another issue of lack of due process of the law is that of prolonged periods of arrest and stay in police custody detention, Section 35 (4) of the Nigerian constitution stipulates that the police must bring a person before a court of law within "a reasonable time." If there is a competent court of jurisdiction within a forty-kilometer radius, "a reasonable time" is defined as twenty-four hours. If there is no court within forty kilometers, arraignment must take place within forty-eight hours or "such longer period as in the circumstances may be considered reasonable. If suspects have not been brought before a competent court of jurisdiction within two months, they must be released unconditionally or "upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. In practice this is rarely adhered to by the police. Police detention in some cases can last for a period ranging from several weeks to several months. This long period of police detention gives room and enough time for acts of torture and other forms of ill treatment to take place.

Recommendations

The Nigerian Government should:

1. Prioritize and provide adequate funding for the training and re-training of security and law enforcement officers on the provisions of the Anti-torture Act and all laws guiding the administration of criminal justice and also ensure their inclusion into the training curriculum of all agencies with the mandate to arrest and detain.
2. Provide materials and up-to-date equipment for forensic investigation in tackling high rate of crime and training and re-training of personnel on competent and intelligent investigation.
3. Ensure adequate funding of the Legal Aid Council to carry out its mandate effectively

4. Strengthening institutions with oversight functions on the Nigeria Police Force and other law enforcement agencies. Specifically, the accountability units within the Nigeria Police need to be unified, integrated and optimised for better achievement of their mandate and ease of tracking records of offending officers and ensuring that no one escapes accountability.
5. Promptly punish erring law enforcement officers in accordance with the Anti-Torture Act
6. Ensure that law enforcement agencies are regularly sensitized on the legal safeguards contained in various laws against torture and that they abide strictly by them.

Prevent ill treatment of mentally ill persons.

In Nigeria, persons with mental disabilities are detained in or commuted to custodial facilities (prisons). There are no national safeguards for protecting persons with mental disabilities against unjust and arbitrary detention. There are 3 broad areas in which persons with mental disabilities in prison custody are categorized: persons who have been convicted of a criminal offence, persons on remand who have been charged with a criminal offence and persons on remand who have not been charged with any criminal offence. This last group is referred to as “civil lunatics” while the others are referred to as “criminal lunatics”.

Civil lunatics are often detained at the insistence of their family members, with the support of the police. Reason being that some of these families are unable to pay for the treatment of these persons in psychiatric hospitals or some for other reasons, do not wish to send their family members to a psychiatric hospital. This is a clear violation of Nigeria’s international human rights obligations.

There are several issues about the treatment of mentally disabled persons within the criminal justice system in Nigeria. One relates to the procedure for detaining mentally disabled people in prisons. The process is plagued by arbitrariness and a lack of due process.

The conditions of detention/ imprisonment of mentally disabled persons do not comply with international standards. Most of them sleep on bare floors in the prison or on torn mattresses and blankets, a situation which is also common to other prisoners, especially those on remand, because of overcrowding and lack of adequate resources. There is no clear segregation between the civil lunatics and the criminal lunatics, or between juveniles and adults, or between convicted and remanded. Those with babies have no special units. The conditions of detention raise concerns about violations of the rights to protection of every person from torture and cruel, inhumane, and degrading treatment. These conditions expose them to personal suffering and indignity.

Furthermore, the current law in force in Nigeria - The Lunacy Act - treats mental healthcare as separate from the primary healthcare system. This fuels the stigma attached to mental healthcare and limits the accessibility of psychological care by victims of such in Nigeria. Again, given the challenge of resource inadequacy, most of the funds provided for mental health institutions are used only in the hospitals and for the treatment of persons with severe mental disorders.

Recommendations

The Nigerian government should

1. Stop all detention of persons with mental disabilities who are not accused or convicted of criminal acts.
2. Identify and divert away all mentally ill persons from custodial facilities to psychiatric hospitals/therapeutic setting.
3. Ensure training and capacity building on access to justice and treatment of persons with mental disabilities for relevant stakeholders
4. Review the existing outdated mental health law and enact a model mental health law
5. Include mental healthcare in the Nigeria primary healthcare system.

Use of lethal force to quell civil unrest and other agitations:

Force Order 237 is the rule that guides the use of firearms by police officers in Nigeria. One of the most exploited parts of the order is that which gives the police officer the right to shoot "if he cannot by any other means arrest a person who takes flight in order to avoid arrest, provided the offence is such that the accused may be punished by death or imprisonment for 7 years or more." It's been argued that in practice, this is usually why some police officers who shoot people go scot free as long as they are able to claim with the collaboration of their colleagues that the person resisted arrest and attempted to flee a crime scene then the shooting is justified. There is also the big issue of lack of oversight to effectively investigate the authenticity of the claim made by the shooting officer.

Again, subsection 2 of section 33 of the Constitution of the Federal Republic of Nigeria which provides for the fundamental right of everyone to life goes further to create an exception to the effect that a person who dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary in order to effect a lawful arrest or to prevent the escape of a person lawfully detained is not to be regarded as having been deprived of his/her right to life. This also gives arbitrary powers to the police officer to shoot at a harmless citizen and then turn around to claim that he/she attempted to resist arrest.

The force order also instructs police officers in "riot" situations to "single out" and fire at "ring-leaders in the forefront of the mob". The definition of riot is so vague, that all protesters, however peaceful, are at risk. The force order also directs officers to fire "at the knees of the rioters" and explicitly prohibits firing in the air. The alleged killing of #EndSARS protesters in October 2020 was the height of the brazen denial of citizens right to life.

Recommendations

1. While the steps taken to by the Nigeria Police Force to revise the force order 237 are commendable, the personnel of the Nigeria Police Force should be trained and sensitized on the new provisions of the Force Order and international standards on the use of force.

Article 11: Conditions of detention

Overcrowding and Excessive use of Pre-trial Detention

Most places of detention are severely overcrowded, which is one of the main contributors to detainees suffering Torture and CIDT. Research conducted by PRAWA shows that the total custodial capacity of the Nigerian correctional service is 56105 and the overall number of inmates is 65997. There are two main reasons for this.

First, is the excessive use of pre-trial detention resulting in 47730 (72.32%) of detainees being in this category. Suspects are remanded in prison custody to enable investigation as opposed to the precautionary measure of ensuring that accused persons attend court to take their trial as provided in the constitution. It is also used to further punish suspects who have refused or are unable to produce bail money.

The police usually refer suspects charged with capital offenses, such as armed robbery and murder, to Magistrates Courts, knowing that they do not have the competent jurisdiction to hear such cases *once remand order is given adequate follow-up is needed (Part 30 of ACJA). This tactic is used by the police to gain extra time to conduct investigations. In the majority of these cases the trial is not concluded within the legally required two-month period provided for by the constitution.

Second, is the criminalization of petty offences certain behaviors like street hawking, alms begging, wandering, being an idle or disorderly person, being a rogue or vagabond, prostitution and some environmental and traffic violations are criminalized. These classes of persons are subjected to several forms of ill treatment and torture including sexual abuse in the process of arrest and detention.

All of this is closely linked to poverty and marginalization some of the pretrial detainees who are poor and end up in pretrial detention not because they are likely to abscond, reoffend or threaten witnesses, but simply because they are poor and unable to comply with onerous bail conditions; afford money bail and are unlikely to be able to pay for the services of a lawyer.

Recommendations

The Nigerian Government should:

1. Decriminalize and declassify petty offenses by ensuring that such offenses are removed from its statute book as criminal offences and effective utilization of non-custodial measures provided for by the ACJA and the Nigerian Correctional service Act of 2019
2. Prioritize and adequately provide funding of the non-Custodial directorate of the NCoS

3. Develop and apply diversion strategies alternative to criminal prosecution in cases involving juveniles on minor cases of non-violent nature, mental health, and drug addictions
4. Review the quota for inmates feeding in tune with the economic state of the country and adequate provision of necessities to alleviate inmate suffering
5. Ensure compliance by the relevant agencies with the provisions set to ensure periodic review of cases of pre-trial detainees to avoid detention in perpetuity.
6. Ensure adequate budgetary allocations to the Legal Aid Council of Nigeria to be able to fulfill its mandate of provision of legal representation for indigent Nigerians.
 - Ensure anyone who requires legal support gets it by adequate bodies including CSOs. Strengthen the ability to coordinate effectively with other (office of the public where they exist)
 - LACON should strengthen the national data base for pro bono and paralegal services clearing house
 - Ensure duty solicitors are adequately utilized.

Article 12-14: Investigation, prosecution and reparation for torture victims

Lack of documentation and investigation of torture allegations

The majority of complaints about torture and other forms of ill treatment do not lead to investigation of any kind. In most cases involving allegations of torture by security forces no proper investigations or measures have been taken to bring suspected perpetrators to justice. In cases where investigations have taken place, they were usually internal within the police or military, the findings were not made public, and no criminal or disciplinary action was taken against the police or military involved. The Police therefore remain susceptible to corruption, faced with allegations of human rights abuses, and operate with widespread impunity in the apprehension, illegal detention, and torture of suspects.

The above situation is not new. Over the years, several Civil Society Organizations both local and international have reported on the pervasive use of torture by police and other security agencies. SARS officials have been implicated in widespread human rights violations and have garnered a reputation for arbitrary arrests, torture, rape, extortion, unlawful detention, and extrajudicial killings.

In recent years, Nigeria has experienced a significant increase in violence targeting civilians by state forces. The Nigerian government, however, has failed to conduct investigations of the torture allegations and bring the perpetrators to justice despite promises of police reform.

One of the main reasons for these problems this is the lack of systematic record of arrest and detention. The provisions of the law mandating the police to record and maintain records of arrest exist only in paper and not in practice. This is partly due to lack of resources and also to enable the inability to gather evidence of arbitrary arrest, illegal and prolonged detention and torture on their part. The implication is that there are no documents to rely on in determining the number of persons arrested the number of persons in detention, how long they have spent in detention and the number of persons exposed to torture. This hampers on effective investigation and prosecution of the allegations of torture as the existence of the above mentioned will to some extent help to substantiate the allegations of torture.

Another reason is the lack of competent and independent state mechanism to investigate complaints about torture. The DSS, police, and military report to civilian authorities but periodically act outside civilian control. The government regularly utilized disciplinary boards and mechanisms to investigate security force members and hold them accountable for crimes committed on duty, but the results of these accountability mechanisms are not made public.

For years, the Nigerian government has lacked the political will to address the problem. It had disbanded the Special Anti-Robbery Squad multiple times within the last five years — first in 2014, then in 2015, and again in 2017. The disbandment was done without taking further steps to investigate the allegations of abuse and use of torture against the unit and the Nigerian Police Force to identify the perpetrators and bring them to book.

Recommendations

The Nigerian Government should:

1. Establish an independent and competent mechanism to investigate all allegations of torture and ill-treatment.
2. Implement a case management system tracking detainees from the point of arrest until their case is adjudicated and any allegations of torture during their detention.
3. Establish standardized, accurate and tamper proof records concerning arrests, detention, any injuries or deaths in custody, or firearms incidents for all police stations and detention facilities, without exception. These records should be submitted annually to both the National Assembly, National Human Rights Commission and the Media as well the respective institutions including the Police Service Commission and should thereafter be publicly accessible.
4. Establish a process of conducting a periodic and formal review of all NPF firearms discharges, regardless of whether anyone was hit. This review should be designed not only to determine whether wrongdoing occurred but to identify and then correct gaps in training, supervision, equipment, or policy which contributed to the shooting.
5. Ensure the effective implementation of the relevant provisions of the ACJA. To particularly cause the office of the Attorney General to regularly call for the records from the police and other arresting agencies and to take steps to ensure that information provided to the office in that regard is tamper proof and accurate.

6. Ensure training on documentation and investigation of torture in accordance with the Istanbul protocol for all relevant stakeholders.

Reparation and Rehabilitation

Section 9(3) of the Anti-Torture Act recognizes the right to claim compensation for torture victims but it does not provide for other aspects of reparation like rehabilitation etc. The National Human Rights Commission's (NHRC) Amendment Act 2011 gives the commission the financial autonomy and the power to monitor, investigate human right violations, assist victims in getting the necessary care through the public health system and help them seek appropriate redress and remedies. But despite this mandate, the NHRC has so far been able to offer only legal redress to victims of torture due to inadequate resources made available to it by the Nigerian government.

The Nigerian Government does not have rehabilitation centers or engage in any rehabilitative measures that would benefit victims of torture. Services relevant to the various forms of rehabilitation needed by torture victims are not readily accessible and as a result, victims of torture are left to suffer its aftermath in silence without any form of recourse.

The most recognized injuries of a victim of torture in Nigeria are physical wounds, which in most cases are left untreated. While easily identifiable marks left by physical injuries receive attention, little or no attention is paid to other psychological and socio-economic impacts of torture on its victims. Such impacts like loss of employment (caused by inability to perform assigned duties due to sustained injuries), susceptibility to the use of drugs (as a coping mechanism), prostitution, and an inability to function effectively within the society due to trauma or post-traumatic stress disorder are left unattended to.

Torture rehabilitation services in Nigeria are only provided by non-governmental organizations. Due to the absence of public policy and the lack of resources, including funds and manpower for the few NGOs that are providing rehabilitation services, sufficiently resourced rehabilitation services are not available in all the geographical regions of Nigeria.

Recommendations

The Nigerian government should

1. Amend the Anti-Torture Act to include the right to as full rehabilitation as possible for torture victims
2. Provide adequate budgetary allocation to facilitate the implementation of the NHRC's mandate, especially with respect to the right to rehabilitation. This will ensure that efforts already made by NGOs may be complemented and made more accessible nationally by the NHRC's intervention.
3. Create an adequately resourced national rehabilitation programme as well as support civil society organizations providing rehabilitation to victims

4. Ensure that services relevant to the various forms of rehabilitation necessary for torture victims are easily accessible.
5. Ensure the Integration of Torture documentation and redress in all medical, law and psychology training institutions.
6. Government should mainstream the treatment of torture victims across the health system

The Special Anti-Robbery Squad (SARS) Scandal:

SARS was created to curb all forms of armed robbery, but overtime it was mismanaged and the police lost control of this unit. Torture and ill-treatment are routine practices in SARS detention centers. Young people between the ages of 17 and 30 were at most risk of arrest, torture or extortion by SARS. They are often accused of being internet fraudsters and/or armed robbers. Young men with dreadlocks, ripped jeans, tattoos, flashy cars or expensive gadgets are frequently targeted by SARS. Often these young men are unlawfully arrested in raids on television viewing centers, bars and recreational centers. They are held in detention and forced to pay huge bribes to secure their release. Those unable to pay are subjected to torture or other ill-treatment.

According to a report by Amnesty International SARS officers turned their duty to protect Nigerians into an opportunity for extortion and stealing money, property and other valuables belonging to suspects and their families. Since 2016, Amnesty International had documented 15 cases where SARS officers arbitrarily confiscated suspects' property.

Amnesty International's research show that no SARS officer has been held accountable for human rights violations documented in its reports. Rather many victims of SARS violations face obstacles and, in some cases, concerted opposition from the police authorities while seeking justice, including threats to their lives.

The systemic use of torture and other forms of human rights abuses by the SARS resulted in a nationwide protest by the Nigerian youths calling for the disbandment of the unit.

The said SARS unit was later disbanded by the Nigerian Government. However, only 29 States and the FCT established judicial panels of inquiry to investigate the allegations of human rights violations carried out by the Nigerian Police Force and the disbanded SARS units. The panels were made up of a diverse group of civil society representatives, government officials, lawyers, youth, and protesters with the task of reviewing complaints submitted by the public and making recommendations to their respective state government on sanctions for human rights violations and proposed compensation for victims. The judicial panels set up across Nigeria to investigate the excesses of the Nigerian police received over 2,500 petitions. Most of the petitions allege human rights violations such as extra-judicial killings, torture with some leading to grievous body harm, extortion, harassment, sexual and gender-based violence, indiscriminate arrests, illegal detention, illegal arrests and abuse of power by personnel of the Nigerian police and other security agencies.

There were issues around inability of some the panel to sit due to inadequate funding the FCT panel for instance sat last on March 24, 2021, when it declared a two-week Easter break, but never resumed. The hiatus was said to be due to some logistics challenges however, in a recent statement by the National Human Rights Commission⁶ the panel will resume its sitting on Monday the 18th of October 2021. The panel is expected to take final written and oral addresses in eight petitions, on the said day, leading to the conclusion of the cases and adjournment for the panel's report on them.

Recommendations

1. Provide comprehensive reparation to victims of torture including victims of the SARS abuses.
2. Investigate and prosecute perpetrators and ensure the panels are empowered to establish the truth and historical record of what happened.

Migration, human trafficking and torture

Nigeria is a country of origin, transit and destination for victims of migration, smuggling and trafficking in human beings⁷. In 2003, Nigeria adopted the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (TIPLEAA), which constitutes the legal basis for the fight against human trafficking in Nigeria, and which has been significantly amended in 2015.

Most of the Victims are women and trafficked to Europe through the Central Mediterranean Route are originally from Edo state. The victim incurs debts of anywhere between US\$40,000-100,000 to traffickers⁸ in their bid to reach Europe, but also to Gulf countries, as well as Russia and other West and Southern African countries mainly for the purpose of sexual and labour exploitation. Some are already recruited by their traffickers in the country of origin; others may start their migration journey voluntarily.

The vast majority of them falls prey to traffickers in transit countries, especially in Libya, and is subject to all forms of human rights violations including torture, rape, extortion, and exploitation amounting to trafficking, slavery and forced labour.

The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) both at federal and state level has been mandated to assist victims as well as, investigate and prosecute perpetrators. Although since 2004, 362 individuals have been convicted, the investigation and prosecution of traffickers need serious and robust improvement. The main challenges identified by civil society organizations relate to corruption, lack of confidence in the judicial system, lack of training and

⁶ <https://www.premiumtimesng.com/news/top-news/490099-after-seven-month-break-abuja-endsars-panel-resumes-sittings.html>

⁷ US, USDOS, Trafficking in Persons Report 2020: Nigeria, 25 June 2020, <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

⁸ <https://www.iom.int/news/human-trafficking-nigeria-europe>

specialized knowledge on trafficking in persons among law enforcement officials, police departments, judges and prosecutors, poor capacity in targeting high-level perpetrators and lengthy of judicial proceedings leading to delayed, and hence, denied, justice⁹. Moreover, convictions of high-ranking individuals within Nigerian trafficking networks were virtually non-existent¹⁰

Nigeria lacks an effective witness protection programme for those who are willing to testify against their traffickers. victims' family members are not protected against potential acts of violence by trafficking networks.

Recommendations

The Nigerian Government should

Put in place effective measures that would ensure prosecutions of all including high-level perpetrators of human trafficking

Establish an effective witness protection programme for victims and those willing to testify against potential acts of violence by trafficking networks

Ensure training and capacity building of relevant stakeholders in the area of human trafficking.

Provide the necessary support and enabling environment that de-incentives young persons and women from being trafficked illegally.

Counter-terrorism measures and torture

During the last decade Nigeria has faced one of the worst humanitarian crises in Africa due to security threats and violent extremism of the Islamic group Boko haram. The human toll of these terrorists' attacks is dramatic with thousand deaths, millions internal displaced persons and refugees. The heavy-handed responses adopted by security forces have contributed to escalate violence against communities and among security forces themselves. Security operations against Boko haram in the sambisa forest instead of reducing the effects of terrorism have rather increased acts of extortion, torture and extrajudicial killings. Several reports accused the Nigerian military of using torture (which takes several inhumane forms) in her effort to defeat the Boko-Haram terrorist group. In 2015 an Amnesty international report stated that « Nigerian military forces have extra-judicially executed more than 1,200 people; they have arbitrarily arrested at least 20,000 people, mostly young men and boys; and have committed countless acts of torture ». A more recent report revealed in 2020 that soldiers subjected women, children and men in detention to torture and other ill-treatment.

⁹ Idem

¹⁰

https://coi.easo.europa.eu/administration/easo/PLib/2021_04_EASO_COI_Report_Nigeria_Trafficking_in_human_beings.pdf, p. 62

In its 2019 final observations, The Human Rights Committee was concerned about some provisions of the Terrorism (Prevention) Act of 2011, such as the broad definition of “terrorism” and “terrorist activities”, the disproportionate sanctions attached to non-violent acts and omissions which fall under the scope of the Act, the extensive powers of the State authorities and the lack of judicial supervision over the exercise of certain powers (CCPR/C/NGA/CO/2 §14). The Committee was also concerned about allegations of serious human rights violations committed by the security forces during the state of emergency, declared in May 2013 in the northeast of the country (states of Adamawa, Borno and Yobe), in the context of counter-terrorism measures against Boko Haram.

Recommendations

Take the necessary steps to review the provisions of the Terrorism (Prevention) Act of 2011 and bring them into line with the Convention against torture

Train security forces on the torture act and its application in any circumstances including in military and law enforcement operations against terrorist groups

Monitor all detention centers especially where alleged terrorists are detained and prevent human rights violations against them

Ensure that all allegations of human rights violations committed during states of emergency are promptly and effectively investigated, that those responsible are brought to justice and victims are provided with full reparations.

Create opportunities and platforms for dialogues between the affected communities in conflict areas and security agencies to enhance trust and information sharing



Ministry of Foreign Affairs of the
Netherlands



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