



UNIVERSAL PERIODIC REVIEW SUBMISSION FOR NIGERIA

NGO Submission

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ABOUT HRF

1. The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.
2. We focus our work on the founding ideals of the human rights movement, those most purely represented in the 1948 Universal Declaration of Human Rights (UDHR), and the 1976 International Covenant on Civil and Political Rights (ICCPR).
3. The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

INTRODUCTION

4. This submission was prepared by HRF for the Universal Periodic Review (UPR) of Nigeria. In this submission, HRF evaluates Nigeria's implementation of previous UPR recommendations by focusing on the current human rights situation in the country, which includes consistent arbitrary arrests, torture, extrajudicial killings and violations of due process of law.

FOLLOW UP TO THE PREVIOUS REVIEW

5. On March 20, 2014, the Human Rights Council considered and adopted the outcome of the review of Nigeria at its 39th meeting.ⁱ After reviewing a total number of 219 recommendations made by member states, the government of Nigeria accepted 184 recommendations and refused to support the remaining 35 recommendations.ⁱⁱ
6. Although Nigeria accepted recommendations covering a wide range of issues, including those concerning the ratification of international human rights instruments¹, such as the Agreement on the Privileges and Immunities of the

¹ According to the Office of the High Commissioner for Human Rights Ratification Dashboard, Nigeria has not yet ratified the Optional Protocol to the International Covenant on Civil and Political Rights on Individual Complaints of 1976; the Second Optional Protocol to the International Covenant on Civil and Political Rights on the Abolition

International Criminal Court, it has not made progress on the ratification of these instruments. Since the country did not submit a midterm report,ⁱⁱⁱ there is no information on whether the remaining instruments are being considered for ratification.

7. In the 2013 UPR cycle, member states were concerned about Nigeria’s violation of human rights, including the gap between law and enforcement, and called for enhanced protection of fundamental rights. Specifically, member states expressed concerns about cases of torture, extrajudicial killings, and other violations by security forces, and called for accountability for wrongdoing by law enforcers.^{iv} In its response to records of torture and extrajudicial killings during the review session on October 25, 2013, the Nigerian government affirmed that security personnel were under strict directives to adhere to the rules of engagement in line with international human rights and humanitarian law.^v The government affirmed further that military personnel violating the rules of engagement would be held accountable.^{vi}

NIGERIA’S NATIONAL FRAMEWORK FOR PROTECTING HUMAN RIGHTS

8. The Federal Constitution of Nigeria of 1999^{vii} provides a basic framework for protecting the human rights of its citizens:

Article 33

- (1) “Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court [..]”

Article 34

- (1) (a) “[..] no person shall be subjected to torture or to inhuman or degrading treatment.”

Article 35

of the Death Penalty of 1991; the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights of 2013; and the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure of 2014. The Dashboard is available on <http://indicators.ohchr.org/> (last visited on February 12 2018).

(2) “Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner [..]”

(3) “Any person who is arrested or detained shall be informed in writing within twenty-four hours of the facts and grounds for his arrest or detention.”

Article 36

(1) “[..] a person shall be entitled to a fair hearing [..] by a court [..] established by law and constituted in such manner as to secure its independence and impartiality.”

TORTURE, CRUEL, INHUMAN AND DEGRADING TREATMENT

9. Although torture is prohibited under Nigerian law, it is commonly used by security forces upon criminal suspects.^{viii} Documented reports show that security personnel have been torturing suspects using horrific methods such as nail and tooth extraction using pliers; shooting on the foot or hand during interrogations, and excessive beatings using gun butts, machetes, rods, and cables.^{ix}
10. In February 2017, the Special Anti-Robbery Squad (SARS) officers in the town of Awkuzu, arrested and severely tortured nine men. Eight of them died in custody and one was charged with robbery and released four months later.^x In December 2017, police officers from the Intelligence Response Team in Lagos tortured a suspect in custody, damaging his eardrum severely.^{xi} In Anambra state, a 25-year-old suspect was tortured by SARS after his employer accused him of burglary at his business premises. The victim was beaten and left hanging on a suspended iron rod until he lost consciousness.^{xii} Another victim was tortured with his finger and toe nails torn out using pliers.^{xiii} Reports show that female suspects have been raped by security forces while in custody.^{xiv} The conduct of security forces is aggravated by an insufficient effort² on behalf of the government to hold accountable security officers, leading to widespread

² According to HRF’s source in Nigeria, majority of security personnel who commit torture go unpunished. See also <https://www.premiumtimesng.com/news/headlines/219722-breaking-nigeria-police-dismiss-6-officers-linked-governor-wike.html> for some measures of accountability.

impunity.^{xv} Nigeria is therefore in violation of its obligation, under international law, to ensure that all persons are free from torture and ill treatment.³

11. In December 2017, the Nigerian Anti-Torture Act (2017) was entered into force.^{xvi} Prior to this act, the federal government passed the Administration of Criminal Justice Act (ACJA) in 2015. The Federal Justice Sector Reform Coordinating Committee and the Nigerian Bar Association recommended that all 36 Nigerian states enact their ACJA legislation. However, as of January 2017, only four states – Anambra, Ekiti, Enugu, and Lagos – had passed such legislation.⁴ The ACJA prohibits the torture of arrested persons, and in the case of voluntary confessions, such confessions must be recorded on video or on other electronic devices.^{xvii} Although confessions obtained through torture are prohibited by law,^{xviii} police often use torture to extract confessions, which are then used to prosecute suspects in court.^{xix} In Nigeria, the police is responsible for conducting criminal investigations.⁵

Torture for extortion of money

12. Police officers in the Special Anti-Robbery Squad (SARS) have been torturing detainees in order to extort bribes from victims. Suspects have been subject to horrific torture methods including mock executions.^{xx}
13. SARS officers in Enugu beat one victim severely, releasing him only after payment of ₦25,500 (\$81) while another victim claimed to have been robbed of his belongings, and tortured on top of being forced to pay SARS officers ₦25,500 (\$81).^{xxi} A student of Lagos State Polytechnic was also tortured after demanding to know the reason for his arrest, and in exchange for his release, the police officers collected ₦30,000 (\$100) from him for being “stubborn,” while other detainees paid between ₦5,000 (\$16) and ₦10,000 (\$32) for their release.”^{xxii}

3 Nigeria is a state party to the International Convention Against Torture, Cruel, Inhuman and Degrading Treatment (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Article 2 of CAT and Article 7 of ICCPR prohibit torture.

4 According to HRF’s source in Nigeria, there is no deadline for Nigerian states to enact Administration of Criminal Justice Act, but there was an ongoing campaign by the Federal Justice Sector Reform Coordinating Committee and the Nigerian Bar Association to mobilize all states to enact ACJA.

5 According to Article 315(b) of the Nigeria Police Regulations, the duties of the officer in charge of the Central Criminal Investigation Department of the Police Force is responsible for the overall direction of the conduct of criminal investigations, and of the police prosecutions of offenders. See also Article 33(d) of the Police Regulations which establishes the Criminal Investigation branch within the Police Force.

Prolonged Detention and Corruption in the Judiciary

14. Prolonged pretrial detention is a serious problem in Nigeria, where 72% of prison population consists of detainees awaiting trial.^{xxiii} The law requires that the pretrial detainees be taken to court within 24 hours after the arrest or be released on bail if the alleged offense is not a crime punishable by death.^{xxiv} According to the Administration of Criminal Justice Act, even in the case of capital offenses, the arrested suspects shall be taken to court within a “reasonable time.”⁶ However, in practice, pretrial detention in Nigeria takes an average of 3.7 years.^{xxv} Further, corruption has contributed to miscarriages of justice as judicial personnel have been soliciting bribes in order to deliver favorable rulings to individuals who can afford to pay.^{xxvi}

ARBITRARY ARREST AND EXTRAJUDICIAL KILLINGS BY SECURITY FORCES

15. In 2016, the military arrested thousands of men, women, and children, including those who were fleeing from Boko Haram in Borno state, and that, the arrests were based on random profiling rather than on reasonable suspicion of having committed a recognizable crime.^{xxvii} The mass arrests caused overcrowding in military detention facilities, particularly in the Giwa town, leading to an outbreak of diseases and starvation. An estimated 240 detainees, including 29 children who were detained with their mothers, died in detention.^{xxviii}

16. In February 2016, security forces used live ammunition to disperse protesting members of the Indigenous People of Biafra (IPOB) in the city of Aba, killing at least 9 people. In May 2016, the police killed at least 17 IPOB supporters in the city of Onitsha ahead of a planned demonstration.^{xxix}

⁶ Section 30(3) of the Administration of Criminal Justice Act (2015) provides that “where a suspect is taken into custody and it appears to the police in charge of the station that the offense is of capital nature, the arrested suspect shall be detained in custody and the police officer may refer the matters to the Attorney General of the Federation for legal advice and cause the suspect to be taken before the court having jurisdiction with respect to the offence within reasonable time.” The provision does not specify what length of time should be considered reasonable.

17. Based on these facts, HRF has concluded that the Nigerian government is not honoring its international obligation assumed through the accepted UPR recommendations during the second cycle review in October 2013. By accepting the previous UPR recommendations, the Nigerian government agreed to take steps towards ending torture, extrajudicial killings, and other violations of human rights by security forces, and holding accountable the perpetrators of human rights abuses.^{xxx} However, practice on the ground points to the contrary. HRF is concerned with the continuous violation of human rights by security forces in Nigeria, particularly the consistent use of torture, extrajudicial killings, and non-adherence to the due process of the law.

RECOMMENDATIONS

18. HRF calls on the Nigerian government to:

- a) Conduct thorough investigations and hold accountable security officials involved in practices of torture and extrajudicial killings as pledged during the 2013 UPR.
- b) Speed up the trial of all detainees who have been arbitrarily held and in the absence of evidence, release them without further delay.
- c) Take rigorous measures to eliminate corruption in the criminal justice system, including prosecuting the police and judicial officers involved in corrupt practices.
- d) Ensure effective implementation of the newly enacted Anti-Torture Act (2017) and urge all states in Nigeria to fast-track the enactment of their Administration of Criminal Justice Act.
- e) Ensure that all detainees are treated humanely in accordance with Nigerian and international laws.
- f) Ratify the Agreement on the Privileges and Immunities of the International Criminal Court and other international human rights instruments which Nigeria accepted to ratify during the 2013 UPR.

i Human Rights Council, Report of the Human Rights Council on its Twenty-Fifth Session, A/HRC/25/2, May 27, 2014, para 463 – 464.

ii Ibid, para 466 – 467.

iii According to the Office of the High Commissioner for Human Rights, as at 30th November 2017, only 68 States (excluding Nigeria) submitted UPR mid-term reports and that, submissions are optional. See <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>

iv Human Rights Council, Report of the Working Group on its Twenty-Fifth Session, A/HRC/25/6, December 16, 2013 for example para 34, 38, 53, 63, 76, 78, 123, 125 and 135.68 to 135.72. See also Human Rights Council, Report of the Human Rights Council on its Twenty-Fifth Session, A/HRC/25/2, May 27, 2014, para 479

v Human Rights Council, Report of the Working Group on its Twenty-Fifth Session, A/HRC/25/6, December 16, 2013, para 132 and Human Rights Council, Report of the Human Rights Council on its Twenty-Fifth Session, A/HRC/25/2, May 27, 2014, para 479.

vi Ibid

vii See <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>

viii Prison Rehabilitation and Welfare Action (PRAWA) National Report 2016 titled “Torture and the Right to Rehabilitation in Nigeria.” See also Amnesty International Report 2016 / 2017

ix Strathmore Law Review (2017) page 173, available at http://www.press.strathmore.edu/uploads/journals/strathmore-law-review/SLR2/2SLR1_Article_9.pdf. The Strathmore Law Review reveals further that about 80 percent of inmates in police detention had either been beaten or threatened with weapons. See also Amnesty International Report (2014) titled “Welcome to Hell Fire, Torture and Other Ill-Treatment in Nigeria,” (page 9) at <https://www.amnesty.org/download/document/4000/afr440112014en.pdf>

x Amnesty International Report 2017 / 2018, available at <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>

xi The Nation Newspaper of Nigeria available at <http://thenationonlineng.net/about-us/>.

xii Amnesty International Report published on 21 September 2016, available at <https://www.amnesty.org/en/latest/news/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/> .

xiii Amnesty International Report (2014) titled “Welcome to Hell Fire, Torture and Other Ill-Treatment in Nigeria,” (page 30 - 31), available at <https://www.amnesty.org/download/documents/4000/afr440112014en.pdf>.

xiv Prison Rehabilitation and Welfare Action (PRAWA) National Report 2016.

xv Human Rights Watch Report 2016 available at https://www.hrw.org/sites/default/files/nigeria_pdf.pdf . See also the International Journal of Humanities and Social Science Vol. 5, No. 10(1); (2015) (page 212) available at http://www.ijhssnet.com/journals/Vol_5_No_10_1_October_2015/23.pdf and the Report “Killings by the security forces in Nigeria: mapping and trend analysis” (2014) (page 8), available at <http://www.nigeriawatch.org/media/html/WP13SuperV7Final.pdf>

xvi See <http://dailypost.ng/2017/12/29/buhari-signs-six-new-bills-law/>

xvii See Article 8 and Article 15(4) of the Administration of Criminal Justice Act (2015).

xviii See Article 29 of the Evidence Act (2011) of Nigeria.

xix Amnesty International Report Special report (2017) titled Nigeria: Gallows preparation in Lagos prison suggests spate of executions imminent, available at <https://www.amnesty.org/en/latest/news/2017/04/nigeria-gallows-preparation-in-lagos-prison-suggests-spate-of-executions-imminent/>

xx Freedom House Report 2017 available at <https://freedomhouse.org/report/freedom-world/2017/nigeria> and Amnesty International Report published on 21 September 2016 available at <https://www.amnesty.org/en/latest/news/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/>. The Amnesty report states that SARS officials are getting rich through their brutality by torturing detainees and demanding bribes in exchange for freedom.

xxi Amnesty International Report of September 2016.

xxii See Amnesty International Report and website <http://punchng.com/policemen-torture-student-demanding-know-offence/>.

xxiii PRAWA Penal Reform Fact Sheet (2017) <http://www.prawa.org/wp-content/uploads/2017/04/PENAL-REFORM-FACT-SHEET.pdf>

xxiv Section 30(1) of the Administration of Criminal Justice Act, 2015.

xxv Open Society Institute, Justice Initiative's Fact Sheet on Why We Need a Global Campaign for Pretrial Justice, available at https://www.coe.int/t/dghl/cooperation/cepej/events/OnEnParle/Why_need_global_camp_pretrial_justice_sept_09.pdf

xxvi See the Nigeria Corruption Report, available at <https://www.business-anti-corruption.com/country-profiles/nigeria/>

xxvii Amnesty International Report (2016 / 2017)

xxviii Ibid.

xxix Ibid

xxx See recommendations of the Human Rights Council Report of the Working Group on its Twenty-Fifth Session, A/HRC/25/6, December 16, 2013 para 135.68 to 135.75 and 135.78 to 135.80. See also Report of the Human Rights Council on its Twenty-Fifth Session, A/HRC/25/2, May 27, 2014, para 479.