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Nigeria: Urgent justice reforms needed to protect rights of inmates -- a statement to the Stakeholders' Summit on Magistracy and Justice Sector Reform in Lagos State

"Limited legal protection, unequal access to justice perpetuate a situation in which the poor and other vulnerable groups are highly susceptible to arrest and subsequent imprisonment. It is the view of the Commission that this phenomenon, the criminalisation of poverty, should have no place in the administration of justice in Nigeria."

The Presidential Commission on the Reform of the Administration of Justice (PCRAJ)

Since 2000, a number of Nigerian presidential commissions and working groups have been established to study the justice, police and prison sectors. All concluded that urgent reforms in the police and justice sector were needed to address the situation in Nigeria's prisons, where inmates await trial for up to five or even ten years in extremely overcrowded cells. The government has promised time after time to implement the recommendations by the commissions and working groups, but little has been done to reform the justice sector and many of the recommendations are yet to be implemented.

On 13 November 2007, key stakeholders in Lagos State will meet in Lagos to discuss these issues. They have been brought together by the Attorney General and Commissioner for Justice of Lagos State, Mr. Olasupo Shasore. Amnesty International welcomes initiatives that promote discussion of the justice, police and prison sectors and calls on the summit to consider in detail the following information and recommendations.

In July 2007 Amnesty International visited ten Nigerian prisons in the Federal Capital Territory and Enugu, Kano and Lagos States. Amnesty International concluded that the recommendations of all those committees and commissions and the promises of the government have not changed Nigeria's prisons: they are still overcrowded, prison authorities do not have enough funds to improve the living conditions, four out of five inmates are awaiting trial, approximately 80 percent of the awaiting trial inmates are indigent and cannot afford a lawyer and they wait years and years without being tried. Amnesty International will release a full report of its findings in January 2008.

The case of Sunday illustrates the situation of many awaiting trial inmates:

After almost forty days in police and State CID detention, Sunday (24) was first brought before a magistrate on 27 December 1999. He was at that time seventeen years old, a minor, and arrested on suspicion of culpable homicide. The magistrate did not have the jurisdiction to handle his case and remanded him to prison, pending the police investigation. At the time of the Amnesty International visit, seven years and eight months had passed and he was still awaiting trial. The last time he was in court was in September 2006 -- his case was adjourned once more. The magistrate court continued to use the holding charge to keep him imprisoned. Sunday, who is 25 now, said, "I have no lawyer. Nothing was offered to me." He denies that he had anything to do with the murder case. According to him: "There was a fight in my village between two gangs and one gang member was killed. Two days later, the police came and arrested me and eleven other persons."

Improving the situation of inmates in the Nigerian prisons requires an effective and functioning judiciary. Without this, the practice of keeping large numbers of inmates awaiting trial in Nigerian prisons for extended periods of time will continue. Amnesty International urges the judiciary to follow due process in accordance with Nigeria's national, regional and international obligations of fair trial. Three aspects in particular require more attention: the right to liberty, the holding charge and confessions extracted after torture.

Right to liberty

Everyone has the right to liberty. Article 35 of the Nigerian constitution confirms this right. According to the constitution a person can be imprisoned "in execution of the sentence or order of a court," "upon reasonable suspicion of his having committed a criminal offence" or "to prevent him committing a criminal offence."

In practice, most suspects of crimes wait for their trial in pre-trial detention, even if the accused person poses little or no risk to society; and even if the crime is not considered a serious one. As a general rule, people awaiting trial should not be remanded to prison. International standards do recognise specific circumstances under which someone could await trial in prison, such as to prevent the suspect from fleeing, interfering with witnesses, or when the suspect poses a serious risk. The International Covenant on Civil and Political Rights (ICCPR) states that deciding to release a suspect could depend on certain guarantees. Amnesty International notes that due process is often not followed in Nigeria. Many awaiting trial inmates explained that it is difficult to meet the conditions set by the courts and that although they do go to court, their case is adjourned time after time. According to an inmate: "I have been here three years. No progress, no bail. They just keep adjourning. I cannot see what is happening in my case." Another inmate cannot afford to pay the bail. He said: "The bail is too high. The less privileged stay in prison."

According to an audit of the National Working Group on Prison Reforms and Decongestion, around 15 percent of the awaiting trial inmates remain in prison because they can not post their bail.

Holding charge

Over the years, the Nigerian police have systematically sent suspects of capital offences, such as armed robbery or murder, to a Magistrate Court instead of following the statutory procedure of sending the case to the prosecutor of the Ministry of Justice for a decision whether or not to take the case to the High Court.

Magistrate Courts usually do not refer the case to the High Court, but remand the suspects to prison pending police investigation. In many cases this takes several years. This practice has been declared unconstitutional and is often referred to as the main reason for the high level of awaiting trial detainees resulting in overcrowding of detentions and prisons in Nigeria. It deprives the suspects of their right to challenge the lawfulness of their detention. Interviews with inmates reveal that this practice is widely used. Amnesty International delegates spoke with a young man suspected of murder who was a minor when he was arrested and remanded to prison by a Magistrate Court. He had not been to court for almost six years. According to the prison audit, almost 40 percent of inmates awaiting trial were remanded to prison on a holding charge.

Torture

Many inmates interviewed by Amnesty International gave consistent reports of having been tortured in order to force them to confess. In some cases, delegates were able to view injuries that appeared to confirm the accounts. Not only men claimed this, women also reported that they had been tortured and in some cases raped by police officers while in police custody.

Amnesty International spoke with a male inmate who had been tortured in police custody. He said, "The police used rubber to tie my hands and arms. They said I had committed robbery." His palms were blistered and peeling and his arms were crisscrossed with dark lines as a result of the wounds. His left hand hung limp. He was not treated for his injuries.

"Many inmates arrive with injuries and wounds they got from arrest," a prison director explained. Lawyers emphasized that by the time suspects go to court, their injuries have often become marks and "that makes it hard to prove it was torture." The use of torture by the police in order to extract a confession should always be questioned in court. If a suspect made a statement under pressure, threat or torture, it must not be used as evidence in court. The prosecutor has a responsibility to prove that the statement was made voluntarily. Section 28 of the Evidence Act, Laws of the Federal Republic of Nigeria is clear on the prohibition of using information extracted from the suspect by means of threats, promises or force: "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise...."

Recommendations

Amnesty International calls on all participants of the Stakeholders' Summit on Magistracy and Justice Sector Reform to be aware of the problems caused by prison overcrowding and to join the prison administration in seeking solutions to reduce this.

Judges and magistrates should:

- o Apply the norms of the United Nations and the African Charter on Human and Peoples' Rights on the treatment of detainees.
- o Exercise their judicial authority to ensure that the human rights of prisoners and detainees are safeguarded at all times.
- o Exercise their judicial authority to ensure that all individuals detained without charge are charged promptly with a recognizable criminal offence or otherwise released.
- o Follow the example of the Court of Appeal which has declared the holding charge to be unlawful and unconstitutional.
- o Inquire if a confession was made under pressure.
- o Ensure that any statement which is made as a result of torture shall not be used as evidence against the suspect.
- o Address the problem of long and repeated adjournments.

- o Screen the remand caseload on a regular basis to make sure that people are remanded lawfully, and that cases are dealt with promptly.
- o Take a more pro-active role in ensuring the defendant is provided with legal aid and able to put his case where the person is unrepresented because of indigency.
- o Ensure that judicial investigations and proceedings are to the effect that prisoners are kept in remand detention for the shortest possible period, avoiding, for example, continual remands in custody by the court.
- o Establish a system for regular review of the time detainees spend on remand.

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For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566

Amnesty International, 1 Easton St., London WC1X 0DW. web: <http://www.amnesty.org>

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