

RESPONSE OF THE NIGERIA NATIONAL HUMAN RIGHTS COMMISSION TO THE QUESTIONNAIRE FROM UN WORKING GROUP ON ARBITRARY DETENTION RELATING TO DRUGS

1. INFORMATION ON NUMBER OF PEOPLE ON PRE-TRIAL DETENTION AND THOSE IMPRISONED FOR DRUG RELATED OFFENCES

The table below shows the number of arrest carried out in 2018.

However, we do not have information on the disaggregated statistics in terms of health status and sexual orientation.

Statistics of Arrests carried out by the National Drug Law Enforcement Agency (NDLEA) nationwide 2018

COMMANDS	Males	Females	Total	%
KATSINA	803	16	819	8.32
JIGAWA	634	3	637	6.47
BORNO	612	10	622	6.32
KANO	535	7	542	5.51
BAUCHI	473	26	499	5.07
ABIA	404	51	455	4.62
PLATEAU	419	19	438	4.45
AKWA IBOM	370	48	418	4.25
BAYELSA	269	83	352	3.57
EDO	260	68	328	3.33

ZAMFARA	270	13	283	2.87
ONDO	236	32	268	2.72
KADUNA	249	10	259	2.63
ADAMAWA	242	11	253	2.57
FCT	240	8	248	2.52
RIVERS	194	38	232	2.35
DELTA	164	46	210	2.13
OSUN	192	16	208	2.11
OYO	182	20	202	2.05
KEBBI	198	3	201	2.04
CROSS RIVER	178	22	200	2.03
ANAMBRA	189	7	196	1.99
NIGER	166	7	173	1.75
OGUN	140	25	165	1.67
EBONYI	150	11	161	1.63
LAGOS	158	3	161	1.63
BENUE	147	11	158	1.60
SOKOTO	135	4	139	1.41
KOGI	106	7	113	1.14
YOBE	111	0	111	1.12
TARABA	106	2	108	1.09
KWARA	93	10	103	1.04

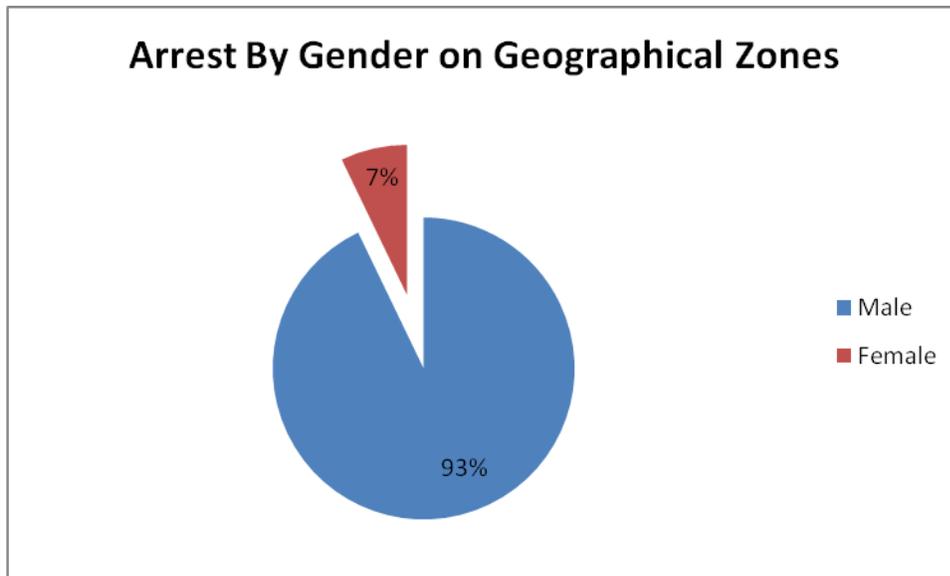
ENUGU	91	1	92	0.93
MMIA LAGOS	73	16	89	0.90
IMO	56	7	63	0.64
NASSARAWA	62	0	62	0.63
GOMBE	59	0	59	0.60
EKITI	41	8	49	0.49
CIATF	25	11	36	0.36
SEME	26	8	34	0.34
DOGI	30	2	32	0.32
NAIA ABUJA	6	6	12	0.12
IDIROKO	9	2	11	0.11
SET	11	0	11	0.11
MAKIA KANO	5	4	9	0.09
PHIA PORT HARCOURT	3	1	4	0.04
AIIA ENUGU	3	0	3	0.03
APAPA PORT	2	0	2	0.02
JTF	2	0	2	0.02
DAFI	1	0	1	0.01
ONNE	0	0	0	0.00
TINCAN PORT	0	0	0	0.00
TOTAL	9,130	703	9,833	100

. Katsina, Jigawa and Borno States in that order took the lead in number of suspects arrested during period in consideration

ARRESTS BY GEO-POLITICAL ZONES: 2018

<i>GEO-POLITICAL ZONE</i>	<i>MALES</i>	<i>FEMALES</i>	<i>TOTAL</i>	<i>PERCENTAGE (%)</i>
<i>NORTH WEST</i>	2,829	60	2,889	29.38
<i>SOUTH SOUTH</i>	1,438	306	1,744	17.74
<i>NORTH EAST</i>	1,603	49	1,652	16.80
<i>NORTH CENTRAL</i>	1,239	68	1,307	13.29
<i>SOUTH WEST</i>	1,128	143	1,271	12.93
<i>SOUTH EAST</i>	893	77	970	9.86
<i>TOTAL</i>	9,130	703	9,833	100

North west, South south and North east took lead in that order



2.0. ACQUISITION, USE OR POSSESION OF DRUGS FOR PERSONAL USE.

The laws on drug related offences in Nigeria do not provide for **acquisition, use or possession of drugs for personal use**. These laws are:

- a. the National Drug Law Enforcement Agency Act Cap. N30 Laws of the Federation of Nigeria 2004 (NDLEA ACT);
- b. The Dangerous Drugs Act;
- c. Indian Hemp Act Cap. 16, Laws of the Federation of Nigeria 2004.

Thus section 19 of the NDLEA Act prescribes punishment for drug related offences ranging from 15 to 25 years' imprisonment. It follows, therefore, that these are not minor offences.

However, the aforementioned laws recognize the lawful possession or use of certain categories of drugs. For instance, section 19 of the NDLEA Act provides:

“Any person who, without **lawful authority**, knowingly possesses the drugs popularly known as cocaine, LSD, heroine, or any similar drugs shall be guilty of an offence under this Act amend liable on conviction to be sentenced to imprisonment for a term not less than fifteen years and not exceeding 25 years”

Similarly, the proviso to section 5 (1) (a) (b) of the Indian Hemp Act makes an exception to the possession of Indian hemp. It states thus:

“paragraph (b) of this section shall not apply to the possession of any medical preparation of Indian Hemp in circumstances such that no offence against the Dangerous Drugs Act is committed...”

It is important to mention, however, that the NDLEA, upon arrest of suspects, screens those that are arrested with a view to ascertaining whether or not they are drug addicts or users.

Where it is established that the suspects are drug addicts or users *simpliciter*, and therefore require medical attention, they are diverted out of the Criminal Justice System. In this regard, such persons are taken to the Directorate for Drug Reduction (DDR) of the NDLEA for counseling and other essential services.

3.0. DECRIMINALIZATION OF THE ACQUISITION, USE OR POSSESSION OF ILLEGAL DRUGS FOR PERSONAL USE.

The acquisition, use and possession of drugs for personal use or any law relating to drug offences have not been decriminalized in Nigeria.

The penalties for acquisition, use or possession of illegal drugs for personal use are encapsulated in the laws that criminalize the offences.

Thus section 19 of the NDLEA Act prescribes punishment ranging from 15 to 25 years' imprisonment.

4.0. CIRCUMSTANCES THAT HAVE LED TO UNLAWFUL AND ARBITRARY ARREST.

The incidence of arbitrary arrest by law enforcement officials occur while carrying out their operations as state in the laws establishing the agency. Specifically, arbitrary arrests could while the law enforcement official is carrying out raid of “black points”, “hot spots”, search of persons, premises, movement of drugs, cultivation and confiscation of exhibits.

4.1. INSTITUTIONS FOR THE PROTECTION OF THE RIGHTS OF SUSPECTS

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended and other laws establish institutions where persons whose rights have been, is being or likely to be infringed can approach in order to seek redress or get justice. These institutions are;

- a. The Courts;
- b. The National Human Rights Commission;
- c. The Legal Aid Council of Nigeria.

The case of *Eze v. Federal Republic of Nigeria*¹ is hereby stated to buttress the fact persons who are arrested for drug related offences approach the courts for redress. In this case, the defendant was arraigned for unlawful possession of the psychoactive substances tramadol under Section 19 of the NDLEA Act. He pleaded guilty to the charge, and the prosecution reviewed the facts in line with section 274 (I) of the Administration of Criminal Justice Act (ACJA), 2015 and tendered the relevant exhibit forms² in evidence. He was convicted and sentenced accordingly. Dissatisfied with the decision, the defendant appealed to the court of appeal on the ground that there was no evidence of expert analysis on the recovered drug to prove that it is actually tramadol.

Dismissing the appeal, the court of appeal per Jummai Hannatu Sankey held:

While it is desirable for a further confirmatory test to be carried out, the fact that the appellant did not oppose the admission of both the narcotic substances and the certificate of test analysis in evidence rendered the documents both admissible and unchallenged evidences

¹ (CA/YL/68C/2015)[2016] NGCA 47 (6 MAY 2016)

² The exhibit forms are the request for scientific and certificate of test analysis and the packaging of substances forms

The appeal was therefore dismissed and the conviction was affirmed. From the above judgement, it is clear that if the appellant had opposed the admission of both the narcotic substances and the Certificate of Test Analysis, the appeal would have succeeded

5.0 ARE THERE SEPRATE CRIMINAL PROCEDURES FOR DRUG RELATED OFFENCES?

There are no separate procedures pertaining to criminal proceedings for drug related offences in Nigeria. The procedure for criminal proceedings in Nigeria applies to all categories of offences.

Conversely, subject to the provisions of ACJA, section 109 thereof provides for the institution of criminal proceedings as follows:

- a. in a Magistrate court, by a charge or complaint;
- b. in a High Court, by information of the Attorney General of the Federation;
- c. by information or charge filed in the court after defendant has been summarily committed for perjury by a court;
- d. by information or charge filed in the court by any other prosecuting authority;

e. by information or charge filed by a private prosecutor.

It is instructive to mention that the ACJA provide for the administration of criminal justice and related matters in the courts of the Federal Capital Territory and other Federal courts in Nigeria.

5.1. PERIOD FOR ARRAINING SUSPECTS IN COURTS

The CFRN 1999 as amended from sections 33 – 44 guarantee the civil and political rights of every person including those arrested on suspicion of drug related offences in Nigeria.

Accordingly, Section 35 of the Constitution of the CFRN 1999 as amended provides:

“any person who is arrested ...shall be brought before a court of law within a reasonable time...”

Thus, reasonable time has been explained by section 35 (5) as follows:

- a. In the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometers, a period of one day; and**
- b. In any other case, a period of two day or such longer period as in the circumstances may be considered by the court to be reasonable**

However, where it becomes necessary to keep any suspect beyond the constitutionally guaranteed period, an application shall be brought before a court of competent jurisdiction which may order for the continued detention of the suspect.

It must be emphasized that every person who is arrested in connection with drug related offences has equal rights and access to legal aid just as those who are arrested in connection with other offences.

5.2 SUSPICION FOR BEING IN POSSESSION OF KEYS TO PREMISIES OR VEHICLE WHERE DRUGS ARE KEPT.

Section 12 of the NDLEA Act provides:

Any person, who being and occupier or is concerned in the management of any premises, unlawfully permits or causes the premises to be used for the purpose of storing, concealing, processing or dealing in drug popularly known as cocaine, LSD, heroine or any other similar drug shall be guilty of an offence... and is liable upon conviction to be sentenced to imprisonment for a term not exceeding 25 years

Similarly, section 14 of the NDLEA Act provides:

any person who- conspires with, aids, abets, counsels, attempts to commit or is an accessory to any act or offence referred to in this Act, shall be guilty of an offence ...

However, by virtue of section 36 (5) the CFRN 1999 as amended, any person who is charged with a criminal offence shall be presumed innocent until he is proved guilty.

5.2. SUSPENDED SENTENCE, PAROLE RELEASE ON COMPASSIONATE GROUNDS FOR PERSONS CONVICTED FOR DRUG RELATED OFFENCES

Persons who are convicted in connection with drug related offences are not entitled to suspended sentences. This is because section 460 (3) of ACJA states:

A suspect shall not be sentenced to suspended sentence or to community service for an offence ...which the punishment exceeds imprisonment for a term of 3 years'..

In light of this provision, therefore, an accused person who is convicted for drug related offence may not enjoy suspended sentence since the punishment upon conviction is from 15 years and up to 25 years in Custodial Facility.

However, the Court may, subject to the recommendation of the Comptroller of the Nigeria Correctional Service, be released on Parole. In this regard, section 468 of ACJA 2015 states:

Where the Comptroller General of Prisons makes a report to the court recommending that a prisoner-

- a. Sentenced and serving his sentence in prison is of good behavior,**
- b. Has served at least one third of his prison term, where he is sentenced to imprisonment for a term of at least 15 years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and prisoner or his legal representative, order that the remaining term of his imprisonment be suspended, with or without conditions, as the court considers fit, and the prisoner shall be released from prison on the order**

Also, there are instances where the court may consider a reduction in sentencing.

5.3 PREROGATIVE OF MERCY

There exists in Nigeria a Presidential Advisory Committee on Prerogative of Mercy (PACPM). The function of this Committee is to select and determine convicts and ex-convicts to be granted pardon. Persons who are convicted for drug related offences can also be considered by the Committee.

6.0 INCIDENCE OF TORTURE WHERE OPIOD THERAPY HAS BEEN WITHHELD

NONE

7.0 COMPULSORY DRUG TREATMENT CENTRES

There are no compulsory drug treatment centers in Nigeria. (see question 8 below).

However, The National Human Rights Commission has monitored reports on raids of illegal rehabilitation facilities in Adamawa State, Kaduna State, Katsina State, Kwara State and Oyo State by Law Enforcement Agencies in Nigeria.

According to a report by West Africa Network for Peace building (WANEP)³, the facilities are regarded by families and caregivers of children as well as some adults as traditional and religious alternatives for addressing cases of juvenile delinquency, mental health concerns and drug addiction.

³ News Situation Tracking- Nigeria: Security Raid on Illegal Rehabilitation Centers (Vol. 6 November 4 2019)

The National Human Rights Commission has since commenced a nationwide action on the matter with a view to addressing ethical, legal and human rights issues.

8.0. PRIVATE DRUG TREATMENT CENTRES

According to the National Drug Control Master Plan (2015-2019)⁴ the treatment of drug dependant person in Nigeria takes place mainly in psychiatric hospitals although some private institutions as well as Non Governmental Organizations (NGOs) and Faith Based Organizations (FBOs) and traditional healers also offer services.

The report further states that most of the treatment centers are located in general hospitals where they provide the following services:

- a. Assessment of patient's physical, mental and social deficiencies;
- b. Detoxification
- c. Psychotherapy and drug free counseling
- d. Educational, occupational and social rehabilitation that is initiated at the start of the treatment with active participation of the family members

The NDLEA through its Research and Non Governmental Unit collate, collect and analyze data on Private Treatment Centers (PTC). In carrying out this function, the

⁴ <https://www.ndlea.gov.ng/annual-reports/> < accessed on 27th February 2020>

unit vets and accredits PTC where it addresses issues concerning the name of the PTC and submitting information on their activities.⁵

9.0 EXISTENCE OF DRUG COURTS

There are no specialized drug courts in Nigeria

10. JURISDICTION

There are no specialized criminal courts for people accused of drug related offences in Nigeria. The Federal High Court, pursuant to section 251 of the CFRN 1999 (as amended) is the court with jurisdiction and powers with respect to drugs and poisons.

11. THE USE OF MILITARY COURTS.

Military Courts (otherwise called Court Marshall) are not in any way used to try people for drug related offences in Nigeria.

A Court Marshall, pursuant to section 130 (1) and (3) of the Armed Forces Act (AFA), is vested with powers subject to the provisions of the Act, to try a person subject to service law for an offence and award for the offence, a punishment authorised by the Act for that offence.

⁵ National Drug Law Enforcement Agency 2016/2017 Annual Report at page 36. <https://www.ndlea.gov.ng/annual-reports/> < accessed on 27th February 2020>

The NDLEA is the agency established by law to investigate and enforce laws against the cultivation, processing, sale, trafficking and use of hard drugs in Nigeria.

12. PROVISION OF LEGISLATION FOR DETENTION OF THOSE WHO USE DRUGS CONSIDERED A DANGER.

Please refer to 4.1 and 5.1

13. PROVISION OF INVOLUNTARY DETENTION OF PREGNANT WOMEN.

NONE

14.0. DRUG TREATMENT FOR PEOPLE IN CUSTODIAL OR PRE-TRIAL DETENTION.

Section 20 (3) of the NDLEA Act provides:

“The Federal High Court before whom an accused is being convicted may in addition to the punishment prescribed ... make an order requiring an offender to undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration”

15.0. JUVENILE JUSTICE AND DRUG RELATED OFFENCES

The Child's Right Act 2003 (CRA) was passed into law in Nigeria in line with the United Nations Convention on the Rights of the Child (CRC). This law incorporates all the rights and responsibilities of children.

Furthermore, it specifies the duties and obligations of government, parents as well as authorities, organizations and bodies.

The Act provides for a Child Justice Administration to replace the Juvenile Justice Administration in Nigeria. The provisions of the CRA 2003 prohibit the subjection of any child to the criminal justice process, and guarantees that due process be given to any child subjected to the child justice system at all stages of investigation, adjudication and disposition of any case against such a child. It prohibits the use of capital punishment, use of imprisonment and use of corporal punishment for children less than 18 years of age. The Act explicitly states deprivation of liberty as a measure of last resort.

Accordingly, section 204 of the Child's Right Act 2003 provides:

“No Child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system...”

Also, section 20 (3) of the NDLEA Act provides:

“...the Federal High Court before whom a minor is being convicted may, in an appropriate case, make an order as the circumstance may determine

- a. An alternative to conviction;
- b. For treatment, education, after care, rehabilitation, social accused is being convicted may in addition to the punishment prescribe

Thus, children who are found to be in conflict with the law are referred to remand homes where they undergo counseling and treatment.

16. PROVISION FOR DRUG USERS AND DEPENDANTS

In Nigeria there are several government and Non Governmental Organizations dealing with different aspects of Migration. The National Commission for Migrants, Refugees and Internally Displaced Persons serves as the Coordinating body for all migration related issues.