

The Acts of Torture and Other Forms of Ill-Treatment of Citizens by Some Institutions and the Role of Criminal Justice System in Nigeria

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Abstract

The campaign against torture and other forms of ill-treatment as a social vice and crime against humanity has been persistent since the post second world war era. Indeed there was a plethora of torture incidences during the Second World War; chief amongst them is the holocaust. Unfortunately, this regime of torture has been permitted into the Criminal Justice System by law enforcement agencies in virtually every nation. Although universally, torture is generally accepted as repugnant to natural justice, yet there appears to be nothing to show that torture is on the decrease, rather it would appear that state sponsored torture continues to go unabated. This is so despite the enactment of numerous legislations and treaties by both international and national concerns, condemning the use of torture and other forms of ill-treatment in criminal justice administration. This paper examines the act of torture, reasons that occasion or warrant torture and the effects on humanity. Some of the international human rights instruments and the national human rights prohibiting torture are also examined to establish the gap between the provisions and the practical applicability and the protection of citizens against torture in Nigeria.

Introduction:

Torture and other forms of ill-treatment have been recognized as one of the worst crimes against humanity and violation of human rights. The nature of torture and its impact is best captured in this statement;

“Torture is not only one of the vilest act that one human being can inflict on another, it is also among the most insidious of all human rights violations. All too often, it is veiled in secrecy, except from those who cowering in nearby prison cells, might be its next victims. Victims are often too ashamed or traumatized to speak out, or face further peril if they do; often, they die from their wounds. Perpetrators, meanwhile, are shielded by conspiracies of silence and by the legal and political machinery of States that resorts to torture.”¹

Nothing captures the practice of torture better than the above statement. Indeed, the helplessness of victims has continued unabated. The act of torture and other forms of ill-treatment is often perpetrated by organs of the state such as the military, the police, the prisons and other law enforcement officials. In fact, it is believed that once a person or state is willing to administer torture on an individual; there is no limit at which the direct perpetrator would not go. It is important to know that these organs of the state that perpetrate the act of torture and other forms of ill-treatment every now and then are primarily saddled with the responsibility of upholding the law of the land and the rights of its citizenry. Instead, they routinely flout the law and also undermine the whole Criminal Justice System. Indicative of this pervasive fact is the Amnesty International Report in more than 150 countries. According to the report, in more than 70 countries, torture was widespread or persistent; in more than 80 countries, people reportedly die as a result of torture². Hence, states are under responsibility to pursue cases of torture against perpetrators. At different times in history, torture has been practiced. For instance, in the primitive periods and during the time of slave trade, torture and other forms of ill-treatment were considered an acceptable practice³.

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¹ Statement made by United Nations Secretary-General, Kofi Annan on the International Day in Support of Victims of torture on June 26, 2000; Quoted in Study on the Domestication of the UNCAT by Legal Research Initiative (LRI)

² Amnesty International: Take a Step up Stamp out Torture; October 18, 2000.

³ J. Mayerfield: Suffering and Moral Responsibility; Oxford University Press, 1999, at pg. 4.

It was legally recognized and regularly carried out for specific purposes such as capital punishment and as a form of discipline for recalcitrant slaves⁴. Also in Europe, the practice of torture in the courts persisted until laws abolishing it were passed in the eighteenth century. During these periods, confession was regarded as “queen of proofs”⁵. Also, history has revealed that in several ancient civilizations and in late medieval Europe, torture within prescribed limits was an accepted practice. Hence, it is difficult to believe that people who inflicted torture in such communities did nothing wrong. Again in Europe, crime was categorized into dangerous and non-dangerous crimes. Torture applied to dangerous crimes alone. This is because dangerous crimes were considered as extraordinary situations and in order to deal with these situations, governments were obliged to put in place extraordinary measures to protect the citizens⁶. After the end of the eighteenth century, torture acquired a universal recognition as a violation of human rights. Torture has also acquired international recognition as one of the worst violations of human rights, as well as, a crime against humanity. But despite this recognition both in national Constitutions and in widely ratified international Treaties, citizens have not been able to realize the full essence of their humanity since their rights are grossly abused and they are dehumanized by overzealous state organs licensed to wreck havoc on defenceless citizens.

Torture and other forms of ill-treatment are violations of human rights and it is practiced in many countries. They are strictly prohibited by a number of international⁷, regional⁸, sub region and national human rights instruments⁹, including the laws of war¹⁰. The general aim of torture is to destroy a human being¹¹, destroy his/her dignity and self-esteem¹². Other reasons for torture include; extracting confessions, to gather information, as a method of sadistic punishment, to retain control by the state by means of intimidation and subjugation, or merely that the person being tortured belonged to a separate group¹³. By its very nature, torture tends to exclude any form of moderation, refinement or limitation. The prohibition of torture enshrines one of the most fundamental values of democratic society¹⁴. Its prohibition in national constitution commits the country, specifically its law enforcement officers to perform their duties with due regard to the essential dignity of every human being. The provisions of the Constitution are binding on all the citizens and must be obeyed by all; whether government officials or non-governmental officials. Similarly, various international, regional and national human rights instruments prohibiting torture must be complied with, particularly, those that relate to the protection of fundamental human rights. Violation of prohibited acts of torture must be penalized through the invocation of various enforcement mechanisms. In Nigeria, eradicating the practice of torture has been bedeviled by several challenges ranging from administrative and judicial procedures to legislative inadequacies. The Nigerian policy play a very important role in criminal justice administration and therefore, it is expected to ensure respect for, and protection of the rights and freedom of individuals within their jurisdiction.

⁴ M. D. Evans, and R. Morgan: Preventing Torture, A Study of the European Convention for the Prevention of Torture and Inhuman or Degrading or Punishment; Oxford University Press; 1998 at pg. 5.

⁵ Odeku Main Thesis. PDF at pg 5.

⁶ E. Peters: Torture, Expanded Edition (University of Pennsylvania Press) 1996 at pg. 6.

⁷ For instance, see United Nations Convention against Torture, Cruel, Inhuman and Degrading Treatment.

⁸ See African Charter on Human and Peoples Right. Article 5 Prohibits Torture. Also, see Article 5 para. 2 of the American Convention on Human Rights.

⁹ Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999.

¹⁰ The Four Geneva Convention of 1949 namely: Geneva Convention 1 for the Amelioration of the Condition of the wounded and the Sick of Armed Forces in the Field; Geneva Convention II for the Amelioration of the Condition of wounded, sick and Shipwrecked Members of the Armed Forces at Sea Geneva Convention III, Relating to the Prisoners of War and Geneva Convention IV, Relating to the Protection of Persons in Time of War (1949).

¹¹ M. Kosma and J. Cantell: Neoconservative Ideology and the Use of Torture in Global War on Terror. Pg. 81

¹² Miller, D.J.: Holding States to their Convention Obligation: the United Nations Convention against Torture, Cruel, Inhuman and Degrading Treatment and the need for Broad Interpretation of State Action; Vol. 17, No. 2, **Georgetown Immigration Law Journal** 2003 at pg. 229.

¹³ Legal Research Initiative (LRI): Study on the Domestication of the United Nations Convention against Torture, Cruel, Inhuman and Degrading Treatment.

¹⁴ Nihal Jayawekrama: The Judicial Application of Human Rights Law, National, Regional and International Jurisprudence, at pg. 298; also Chadalv, United Kingdom (1996) EHRR at pg. 456.

The extent to which some of these obligations are met depends largely, therefore on the attitude and behaviours of police officials towards those individuals and groups with whom they interact with in the policing process at a personal level and on a daily basis¹⁵. We shall therefore examine the activities of the police, and importantly those of other law enforcement agencies.

It is a shocking discovery that so far into the fight or campaign for the eradication of torture and ill-treatment, there is no statutory definition of torture found in any of our local statute or enactments. Also, the International Treaty on Torture¹⁶ has not been accorded the force of law by the National Assembly. Hence, we shall examine some legal frameworks or statutes of international, regional, sub regional and national concerns relating to the prohibition of torture and other forms of ill-treatment in Nigeria.

Perpetrators of Torture and Other Forms of Ill-Treatment:

The act of torture and other forms of ill-treatment do not just occur. It is usually carried out by persons acting in official or personal capacity. Such persons are referred to as perpetrators of torture or torturers as the case may be. Therefore, perpetrators of torture can be referred to as persons (acting either under official or private capacity) who inflict severe pains (both physical and mental) on individuals for several reasons. Also, Article 1 of Convention against Torture (CAT), defines the perpetrator as a 'public official or other person acting in an official capacity'.

A typical torturer will be a law enforcement official or member of the security or intelligence services, precisely seeking to obtain, in the course of and in furtherance of his/her duties, information or confessions. It may also be someone with no official status acting in collusion with, and to advance the purposes of a public office holder. On the other hand, the direct perpetrator of the torture may be acting in collusion with, and to advance the purposes of, civilian political authorities who prefer to turn a blind eye to the 'excesses' of law enforcement or security officials. That is why the CAT definition describes the perpetrator not only as the official who directly inflicts the torture, but also the official who instigates, consents to or acquiesces in it. It is important to state here that most of the perpetrators of acts of torture are usually those in positions of state power. However, other persons who wield other forms of authority or influence also perpetrate acts of torture. One of the major elements in torture is the infliction of serious physical and/or mental pain by 'persons' whether they are policemen, other state agents, prisons, soldiers, other civilians who hold or believe they do hold positions of authority over their victims¹⁷, including certain cultural/religious practices. They do it through the infliction of specific acts of torture such as corporal punishment, rape, suffering of family members, even death sentence.

It is also important to point out that sometimes the use of torture may be intentional or unintentional. The relevant point is that the act or the use of torture and other forms of ill-treatment usually emanate from and is inflicted either at the instance of the public official or person acting in official or personal capacity. It is therefore an irony that the law enforcement officials and the security agents who are charged with the responsibility of maintaining law and order in the society sometimes breach the law which they have been sworn to uphold. For instance, officials may be too overzealous and in the process violate the rights of the citizens by subjecting victims to torture or other cruel, inhuman and degrading treatment. Torture is absolutely prohibited by the Nigerian Constitution, CAT, etc. Section 34(1) of 1999 Constitution which provides inter alia: "...no person shall be subjected to torture or to inhuman or degrading treatment..."¹⁸.

Towards this end, Nigeria as a state is generally responsible under international law for safeguarding the rights of individuals within its jurisdiction and could be held accountable for acts carried out by private individuals if it supports or tolerates them or fails to provide effective protection in law against them. We shall move on to discuss some institutions that commit acts that constitute torture and other forms of ill-treatment of citizens.

¹⁵ R. Crawshaw, B. Devlin and T. Williamson: **Human Rights and Policing Standard for Good Behaviour and a Strategy for Change** 1998 PP. 17.

¹⁶ For instance, see the International Convention on Civil and Political Rights; see also, National Convention Against Torture, Cruel, Inhuman and Degrading Treatment.

¹⁷ J. Barber: 'Less than Human Torture in Cambodia, A Licadho Project Against Torture Report'. **Cambodian League for the Promotion and Defence of Human Rights**, (LICADHO) 2000.

¹⁸ See Article 2 of CAT, which provides inter alia: "... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

(a) The Nigerian Police:

The Nigerian Police Force is established under Section 214(1) of the 1999 Constitution, which provides that “there shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other Police Force shall be established for the Federation or any part thereof”. The section further provides that: “the Nigeria Police Force shall be organized and administered in accordance with such provisions as may be prescribed by an Act of the National Assembly”¹⁹.

Similarly, the powers and responsibilities of the Police are set out under the Police Act²⁰. Section 4 thereof, provides for the duties assigned to the Nigerian Police Force: “whom he finds committing any felony, misdemeanor or simple offence or whom he reasonably suspects to having committed or about to commit any felony, misdemeanor or breach of the peace”. It also grants authority to arrest without a warrant “any person whom any other person charges with having committed a felony or misdemeanor” or “any person who any other person suspects of having committed a felony or misdemeanor or charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and to enter into a recognizance to prosecute such charge”²¹. In addition to arresting those they believe are about to commit a crime, the police routinely interpret the law in such a way that many people are arrested as a result of unverified allegation against citizens.

Similarly, at the point of arrest, the police officer shall inform the arrested person the facts and grounds for his arrest within twenty-four hours²². He should not be handcuffed, bound or subjected to unnecessary restraint, unless by an order of court, or where there is an attempt to escape, or the restraint is considered necessary for his safety²³. It then means that to handcuff, bind or restrain a suspect unnecessarily amounts to the violation of his right to personal liberty and dignity of his human person. In the area of crime investigation, the Nigerian Police is charged with the responsibility of prevention and detection of crime and the apprehension of offenders²⁴ through the powers of arrest, search, and detention, and also take their photographic records and finger prints. In the process of arrest and prosecution, the police carry out discreet investigation into reported cases, thus, the law allows them the use of minimum force as is reasonably necessary in the exercise of its powers of arrest and in bringing suspects to justice.

In the process of investigation and in some circumstances, the offender may be asked to make confession²⁵. The general rule of admissibility of such confession is predicated on its voluntary nature devoid of any inducement, intimidation, threat or promise of favour proceeding from a person in authority such as a Police Officer²⁶. To ensure fairness in the investigation process, the police is expected to administer the word of caution on the suspect before he makes any confessional statement thus: “do you wish to make statement in answer to the charge, you are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence”.

Furthermore, the United Nations Code of Conduct for Law Enforcement Officers²⁷ states that: “No law enforcement official may inflict, instigate, or tolerate any act of torture, or other cruel, inhuman or degrading treatment or punishment or may any law enforcement official invoke superior orders or exceptional circumstances such as state of war, a threat of war, threat of national security, internal instability or any public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment”.

However in practice, police brutality, extortion, intimidation, torture and maltreatment occur with constant regularity, especially in the course of exercising their powers. The police are frequent human rights offenders and often times they are not held accountable for the use of excessive force, torture or for death of victims in custody.

¹⁹ See S.214 (2)(a).

²⁰ (Cap. 359) Laws of the Federation of Nigeria.

²¹ Section 24, Police Act, 1990.

²² Section 35 (3), 1999 Constitution.

²³ S.4, Criminal Procedure Act and S.37 Criminal Procedure Code.

²⁴ Section 4, Police Act.

²⁵ S. 28 of Evidence Act 2011, defines confession as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.

²⁶ Harrison, H. I: The Role of Confession in Police Investigation vis-à-vis the Nigerian Constitution and the Convention Against Torture; being a lecture delivered.

²⁷ Article 5.

Also the police operate with impunity in the apprehension, illegal detention, and sometimes the execution of criminal suspects²⁸. Similarly, the Nigerian police routinely torture, ill-treat, or intimidate suspects for the purpose of extracting confessions from such suspect. Human Rights Watch gave a graphic detailed report of eyewitness accounts of how the police “tied up, hung from ceilings, beaten, gave electric shocks, sexually assaulted and threatened victims with death”²⁹. Furthermore, most victims of police torture are usually suspects in ordinary crimes and those who simply refuse to pay bribes that are routinely and openly demanded by policemen at checkpoints. According to Alemika and Chukwuma, Police violence defined in terms of brutality, torture and homicide, is widespread in Nigeria. Accordingly:

Its manifestations include beating and killing citizens, unnecessary restrains such as handcuffs and leg chains, unnecessary use of firearms against suspects and members of the public, torture of suspects in order to extract confession or extort gratification³⁰. Police brutality is used to describe the excessive use of force by the Police. Whenever the police use force for improper purpose, unnecessarily or prematurely, wrongly directed or excessive in nature and intensity, such action falls into the category of police brutality³¹ and torture. The circumstances which may provoke police brutality or torture vary, but may include the following:

- (i) Attempt to extort confessions, using ‘third degree’ method;
- (ii) attempt to prevent crimes or further crimes;
- (iii) in a spirit of disgust or contempt towards particular criminals;
- (iv) by way of revenge, especially when one or some of their own has been injured or killed;
- (v) in situations or danger when a crowd seems to be getting beyond control;
- (vi) In the cause of committing corrupt acts, such as extortion or other forms of police crimes.

Interestingly, a 2015 law now makes provisions against torture. Indeed, S. 8 (1) of the Administration of Criminal Justice Act, 2015 provide that a person arrested shall be accorded humane treatment, having regard to his right to the dignity of his person. This, certainly accords with the provisions of the constitution of the Federal Republic of Nigeria, as amended. S.8 (2) of the Law also provides that a person arrested shall not be subjected to any form of torture, cruelty, inhuman or degrading treatment. This certainly too accords with series of human rights and other conventions that Nigeria is signatory to.

Indeed, S.8(3) of the ACJA provides that a person shall not be arbitrarily arrested, or arrested on allegations that border on civil wrong or breach of contract, but the arrest shall be based on reasonable suspicion that the person arrested committed, or is about to commit a crime punishable as an offence under a written Law. The Law request that a person arrested shall be brought to the court for arraignment and trial as prescribed by the Act or any other law³². It is also same reason the Law requires that an arrested person be taken immediately to the Police Station upon arrest³³.

(b) Torture and Other Forms of Ill-Treatment While in the Custody by other Law Enforcement Agencies:

Other law enforcement agencies such as the Economic and Financial Crimes Commission (EFCC) and National Drug Law Enforcement Agency (NDLEA) etc. are not spared in this act of inflicting torture and other forms of ill-treatment on citizens in Nigeria. As a result of prevalence of corruption in Nigeria, the Federal Government in 2002 established the EFCC to investigate corruption and other financial crimes such as fraud and money laundering and enforce all economic and financial crimes laws. According to the provisions in the Act establishing the EFCC, all officers of the Commission “shall have the same powers, authorities and privileges (including the power to bear arms) as are given by law to members of the Nigerian Police”³⁴. The Commission is also able to appoint or second police officers in order to carry out its functions³⁵. However, the EFCC maintains a separate command structure to the Nigerian Police Force.

²⁸ Dambazzau, A.B. Criminology and Criminal Justice at pg. 282.

²⁹ Vanguard (online) July 28, 2005.

³⁰ Alemika, E.E.O and Chukwuma, I.C.: Police-Community Violence in Nigeria; Centre for Law Enforcement Education and National Human Rights Commission, (2000), page 11.

³¹ Dambazzau, A.B., Loc. Cit.

³² S. 8(4) Administration of Criminal Justice Act, 2015.

³³ S. 14 Administration of Criminal Justice Act, 2015.

³⁴ Section 8(5) of the Economic and Financial Crimes Commission (Establishment) Act, 2004.

³⁵ Section 8(3) of the Economic and Financial Crimes Commission (Establishment) Act, 2004.

The EFCC has been widely commended for its investigative zeal and efforts in combating corruption. However, the EFCC have always been caught in the act of committing torture. For instance, a twenty-six-year old man in Lagos described how, in EFCC custody and on the orders of a senior police officer seconded to the Commission, he was tortured so badly that he had to be admitted in the hospital.

Similarly, the National Drug Law Enforcement Agency (NDLEA) is agencies of the Federal Government conferred with the powers to arrest and detain suspects of drug abuse and drug trafficking. They also are guilty of violating the right not to be subjected to torture and other forms of ill-treatment.

(c) The Nigerian Prisons:

The prison is a correctional facility for offenders and remand of suspects. By their very nature, prisons are meant to restrict human rights. They are penal institutions created with the objective of curtailing the freedom of movement and certain other rights of individuals that are sent there by some authority or power³⁶ of the state.

The rules' guiding the treatment of prisoners in Nigeria is the United Nations Minimum Standard Rules for the Treatment of Prisoners. Rule 31 of the UN Minimum Standard Rules states that "corporal punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely prohibited as punishment for disciplinary offences". The rule makes it the responsibility of the prisons to prevent inmate to inmate disciplinary structure³⁷. The UN Minimum Rules insist that punishment by close confinement or reduction of diet can only be done if the medical officer has certified in writing that the prisoner is fit to sustain it³⁸.

Hence, there is need for daily visit by the medical officer of prisoner undergoing punishment. The medical officer must advise on whether the mode of punishment should be discontinued or altered³⁹. The Nigeria Prison Regulation empowers the judgment of official infractions. Also, instruments of restrain such as handcuffs, chains, irons and straightjackets, shall never be applied as a punishment⁴⁰. In terms of classification and housing of prisoners, most penal systems of the world as a matter of policy aspiration recommend the classification and separation of prisoners according to sex, age and degree of criminality. In Nigeria, the separation of prisoners is a requirement of the law which is expressly provided under Section 2(4) of the Police Act⁴¹. Similarly, the Prisons Regulation⁴² provides that prisoners of each sex, as far as prison accommodation renders it practicable be divided into distinct classes namely:

- (i) prisoners before trials shall be kept apart from convicted prisoners;
- (ii) juveniles under sixteen years of age from adults;
- (iii) Debtors and other non-criminal prisoners from criminal prisoners.

With regards to sanitation, health and feeding, "prisoners shall be required to keep themselves clean and decent in their prisons. Every prisoner not exempted by the medical officer shall bathe daily"⁴³. Also, every prisoner is expected to be provided by the administration at the usual hours with food of nutritional value adequate for health, strength, well prepared, and served. Drinking water shall be available to every prisoner whenever he needs it⁴⁴.

However, the Nigerian Prisons are in total contrast from the above expectations. What has been found in the Nigerian prisons include: beating with cable, long incarceration without trial, solitary confinement for period exceeding limits stipulated under Regulations 49(1)(b)(i) and 49(3)(a) of the prison regulations. Putting prisoners in cells occupied by the toughest cruelest inmates to be brutalized, or rather, "eaten" alive⁴⁵. Chaining prisoners hands and or legs in their cells, chaining to the wall in single cells, constant intimidation and threats by warders and other prison officials, widespread flogging, congesting, malnutrition and diseases due to poor feeding, poor sanitation and near total absence of medical care⁴⁶. Food situation in Nigerian Prison is truly horrible⁴⁷.

³⁶ Nigerian Institute of Advanced Legal Studies: Supra note 27 at pg. 175.

³⁷ Rule 28, UN Minimum Standard Rules for the Treatment of Prisoners

³⁸ Rule 32

³⁹ Rule 32(3)

⁴⁰ Rule 33

⁴¹ 1972

⁴² Regulations 16

⁴³ Regulations 31

⁴⁴ Rule 20, Op.cit.

⁴⁵ Human Rights in Retreat at pg. 123

⁴⁶ Ibid

⁴⁷ Nderibe at an interview with New Africa Magazine, Sep. 1988

No one ever went to Nigerian prison and came out a sane person⁴⁸. Life in Nigerian prison have also been described as 'Living in Hell'⁴⁹, 'Chambers of Torture'⁵⁰, horror chambers, medieval dungeons and torture camps⁵¹. Therefore it is difficult to say that people living under the above mentioned conditions are not passing through torture and ill-treatment.

(d) The Nigerian Military:

Torture by the military followed the police pattern. They physically assault civilians at the slightest provocation. Most times as a show of power. The victims of military torture are usually the very ordinary people such as drivers and conductors (usually over bus fares), roadside traders during street clearing operations; or just any civilian who happen to get involved with a soldier or his relation in an argument or misunderstanding. A very notorious case of provoked military attacks is illustrated in *Uzoma Okere v. Nigerian Navy, Arogundade & Ors*⁵². Where a poor, defenceless young lady was brutalized, beaten, pushed, pulled and dragged. In this case, the plaintiff and her colleague were beaten, brutalized and her dress pulled off by a naval rating thereby exposing her nakedness, leaving her with only the brassier because she could not leave the very narrow road on time at the blaring of siren from the vehicle carrying a Naval Rear Admiral Arogundade. In an action for damages, the Justice Opeyemi Oke of the Lagos High Court on Jan. 27, 2010, ordered the Nigerian Navy, Rear Admiral Harry Arogundade and other Naval Ratings to pay One Hundred Million Naira as damages for assaulting the Plaintiff and violating her right to dignity of her person. However, the Nigerian Navy has since appealed against the decision of the High Court. Also, in the case of *Joe Etene V. Nigerian Navy*⁵³ the Justice Ademola Adetokunbo of the Federal High Court sitting in Calabar, Cross River State ruled in favour of Mr. Etene and granted all the relief he sought for by awarding damages of One Hundred and Fifty Thousand Naira to Mr. Etene and Fifty Thousand Naira as litigation costs for the violation of his fundamental human rights such as right to dignity of human person and right to personal liberty. Justice Adetokunbo observed that trampling on human rights by the military (naval operatives) had become common in Nigeria and declared that, "if the development is left unchecked, it will result in serious consequence". The learned justice further opined that, "Nigerians are gradually becoming endangered species in their own country and that Military Officers should be taught that we are in the 21st century and not in the era of "animal farm"⁵⁴.

Still on the abuse of human rights, a Federal High Court sitting in Enugu awarded Fifteen Million Naira damages to Joseph Agu against the Nigerian Army for torture, inhuman and cruel treatment by a soldier Sgt. Francis Oga of 82 Division Enugu, leading to his permanent loss of sight. The incident occurred on January 15, 2009. Agu had sued the Nigerian Army on December 10, 2010, for the enforcement of his fundamental human right. On the fateful day, Joseph Agu who was driving a lorry was suddenly overtaken by the said Sgt. Francis Oga who was driving a Mitsubishi bus.

Sgt. Oga hit the Joseph several times on his face with the iron buckle of his army belt, and blood started gushing out of his eyes and nose. The soldiers fled and left him in the pool of his blood and he was taken to the hospital by passers-by where he received medical treatment for more than one year after which Joseph went completely blind. No assistance came from the Army even though he complained to the Army authorities and they acknowledged the incident. The trial Judge, Justice Agishi after hearing the submissions of the applicant's counsel, a Legal Defence and Assistance Project (LEDAP) pro-bono lawyer in Enugu who handled the case awarded the said sum to the victim⁵⁵. In the same vein, the Joint Task Force (JTF) and Special Task Force (STF) comprising of police and the military have also been alleged to be committing torture in the course of discharging their responsibilities. The JTF and STF in the course of discharging their instilling peace in the troubled areas of the Niger Delta region where the militants operate and up north where the Boko Haram sect are holding sway; they have inflicted grievous torture, brutality and even extra-judicial killings on citizens of such areas.

⁴⁸ Statement made by Olisa Agbakoba SAN, President of Civil Liberties Organisation Newswatch Magazine, June 19, 1989

⁴⁹ Newswatch Magazine, June 19, 1989.

⁵⁰ Supra note 48 at pg. 122

⁵¹ Unreported case: <http://allafrican.com/stories/201103080305.html>: Accessed on July 7, 2013

⁵² Newswatch, Loc. Cit.

⁵³ Suit No. FHC/CA/M88/2010

⁵⁴ www.nigeriaworld.com/./111.html: Accessed on July 7, 2013

⁵⁵ www.sunnewsonline.net/news/right-abuse accessed on July 8, 2013

Some Other Forms of Acts of Torture

There are some acts that although might not be perpetrated by the law enforcers that may constitute torture by individuals that need to be prevented either by law or the criminal justice agencies. Some of these are as indicated below.

(e) Discipline and Corporal Punishment:

According to Black's Law Dictionary⁵⁶, "corporal punishment or physical punishment is defined as any punishment that is inflicted upon the body (including imprisonment)." Any use of force that is not strictly necessary to ensure a prisoner's proper behaviour constitutes a violation of his or her right to personal dignity as protected by the 1999 Nigerian Constitution. Corporal punishment per se is incompatible with Section 34(1) of the 1999 Nigerian Constitution because of its inherently cruel, inhuman and degrading nature. It may consist of severe beatings with implements such as batons, sticks, planks of wood, belts, iron bars, gun butts, cable wire, koboko (horsewhip) and gora (poles of bamboo palm used as roofing material)⁵⁷. Many cases of corporal punishment may (depending on the severity) rise to the level of torture, in that they involved the intentional infliction of severe pain or suffering for the purpose of obtaining a confession or extracting information, or punishing the victim for his or her own or a relative's perceived wrongdoing. Other cases may not clearly amount to torture but all of the cases at a minimum constitute cruel, inhuman and degrading treatment or punishment, which is also prohibited in the Nigerian Constitution and UN Convention against Torture.

(f) Rape:

Rape and other forms of sexual violence are cruel, inhuman and degrading treatment and in particular cases may rise to the level of torture. In other words, rape is a form of torture. In Martin De Meifa,⁵⁸ it was stated that "rape is a physical and mental abuse that is perpetrated as a result of an act of violence. Moreover, rape is considered to be a method of psychological torture because of its objective. In many cases, it is done not just to humiliate the victims but also their families or communities"⁵⁹. Generally, rape survivors suffer psychological trauma as a result of being humiliated and victimized⁶⁰. For some this trauma may be aggravated by "the condemnation of the members of their community if they report (that they have been raped or sexually assaulted)"⁶¹. Sexual abuse, besides being a violation of the victim's physical and mental integrity, implies a deliberate outrage to their dignity. For instance, in Nigeria, Human Right Watch⁶² reported how three police officers, including a Deputy Superintendent of Police (DSP) gang-raped two young women. They were secondary school students, aged seventeen and eighteen at the time of the incident. This form of torture are often perpetrated as a way of making the female suspects gratify the officer(s) in cash or kind for their freedom from being charged to Court for the offence that was not committed, for which if not negotiated could further, land them in prison.

This case received significant attention within Nigeria. Thanks to the efforts of a local human rights organisation and the willingness of the women who were prepared to speak publicly about their ordeal⁶³. The Enugu based Centre for Victims of Torture and Extra-Judicial Killing (CVEKT) has conducted a tireless campaign to bring the perpetrators to justice, petitioning the police authorities, the Federal Government, National Assembly and the National Human Rights Commission. As a result, the police authorities conducted an internal investigation which indicted the officers for rape and abduction. The two police constables were subsequently dismissed from the force.

⁵⁶ 8th edition

⁵⁷ Human Rights Watch: "Rest in Peace". Police Torture and Death in Custody in Nigeria, July 2005 vol. 17 No. 11 (A).

⁵⁸ Supra note 13, pg.

⁵⁹ Id., p. 186 (citing Blatt, Deborah, "Recognizing Rape as a Method of Torture," 19 N.Y.U Rev. L & Soc. Change 821, 854 (1992).

⁶⁰ Ibid, Blatt, pg. 855

⁶¹ Ibid, Blatt, pg. 855

⁶² Ibid, pg. 185

⁶³ For example, Mike Obani, "Gang rape in Enugu" Insider Weekly, November 15, 2004 and "DSP, two corporals implicated in rape case", Daily Independent, October 20, 2004 and "Police probe officers over alleged abduction, rape," The Guardian, October 22, 2004.

(g) Cultural and Religious Practices:

Although we live in a modern world, but there are still some cultural and religious beliefs that are still in practice in Nigeria. Unfortunately, these beliefs or practices may amount to torture or at least cruel, inhuman or degrading treatment. This practice may range from child selling/slavery and cannibalism (the eating of human beings).

Human sacrifice as a funeral custom where widows or servants of a dead man are buried (either willingly or due to pressure) with the deceased as a show of devotion to their dead master/ husband, infanticide (intentional killing of infants) either due to religious sacrifice or sex selection⁶⁴. Others include stoning, amputation, Female Genital Mutilation (FGM) or Female Circumcision⁶⁵ - this practice imposes trauma on the girl child, which is comparable to torture especially when done as an infant.

(h) Medical Personnel:

Medical torture is used to describe the involvement and sometimes active participation of medical professionals in acts of torture, either to judge what victims can endure, to apply treatments which will enhance torture, or as torturers in their own right. Medical torture may be called medical interrogation if it involves the use of expert medical knowledge to facilitate interrogation or corporal punishment, in the conduct of torturous human experimentation or in providing professional medical sanction and approval for the torture of victims.⁶⁶ The term 'medical torture', also covers torturous scientific experimentation upon unwilling human subjects⁶⁷.

It is a fundamental principle of medical practice that the patient's interest should be central in the healing relationship. The long standing guiding rule is that the healer should act in the interest of the patient's well-being and above all never to do harm. Aside the ethical principles guiding the professional behaviour of medical personnel towards the dying, the physically and mentally ill, the handicapped children and professional colleagues among others, their codes bearing on the behaviour of health professionals towards prisoners and victims of torture.

In minimizing the involvement of the medical profession in torture, the World Medical Assembly in its twenty ninth session unanimously adopted the Declaration of Tokyo in 1975. Article 1 of the declaration provides that doctors shall not "countenance, condone or participate in the practice of torture; or other forms of cruel, inhuman or degrading procedures, in all situations, including armed conflict and even civil strife". This obligation is further refined in subsequent paragraphs of the Declaration. A doctor must have completed clinical independence in deciding upon the case of a person for whom he/she is medically responsible. The doctor's fundamental role is to alleviate the distress of his/her fellow men/women, and no motive whether personal, collective or political shall prevail against his/her higher purpose⁶⁸.

It is worth mentioning that various supports have been given to doctors by The World Medical Association in order for doctors to be able to perform their duties without fear. To this end, paragraph 6 of the Declaration serves as a shield and protection and it makes provision 'to support' and 'encourage' national medical associations and fellow doctors and their families in the face of threats or reprisals resulting from a refusal to condone the use of torture or other forms of cruel, inhuman or degrading treatment. Other ethical codes also imply an obligation on the part of the doctor to refrain from such self-evidently harmful behaviour, thus: A physician shall not permit considerations of age, disease of disability, creed, ethnical origin, gender, nationality, political affiliation, race, sexual orientation, or social standing to intervene between his duty and his patient. He shall maintain the utmost respect for human life from its beginning even under threat and should not use his medical knowledge contrary to the law of humanity⁶⁹. Also, a physician shall ... be dedicated to providing competent medical services in full technical and moral independence, with compassion for respect of human dignity⁷⁰.

⁶⁴ 10 Barbaric practices That Still Exists: www.listverse.com/2013/03/02/10-barbaric...; accessed on July 9, 2013.

⁶⁵ Female Genital Mutilation: Human Rights and Cultural Relativity: www.forwarduk.org.uk/./human-rights: Accessed on July 9, 2013.

⁶⁶ www.en.wikimedia.org/wiki/medical-torture accessed on July 8.

⁶⁷ Ibid.

⁶⁸ Lipman, M: The Protection of Universal Human Rights: The Problem of Torture, 1 (4) Universal Human Rights (Oct. – Dec. 1997) p. 28.

⁶⁹ World Medical Assembly Declaration of Geneva.

⁷⁰ Amnesty International, Principles for the Medical Investigation of Torture and other Cruel, Inhuman or Degrading Treatment, Appendix 2, Prescription for Change: Health Professionals and the Exposure of Human Rights Violations at 39, Amnesty International Report No. ACT 75/01/96 (1996); www.umn.edu/./medicalprinciple.html. accessed on July 8, 2013.

Professionally and ethnically, no situation or reason should compel a medical doctor to engage an unethical practice of torture. Medical ethics and doctor's allegiance should discourage the use of torture. Moreover, the Declaration explicitly spells out the duties, obligations and responsibilities of medical personnel. No provision is made for the use of torture by medical personnel. No justification can therefore be given for a doctor's presence during torture sessions because it is contrary to a doctor's professional calling and responsibility.

(i) Individuals as Perpetrators of Torture:

Individuals can also inflict the act of torture and other forms of ill-treatment on another person. From all indications, it seems the practice of torture by individuals was never envisaged under CAT. Individuals as perpetrators of torture may include the use of private residence for the purpose of practicing torture. It also covers private hospitals and by extension private homes where for example, a person may be under house arrest. In Nigeria, domestic violence perpetrated by a husband upon his wife can be classified as torture or at least ill-treatment depending on the severity of such violence. A good example of torture perpetrated by individuals can be seen in the notorious "Aluu Killings" where four students of the University of Port-Harcourt were tortured to death. They were thoroughly beaten and then burnt alive by indigenes of Aluu Community for allegedly stealing cell phones and laptops in an off campus hostel. The community engaged in jungle justice thereby inflicting torture on both the victims and their families.

Conclusion:

In terms of legislative measures, apart from relevant provisions of the Evidence Act, the Penal Code and the Criminal Code, Nigeria also enacted the Geneva Conventions Act⁷¹ as far back as September 30, 1960 which domesticated the 1949 Geneva Conventions. The Convention prohibits among other things, "torture or inhuman treatment, including biological experiments"⁷². In addition, Section 34 (1)(a) of the 1999 Constitution provides that "every person is entitled to respect for the dignity of his person, and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment". Also, Article 5 of the African Charter on Human and Peoples Right⁷³, 1981 (which Nigeria has domesticated) prohibits "all forms of exploitation and degradation of man, particularly ... torture, cruel, inhuman or degrading punishment and treatment". In practical terms, allegations of torture abound during Nigeria's past military regime. However, there are signs of improvement under the current civilian regime; a lot still needs to be done, especially in the context of law enforcement, in order to have a responsible degree of compliance with the provisions of the Convention. Section 3 of the Geneva Conventions Act, a domestic Nigerian legislation, criminalizes torture and prescribes punishments ranging from 14 years imprisonment to death penalty. Generally, the territoriality principle governs the exercise of criminal jurisdiction in Nigeria. However, Article 3 of the Geneva Conventions Act provides that "if, whether in or outside the Federal Republic of Nigeria, any person, whatever his nationality, commits, or aids, abets or procures any other person to commits any such grave breach of any of the Conventions as is referred to in the articles of the Conventions set out in the First Schedule of this Act", (including torture) such person may be proceeded against, tried and sentenced where the offence shall be deemed to have been committed. Section 46(1) of the 1999 Constitution provides to the effect that any person who alleges that any of his right has been, is being, or is likely to be contravened in any state may apply to a High Court in that state for redress. Subsection (2) empowers the court to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement ...of any right to which the person who makes the application may be entitled". This availed window for redress is very good and welcomed, but for the delay that characterizes judicial proceedings in Nigeria. In the words of an erudite Nigerian jurist: The chorus 'justice delayed is justice denied' has become a senseless nuisance to most of the persons and institutions which are intimately connected with administration of justice in our country and a saddening reminder to those directly affected, of a totally bankrupt system of administration of justice. This is of course extremely sad, since that chorus is absolutely true⁷⁴

⁷¹ Cap 162, Laws of the Federation of Nigeria, 1990

⁷² Articles 50,51,130 and 147 of the second, third and fourth Geneva Conventions, 1949 respectively. Supra, note 60 chapter two.

⁷³ Supra, note 60 chapter two.

⁷⁴ Aguda, T.A.: "The Challenges for Nigerian Law and the Nigerian Lawyer in the 21st century", a Nigerian National Merit Award Winners Lecture, September 14, 1988 pg. 3-4. However, in *Obeta V. Okpe* (1996)9 NWLR pt. 473 pg. 401, where it was pointed out that when "speed in conducting a case is at the expense of justice of fair hearing, the speed becomes condemnable. Such speed can cause an accident or crash". The court must therefore strive to strike a balance.