

A Bird's Eye view of the Frameworks for the Prohibition of Torture Under International Law and Nigerian Legal System: Parallels, Problems, and Prospects

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Abstract

This article presents overviews of the regimes for the prohibition of torture under international law and Nigerian law. Adopting the doctrinal research methodology, the article finds that despite Nigeria's robust regulatory regimes for the prohibition of torture, there has been widespread use of torture by law enforcement officials against suspects. These infractions have caused untold hardship and sometimes resulted in death of the victims. The article recommends that the government should establish an independent agency to investigate and monitor activities of law enforcement agencies in the country. It makes a case for concerted efforts by the government in collaboration with experts in the field of human rights to establish pragmatic programmes aimed at training law enforcement officials regarding the prohibition of torture and to enlighten citizens about their legal rights and the ways they may seek legal redress in the event that their right to freedom from torture is violated.

Keywords: Prohibition, torture, international law, Nigerian law, parallels, problems, prospects

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1. Introduction

One of the most traumatic human experiences is occasioned by man's inhumanity to his fellow mankind through the phenomenon of torture. In retrospect, the act of torture has been practiced by state functionaries and law enforcement personnel around the world from time immemorial. The Judeo-Christian scripture records one of the most poignant and heartrending narrative of torture as exemplified by the hideous and lacerating treatment of Jesus Christ. Prior to his brutal execution, soldiers derided, taunted, and stripped him; they placed an incisive crown of thorns on his head, malevolently spat on him, compelled him to bear a weighty and burdensome cross, smote him severely, and eventually executed him by nailing him on a cross.¹The excruciating pain and human suffering caused by this most untoward treatment of Jesus is better imagined than recounted.

The quagmire of anti-Semitism in the circular world paved way for the orchestration of the Holocaust which occurred in Europe between 1933 and 1945. The Holocaust was characterised by state manned mistreatment, torture, and killing of six million Jews by the Nazi German regime and its supporters.²The gruesome torture and extermination of the Jews during the Holocaust is graphically depicted as follows:

*During World War II, Nazi Germany and its allies and collaborators killed nearly two out of every three European Jews using deadly living conditions, brutal mistreatment, mass shootings and gassings, and specially designed killing centers.*³

Beyond the beleaguered history of torture in Europe, the use of torture especially by state functionaries remains prevalent in many parts of the world including Nigeria. Amnesty International has pointedly expressed concern about the arbitrary deployment of torture and other inhuman or degrading treatment in Nigeria. The

¹ The Holy Bible, New Living Translation Tropical Study Bible (Tyndale House Publishers, Inc 2004) Matthew Chapter 27 versus 27-50.

² Holocaust Encyclopedia, 'Introduction to the Holocaust' <<https://encyclopedia.ushmm.org/content/en/article/introduction-to-the-holocaust>> accessed 22 September 2022

³ Ibid

human rights watchdog noted that the police and military officers frequently use torture to elicit information from criminal suspects or accused persons.⁴ Amnesty International also indicated that contrary to international law and national law, information elicited from accused persons allegedly obtained by torture is accepted as evidence in court,⁵ in some instances. This often occurs when the accused person fails to persuade the court that their purported confessional statements were obtained through torture or other inhuman treatment during trial within trial. Trial within trial is a special procedure in criminal proceedings whereby the court inquires whether a statement or statements allegedly made by an accused person was made voluntarily or otherwise owing to torture or other illegal means. Against this backdrop, this article seeks to examine the regimes for the prohibition of torture under international law and Nigerian law. The article also highlights the conundrum of torture in contemporary Nigerian society and proffers strategies for reform and policy consideration.

The article is comprised of seven subheads. It begins with a general introduction which presents its background and enunciates its fundamental objective. The second subhead clarifies the concept of torture whilst the third subhead focuses on conspectuses of the frameworks for the prohibition of torture under international law. It examines the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, and the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002. The subhead also discusses the dynamics of the Committee Against Torture. The fourth subhead undertakes an overview of the domestic legal frameworks for the prohibition of torture in Nigeria. The legal instruments it examines are: the Constitution of the Federal Republic of Nigeria, 1999, as amended, the Evidence Act, 2011, the Anti-Torture Act of 2017, and the Administration of Criminal Justice Act, 2015. The fifth subhead briefly highlights the conundrum of torture in contemporary Nigerian society whilst the sixth subhead enunciates

⁴ Amnesty International, 'Torture in Nigeria: In Summary' <<https://www.amnesty.org.20>> accessed 22 September 2022

⁵ Ibid

strategies and prospects towards ameliorating or eradicating the problem of torture in the country. The sixth and final subhead is the conclusion of the discourse.

2. Understanding the Concept of Torture

Torture is the deliberate infliction of severe pain or suffering on a person or group of persons by a public functionary or an individual acting in an official capacity in the course of carrying out such functions.⁶The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984,⁷ defines torture as:

...[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The foregoing definition, although quite elaborate and instructive, is vague, wooly, and equivocal regarding the capacity of the perpetrators of torture. Is the provision restricted to acts undertaken by public officials in the course of performing their official duties? What is the position of the law if public officials act outside their official duties or in a private capacity? These recondite issues have been squarely addressed by the Human Rights Committee in paragraph 2 of its General Comment No. 20, where it explained that acts of torture may be inflicted by persons acting in

⁶ Sheila Bone, *Osborne's Concise Law Dictionary* (9th edn Sweet and Maxwell, 2001) 380

⁷ (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

their official capacity or outside their official capacity or in a private capacity.⁸

Similarly, the Nigerian Ant-Torture Act, 2017, defines torture as follows:

Torture is deemed committed when an act by which pain or suffering, whether physical or mental, is intentionally inflicted on a person to:

- (a) Obtain information or a confession from him or a third person;
- (b) Punish him for an act he or a third person has committed or is suspected of having committed; or
- (c) Intimidate or coerce him or third person for any reason based on discrimination of any kind;

When such pain or suffering is influenced by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity provided that it does not include pain or suffering in compliance with lawful sanctions.

On the basis of the foregoing definitions, the following basic elements, which constitute torture, may be distilled:

- (a) That there is a deliberate or intentional act which causes pain or suffering, whether physical or mental, on a person or group of persons;
- (b) That the rationale for the act include to:
 - (i) elicit information or confession from the person or persons involved; or
 - (ii) penalise the person or other person or persons who have allegedly committed or suspected of having committed an offence; or
 - (iii)coerce or intimidate the person or other persons on the basis of discrimination:
- (c) That such pain or suffering is inflicted by a public officer or another person instigated or influenced by the public official while acting in an official capacity including public officials acting outside their official duties or in a private capacity.

⁸ CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) Adopted at the Forty-fourth Session of the Human Rights Committee on 10 March 1992)

Under subsection 2 of section 2 of the Anti-Torture Act, 2017, torture is classified into physical torture and mental or psychological torture. Physical torture includes acts such as beating, punching, head-banging, food deprivation, electric shocks, burning the human flesh by heated objects, and submersion of the head or body in water, excrement, blood or urine. Other acts which constitute torture are insertion of foreign bodies into sex organs, amputation of body parts, extraction of teeth, harmful exposure to sunlight or extremely cold conditions, and the forceful administration of psychoactive substances to alter perception or memory, among others.⁹

Mental or psychological torture involves cruel, inhuman or degrading treatment or punishment aimed at undermining a person's dignity and state of mind. It includes acts such as threatening the persons affected with bodily harm, blindfolding, confinement in solitary cells, prolonged interrogation to the extent of undermining the opportunity for rest and sleep; mistreatment of the person's family member, and denial rest or sleep, among others.¹⁰

In a nutshell, torture involves any act or omission by a public officer, in an official capacity or in a private capacity, or any other person acting directly or indirectly on his or her behalf, which causes pain or suffering on another person in order to elicit information or to punish or intimidate the person affected. However, any pain or suffering occasioned by a public official in compliance with lawful sanctions especially by a court of competent jurisdiction is not tantamount to torture.

3. Conspectuses of the Frameworks for the Prohibition of Torture Under International Law

Some international treaties have been established under the auspices of the United Nations in response to the prevalence of torture and cruel, inhuman or degrading treatment or punishment around the globe. The treaties include International Covenant on Civil and Political Rights, 1966, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, and the Optional Protocol to the Convention Against Torture and

⁹ Anti-Torture Act 2017, s2 (2) (a)

¹⁰ Ibid s 2 (2) (b)

Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002. Salient and relevant provisions of these instruments are discussed hereunder.

3.1 *International Covenant on Civil and Political Rights, 1966*

The International Covenant on Civil and Political Rights (ICCPR) ¹¹ makes elaborate provisions for the promotion and protection of human rights, which may broadly be characterised under the rubric of civil and political rights. The ICCPR generally prohibits torture and inhuman or degrading treatment or punishment. Accordingly, article 7 of the ICCPR, 1966, states that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Expounding the import of the provisions of article 7 of the ICCPR, 1966, the Human Rights Committee in its General Comment No. 20 indicated that:

The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislature and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that 'all persons deprived of their liberty shall be

¹¹ (adopted and Opened for Signature, Ratification and Accession by the UN General Assembly Resolution 2200 A(XXI) of 16 December 1966, which entered into force on the 23 March 1976) 999 UNTS 171. Nigeria acceded the ICCPR 1966 on 29 July 1963.

*treated with humanity and with respect for the inherent dignity of the human person.*¹²

The Committee on Human rights, apropos, asserts that the provision of article 7 of the ICCPR does not permit any form of restriction or limitation whatsoever. No derogation of the provision is permissible even in situations of public emergency as its provisions must remain in force.¹³ The prescriptive implication of the Committee's commentary is that the prohibition against torture must be observed by all persons and authorities at all times, be it in time of peace, public emergency, or situations of armed conflict.

3.2 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), 1984, generally prohibits all acts of torture. The UNCAT stipulates various measures to be taken by States Parties in order to ensure the prevention and prohibition of acts of torture. Article 2 of the UNCAT mandates each State party to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any geographical location within its jurisdiction. States Parties are precluded from returning or causing a person to be extradited to another state where there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture.¹⁴ States are to ensure that all acts of torture are recognised as offences punishable by appropriate sanctions under the law.¹⁵ They are required to cooperate with each other during criminal proceedings and ensure the unbridled supply of evidence at their disposal which is deemed necessary for the judicious determination of such criminal matters.¹⁶

¹² (CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) Adopted at the Forty-fourth Session of the Human Rights Committee on 10 March 1992, para 2.

¹³ Ibid par 3

¹⁴ Ibid art 3 (1)

¹⁵ Ibid art 4

¹⁶ Ibid art 9 (1)

States Parties are also obligated to ensure that education and information regarding the prohibition against torture is fully included in the training curriculum of law enforcement officials, medical personnel, public officials and other persons involved in the criminal justice process of a country.¹⁷ States Parties must carry out periodic review of interrogation regulations, methods, and make arrangement for the custody and treatment of persons subjected to arrests, detention or incarceration with the primary objective of preventing incidences of torture.¹⁸

Each State Party to the UNCAT is obligated to ensure that a victim of torture obtains redress and has an enforceable right to fair and adequate compensation as well as rehabilitation.¹⁹ Where a victim dies as a result of an act of torture, the UNCAT stipulates that the dependents of the deceased must be granted compensation. It is incumbent on the States to ensure that statements elicited as a result of torture are not relied upon as evidence in any proceedings except in situations where it is used against an individual accused of torture to establish that the statement was made.²⁰ The UNCAT provides for the establishment of the a torture monitoring body called the Committee against Torture.²¹

The provision of UNCAT, like any other international treaty, is not binding on a State Party as a matter of course. The State must positively express the requisite consent by way of ratification or accession to demonstrate its consent to be bound under well settled principles of international law. It is pertinent to note that Nigeria signed UNCAT on the 28th of July 1988 and duly ratified same on the 28th of June, 2001.²² Pursuant to the provision of article 2 of the UNCAT, which mandates each State party to take effective legislative measures to prevent acts of torture, Nigeria enacted the Anti-Torture Act of 2017. Thus Nigeria has, in principle,

¹⁷ Ibid art 10 (1)

¹⁸ Ibid art 11

¹⁹ Ibid art 14

²⁰ Ibid art 15

²¹ Ibid art 17

²² See United Nations Treaty Collections, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsq_no=IV-9&chapters=&clangen> accessed 24 September 2022

demonstrated its desire to give effect to the requirement of establishing a domestic legal framework aimed at preventing and prohibiting torture in the country. However, the efficacy of its implementation is critical in the determination of the extent of the country's commitment to fulfilling the intents and purposes of UNCAT.

3.3 *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), 2002,²³ is aimed at establishing a system of frequent visitation by autonomous national and international agencies to places where people are deprived of their liberty with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment.²⁴ The OP-CAT provides for the establishment of a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (Subcommittee on Prevention). The OP-CAT mandates each State Party to establish and maintain at the domestic arena one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.²⁵

The Subcommittee on Prevention is mandated to perform the following functions:²⁶

- (a) Visit places where people are deprived of their liberty in order to prevent acts of torture and other cruel, inhuman or degrading treatment.
- (b) Cooperate primarily with the aim of preventing torture in general with relevant United Nations organs and mechanisms including international, regional, and domestic institutions working towards ramping up the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

²³ (adopted 18 December 2002, entered into force 22 June 2006) UNGA A/RES/57/199

²⁴ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002, art 1

²⁵ Ibid art 3

²⁶ Ibid 11

- (c) Assist national torture prevention mechanisms in the following specific ways:
 - (i) Advise and assist States Parties regarding their institutional mechanisms;
 - (ii) Maintain direct contact with national preventive mechanisms and assist them with training and technical assistance to enhance their capacities;
 - (iii) Advise and assist national preventive mechanisms in the assessment of needs and means necessary to bolster the protection of persons deprived of their liberty from acts of torture and other cruel, inhuman or degrading treatment or punishment; and
 - (iv) Make suggestions to States Parties in order to galvanise their capacity and the mandate of national preventive mechanisms with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment.

States Parties are expected to cooperate with the Subcommittee on Prevention to enable it discharge its responsibilities. Accordingly, States Parties are required to receive the Subcommittee on Prevention in their territories and grant access to where people are detained. They are expected to share such information as the Subcommittee on Prevention may request, encourage and facilitate collaboration between the Subcommittee on Prevention and the national preventive mechanisms. They are also duty bound to examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it in respect of implementation strategies.²⁷ States Parties to the OP-CAT are required to grant the Subcommittee on Prevention unrestricted access to information regarding the number of persons deprived of their liberty in detention centres, conditions of detention, and the manner of treatment of such persons. In addition, States Parties are to grant the Subcommittee on Prevention the opportunity to conduct private interviews with

²⁷ Ibid art 12

detainees and the latter has the latitude to choose the places it wants to visit and the detainees it desires to interview.²⁸

States Parties are obligated to establish and maintain independent national preventive mechanisms for the purpose of preventing acts of torture at the domestic plane.²⁹ The States Parties must guarantee the autonomy of national preventive mechanisms.³⁰

Nigeria has duly ratified the OP-CAT.³¹ This implies that the country is legally bound by the provisions of the OP-CAT and it is therefore obliged to take necessary measures to give effect to the provisions of the treaty. Nigeria has glaringly taken deliberate steps to comply with certain fundamental provisions of the OP-CAT. For instance, in furtherance of the mandate to establish national preventive mechanisms, Nigeria has duly enacted the Anti-Torture Act of 2017. Section 10 of the Anti-Torture Act, 2017, empowers the Attorney –General of the Federation and other law enforcement and investigative agencies to take measures to ensure the implementation of the Act in order to engender the prevention and prohibition of torture in the country.

3.4 *Committee Against Torture*

The UNCAT, 1984, provides for the establishment of the Committee against Torture (CAT).³² The UNCAT stipulates that the CAT must be comprised of ten experts of high moral standing and recognised competence in the field of human rights.³³ In order to achieve the foregoing function, States Parties to the UNCAT are obligated to submit to the CAT via the Secretary-General of the UN, reports regarding measures they have taken to comply with the provisions of the UNCAT.³⁴ This must be done within a year of the entry into force of the treaty for the State Party

²⁸ Ibid art 14

²⁹ Ibid art 17

³⁰ Ibid art 18

³¹ Nigeria ratified the OP-CAT on the 27 July 2009. See United Nations Human Rights Treaty Bodies, 'Ratification Status for CAT-OP-Optional Protocol of the Convention against Torture' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CAT-OP&Lang=en> accessed 25 September 2022

³² The UNCAT, 1984, art 17

³³ Ibid

³⁴ Ibid art 19 (1)

concerned.³⁵ Thereafter States Parties are required to submit supplementary reports every four years on any step it has taken alongside any other information it may request.³⁶ The Secretary-General of the UN is required to transmit the reports to all States Parties.³⁷ Each report must be considered by the CAT which has the discretion to make such general comments on the report as it deems appropriate and forward same to the parties concerned.³⁸ The State Party involved is at liberty to respond and make any observations to the CAT.³⁹ The CAT may include any comments made to it alongside the observations received from the State Party concerned.⁴⁰ Apart from the inter-state reporting procedure mentioned above, the CAT has other procedures aimed at addressing complaints of torture, namely; the inquiry procedure and the individual complaint procedure.

3.4.1 The Inquiry Procedure

Paragraph 1 of article 20 of UNCAT provides that if the CAT receives credible information which indicates that torture is being practiced within the territory of a State Party, CAT is obligated to invite such a State Party to cooperate in the examination of information and submit its observations regarding the information. After considering the observations submitted by the State Party concerned and any other relevant information at its disposal, the CAT may designate one or more of its members to undertake a confidential inquiry and present a feedback to the CAT expeditiously.⁴¹ The CAT is required to seek the cooperation of the State Party concerned and with the consent of the State Party; such an inquiry may require an on-site visit to the country. Sequel to an examination of the findings of members of the CAT, it is required to transmit such findings to the State Party concerned including any comments or suggestions which it deems fit in the light of the

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid art 19 (2)

³⁸ Ibid art 19 (3)

³⁹ Ibid

⁴⁰ Ibid art (4)

⁴¹ Ibid art 20 (1)

circumstances.⁴²All the proceedings of the CAT must be confidential.⁴³The State Party to the UNCAT has the discretion to declare that it recognises the competence of CAT to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations as enshrined in the UNCAT.⁴⁴

3.4.2 Individual Complaint Procedure

Under article 22 of the UNCAT, a State Party may declare that it recognises the competence of the CAT to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of UNCAT.⁴⁵The CAT is precluded from receiving communications presented by a State Party which has not made such a declaration.⁴⁶Communications made by anonymous persons are not admissible.⁴⁷Complaints submitted to the CAT are to be brought to the attention of the State Party alleged to have violated the provisions of UNCAT. The State Party is obligated to submit to the CAT a written explanation or statement clarifying the matters alleged and the remedy provided where necessary.⁴⁸The CAT is required to hold closed meetings when considering individual communications and it expected to forward its views to the State Party and individual concerned.⁴⁹Note that the CAT is precluded from considering communications filed by an individual unless it is satisfied that it has not been and it is not being examined under another procedure of international settlement and the individual has exhausted all available domestic remedies.⁵⁰Thus CAT can only consider individual complaints that have duly fulfilled the admissibility criteria articulated above.

⁴² Ibid art 20 (4)

⁴³ Ibid art 20 (5)

⁴⁴ Ibid art 21 (1)

⁴⁵ Ibid art 22 (1)

⁴⁶ Ibid

⁴⁷ Ibid art 22 (2)

⁴⁸ Ibid art 22 (3)

⁴⁹ Ibid art 22 (6) (7)

⁵⁰ Ibid art 22 (5) (a) (b)

One of the major drawbacks of CAT is that, unlike municipal courts and international tribunals, it lacks the powers to make binding decisions. Its comments and observations are advisory or persuasive. Nevertheless, it is incumbent on States Parties to the UNCAT to comply with the directions and recommendations of CAT in order to demonstrate their commitment to international rules based order and the desideration of fulfilling the intents and objectives of the UNCAT.

4. An Overview of the Domestic Legal Frameworks for the Prohibition of Torture in Nigeria

The Nature and character of a country's domestic legal regime is critically important in determining the efficacy of its regulatory environment. Nigeria has put in place frameworks for the prevention and prohibition of acts of torture within its domestic milieu. The legal frameworks include the Constitution of the Federal Republic of Nigeria, 1999, as amended, the Evidence Act, 2011, the Anti-Torture Act, 2017, and the Administration of Criminal Justice Act, 2015, among others. These legal instruments are briefly discussed in the succeeding subheads.

4.1 The Constitution of the Federal Republic of Nigeria, 1999, as Amended

The Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended, recognises a plethora of human rights which are characterised as 'fundamental human rights.' The CFRN expressly prohibits torture and inhuman or degrading treatment. Thus section 34 of the CFRN, 1999, as amended, provides that:

- (a) No person shall be subjected to torture or inhuman or degrading treatment;
- (b) No person shall be held in slavery or servitude; and
- (c) No person shall be required to perform forced or compulsory labour.

In the light of the provisions of subsection 1 of section 46 of the CFRN, 1999, as amended, anyone whose human rights has been infringed including violations such as torture or inhuman or

degrading treatment may approach the High Court of Justice to seek redress.

4.2 The Evidence Act, 2011

The Evidence Act, 2011, is the main statute used in determining the admissibility of evidence in judicial proceedings in Nigerian courts. It contains various rules establishing the procedure in which evidence may be adduced before courts. Section 1 of the Evidence Act, 2011, is to the effect that evidence may be adduced in any proceeding of the existence or non-existence of any fact in issue and of other facts declared to be relevant.

However, there are circumstances in which the court may refuse to admit certain statements or documents. For instance, in adducing evidence in court, if it is established that the facts were not elicited voluntarily from the person who purportedly made the statement, that piece of evidence is not admissible in court. Thus section 29 (2) of the Evidence Act, 2011, *inter alia*, provides as follows:

If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained:

- (a) By oppression of the person who made it; or
- (b) In consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provision of this section.

The term ‘oppression’ used in the above mentioned statement refers to ‘torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture.’⁵¹ Thus, where in criminal proceedings in which trial within trial is conducted

⁵¹ Evidence Act, 2011, s 29 (5)

to determine the voluntariness or otherwise of a purported confessional statement, the court arrives at a decision that the statement is not made voluntarily, based on torture of the accused person, the court will not admit the statement or document in evidence. In effect, the statement or document will not be relied upon in determining the guilt or otherwise of the accused person during the substantive proceedings. This position resonates with the decision of the Supreme Court in the case of *Sadau v State*⁵² where the apex court held, *inter alia*, that if a signature in a purported confessional statement is obtained by force, threat, inducement or fraud, such a statement cannot be taken as one made voluntarily and the issue of its admissibility can only be resolved by conducting trial within trial.

4.3 The Anti-Torture Act, 2017

The Anti-Torture Act, 2017, is essentially aimed at penalising acts of torture and other cruel, inhuman and degrading treatment. It also prescribes punishment for such acts.⁵³ The Anti-Torture Act, 2017, mandates the government to ensure that the rights of all individuals including crime suspects, detainees and all prisoners are respected at all times and that no one placed under investigation or held in custody of any one in authority is subjected to threat, violence, intimidation, physical harm, or force or any other act which undermines free will.⁵⁴ The government is also obligated to adhere to the tenets and principles of absolute prohibition and condemnation of torture as stipulated under the CFRN, 1999, as amended, and various international instruments to which Nigeria is a State Party.⁵⁵

Nigerian law prohibits torture at all times. No restriction or derogation to the acts of torture is permissible at any given time. Accordingly, subsection 1 of section 3 of the Anti-Torture Act, 2017, provides that:

*No exceptional circumstances whatsoever, whether
a state of war or a threat of war, internal political*

⁵² 4 SC 41

⁵³ Long Title of the Anti-Torture Act, 2017

⁵⁴ Anti-Torture Act 2017, s1 (a)

⁵⁵ Ibid s 1 (b)

instability or any other emergency, may be invoked as a justification for torture.

In order to prevent acts of torture, the Anti-Torture Act prohibits the use of solitary confinement, secret detention centres, and reclusive detention, among others, where torture may be inflicted on humans.⁵⁶ Evidence obtained as a result of torture is not admissible in a proceeding except where it is used against an individual accused of torture as evidence to buttress the fact that the confession or statement was made.⁵⁷

The Anti-Torture Act gives a person who alleges that an act of torture has been committed against him or her latitude to complain. Such complaint is required to be impartially and expeditiously examined by a competent authority.⁵⁸ Although the statute is silent about the competent authority referred to, section 46 of the CFRN, 1999, as amended, gives individuals whose human rights including freedom from torture have been breached to approach the High Court of Justice to seek redress.

The competent authority aforementioned is duty bound to ensure that the complainant is protected against all forms of intimidation and mistreatment as a consequence of the complaint or any other evidence adduced.⁵⁹ A victim of torture or any other interested party may seek legal assistance from the National Human Rights Commission (NHRC), non-governmental organisation (NGO), and private individual.⁶⁰

A person arrested or detained is entitled to be informed of his or her right to demand a physical or psychological examination by a competent medical practitioner of his or her own choice, after interrogation, which must be conducted outside the influence of law enforcement agencies or the police.⁶¹

⁵⁶ Ibid s 3 (2)

⁵⁷ Ibid s 4

⁵⁸ Ibid s 5 (1)

⁵⁹ Ibid s 5 (2)

⁶⁰ Ibid s 6

⁶¹ Ibid s 7 (1)

Whoever commits acts of torture is criminally responsible and is liable to punishment. Subsection 1 of section 8 of the Anti-Torture Act stipulates that:

A person who actually participates in the infliction of torture or who is present during the commission of the act is liable as the principal.

Criminal liability also extends to law enforcement officers and superior military or police officers who give directives to the subordinate ranking personnel to torture a victim. An order from a superior officer or superior public authority cannot be relied upon as justification to inflict acts of torture.⁶² The law expressly stipulates that the immediate commanding officer of the unit concerned of the security or law enforcement establishment shall be held liable as an accessory to the crime for any act or omission or negligence on his or her part that has resulted in the perpetration of the acts of torture by his subordinates.⁶³ This provision places enormous responsibility on superior officers in charge of units of security and other law enforcement agencies to ensure that acts of torture are not committed under their watch. It is, however, critical in the event of allegations of torture, to ascertain the role of superior officers in a given case. Where a subordinate officer inflicts torture on a person contrary to the directive of the superior officer, it is submitted that such a superior officer should not be held liable. The superior officer should be exculpated in such a situation as it glaringly depicts that there is no *mens rea* (intention or knowledge of wrong doing or mental element) to ground criminal responsibility under settled norms of criminal law and jurisprudence.

The Attorney General of the Federation has a significant role to play in creating an enabling environment for the implementation of the Anti-Torture Act, 2017. Section 10 of the Act stipulates that the Attorney General and other law enforcement and investigative agencies must ensure that a specific office or unit in the relevant agencies of government is assigned with the responsibility of supervising the implementation of the Act. Section 12 of the Anti-

⁶² Ibid s 8 (3)

⁶³ Ibid s 8 (4)

Torture Act also empowers the Attorney General of the Federation subject to the approval of the President, to make regulations for the effective implementation of the statute.

The main drawback of the Anti-Torture Act, 2017, may be gleaned from its complaint mechanism. Although subsection 1 of section 5 of the Act glaringly gives torture victims the right to complain, there is a tendency for culpable perpetrators and complicit superior officers to conceal such dastardly acts if the victim is unable to present credible evidence to substantiate his or her complaint. The other issue of concern is the difficulty in conducting a transparent investigation of allegations of torture leveled against police officers and other law enforcement agents. Who will investigate such suspects especially if the officers are complicit? Is it the Police or law enforcement officials themselves? How autonomous or independent are the various Anti-Torture units? It is therefore incumbent on the Attorney –General of the Federation pursuant to the powers vested in him under the provision of section 12 of the Act to make rules that will effectively tackle the egregious conundrum.

4.4 Administration of Criminal Justice Act, 2015

The Administration of Criminal Justice Act (ACJA), 2015, is aimed at ensuring that the administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, facilitates expeditious dispensation of justice, safeguards the society from crime and enhances protection of the rights and interests of the suspect, the defendant and the victim.⁶⁴ The ACJA prescribes the procedure in which pre-trial statements and confessions can be elicited from suspects or accused persons. Subsection 4 of section 15 of the ACJA, 2015, provides that:

Where a suspect who is arrested with or without a warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a

⁶⁴ ACJA, 2015, s 1 (1)

retrievable video compact disc or such other audio visual means.

The ACJA also states that an oral confession or statement of an arrested suspect is admissible in evidence.⁶⁵ Furthermore, subsections (1) and (2) of section 17 of ACJA, 2015, states that where a suspect is arrested his statement must be taken, that is if he or she wishes to make a statement. Such statement is to be taken in the presence of a legal practitioner of his or her choice. Where the accused person has no legal practitioner, the statement may be made in the presence of an officer of the Legal Aid Council of Nigeria or an official of a civil society organisation or justice of peace or any other person of his choice. Subsection 5 of section 17 of ACJA also requires suspects to endorse their statements indicating their full particulars.

The ACJA would clearly appear relevant in the context of the present discourse taking cognisance of the way and manner statements of suspects are elicited in the course of investigation. Oftentimes, suspects and accused persons in Nigeria have alleged that their statements were not made voluntarily owing to torture or acts of coercion by the police or law enforcement officials. This has frequently necessitated the holding of trial within trial in order to ascertain the voluntariness or otherwise of such statements for the purpose of determining their admissibility as required under section 29 of the Evidence Act, 2011. The combined provisions of Subsection 4 of section 15 of the ACJA, 2015, and subsections (1) and (2) of section 17 of ACJA, 2015, is premised on the imperative of enhancing transparency in the manner statements are elicited from suspects. No doubt, the efficacious utility of these procedures would attenuate and discourage the use of torture by law enforcement personnael taking into account the pervasive narratives of torture in Nigeria.

⁶⁵ Ibid s 15 (5)

5. A Brief Narrative of the Menace of Torture in Contemporary Nigerian Society

Despite Nigeria's ratification of international treaties relating to torture and the constitutional framework for the prohibition of torture, the Human Rights Watch has revealed that there is a pervasive perpetration of torture of suspects in police cells which occasionally results in the demise of the victim.⁶⁶ The most egregious perpetrators of torture as tellingly depicted by the International Rehabilitation Council for Torture Victims include the police, military, state security service, correctional service officers, and officials of the Nigerian Security and Civil Defence Corps.⁶⁷ The use of torture by some state functionaries in Nigeria has been picturesquely captured as follows:

*The most common types of abuse committed by the police in Nigeria and described to Human Rights Watch by victims and perpetrators include repeated and severe beatings with metal rods and wooden sticks or planks, as well as other implements described above. Other violations reported include tying of arms and legs tight behind the body; suspension by hands and legs from the ceiling or pole; resting concrete blocks on the arms and back while suspended; spraying of tear gas in the face and eyes; electric shocks; death threats; including holding a gun to the victim's head; shooting in the foot or leg; stoning; burning with clothes irons or cigarettes; slapping and kicking with hands and boots; abusive language or threats; and denial of food and water. There were also numerous cases of the molestation and rape of female detainees; use of pliers or electric shocks on the penis; insertion of broom bristles into the penis; beating the penis with cable wire; and spraying of tear gas on genitals.*⁶⁸

⁶⁶ Human Rights Watch, 'Torture and Cruel, Inhuman or Degrading Treatment or Punishment' <<https://www.hrw.org/reports/2005/nigerias0705/6.htm>> accessed 29 September 2022

⁶⁷ International Rehabilitation Council for Torture Victims, 'Torture and the Right to Rehabilitation in Nigeria' <<https://irct.org/influencing-laws-and-policies/torture-and-the-right-to-rehabilitation-in-Nigeria>> accessed 29 September 2022

⁶⁸ Ibid

The pervasive practice of torture in Nigeria resulted in widespread agitation for reforms. The hue and cry about the menacing activities of the police culminated in a protest carried out across many Nigerian cities dubbed ‘#End SARS,’ which may be literally transcribed as ‘end or disband the Special Anti-Robbery Squad (SARS),’ a unit of the Nigerian Police. The protesters, mainly comprised of youths, pertinaciously sought for the disbandment of the SARS and a definite discontinuance of the perpetration of wanton acts of torture and brutality the police.⁶⁹ The kernel of the agitation is aptly captured as follows: ‘End SARS protest began as a call to end police brutality and extrajudicial killings that have become endemic in Nigeria.’⁷⁰

Sequel to the End SARS protest, the Federal government disbanded the SARS and various panels of inquiry were instituted in various states across Nigeria which resulted in the payment of compensation in some states to victims of police brutality.⁷¹ Against this backdrop, there is need to put effective strategies in place to tackle the menace of torture in the country.

6. Strategies and Prospects towards Ameliorating or Eradicating the Conundrum of Torture

Given the endemic nature and flagrant acts of torture being perpetrated in Nigeria, it is expedient to ramp up strategies focused on eradicating or ameliorating the problem of torture in the country. To this end, the following strategies are recommended for reform and policy consideration.

- (i) The government should establish an autonomous or independent agency called ‘Anti Torture Agency of Nigeria (ATAN)’ at the federal and state levels of government to investigate and monitor the activities of law enforcement agencies in the country with a view to preventing and implementing the provisions of the Anti-Torture Act, 2017,

⁶⁹ Human Rights Watch, ‘Nigeria: A Year On, No Justice for #End SARS Crack Down’ 19 October 2021 <<https://www.hrw.org/news/2021/10/19/nigeria-year-no-justice-endsars-crackdown#:~:text=in%20the%20most%20violent%20in%20>> accessed 30 September 2022

⁷⁰ Chiamaka Ozulumba, ‘What Led to #End SARS Protests?’ Thisday <<https://www.thisdaylive.com/index.php/2021/10/20/what-led-to-endsars-protests/>> accessed 30 September 2022

⁷¹ Ibid

and other relevant domestic as well as international instruments. Personnel from the proposed ATAN may be deployed to serve in relevant agencies and departments of government including security and law enforcement institutions. This will bolster the realisation of the provisions of section 10 of the Anti-Torture Act which gives the Attorney-General of the Federation the latitude to ensure the implementation of the statute whose ultimate objective is to prevent or prohibit torture.

- (ii) The government should collaborate with civil societies and lecturers or experts with specialisation or expertise in the field of human rights as well as apposite fields in order to organise seminars and workshops to educate security personnel and law enforcement officers regarding the prohibition of torture as stipulated under international and municipal law. They should also be enlightened about the dire consequences of non-compliance with relevant laws. In the same vein, Pursuant to the provision of section 11 of the Ant-Torture Act, 2017, the Attorney-General of the Federation should collaborate with relevant government agencies and members of the academia to ensure that citizens are adequately enlightened about their constitutional and legal rights especially as it relates to the prohibition of torture. They should also be enlightened about the various ways in which they can seek redress in the event that their right to freedom from torture is breached.
- (iii) In order to discourage the use of torture for purposes of eliciting purported 'confessional statements' from suspects, efforts must be made to keep audio-visual records of such statements and they should be made in the presence of a legal practitioner of his or her choice or Legal Aid Officer or credible agent of a registered civil society organisation as required under the Administration of Criminal Justice Act (ADJA), 2015. States that are yet to enact legislations with similar provision should adopt the ADJA or amend their local laws to accommodate the foregoing provision. Such recorded statements should be stored in triplicate in retrievable devices. A copy should be preserved for the law enforcement agency

concerned, the second copy for the accused person or his legal representative, and the third for the court or tribunal. The government should also ensure that all criminal investigation and interrogation units are fully equipped with cutting edge technology and relevant devices to enhance efficient, safe, and quality records of each scenario.

- (iv) The judiciary in interpreting relevant provisions of the ADJA and similar enactments should ensure that litigants have fully complied with the provisions of the law regarding the voluntariness or otherwise of the statements of suspects or accused persons. Evidence elicited by way of torture should be out rightly discountenanced as envisaged by the law in order to engender the judicious and judicial determination of matters presented in court.

The National Human Rights Commission should synergise with the Nigerian Bar Association as well as Legal Aid Council of Nigeria to ensure that adequate legal representation is given to indigent victims of torture in Nigeria.

7. Conclusion

The prevalence of torture, cruel, and inhuman or degrading treatment around the world has given impetus to the establishment of international legal regimes for the prevention and prohibition of such atrocities. The legal instruments include the ICCPR, 1966, the UNCAT, 1984, and the OP-CAT, 2002. Nigeria has not only ratified the treaties but has gone ahead to establish parallel domestic legal regimes to give effect to the aims of the treaties. The main frameworks established at the domestic milieu are the CFRN, 1999, as amended, the Anti-Torture Act, 2017, the Evidence Act, 2011, and the Administration of Criminal Justice Act, 2015. However, this article has indicated that despite Nigeria's robust regulatory regimes for the prohibition of torture, there has been the egregious problem of widespread and systematic use of torture by security and law enforcement officials against suspects across the country. These infractions have caused untold hardship, pain, and sometimes resulted in the death of the victims. The foregoing state of affairs has

given impetus to the imperative of taking proactive measures towards the prospects of ameliorating or eradicating the use of torture in the country. To this end, the article has recommended that the government should establish an independent agency at the federal and state levels to investigate and monitor activities of law enforcement agencies in the country. The article also makes a case for concerted efforts by the Attorney-General of the Federation and other relevant government agencies in collaboration with specialist in the field of human rights to establish pragmatic programmes aimed at training law enforcement officials regarding the prohibition of torture as stipulated under municipal and international law. The article also posits that seminars and workshops should be organised to ensure that citizens are enlightened about their legal rights and the various ways in which they may seek legal redress in the event that their right to freedom from torture is violated contrary to the provisions of international law and Nigerian law.