UNDERSTANDING AND APPLYING THE PROVISIONS OF THE ANTI-TORTURE ACT 2017

Chino Edmund Obiagwu SAN, FICMC[1]

In the *Hansard*[2] of the legislative proceedings leading to the passing into law of the *Anti-Torture Act 2017*, it was recorded that:

> 'Torture and other cruel, inhuman and degrading treatment or punishment are strictly prohibited at all times under international laws, regardless of the person having committed such unlawful acts and what crimes the victim may be suspected of having committed. The enactment of a law against torture and ill treatment would protect the rights of the potential victims of such ill-treatment and would enable the punishment of the responsible individual(s), thus, ensuring there will be no impunity. … The proposed bill underscores that freedom for torture is a non-derogable right. No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture'[3].

Hon Onyejeocha further stated that 'The Anti-Torture bill is contemporaneous[4] and seeks to among other things: (i) criminalize torture as an act by which sever pain or suffering, whether physical or mental, is intentionally inflicted on a person or such purposes as obtaining from him/her or a third person information or a confession; and (ii) punish him/her for an act he/she or a third person has committed or is suspect to having committed'

These decisive declarations of the legislative justifications of the *Anti-Torture Act 2017* underscore the importance of the legislation and its eminent place in the penal law regime in Nigeria.

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[1] Lead Counsel, LEDAP – Legal Defence & Assistance Project, a public law firm in Nigeria. Also senior partner, OBIAGWU & OBIAGWU, legal practitioners. Mr. Obiagwu was also the Chair of the *National Working Group on the Reform of Criminal Justice Administration in Nigeria* and a member of the *National Committee against Torture* (NCAT).

[2] *Hansard* is the traditional name of the transcripts of Parliamentary Debates in Britain and other Commonwealth countries. It is named after Thomas Curson Hansard (1776–1833), a London printer and publisher, who was the first official printer to the UK parliament at Westminster.

[3] Executive summary of Hon Nkiruka Onyejeocha (PDP Abia), sponsor of the anti-torture bill to her colleagues of the 8th Assembly of the National Assembly of Nigeria.

[4] Reference to 'contemporary' trend in which torture and torture prevention is a universal norm of *jus cogens* or peremptory norms of customary international law.

The Act is also in compliance with Nigeria's treaty obligation under Article 4 of the *UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment*, which has been ratified by Nigeria. It provides that:

> 'Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature'

The ***Anti-Torture Act 2017*** is a very clear and concise legislation. It contains 13 sections and an explanatory note or long title. It creates offences of torture and prescriber punishments for such offences. It is therefore a penal legislation that has national application.

Before the passing of the law, 'torture' *per se* was not a crime. An act or omission constituting torture could be subject of civil claim for compensation under *section 34 of the 1999 Constitution* because the section prohibits torture and other forms of ill treatment (cruel, inhuman and degrading treatment) usually called 'CID', and provides for compensation for infraction. Such act or omission of torture could also be prosecuted as a crime of causing grievous bodily harm, attempted murder or assault under the *Criminal Code* or *Penal Code*. Thus, that torture has remained a condoned part of crime investigations have been acknowledged by civil society organizations, the media, legislature and Nigeria's judiciary. It was recently reported that the Chief Judge of Benue State decried the widespread use of torture by law enforcement officials to obtain confessions from criminal suspects[5]. In ***Adewale Adedara v The State*** (2009) LPELR 8194CA, the Court of Appeal Ilorin division per Denton-West condemned the torture of the appellant and his co-suspect at the police station, leading to the death of one of them, and called for drastic punishment of perpetrators of torture.

There are yet other reports about the **widespread and systemic practices of torture and ill treatment in Nigeria,** resulting in massive violations of human rights in law enforcement. In May 2019, the Presidential Panel on Reform of Special Anti-Robbery Squad[6] in its report to President Mohammed Buhari stated that '*use of torture in investigation is pervasive in police, especially within SARS and related special squads'.* In November 2008, the UN Special Rapporteur on Torture reported that "*Torture is an intrinsic part of the functioning of the police*

[5] https://www.vanguardngr.com/2018/05/confessional-statements-benue-cj-decries-torture-suspects-police/

[6] I was a member of the panel, which was chaired by Mr. Tony Ojukwu, the Executive Secretary of the National Human Rights Commission.

in Nigeria, and at CID[7] detention facilities, it was a challenge to find a detainee that had not been ill-treated"[8].

Furthermore, in 2011, NGO Legal Defence & Assistance Project (LEDAP) recorded that nearly 90% of convictions and death sentences for the offence of armed robbery were based on confessional statements that were all retracted or resiled at trials of the defendants.[9] Earlier in 2002, Amnesty International had reported the numerous and regular human rights violations carried out by the Nigerian police and armed forces, especially torture and other ill treatment, and called on Nigeria's government to curb the pervasive practices.[10] In May 2008, the organization issued another report on torture practices in Nigeria, and concluded that "*Several years after the publication of the (2002) report, little has changed. The police continue to execute suspects extra-judicially and torture is widespread in police custody"[11]*. These reports were confirmed by researches of local NGOs. In a 2002 study, the National Human Rights Commission and the CLEEN Foundation reported that almost 80% of inmates in Nigerian prisons claimed to have been beaten by police, threatened with weapons and tortured in police cells.[12] The Network on Police Reforms (NOPRIN) in 2007 reported that "*torture and ill treatment has become an acceptable tool of policing in Nigeria, and ... unchallenged torture practices under the military had entrenched this attitude among security officials*"[13]. The National Human Rights Commission (NRHC) stated in its 2005-2006 "State of Human Rights in Nigeria Report" that:

> "*Prolonged years of military in Nigeria entrenched a culture of disregard for human life, particularly on the part of security and law enforcement agencies. This attitude has largely remained unchanged, seven years after the advent of democracy*"

For other expert reports on state of use of torture in Nigeria as accepted or condoned part of policing tool in Nigeria, see annual reports of Office of the Prosecutor (OTP) of the International Criminal Court (ICC) on its Preliminary Examination of Nigeria since 2011[14], Human Rights

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[7] Criminal Investigation Department
[8] See Footnote No. 5
[9] '*Who has the right to kill – Report on state of the use of death penalty in Nigeria'* LEDAP, 2011, www.ledapnigeria.org
[10] Amnesty International, AFR 44/023/2002, Nigeria: Security forces: Serving to protect and respect human rights? (19 December 2002)
[11] Amnesty International, AFR 44/006/2008, Nigeria: "Pragmatic policing" through extra-judicial executions and torture, (16 May 2008)
[12] CLEEN & NHRC, *Police Community Violence in Nigeria.* Lagos, 2000
[13] NOPRIN, "Criminal Force?: An Interim Report On The Nigeria Police Force", December 2007

[14] International Criminal Court, Office of the Prosecutor, Report on Preliminary Examination Activities 2016, at https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

Watch Reports on state of human rights, published annually for the preceding year. E.g. also Amnesty International reports on torture practices in Nigeria[15]; report of NOPRIN[16], among others.

There are low rate of redress for victims of torture because of the little or absence of awareness of the effective complaint mechanisms for victims and their families to seek redress or demand that perpetrators are investigated and punished. This has created an atmosphere of impunity and helplessness for victims.

There has also been, before the Anti Torture Act 2017, poor legal framework for punishment for torture. This is why the new Act is a welcome development, but its usefulness in curbing torture will depend on how law enforcement authorities, prosecutors and judiciary enforce the legislation and its provisions. There is also need to provide victims and witness protection against reprisals where there are complaint and investigation of torture, so as to assure victims and their families of state protection.

What is torture?

Article 1 of the *UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (CAT)* defines torture as

> "Any 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…."

It may be "inflicted by or at the instigation of or acquiescence of a public official or other person acting in an official capacity."

Under this definition, which is accepted in international law, the act or omission constituting torture has to be perpetrated by officials of the state or someone authorized by such official.

[16] [15] Amnesty International, 'Nigeria: Special police squad 'get rich' torturing detainees and demanding bribes in exchange for freedom,' (Amnesty International, SARS Report), 21 September 2016, at https://www.amnesty.org/en/latest/news/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/

[16] [16] Network of Police Reform in Nigeria, 'NOPRIN: Criminal Force: Torture, Abuse and Extrajudicial killings by the Nigeria Police Force,' 2010, at http://www.noprin.org/criminal-force-20100519.pdf, p. 68.

Under the *Anti Torture Act 2017*, torture has a broader meaning and can be committed by a non-state official or an individual.

Section 2 of the Act defines torture as:

> 'torture is deemed committed when an act by which pain and suffering, whether physical or mental, is intentionally inflicted on a person to – (a) obtain information or confession from him or a third person; (b) punish him for an act he or a third person has committed or suspected of having committed; and (c) intimidate or coerce him or third person for any reason based on discrimination of any kind'.

It goes on to state that torture does not include pain and suffering inflicted in compliance with *lawful* (judicial) sanction.

The Act also lists what act or omissions constitute torture, with non-exhaustive list, that include some examples such as systematic beatings, head-banging, punching, kicking, striking with rifle butts, and jumping on the stomach, food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten, electric shocks, cigarette burning, burning by electric heated rods, hot oil, acid, by the rubbing of pepper or other chemical substance on mucous membranes, or acids or spices directly on the wound, the submersion of head in water or water polluted with excrement, urine, vomit or blow, blindfolding, threatening a person or such persons related to known to him with bodily harm.

Other examples of torture include execution or other wrongful acts, confinement in solitary cells, confinement in solitary cells against the victim's will or without prejudice to his security, prolonged interrogation to deny normal length of sleep or rest and causing unscheduled transfer of a person from one place to another with intention of creating the belief that he shall be summarily executed, etc.

Where the statute lists examples of act constituting an offence, such list of examples is not exhaustive but any act that falls within the range or category of those indicated would be included in the list. This is in line with the *ejusdem generis* rules of statutory interpretation. All acts of sexual abuse, including rape, sexual assault, fondling, pricking of private parts of the suspect, or such acts that put fear of sexual or organic pain on the person constitute acts of torture.

No justification for torture:

The absolute prohibition of torture (and other cruel, inhuman or degrading treatment or punishments) is non-derogable under international law. Under no circumstances can States set aside this obligation – even in times of war or other emergency threatening the life of the nation.

The absolute nature of the prohibition of torture and ill-treatment is enshrined in universal and regional human rights treaties ratified by Nigeria as well as in customary international law. This legal principle is also recognized in the Act.

Section 3 of the *Anti-Torture Act 2017* provides specifically that there is no justification for torture. It states that no exceptional circumstance whatsoever, a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture. It prohibits secrete detention facilities, solitary confinement, incommunicado detentions where torture may be carried out. It makes it very clear that evidence obtained from torture is inadmissible in any court except for use against a person accused of perpetrating torture.

This section expands the provisions of sections 28 and 29 of the *Evidence Act 2011*, which provides that confessions obtained involuntarily under use of undue pressure, such as torture or threat of torture, is not admissible as incriminating evidence against the defendant. In other words, such evidence obtained under torture or involuntarily can be used against any other person other than the defendant. Though this is not yet clear from our case law, but the provision of section 3 of the *Anti-Torture Act* makes it clear that any evidence obtained under torture or threat of torture is inadmissible for all purposes. This provision is also an exception under our law that illegally obtained evidence is nevertheless admissible, though the court will consider such illegal circumstances in attaching weight to the evidence.

Torture prohibition under international law

The prohibition of torture and all other forms of cruel, inhuman or degrading treatment or punishment is specifically codified in all relevant international human rights and humanitarian treaties, including:

- UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishments

- the 1949 Geneva Conventions,[17]
- the International Covenant on Civil and Political Rights,
- the African Charter on Human and Peoples Rights[18] which is applicable to Nigeria by virtue of its domestication as *African Charter on Human and People's Rights (Ratification and Enforcement) Act;*
- Rome Statute of the International Criminal Court,
- The treaties establishing the various international criminal tribunals. articles 7(1)(f) and (k), and 8(2)(a)(ii), (b)(xxi) and (c) such as the *Statute of the International Criminal Tribunal for the Former Yugoslavia,* articles 2(b) and (c), and 5(f) and (i); *Statute of the International Tribunal for Rwanda,* articles 3(f) and (i), 4(a) and (e),

The absolute prohibition of torture also forms a part of customary international law, the general rules of international law binding on all States whether or not the State is party to any particular treaty. The existence of a rule of customary international law is established through evidence of the actual practices of States (either doing or refraining from doing something) and evidence that the practice is pursuant to a shared opinion that the action or abstention is required by international law (*opinio juris*). There is ample evidence to support the many court judgments and scholarly analyses that have found the prohibition of torture to be a part of customary international law or what is also called *jus cogens*.

Prohibition of torture under the common law

The prohibition of torture has been acclaimed as a peremptory legal norm of customary international law enforceable at national jurisdictions even in the absence of a domestic legislation expressly prohibition or criminalizing torture.

Under the common law, torture is universally punishable, thus it is irrelevant where the torture was committed, whether outside the jurisdiction of the relevant prosecuting or judicial body. There are number of comparative national case law on *universal* prohibition of torture. See for example the UK case of ***R. v. Bow Street Metropolitan Stipendiary Magistrate and Others, ex parte Pinochet Ugarte (No. 3)***, [2000] AC 147 (H.L.); and USA cases of ***Filartiga v. Pena-Irala***, 630 F. 2d 876 (2d Cir.1980) at 881-884; ***Mehinovic v. Vuckovic***, 198 F. Supp. 2d 1322, 1347-49 (N.D. Ga. 2002); ***Estate of Cabello v. Fernandez-Larios***, 157 F. Supp 2d.

[17] E.g., *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, articles 3(1)(a) and (c), 27, 29, 31, 32, 147.
[18] Article 5

1345, 1361 (S.D. Fla. 2001), affirmed (11th Cir. 14 March 2005); ***Ken Wiwa jnr v. Royal Dutch Petroleum Co***., 2002 U.S. Dist. LEXIS 3293 (S.D.N.Y. 2002).

At the international tribunal and fora, there are a lot of decisions absolutely prohibiting torture. See e.g.

- ***Prosecutor v. Furundzija*** (10 December 1998), para. 137 (Judgment of the ICTY);
- ***Prosecutor v Delalić and others*** (16 November 1998), paras. 454, 517 (Judgment of the ICTY);
- ***Al-Adsani v. UK***, (2001) ECHR 35763/97, at para. 61;
- and Inter-American Court of Human Rights' decision in ***Caesar v. Trinidad and Tobago*** (11 March 2005), paragraph 70.
- See also the Human Rights Committee, ***General Comment 20***, U.N. Doc. HRI\GEN\1\Rev.1 at 30 (1994), paragraph 3.

Under international law, as with Nigerian domestic laws, the spectrum of constitutionally prohibited ill-treatment is graded based on the severity of the infliction. The most severe is torture, which is act or omission that causes pain or suffering.

Though pain and suffering is subjective, the objective test of threshold of torture has been defined in international law to mean the situation in which a person carried out an act involuntarily as a result of the infliction of the pain or suffering against his will. In other words, torture is not 'legally torture' unless there is some advantage or involuntary disadvantage suffered by the sufferer to the benefit of the perpetrator.

The critical element in the offence of torture is involuntariness of the victims to undergo the pain or suffering. Thus, where a religious leader commands his followers to go into fasting or undergo severe denial of food and want, and they voluntarily comply due to their faith, that would not amount to torture. On the other hand, if the victims were told that if they failed to comply with the starvation orders, they will suffer death or some mishap, and they comply as a result of the threat, then that would amount to torture because of the constructive involuntariness.

The other forms of ill-treatments in their order of severity are cruelty, inhuman and degrading treatment or punishment. Though 'punishment' was omitted in the provisions of section 34 of the 1999 Constitution (for reasons of retaining corporal punishment in the criminal laws, which

has been widely declared as cruel and degrading punishment,[19] unlike in the 1979 Constitution where 'CID punishment' was prohibited), the wide defining of torture in the *Anti-torture Act 2017* includes 'CID punishment' and therefore corporal punishment. In ***Ncube v State*** (supra), the appellants were convicted by a magistrate court in Bulawayo for offences of rape and sexual assault of juveniles, and sentenced to whipping of six strokes of cane in addition to imprisonment with hard labour. They appealed against the sentence of whipping, claiming that such sentence were inhuman and degrading punishment contrary to section 15(1) of the Zimbabwean Constitution, which provides that 'no person shall be subjected to torture, or to inhuman or degrading punishment or other such treatment'. The Supreme Court declared sentence of whipping unconstitutional. See also ***A Juvenile v State*** (1989) LRC (Const) 774 where some juveniles were sentenced to moderate correction of whipping of four strokes with light case. The Zimbabwean Supreme Court set aside the sentence as unconstitutional, being inhuman and degrading. See also ***State v Williams*** (1995) 2 LRC103, (Constitutional Court of South Africa) where the court declared the judicial sentence of whipping ordered under section 294 of the South African Criminal Procedure Act 1977 as unlawful under the Constitution. See further ***Ex Parte A-G of Namibia, Re Corporal Punishment by Organs of State*** (1992) LRC (Const) 515; ***Tyrer v United Kingdom*** (1978) 2 EHRR 1 (judgment of European Court of Human Rights).

In ***State v Williams*** (supra), it was held that

> "whether a punishment was a cruel inhuman and degrading within the meaning of the Constitution had to be determined in accordance with the values and standers upon which the Constitution was based. The state could only impose punishment in accordance with the values which underpinned the Constitution. That meant that punishment must respect human dignity and be consistent with the Constitution. Judicial whipping, which involved the deliberate infliction of pain, offended society's notion of decency and was a direct invasion of the right to human dignity. There was no merit in the state's argument which sought to justify juvenile whipping as opposed to adult whipping. On the contrary, it was precisely because a juvenile was more impressionable and sensitive that he should be protected from experiences which might harden him and from treatment by the state which might diminish his regard for a culture of decency and respect for others."

[19] See ***Ncube v State*** (1988) LRC (Const) 442, decision of Zimbabwe Supreme Court.

Similar conclusion was reached in Nigerian case of ***Alhaja Abibatu Mogaji & Ors v. Board of Customs and Excise & Anor*** (1982) 3 NCLR 552 where it was held that flogging of a person was unconstitutional and gross violation of the right against cruel inhuman and degrading treatment. In the case, some market women as Plaintiffs instituted action against the Board of Customs and Excise and its Director. The market women were maltreated by the Defendants, wherewith the officials of the Customs and Excise aided by soldiers and mobile police officers who fired guns, used horsewhips and tear gas freely on the women in the process of raiding the shops of the women, searching for contraband goods. The court held that the action of the Defendants violated the fundamental rights of the women under section 31 (9) of the 1979 Constitution, now section 34 of 1999 Constitution. The court condemned the action of the Defendants in the following words.

On the definitions of the categories of Torture and CID, the Nigerian court have held that torture and CID, which is at center of the right to human security and integrity, cannot be violated under any circumstance. The right to dignity of human person is guaranteed under Section 34 1999 Nigerian Constitution. Strictly torture, inhuman degrading treatment, slavery, servitude force labour are forbidden. In the case of ***Uzoukwu v. Ezeonu*** (1991) 6 NWLR (PT.200) 708 at 763 it was held that mental harassment, physical brutalization, lack of human feeling, lowering of societal status, character, vale and position of a person are covered within the ambit of this section, though it does not meet the threshold of 'torture' but is CID. See also the case of ***Amachree V. Military Governor Rivers State***, (1974 unreported) where the military Governor of Rivers State ordered his ADC to shave D's hair and gave him strokes of the cane as humiliation for soliciting for unwanted publication information. The court held that this constituted inhuman and degrading treatment.

Strength of the Prohibition of torture under the law

The prohibition of torture and other forms of ill-treatment is absolute, non-derogable, and one of the strongest and most entrenched rules in all of international law. In other words, the prohibition applies with full force in all circumstances, including peacetime, wartime, during and in relation to public emergencies of any kind including terrorist attacks, and in respect of all anti-terrorism measures:

- The prohibition is absolute in that no act of torture or other ill-treatment can ever be justified on any basis in any circumstances. Judicial decisions, treaty texts and other international instruments, and international experts have confirmed that the right to

freedom from torture and other ill-treatment cannot be "balanced" against other rights, including rights related to the security and safety of other individuals from acts of terrorism.

- The prohibition is non-derogable in that treaties that codify the prohibition specifically exclude it from general "derogations" clauses that otherwise allow temporary limitation of some rights in extreme circumstances. In other words, a State is not permitted by any treaty to temporarily limit the application of the prohibition under its own domestic law for any public emergency, including for anti-terrorism measures or in the context of an armed conflict. Even though under the Nigerian 1999 Constitution section 34 is not part of the non-derogable provision of the constitution, the spirit and obligations of Nigerian state under ratified treaties, and being a *jus cogens*, recognized under Nigerian laws as inherent part of the commons law, torture and CID cannot be derogated under any circumstance.

- The prohibition of torture, and possibly also the prohibition of all other forms of cruel, inhuman or degrading treatment or punishment, is also one of a subset of customary rules of international law that have sacrosanct status, so-called "peremptory norms of international law" or "*jus cogens*" rules. Any objection, reservation, treaty provision, declaration of interpretation, or any other customary rule that is inconsistent with the prohibition is utterly invalid to the extent of the inconsistency. The *jus cogens* nature of the prohibition may also have implications for inconsistent domestic legislation, or the domestic legality of particular actions taken by a government.[12]

It is clear that the prohibition of torture and other ill-treatment is already, and has been for a long time, absolute as a matter of international law. Decades of armed conflict, and of serious threats and acts of terrorism, have not affected this absolute legal position. Thus, to those who question the absolute nature of the prohibition in a political context, the first response should be that the absolute prohibition forms a part of international law that no single state or group of states can alter or change for any reason. However, as a second answer, it is worth recalling some of the reasons why the prohibition is absolute:

- Once torture is permitted on the purported ground of necessity, no matter how narrow, there is an inherent slippery slope that leads to its application of torture on grounds of expediency, inevitably leading to proliferation and abuse. In other words, there is no threshold in law to define what is justified and unjustified 'torture' or CID.

- There is a tempting argument that torture may be justifiably be applied to suspected criminal who inflict torture or pain on other people or who commit heinous crimes. The application of torture, even to those who have themselves committed inhumane acts, is unacceptably dehumanizing to the torturer and to the society that endorses or tolerates the torture, in terms of: individual and group morality, psychological effects on the torturer and others, and social effects on the society as a whole.

- There is a long and well-documented history of the use of torture and other-ill treatment against innocent individuals, particularly in the context of secrecy on "national security" grounds, by both democratic and non-democratic States. This history demonstrates that no State can in fact limit torture or ill- treatment to only those individuals who intend to or have carried out violent crimes and actually have information critical to prevent imminent threats to life that could not be obtained in any other way. "Ticking bomb" scenarios constructed for philosophical or political debates do not exist in real life due to inherent limitations on knowledge and certainty, both moral and factual, as to the threat, the existence of information, impossibility of obtaining by other means, the identity of the individual, accountability, etc.[17]

- Information obtained by torture is inherently unreliable and therefore of little or no value to any valid government objective. Under sections 28 and 29 of the Evidence Act 2011, and section 3 of Anti Torture Act, such evidence is inadmissible under any circumstance.

Elements of Prohibition of Torture

The prohibition of torture and other ill-treatment is comprehensive. It not only include those who directly perpetrate the act of torture as criminal perpetrators, but their superiors and colleagues who encourage, condone, allow or permit any act of torture are liable.

Prohibition:

- State officials, and other persons acting in an official capacity, must not themselves inflict, instigate, consent to or acquiesce in authorize, any act of torture or other ill-treatment.
- Any aspect of torture or CID, attempts to commit torture, complicity in an act of torture, incitement of torture, and concealment of evidence of torture, maintaining

instruments of torture or place of torture, etc are all prohibited.

- No one should solicit, accept or use information in respect of which there is knowledge (or a real risk) that the information was obtained through torture. The only exception to the rule is in respect of proceedings against a person accused of torture in order to establish the torture.

Prevention:

- Prohibition of torture and CID also involves the element of prevention. Where there is allegation of torture, immediate redress must be provided and the circumstances of the allegation or threat investigated and dealt with.
- The obligation of the state to prevent torture extents to torture or threat of torture by private persons against another citizen. There is constitutional obligation to investigate and prosecute the private perpetrator of torture.

- A State may be responsible for ill-treatment perpetrated by private persons in its territory or jurisdiction, if the State was aware of the risk, or ought to have been aware of the risk, and did not take reasonable steps to prevent the ill- treatment.

- One of the key methods for preventing torture is the establishment of independent expert mechanisms, empowered to carry out visits to all places where persons are deprived of liberty, without prior notice and with a range of legally-entrenched rights to information and to interview detainees in private.

Punishment and Remedy:

- Where investigations establish that torture occurred, the perpetrators must be criminally prosecuted; other acts of cruel, inhuman or degrading treatment must similarly be prosecuted or punished through other administrative or disciplinary proceedings. The punishment must be sufficiently serious to match the grave nature of such crimes.

- States may (and in some cases must) exercise "universal jurisdiction" over acts of torture. In other words, under international law, domestic courts can exercise jurisdiction over acts of torture even if they did not occur in the territory or jurisdiction of that State. Indeed, a State must detain and extradite or prosecute any

alleged torturer that enters the State's territory or jurisdiction.

- Any individual who has been subject to torture or other ill-treatment must be given public redress and compensation. See section 34 of the 1999 Constitution.

Right to complain

Sections 4, 5 and 6 of the *Anti-Torture Act 2017* allow a person alleging that torture has been committed, whether the person is the victims of the offence or not, a right to complaint to the police, National Human Rights Commission or any other relevant institution or body having jurisdiction over the offence. It provides that the victim and complaint must be protected. Section 5 provides that a person who has suffered torture or any interested party on his behalf may seek legal assistance in the proper handling and filing of the complaint. The authorization of 'any interested person' to make a complaint on behalf of a victim is in line with the current state of the law as articulated in section 88 of the *Administration of Criminal Justice Act 2015*, which provides that:

> 'a person may make a complaint against any other person alleged to have committed or to be committing an offence. (2) Notwithstanding anything to the contrary contained in any other law, a police officer may make a complaint in a case of assault even though the party aggrieved declines or refuses to make a complaint."

See ***Onah v Okenwa*** (2010) 7 NWLR (Pt 1194) 512 where it was stated, per Nwodo JCA that 'every person in Nigeria who feels an offence has been committed has a right to report to the Nigerian police force' See also ***Ajayi v The State*** (2013) 9 NWLR (Pt 1360) 589.

Superior order for torture not defence

Section 8 of the Act makes a superior official who authorizes or orders for torture of another person to be principally responsibly in the same manner as the primary perpetrator. In the same way, the subordinate who commits act of torture on the orders of a superior official cannot raise the defence of obeying superior orders to evade punishment under the Act.

Medical and forensic evidence of torture

Section 7 of the Act authorizes a person who alleges he has been tortured to receive independent medical examination by a medical official of his own choice and is entitled to the medical report issued after the examination. \

Offences under the Anti-Torture Act 2017

Section 9 of the Act creates two classes of offences. The first is act that constitutes any of the acts mentioned in section 2, which defined what constitute torture. Anyone who is found guilty thereof is liable to imprisonment for maximum term of 25 years. There is however no minimum term of imprisonment indicated, and thus it is left to the discretion of the court in exercise of its inherent sentencing powers. It must be noted that whatever punishment to be imposed will be informed by the severity of the act of torture, the harm or pain or suffering cause on the victim, the vulnerability of the victim (such as where the victim is a child, woman or disabled person or suffers any form of vulnerability), as well as the malicious intentions of the act of torture.

The second category of offence is where the act of torture results in death of the victims, in which case, it amounts to murder or culpable homicide, and therefore punishable under the relevant sections of the Criminal Code or Penal Code as the case may be. The punishment for such act is death sentence as mandatory provision. It must be noted that the death must be a direct or necessary result of the act of torture, and there are no intervening factors. However, where a suspect who suffers from an illness, to the knowledge of the perpetrator, is inflicted with pain which a normal person could endure, but which the sick suspect could not endure and which pain led to his death, the perpetrator would be liable since the degree of torture or threshold of each category are purely subjective.

Section 9 also provides that the prosecution of the perpetrator of torture would not preclude the victim and his or her family pursing civil claim of compensation or his prosecution for any other offence or violation such as rape or stealing or extortion.

Section 12 of the Act enjoins the Attorney General of the Federation to make rules and regulations, and develop modalities for implementation and building knowledge around the Act across the country. This includes training and education of personnel involved in policing, custody, investigations, and treatment of any individual subjected to act of torture.

Key features of the Anti-Torture Act 2017

1. The Act makes comprehensive provision defining what constitute torture with elaborate instances and examples.

2. The Act criminalizes torture. It prescribes offences and penalties for any person who commits torture or aids, abets, counsels or procures any person to commit torture

3. The Act does not permit defence of obeying superior orders to a charge of torture. Such superior order of a public official shall not be a justification for an act of torture.

4. The Act expands the *Miranda* rights already provided in section 6 of Administration of Criminal Justice Act 2015 by further imposing an obligation on the police to inform a person arrested, detained or under custodial investigation of his right to demand a physical and psychological examination by an independent and competent medical officer of his choice after interrogation. There need not be a visible infliction of physical torture before this right of medical examination is exercised.

5. The Act protects the victims of torture and witnesses of the act. It is a provision for witness protection against reprisal.

6. The Act allows the prosecution to charge the offender with other offences emanating from the act of torture despite having been charged with the offence of torture. It also allows for personal civil claim in favour of the victims and his family, irrespective of the offender having been charged and punished for the offence of torture.

Conclusion

The Anti Torture Act 2017 has considerable overreaching effect on policing and law enforcement in Nigeria. Before the enactment of the Act, torture was seen more as a civil wrong except where death occurs, in which case, it was treated as homicide. The police and other law enforcement officials having custodial powers could get away with torture as the law against torture was not clear and punitive enough. The coming into effect of the Act has fundamentally changed this.

Torture is now officially a crime. A police officer can be prosecuted for torture, aiding, abetting or procuring any person to commit torture. A police officer and or any other law enforcement officials can no longer rely on emergency powers or 'orders from above' as justification for using torture to obtain information or extract confessions from suspects. The criminal liability of police officer under the Act is specific to the individual perpetrator connected with the act of torture. It is not vicarious. Thus, the individual officer and his aiders and abetters will be personally liable criminally. This liability could be direct or indirect. According to section 7(1) of the Act, 'a person' who participated in the infliction or torture or who is present during the commission of the act of torture is liable as the principal or the primary perpetrator who actually carried out the act. Also, a superior military, police or law enforcement officer or senior government officials who issues an order to a lower ranking personnel to torture a victim for whatever purpose is equally liable as the principal. The immediate commanding officer of the unit concerned of the security of law enforcement agencies is held liable as an accessory to the crime for any act or omission or negligence on his part that may have led to the commission of torture by his subordinates.

The Act further permits any other person or body to take up a case or make criminal complaint on behalf of a victim of torture. Such statutory locus standi is a commendable tool for civil society organizations, legal aid institutions, National Human Rights Commission, prosecutors and police ombudsman to take up individual cases of torture especially where the victims are vulnerable or too indigent to lay complaint.

This is a commendable legislation, for which Nigeria legislature must be commended. As a national legislation with nationwide application, the Act has clearly addressed the impunity around torture in the country, which is the major human rights concern. The challenge however is to ensure that the Act is widely publicized, and effectively implemented by all stakeholders.

Chino Edmund Obiagwu SAN
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Obiagwu@ledapnigeria.org
08036913269
@chinoobiagwu
www.ledapnigeria.org