THE DOMESTIC LEGAL INCORPORATION AND INSTITUTIONALISATION OF THE INTERNATIONAL LEGAL PROHIBITION OF TORTURE IN THE FEDERAL REPUBLIC OF NIGERIA

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DECLARATION

I, Ayo-Ojo Bayode Sunday, declare that 'The Domestic Legal Incorporation and Institutionalisation of the International Legal Prohibition of Torture in the Federal Republic of Nigeria' is my work and that all sources that I have used or quoted have been indicated and acknowledged utilising complete and proper references.

I have not used another student's previous work and submitted it as my own.

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DEDICATION

This thesis is dedicated to:

My parents, who have taken the time and invested resources in supporting my academic endeavours. Additionally, this thesis is dedicated to all those who have been tortured in Africa, particularly in Nigeria. I hope that one day, every law enforcement officer will understand that torture is not tolerated and that it is inhumane to perpetrate torture.

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Most importantly, I am grateful to God for providing me with the grace and wisdom to finish this task.

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ABSTRACT

The prohibition on torture is an essential aspect of international law that applies universally and is considered a peremptory norm of international law (*jus cogens*). The explicit prohibition of torture is outlined in the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), as well as in other international and regional human rights treaties that are part of Nigerian law.

Prior to the Anti-Torture Act 2017, the act of torture was not a specific criminal offence under domestic law in Nigeria. However, the Anti-Torture Act 2017 established a prohibition on its use and mandated appropriate penalties for offenders. Despite this prohibition, there are still numerous instances of the use of torture among law enforcement agencies.

This thesis focuses on the Nigerian government's commitment to prohibit torture under domestic law and the effectiveness of the institutions responsible for preventing torture in Nigeria. The first question of the thesis aims to identify the international standards and obligations against torture. In contrast, the second question explores the legal and institutional frameworks established to combat torture in Nigeria. The study analyses whether these frameworks in Nigeria align with international standards. Lastly, in analysing the issues associated with the persistence of torture in Nigeria, this study considers the factors that obstruct the proper functioning of the legal and institutional frameworks, as well as their implications.

Thus, this thesis argues that the persistent use of torture in Nigeria is not about domestication but the lack of an effort to consistently implement the international standards and domestic law that prevent torture, which is the UNCAT, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), African Charter on Human and Peoples' Rights (ACHPR) and the Nigerian Anti-Torture Act 2017.

The thesis further argues that there are weak institutional mechanisms available for the prevention of torture in Nigeria. For torture to be adequately prevented, there must be effective institutions available to monitor the various detention centres. This thesis argues that there is a lack of implementation of essential safeguards available in both the international standards and domestic laws to prevent torture. Thus, the thesis recommends that effective implementation calls for the granting of access to detention centres to the

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National Committee on Torture (NCAT). Additionally, NCAT's mandates and functions need to be codified in law while also ensuring its independence to make decisions without interference from the executive.

The thesis also recommends training of law enforcement agencies, especially the Nigeria Police, in human rights standards and effective investigation techniques that do not require resorting to torture. It further highlights the importance of providing awareness to judges and law enforcement agencies on the dangers of overreliance on confession-based evidence.

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACJA	Administration of Criminal Justice Act, 2015
AFCHPR	African Court on Human and Peoples' Rights
APT	Association for the Prevention of Torture
CAT	Committee against Torture
CPTA	Committee for the Prevention of Torture in Africa
CTI	Convention against Torture Initiative (CTI)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CA	Court of Appeal
CPA	Criminal Procedure Act
CPC	Criminal Procedure (Northern States) Code
EFCC	Economic and Financial Crimes Commission
ECPT	European Convention for the Prevention of Torture (ECPT)
FEC	Federal Executive Council
FHC	Federal High Court
FMJ	Federal Ministry of Justice
HRIC	Human Rights Implementation Centre
ICCPR	International Covenant on Civil and Political Rights
NDLEA	National Drug Law Enforcement Agency
NHEC	National Human Rights Commission
NHRC	National Human Rights Commission
NPM	National Preventive Mechanism
NOPRIN	Network of Police Reform in Nigeria
NLRC	Nigerian Law Reform Commission

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OPCAT	The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PRAWA	Prisoners Rehabilitation and Welfare Action
RIG	Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (RIG)
SARS	Special Anti-Robbery Squad
SC	Supreme Court of Nigeria
SPT	Subcommittee on Prevention of Torture
SSS	State Security Service
The Istanbul Protocol	United Nations Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
The Paris Principles	Principles relating to the Status of National Institutions
UNCAT	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNHCR	Office of the United Nations High Commissioner for Refugees

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CHAPTER ONE
INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 INTRODUCTION

The practice of torture is internationally regarded as a major violation of human rights and one that warrants the attention and action of legal scholars. The prohibition of torture is non-derogable in international human rights law.[1] There is a corresponding prohibition in international humanitarian law[2] and in all circumstances the prohibition of torture exists in customary international law.[3] The prohibition is further considered to be a peremptory (*jus cogens)* norm of international law.[4] It is, therefore, legally incapable of suspension or limitation, including by treaty.[5]

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[1] UN Committee Against Torture, General Comment No. 2: Convention against torture and other cruel, inhuman or degrading treatment or punishment: Implementation of article 2 by States parties. CAT/C/GC2, 24 January 2008 at para 5. See also, Art 4 (2) of the International Covenant on Civil and Political Rights (ICCPR) declare that the prohibition of torture is non-derogable. See also, Report of the International Law Commission, Seventy-first session (29 April -7 June and 8 July-9 August 2019), UN doc. A/74/10,2019 at 190-191 para 1.

[2] N S Rodley and M Pollard *The treatment of prisoners under international law* 3rd edn (2009) 65-66. See also, NS Rodley 'The prohibition of torture: Absolute means absolute' (2006) 34 (1) *Denver Journal of International Law & Policy* 145 at 148-149.

[3] M Nowak 'Torture: Perspective from UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment' (2012) 7 (2) *National Taiwan University Law Review* 465 at 481. See also, Association for the Prevention of Torture (APT) and the Center for Justice and International Law (CEJIL) *Torture in International Law A guide to jurisprudence* (2008) 1 at 113. See also, DD Tladi, International Law Commission Special Rapporteur: Second report on *jus cogens*, International Commission: Sixty-ninth Session, Geneva 1 May-2 June and 3 July-4 August 2017 at para 46. See also, 'Report of the International Law Commission' (n 1 above) 161 para 5-6. See also, N S Rodley and M Pollard *The treatment of prisoners under international law* 3rd edn (2009) 65-66.

[4] Report of the International Law Commission, (n 1 above) 171 para 3 and 182 at para 4. See also, UN Committee Against Torture, General Comment No. 2: Convention against torture and other cruel, inhuman or degrading treatment or punishment: Implementation of article 2 by States parties. CAT/C/GC2, 24 January 2008 at para 1. See also, *Prosecutor v Anto Furundzja* Case No. IT-95-17/1-T, at para 153-154. See also, D D Tladi, (n 3 above) at para 43. See also, Rodley and Pollard (n 2 above) 65-66. See also, T F Yerima 'Still searching for solution: From protection of individual human rights to individual criminal responsibility for serious violations of humanitarian law' (2010) 10 *ISIL Yearbook of International Humanitarian and Refugee Law* 40 54.

[5] UN Human Rights Committee, CCPR General Comment No. 24: Issues relating to reservation made upon ratification or accession to the covenant or the optional protocols thereto, or in relation to declaration under article 41 of the covenant, 4 November 1994, CCPR/21/Rec.1/Add.6. at para 8. '…Accordingly, a State may not reserve the right to engage in slavery, to torture…' See also, W E Conklin 'The peremptory norms of the international community' (2012) 23 (3) *European Journal of International* Law 837 at 838. See also, *Prosecutor v Anto Furundžija* Case No. IT-95-17/1-T at para 155, where the International Criminal Tribunal for former Yugoslavia (ICTY) interpreted the effect of *jus cogens* on the prohibition of torture and specified that 'The fact that torture is prohibited by a peremptory norm of international law has other effects at the inter-State and individual levels. At the inter-State level, it serves to internationally de-legitimise any legislative, administrative or judicial act authorising torture.' See also, Art 53 of the Vienna Convention of the law of treaties (with annex) conclude at Vienna on 23 May 1969. UN Committee Against Torture, General Comment

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In introducing this study, this chapter first presents an exploration of what torture entails in international law. I then set out the treaties that prohibit torture, before proceeding to outline the process of domestication and the resulting prohibitions on torture in Nigeria. With that as the background, the chapter presents the thesis and the research questions guiding this study.

1.2 DEFINING TORTURE IN INTERNATIONAL LAW

The concept of torture in this study follows the definitions provided by article 1 of UNCAT, recognised in article 5 of the ACHPR[6] and section 2(1) of Nigeria's Anti-Torture Act 2017.[7] Article 1 of UNCAT provides the most widely accepted definition of torture,[8] which is employed within this thesis. It states:

> [T]he term torture means 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 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.

Article 1 of UNCAT gives a precise and accurate definition of torture, which means that, for this thesis, the infliction of 'severe pain or suffering' must be done intentionally and at the hands of a public official, although the reference to 'pain and suffering' inflicted on a person is open to interpretation, as it is uncertain at what stage the behaviour amounts to being

No. 2: Convention against torture and other cruel, inhuman or degrading treatment or punishment: Implementation of article 2 by States parties. CAT/C/GC2, 24 January 2008 at para 5.

[6] The Commission in its interpretation of Art 5 of ACHPR adopted the definition provided in Art 1 of CAT. See also, Communication 379/09, *Monim Elgak, Osman Hummeida and Amir Suliman v Sudan,* 15th Extra Ordinary Session, 07 March to 14 March 2014 para 98. See also, Communication 368/98, *Abdel Hadi, Ali Radi & Others v Republic of Sudan,* 54th Ordinary Session, 22 October to 05 November 2013 at para 70. See also, *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt,* Communication 334/06, 9th Extraordinary Session, 23 February to 03 March 2011 para 162.

[7] Sec 2(1) States: '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 a third person 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 actin in an official capacity provided that it does not include pain or suffering in compliance with lawful sanctions.' The 1999 Constitutions, Evidence Act 2011, Administration of Criminal Justice Act 2015, provides for the necessary safeguards against torture. These laws are analysed in chapter three as part of the laws that prohibits torture in Nigeria.

[8] Art 1 of UNCAT. See also, Yerima (n 4 above) 55.

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'severe.' However, Burgers and Danelius, who examined the UNCAT *travaux préparatoires*, assert that UNCAT did not shed light on the issue of the level of intensity.[9] Nowak, Birk and Monina's work reports that the committee decides on the circumstances of each case, whether the infliction of severe pain or suffering is in line with article 1 of UNCAT. They go further to State that the level of pain and suffering is 'relative and may differ subjectively'.[10] More so, the intensity of the pain and suffering is assessed based on the circumstances of each case; however, this assessment is not consistent.[11] In *Alexander Gerasimov* v *Kazakhstan*, the complainant before the Committee against Torture was inflicted with a blow on his kidney, and then both hands were tied to the back with a belt. Afterwards, the officers suffocated him by covering his head with a polypropylene bag until he started bleeding from the nose, ears and abrasion from his face before losing consciousness. The process was repeated many times. It was held that the treatment could be characterised as severe pain and suffering.[12]

Moreover, in distinguishing between torture and cruel, inhuman and degrading treatment, Nowak argues that it is not about the 'intensity of the pain or suffering but the purpose of the conduct and the powerlessness of the victim'.[13] He goes further to give an example that in a situation where a victim is handcuffed or detained in a police cell or detention centre, the use of force is not allowed in any circumstances. However, if there is a use of force, which results in severe pain or suffering from the aim of achieving or extracting a confession or information, then it must be considered torture.[14] Thus, what matters is the victim's powerlessness in a detention centre, which makes him or her vulnerable to any type of physical or mental pressure.[15] In analysing the difference between torture and certain ill-treatment, Rodley and Pollard argued to the committee that inhuman treatment and torture are

[9] JH Burgers & H Danelius *The United Nations Convention against torture: a handbook against torture and other cruel, inhuman or degrading treatment or punishment* (1988) 117 118.

[10] M Nowak, M Birk & G Monina *The United Nations Convention Against Torture and its Optional Protocol: A commentary* (2019) 50.

[11] As above.

[12] Communication No.443/2010. CAT/C/48/D/433/2010. Decision adopted by the Committee at its forty-eight session, 7 May-1 June 2012 at para 2.3 and 12.2. See also, *Saidi Ntahiraja v Burundi,* Communication No. 575/2013 CAT/C/55/D/575/2013, 3 August 2015 at para 7.6.

[13] M Nowak & E McArthur 'The distinction between torture and cruel, inhuman or degrading treatment' (2006) 13 (3) *Torture* 147 at 151.

[14] As above.

[15] As above.

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distinguished by purpose.[16] Moreover, the committee provide a binding authority stating that it is not necessary to distinguish between torture and ill-treatment, but what matters in distinguishing the two is the kind, purpose and severity of a particular treatment.[17]

The prohibition of torture in article 5 of ACHPR did not explicitly define torture, however, the commission has adopted the definition provided in article 1 of UNCAT in most of its communications.[18] In the case of *John D. Ouko v Kenya,*[19] the complainant was detained in a cell for ten months without trial, contrary to the precepts of article 6 of the ACHPR. He was denied access to the bathroom and subjected to continuous exposure to harsh light. The African Commission held that this amounted to inhuman and degrading treatment but failed to constitute torture and 'cruel' treatment as the evidence did not show 'physical and mental torture'.[20] In the case of *Huri-Laws v Nigeria,*[21] it was held that for a treatment to amount to torture or cruel, inhuman or degrading or punishment, the treatment must attain some certain level of severity. The interpretation accords with the definition in UNCAT; for the prohibition to be severe, it depends on the amount and duration of the treatment, its physical and mental effects on the victim life and importantly, the age, gender and state of health of the victim.[22] More so, the Commission adopted the definition of UNCAT in the case of *Abdel Hadi, Ali Radi & others v Republic of Sudan*[23]

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[16] Rodley & Pollard (n 2 above) 118-119.

[17] Human rights committee: General Comment No.7 Article 7 (Torture or cruel, inhuman degrading treatment or punishment) Sixteenth Session Adopted: 30 May 1982 at para 2. This has thus been replaced by the CCPR General comment No.20: Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment) 1992 at para 4.

[18] *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt,* Communication 334/06, 9th Extraordinary Session, 23 February to 03 March 2011 para 162. See also, Communication 279/03-296/05, *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v Sudan*, 45th Ordinary Session, 13 May to 27 May 2009 para 155 and 156.

[19] Communication 232/99, *John D Ouko v Kenya,* 28th Ordinary Session, (2000) AHRLR 135 9 (ACHPR 2000), Reprinted in (2002) 9 *International Human Rights Reports* 246.

[20] As above.

[21] Communication 225/98, *Huri-laws v Nigeria,* 28th Ordinary Session, (2000) AHRLR 273 (ACHPR 2000) *https://www.achpr.org/sessions/descions?id=125* (accessed 7 June 2021).

[22] As above.

[23] Communication 368/98, Abdel Hadi, Ali Radi & Others v Republic of Sudan, 54th Ordinary Session, 22 October to 05 November 2013. See also, *Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt*, Communication 334/06, 9th Extraordinary Session, 23 February to 03 March 2011 para 162.

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> that severe pain or suffering has to have been inflicted; for a specific purpose, such as to obtain information, as punishment or to intimidate, or for any reason based on discrimination; by or at the instigation of or with the consent or acquiescence of State authorities.[24]

Similarly, the African Court on Human and Peoples' Rights (AFCHPR), in the case of *Alex Thomas v Tanzania*,[25] interpreted that torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person to obtain information or a confession.

On this note, the definition of torture by UNCAT, ACHPR and the AFCHPR shares the same elements of what can constitute torture. The committee asserted that when a State gives a broader definition of torture, the purpose and objective of that definition must contain and be applied per the standards of UNCAT.[26] In the concluding observation of Sri Lanka, the committee pointed out that the exclusion of suffering from the definition of torture in its Criminal Code is not sufficient.[27]

1.2.1 Definition of torture in Nigeria

While drawing on the concept of torture provided by article 1 of UNCAT, the understanding of torture in Nigerian law is very similar but not identical. Section 2(1) of the Anti-Torture Act 2017 defines torture as the deliberate infliction of severe pain or suffering on a person, either on the body or mind, by State officials in other to extract information, or confessions. It further provides the methods of torture in section 2(2) of the Anti-Torture Act 2017 as

> [S]ystematic 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 electrically heated rods, hot oils, acid, by the rubbing of pepper or other chemical substance on mucous membranes, or acids or spices directly on wounds, the submersion of the head in water or water polluted with excrement, urine, vomit or blood,

[24] As above para 70.

[25] (2015) 1 AFCLR 465. The Applicant was convicted of armed robbery and sentenced to thirty years' imprisonment. He alleged that the undue delay in the hearing of his appeal and review by Tanzania Courts amounted to torture. The Court held that Mr. Thomas has not proved that delay in the hearing on his appeal amounted to torture. For torture to occur, Mr. Thomas must be able to prove that severe mental or physical pain which was intentionally inflicted for a particular purpose.

[26] UN Committee Against Torture, General Comment No.2: Implementation of Article 2 by States parties 24 January 2008, CAT/C/GC/2 at para 9.

[27] Committee against Torture: Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture. Sri Lanka, 31 October -25 November 2011 CAT /C/LKA/CO/3-4 at para 25. See also, M Nowak, M Birk, and G Monina *The United Nations Convention Against Torture and its Optional Protocol: A commentary* (2019) 51.

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> being tied or forced to assume fixed and stressful bodily positions, rape and sexual abuse, including the insertion of foreign bodies into the sex organs or rectum or electrical torture of the genitals, other forms of sexual abuse, mutilation, such as amputation of the essential parts of the body such as the genitalia, ears or tongue and any other part of the body, dental torture or the forced extraction of the teeth, harmful exposure to the elements such as sunlight and extreme cold, the use of plastic bags and other materials placed over the head to the point of asphyxiation.[28]

It will be appreciated that while the wording is different from that of the UNCAT definition of torture, these identifications of what torture specifically consists of fall under the same understanding of the 'deliberate infliction of severe pain or suffering on a person'. A person has carried out any of the offences listed in section 2 commits an act of torture. However, any act causing pain and suffering by law officials acting in their official capacity that falls outside the list of offences in section 2, arguably will also fall in line by virtue of the *eiusdem generis* rule of interpretation.

1.3 CONVENTIONAL LAW PROHIBITIONS AGAINST TORTURE

Nowak identifies that the prohibition of torture is non-derogable and cannot be suspended in any circumstance, not even in times of war or State of emergencies.[29] Mujuzi argues that the prohibition of torture is absolute and points out that the ACHPR has categorised the norm as one of *jus cogens* that was not derogable under any circumstances.[30] Further, Burgers and Danelius give a detailed analysis of the content and obligations incurred by States parties to UNCAT.[31] Conor argues that States are obliged to prohibit and prevent torture. He goes further to discuss several safeguards under international treaties prohibiting torture.[32] Carver and Handley look at whether the prevention of torture works. They go ahead to outline the type of obligations accepted by those States that ratify any of the treaties. These obligations vary from the investigation, monitoring, prohibition, criminalisation, prevention, and

[28] The analysis of the definition of torture in the Anti-Torture Act 2017 is discussed in chapter three of this thesis.

[29] Nowak (n 3 above) 679.

[30] JD Mujuzi 'An analysis of the approach to the right to freedom from torture adopted by the African Commission on Human and Peoples' Rights' (2006) 6 (2) *African Human Rights Law Journal* 423 at 429.

[31] JH Burgers & H Danelius *The United Nations Convention against Torture: A handbook on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (1988) 47.

[32] F Conor *The torture reporting handbook: Combating torture handbook: a manual for judges and prosecutions* (2003) 8.

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prosecution to those important safeguards that help in the prevention of torture such as access to lawyers, documentation, notification to families, audio recording, medical examination and prompt trial before a judge.[33] They describe human rights treaties, especially those that cover torture and those preventive mechanisms that are put in place to monitor and oversees the implementation of these treaties. Nowak, McArthur, and Buchinger discuss the role of UNCAT and analyse the definition, obligation of States parties, monitoring bodies, and the mandate of the subcommittee on the prevention of torture and national preventive mechanisms.[34] The obligations discussed in these books serve as the conceptual framework for this research.

Viljoen and Odinkalu examine the prohibition of torture in the Africa human rights context.[35] Their book elaborates the extension of the regional prohibition in the ACHPR to other substantive norms like the African Charter on the rights and welfare of the child, the prohibition of torture in the protocol to the ACHPR on the right of women in Africa. Promoting the prohibition of torture is within the mandate of the African Commission and procedures before the Africa Commission and African Human Rights Court for both individual and States communications.[36] This work provides background on the obligations of Nigeria as required by the AU.

There are various international treaties that are part of Nigerian law that prohibit torture, such as the UNCAT[37] and the International Covenant on Civil and Political Rights (ICCPR),[38] while others such as the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED),[39] Convention on the Elimination of All Forms of Discrimination

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[33] R Caver & L Handley *Does torture prevention work?* (2016).

[34] M Nowak, K Buchinger & E McArthur *The United Nations convention against torture: A commentary* (2008).

[35] F Viljoen & C Odinkalu *The prohibition of torture and ill-treatment in the African human rights system: A handbook for victims and their advocates* (2006) 36.

[36] As above.

[37] United Nations Convention against Torture (UNCAT) adopted and effective on 10 December 1984, 1465, UNTS 85. UNCAT was ratified by Nigeria on 28 June 2001.

[38] The ICCPR (signed 1966) and effective from 23 March 1976. It was ratified by Nigeria on 29 July 1993.

[39] Adopted on the 23 December 2010 by the UNGA Resolution 47/133. Nigeria made an accession on the 27 July 2009. The ICPPED aims at the deprivation of liberty of individuals and arrest, detention by the agents of the State or anyone acting on authorisation, support or acquiescence of the State. It did not however, expressly have a provision of torture like UNCAT and the ICCPR but it has been argued that enforced disappearance constitute torture and violates other human fundamental human rights. For example, in *Mouvement Burkinabe*

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against Women (CEDAW),[40] International Covenant on the Elimination of All Forms of Racial Discrimination (CERD),[41] International Covenant on Economic, Social and Cultural Rights (ICESCR),[42] International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW),[43] Convention on the Rights of the Child (CRC)[44] and the Convention on the Rights of Persons with Disabilities (CRPD)[45] all prohibit

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des droits de l'homme et des peoples v. Burkina Faso Communication No. 204/97, where it was affirmed that the act of enforced disappearance excludse victims from all protections of the law. It was further affirmed that it constitutes the violations of the victim's rights including person's legal status, right to security and freedom and the rights not to be subjected to torture.

[40] Adopted on 18 December 1979, UNGA Resolution 34/180 Entry into force: 3 September 1981. It was ratified by Nigeria on 13 June 1985. The CEDAW prohibits all forms of discrimination against women in all area of life. It also includes the obligations on State government to adopt measure to achieve the equality between men and women in particular to political, social and economic and cultural terms. CEDAW does not contain an explicit provision on torture, however, the CEDAW Committee in its General Comments No.19 explains in its para 7 that 'Gender based violence nullifies the enjoyment by women of human rights and fundamental freedom under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include (b) the right not to be subject to torture…'.

[41] Adopted on 21 December 1965 UNGA Resolution 2106 (XX). Nigeria acceded to the Convention on 16 October 1969. The article 1 of the CERD defines racial discrimination as 'any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. The CERD did not explicitly provide for the prohibition of torture, however, It prohibits all aspect of violence in its article 4 and its article 5(b) includes the obligations that the government has to protects individuals against State violence or bodily harm, either inflicted by the government or private individuals or groups. Although torture is not expressly Stated in the CERD, one of the features of torture is to include severe pain as provided in the UNCAT definition which may also include bodily harm by government officials.

[42] Adopted 16 December 1966 UNGA Resolution 2200A (XXI). Nigeria made an accession on the 29 July 1993. The ICESCR did not expressly provide for the prohibition of torture, but article 12 has been interpreted by the Committee on Economic Social and Cultural Rights (ICESCR Committee) in General Comment 14, para 3 to be closely related and include the freedom from torture. See, CESCR General Comment No. 14: The Rights to the Highest Attainable Standard of Health (Art 12) adopted at the Twenty-second Session of the Committee on Economic Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4)

[43] Adopted on the 18 December 1990, UNGA 45/158 and entry into force: 1 July 2003. Nigeria made an accession on the 27 July 2009. Art 2(1) defined migrant worker as 'a person who is to be engaged, is engaged or has been engaged in remunerated activity in a State of which he or she is not a national'. The purpose of the CMW is to protect migrant workers from exploitation and any human rights violations. The Article 10 of the CMW provides that no migrant worker or member of his or her family shall be subjected to torture. The General Comment No. 2 on the Rights to Migrant Workers in an irregular situation and members of their families, the CMC Committee in para 3 provides that State are ensure that Migrant worker are not subject to torture and also, State have the obligation to investigate the complaint of torture where migrant worker or any of his or her family are deprived of liberty. See Para, 46, 48 and 50 where States have different obligations to protect Migrant worker from Torture and not to return to where torture may be used on them.

[44] Adopted 20 November 1989 UNGA Resolution 44/25. It was ratified by Nigeria on 19 April 1991. The CRC as a United Nations instrument protects the rights of children and in its article 19, provides that children shall be protected against all abuse and neglect and put the obligations on the States government to provides program for the prevention of abuse and treatment of those who suffered abuse. It also provides in its 37 that no child shall be subject of torture or deprived of their liberties or arrest unlawfully. The Committee on the Rights of the Child in its General Comment 13 para 22 that any form of physical violence which includes fatal and non-fatal physical violence is not allowed. It furthers interpret physical violence in para 22(a) to include all corporal

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torture. However, only the UNCAT and ICCPR are used as the background in this thesis.

To understand fully Nigeria's legal position on the issue, we need to report on the several treaties that prohibit torture, whether directly or indirectly. These treaties fall under the United Nations and African Union jurisdictions. This section first analyses the United Nations treaties, followed by the African Union.

1.3.1 The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was the first human rights treaty to explicitly prohibits torture with the aim to protect both the dignity and the physical and mental integrity of individuals.[46] The ICCPR provides in its article 7 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.' Article 10 further states that 'all persons, deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'.[47]

The provision of article 7 explicitly prohibits torture but it does not define it. The Human Rights Committee (HRC) in its General Comment 20, paragraph 4, remarked that it did not find it necessary to draw on the list of prohibited acts that constitute torture, but to distinguish between torture and other forms of ill-treatment, the 'the distinctions depends on the nature, purpose and severity of the treatment applied'.[48] Thus, the HRC when considering the issue of torture, did not always specify the part of the article 7 that has been breached but always concludes that article 7 has been violated.[49] Meanwhile, the HRC also noted that what matters

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punishment and torture… See Convention on the Rights of the Child, General Comment No. 13(2011). The right of the Child to Freedom from all forms of violence. CRC/C/GC/13.

[45] Adopted on 12 December 2006 UNGA A/RES/61/106. It was ratified by Nigeria on 24 September 2010. The CRPD in its article 1 aimed at promoting and protecting and ensuring that there is full and equal enjoyment of all human rights and fundamental freedoms by all person with disabilities and to promote respect for their inherent dignity. It also provides in its article 15 that no one shall be subjected to torture. It places an obligation on the State parties to take an effective legislative, administrative and judicial or any other measures to prevent that those that have disabilities are not subjected to torture.

[46] I M Shale 'Domestic implementation of international human rights standards against torture in Lesotho' Unpublished PhD thesis, University of Witwatersrand, 2017. The ICCPR creates three type of prohibited behaviour which are torture, treatment or punishment which is cruel and inhuman and the treatment or punishment that are degrading in nature.

[47] Art 7 and 10 ICCPR.

[48] HRC, 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.

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in assessing whether article 7 has been violated depends on the nature of the case, which includes the duration and the nature of treatment on both mental and physicals effect on the victims as well as the age, sex and status of victim health.[50]

Similarly to UNCAT, the States parties to ICCPR are under the obligation to ensure that every individual is protected through legislation and other measures to ensure that torture is prevented and that those who perpetrate torture are punished.[51]

The interpretation of article 7 further connotes that a State may breach this obligation to prevent torture when it fails to act,[52] for example, in a circumstance where a perpetrator is not punished for the act of torture. The act of torture can also be breached where there is unintentional infliction of severe pain and suffering on a person.[53] This implies that intention is necessary for an act or an omission to be referred to as torture as opposed to other forms of treatment.[54] As emphasised by the Human Rights Committee itself, other forms of treatment can be distinguished through 'purpose' of the treatment.[55] However, the provision of article 7 can also be entailed in unintentional behaviours.

In *Rojas Garcia v. Colombia,* where a group of armed men wearing civilian clothes mistakenly entered the author's house in the middle of the night, the search party verbally abused and terrified the complainant and the young children. Also, a gunshot was fired during the mistaken entry by State officials. The search party realised that they went to the wrong house. It was found that the search party were in breached of article 7 even though there was no specific intention to harm the family or the complainant.[56]

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[49] S Joseph, K Mitchell and L Gyorki and C Benninger-Budel *Seeking remedies for torture victims: A handbook on the individual complaints procedures of the UN treaty bodies* (2006) 158.

[50] As above 159.

[51] HRC, 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.

[52] S Joseph, K Mitchell and L Gyorki and C Benninger-Budel *Seeking remedies for torture victims: A handbook on the individual complaints procedures of the UN treaty bodies* (2006) 157.

[53] As above.

[54] As above.

[55] Human rights committee: General Comment No.7 Article 7 (Torture or cruel, inhuman degrading treatment or punishment) Sixteenth Session Adopted: 30 May 1982 at para 2. This has thus been replaced by the CCPR General comment No.20: Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment) 1992 at para 4.

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Moreover, article 10 provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.[57] This implies that States parties are to ensure that all those who are detained are to be treated with dignity and respect. In *Kennedy v Trinidad and Tobago,* the HRC held that the beating of the author while detained in a detention centre violated the provision of article 7 and other conditions, such as the overcrowded situation as the detention centre while he was on death row, violated article 10(1).[58]

Similarly, when a detainee complains about torture in detention centre, he or she must be able to explain that he received a worse treatment than other detainees in the detention centre, otherwise there may not be a violation of article 7. In *Mukong v Cameroon,* the author alleged that he was singled out by being treated badly.[59] He complained that he was been kept in an incommunicado detention, threatened with torture and death and was deprived of food and locked up in the cell for several days without the availability of recreation. The HRC held that to be a violation of article 7.[60]

In addition, State obligations in relation to article 7 in General Comment No. 7 of 1984 which was later replaced with General Comment No. 20 of 1992 that was later replaced with General Comment No. 31(80) of 2004 interpreted that States parties have the obligations to prevent and prohibit torture, exclude evidence obtained from torture in criminal proceedings, punish perpetrators, provide redress to victims of torture, report measures taken to prevent torture to the HRC after one year of entry into force of the covenant by each State party and also the obligations of non-refoulement and training of law enforcement agencies.[61]

1.3.2 Prohibition of Torture in the African Charter of Human and Peoples' Rights (ACHPR)

The ACHPR draws for its definition of torture on UNCAT. From there it extends into the prohibitions on torture.

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[56] Communication No. 687/1996, UN Doc. CCPR/C/71/D/687/1996 (2001).

[57] Art 10 of ICCPR.

[58] Communication No. 845/1998, UN Doc. CCPR/C/74/D/845/1998 (2002).

[59] Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991 (1994).

[60] As above.

[61] HRC: General Comment No. 31(80), The Nature of the General Legal Obligation Imposed on States Parties to the Covenant. Adopted on 29 March 2004.

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Article 5 of the ACHPR provides as follows:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

The ACHPR includes 'dignity' as rights that underpin human rights.[62] The right to human dignity is a separate right that is partially guaranteed by the prohibition of torture.[63] Critically, the right to human dignity is a yardstick of the obligation and rights set out in article 5, in which the obligation to respect human dignity is then contained in the prohibition against torture. In a situation where State agencies breach the obligation to respect human dignity, then breaching the obligation on torture is almost inevitable.[64] The mention of 'all forms' in the definition covers not only actions by or on behalf of the States but also those by individuals and private entities.[65]

In contrast to other international treaties, torture is listed as an example of 'exploitation and degradation'. However, the changes reflected in the ACHPR from other international instruments do not alter the nature of the prohibition of torture in Africa.[66] The inclusion in article 5 of 'slavery and slave trade' (intended to expand the definition), however only serves to complicate the issue as the prohibition of slavery and the slave trade involves a set of rights distinct from other types of rights listed.[67]

1.4 PROHIBITIONS OF TORTURE IN NIGERIA

The prohibition of torture is universally considered as a fundamental principle of international law. Notwithstanding its prohibition being recognised under this principle, torture has become a recurrent feature across most African States in violation of their human

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[62] Communication 241/2001, *Purohit and Moore v The Gambia*, Thirty-Third Ordinary Session 15-29 May 2003, ACHPR 2003 at para 57 '…it is therefore an inherent right which every human being is obliged to respect by all means possible and on the other hand it confers a duty on every human being to respect this right.'

[63] F Viljoen & C Odinkalu *The prohibition of torture and ill-treatment in the African human rights system; A handbook for victims and their advocates* (2006) 36.

[64] As above 37.

[65] As above.

[66] 'Torture in International Law A guide to jurisprudence' (2008) *Association for the Prevention of Torture (APT) and the Center for Justice and International Law* 95 https://www.corteidh.or.cr/tablas/26562.pdf (accessed 24 August 2021).

[67] Viljoen & Odinkalu (n 35 above) 37.

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rights obligations.[68] Nowak argues that the non-derogable nature of torture has not prevented States from practising torture though they often deny the practice.[69]

Under UNCAT, States parties are required to enact legislation that prevents and prohibits torture, punishes perpetrators and furnishes redress to victims. UNCAT obliges States parties to criminalise and prevent torture.[70] The ICCPR requires its States parties to enact measures to criminalise and prevent torture.[71] Both UNCAT and the ACHPR require the establishment of appropriate preventive and punitive legal mechanisms in accordance with the gravity of the offences,[72] to monitor activities,[73] and provide redress for the victims. Crucially, the State must have national preventive measures or institutions with the mandate to visit various detention centres, advise, train, assist, recommend and observe.[74]

Despite these obligations, the use of torture persists in Nigeria.[75] Torture in Nigeria is carried out by State actors mainly with a view to extracting confessions or to punish criminal

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[68] JD Mujuzi 'An analysis of the approach to the right to freedom from torture adopted by the African Commission on Human and Peoples' Rights' (2006) 6 (2) *African Human Rights Law Journal* 423 at 424. See also, D Miriri and K Houreld 'Moi's Kenya torture victims mourn a reckoning that never came' 4 February 2020 *Reuters News.* See also, C Oduah 'Gone: The lost victims of Nigeria's most brutal police station' 20 January 2021 *Aljazeera News.* See also, Amnesty International 'Amnesty International: Torture rampant in Africa as continent lags behind in criminalizing the practice' 13 May 2014.

[69] M Nowak 'Challenges to the absolute nature of the prohibition of torture and ill-treatment' 29 September 2005 Speech delivered at the 24th anniversary of the Netherlands Institute of Human Rights (SIM) at 674.

[70] Art 4(1) and (2) of UNCAT provides, 'Each State party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participate in torture... each State party shall make these offences punishable by appropriate penalties which take into account their grave nature'.

[71] Art 2(2) of ICCPR provides: 'Where not already provided for by existing legislation or other measures, each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effects to the rights recognized in the present covenant.'

[72] The Committee against Torture stipulates that States party to UNCAT must distinguish the offence of torture from common assault or other crimes and that the State should alert everyone, including the perpetrators, victims, and the public on the gravity of the crime of torture. Lastly, the committee States that the codification of the crime should emphasize the gravity of the offence and give officers the ability to track the crime of torture. See also, CAT/C/GC/2/CRP.1/Rev.4 para 11 *https://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf* (accessed 1 June 2021). See also, Art 4 of CAT. See also, art 12 of RIG.

[73] Art 3 of OPCAT provides: 'Each State party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (National Preventive mechanism).'

[74] Art 4, 11 of OPCAT. See also, art 41 of RIG.

[75] Amnesty International, 'Nigeria 2020.'

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suspects.[76] It is thus practised by those whose duty it is to protect the citizens, notably the Nigeria police force (NPF), the military, the State Security Service (SSS), Correctional Services, the National Drug Law Enforcement Agency (NDLEA),[77] and the Economic and Financial Crimes Commission (EFCC).[78]

1.5 THE PROCESS OF DOMESTIC INCORPORATION

Donnelly had pointed out that '[t]he fate of human rights – their implementation, abridgement, protection, violation, enforcement, denial or enjoyment – is largely a matter of national, not international action'.[79] Incorporation is giving legal effect to the treaty in domestic law.[80] The transformation of treaties is traditionally a matter of domestic law.[81]

The implementation of UNCAT is mandatory after ratification; however, the measure a State may take to implement falls under the discretion of the State.[82] To give legal effect to a treaty in a country is highly contingent upon that State's constitutional and legal system.[83] In some countries (monist States), once UNCAT has been ratified, it becomes part of the national law automatically. However, in a dualist State, an act of parliament is needed before it can have

[76] B Karumi 'Protection of the right against torture under international human rights law: A critical appraisal' (2015) 37 *Journal of Law, Policy and Globalization* 204 at 205. The Nigeria Police Force and many of the security agencies in Nigeria lacks the basic tools of investigation. In most cases, torture has been administered on victims in other to extract information or confessions that will be tendered in court as an evidence and sometimes, to obtain money from the victim (bribe). See also, 'Everyone's in on the game: Corruption and human rights abuses by the Nigeria police force' (2010) *Human Rights Watch* *https://www.hrw.org/sites/default/files/reports/nigeria0810webwcover.pdf* (accessed 2 September 2021).

[77] 'Ebonyi man accuses NDLEA agents of torture during 2012 arrest' 23 October 2015 *Sahara Reporters.*

[78] International Rehabilitation Council for Torture Victims 'Influencing laws and policies? Torture and the rights to rehabilitation in Nigeria.' https://irct.org/influencing-laws-and-policies/torture-and-the-right-to-rehabilitation-in-nigeria (accessed 18 April 2021). See also Amnesty International, 'Nigeria 2020.' See also 'EFCC tortured me, dislocated my spinal-cord, all to get at Jonathan, Dudafa claims' 24 January 2017 *Ripples Nigeria* *https://www.ripplesnigeria.com/efcc-tortured-dislocated-spinal-cord-get-jonathan-dudafa-claims/* (accessed 20 September 2021).

[79] J Donnelly, *Universal human rights in theory and practice* 2nd edn (2013) at 171.

[80] As above

[81] S Kadelbach 'International law and incorporation of treaties into domestic law' (1999) 42 *German Yearbook of International Law* 66 at 67.

[82] Art 27 of UNCAT mandates that UNCAT comes into force after thirtieth days of ratification or accession, however, a country can ratify and take no action on domestication except in a monist States that it's an automatic part of the law. In a State like Nigeria, that uses a dualist system, the law does not have any effect until it has been incorporated into an enacted law by the National Assembly.

[83] E Egede 'Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria' (2007) 51 (2) *Journal of African Law* 249 at 250.

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any legal effect.[84] Another factor that determines a treaty's legal status after being incorporated is its hierarchy in the legal system.[85] In some jurisdictions, UNCAT is equivalent to the national law, while in some, it would have constitutional status, which makes it superior to the legislation.[86]

When incorporation of human rights treaties becomes part and parcel of domestic law, the success or failure of these treaties is conditioned and evaluated on their impact on human rights practice at the domestic level.[87] Therefore, human rights treaties create obligations at the international level that need to be given effect at the domestic level, thereby creating a meaningful transition of the international norms into the national legal system.[88]

> whether a State automatically recognises human rights instruments as forming part of its domestic laws upon ratification without the need for formal incorporation into domestic law, or formally incorporates them into domestic laws in order to become enforceable in domestic courts, the challenges really lies in ensuring that the human rights principles and obligations enshrined in those instruments are realised and ultimately make a significant impact at the domestic level.[89]

Following this view, this research examines the effectiveness of incorporating international treaties prohibiting torture in Nigeria and its institutions.

General Comment 2 advises States to prohibit torture with the participation of the judiciary, administration, and legislature.[90] It goes ahead to include the guidance that national law must be reviewed constantly to eradicate torture.[91] While incorporation is important, the functions of institutions can never be overlooked. OPCAT in its article 3 requires States to have a

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[84] As above.

[85] Kadelbach (n 81 above).

[86] More about the incorporation and hierarchy will be discussed in Chapter Two of this work.

[87] R Matemba 'Incorporation of international and regional human rights instruments: Comparative analyses of methods of incorporation and the impact that human rights instruments have in a national legal order' (2011) 37 (3) *Commonwealth Law Bulletin* 435 at 436.

[88] JE Lord & MA Stein 'The domestic incorporation of human rights law and the United Nations convention on the rights of persons with disabilities' (2008) 83 (4) *Washington Law Review* 449 at 453.

[89] R Matemba 'Incorporation of international and regional human rights instruments: Comparative analyses of methods of incorporation and the impact that human rights instruments have in a national legal order' (2011) 37 (3) *Commonwealth Law Bulletin* 435 at 436.

[90] UN Committee Against Torture, General Comment No.2: Implementation of article 2 by States parties, 24 January 2008, CAT/C/GC/2 at para 2.

[91] As above.

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national preventive mechanism (NPM) to prevent torture.[92] Article 4 of OPCAT imposes on States the requirement that the NPM must have the liberty to visit places of detention; article 18 obligates the States to ensure functional independence and the independence of its personnel, provide knowledgeable and professional personnel, and avail necessary resources. In article 19, the power of the NPM extends to the right to visit places of deprived liberty; it sets out recommendation on the conditions of persons deprived and how to curb torture, while article 20 obligates the States to allow for access to information concerning the number of persons deprived of their liberty, the place of detention, opportunities to have a private interview with detainees and the liberty to choose the place to visit and whom to interview.

The 'Subcommittee on Prevention of Torture (SPT)' was created, requiring official visits to places of detention or confinements.[93] Nigeria put in place the national preventive mechanism, known as the National Committee Against Torture (NCAT),[94] with the mandate to receive information and communication from individuals, including government institutions, visit (monitor) prisons or detention centres, with the power to review and recommend improvements.[95] The NCAT also has the power to investigate torture.[96]

However, OPCAT further provides that when, establishing NPM, States are to comply with the principle relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[97] The Paris Principles direct States to ensure that NPM have an independent basis in the constitution or legislative text. While this research understands that States parties to OPCAT have the liberty to create their NPM, this research investigates how the selected NPM structures (National Human Rights Commission, National Committee Against Torture, Police Commission, Human Rights Desk and X-Squad) have enabled or hindered the fulfilment of their mandate. This is done with an analysis of the

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[92] United Nations Human Rights Office of the High Commissioner 'Preventing torture: The role of national preventive mechanisms' *A practical guide, professional training series No.21* (2018).

[93] Committee Against Torture: Monitoring the Prevention of torture and other cruel, inhuman or degrading treatment or punishment *https://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIntro.aspx* (accessed 17 June 2021).

[94] Federal Ministry of Justice 'Mandate of the National Committee on Torture' *http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 16 June 2021).

[95] As above.

[96] As above.

[97] UNGA Res 48/134 (20 December 1993), Annex

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activities they have undertaken to prevent torture and what they have achieved or what challenges have hindered their mandates.

1.6 STATEMENT OF THE PROBLEM

Notwithstanding the ratifications of international laws and promulgations of several national laws prohibiting torture, there is still persistent use of torture in Nigeria. UNCAT obligates its States parties to investigate and punish perpetrators of torture.[98] Amnesty International has reported that the failure of the Nigerian Government to investigate and punish State officials has increased the use of torture among security agencies.[99] In the circumstance where an investigation is conducted, there are few efforts to prosecute.[100] The failure to hold State actors accountable has normalised the use of torture in Nigeria, and, in fact, there have been cases of torture related deaths of individuals within the custody of State securities agencies in Nigeria.[101] In 2017, the Vice President of Nigeria set up a panel to review the 'compliance of armed forces with human rights obligations and rules of engagement'.[102] However, since 2018, when the report and findings were submitted, none of the officers indicted has been prosecuted.[103]

Torture persists in Nigeria on account of a power imbalance, a weak national legal system,[104]

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[98] Art 12 of UNCAT.

[99] Amnesty International, 'Torture in Nigeria: In summary' AFR 44/005/2014. See also, Amnesty International 'Nigeria: Authorities repeatedly failing to tackle impunity enjoyed by notorious SARS police unit' 6 October 2020. See also, N Ibekwe 'How widespread impunity is encouraging right abuses in Nigeria – U.S. report' *Premium Times Newspaper* 22 March 2021 https://www.premiumtimesng.com/news/headlines/321535-how-widespread-impunity-is-encouraging-right-abuses-in-nigeria-u-s-report.html (accessed 19 July 2021).

[100] ICCPR Human rights committee concluding observations on Nigeria in the absence of its second periodic report 29 August 2019 at Art 33. It was advised by the Human Rights Committee that prompt investigation must always be conducted and perpetrators prosecuted.

[101] As above. See also, E Udobia 'Nigeria student, who died in police custody, was tortured, autopsy reveals' 6 September 2021 *Premium Times Newspaper.* See also, A Joint Report to the Universal Periodic Review (UPR) by Prisoners' Rehabilitation and Welfare Action (PRAWA) and Network on Police Reforms in Nigeria (NOPRIN) 'Torture and extrajudicial killings in Nigeria'.

[102] 'Release presidential panel report on military's human rights abuses, amnesty international tells Nigeria government' *Sahara Reporters* 11 September 2020 http://saharareporters.com/2020/09/11/release-presidential-panel-report-military's-human-rights-abuses-amnesty-international (accessed 30 August 2021).

[103] As above.

[104] Administration of Criminal Justice Act, 2015 (ACJA) in sec 493 and in its preamble, repealed both Criminal Procedure Act (CPA) and the Criminal Procedure (Northern States) Code (CPC) which were the law in use before the enactment of ACJA. However, in sec 2(1) of ACJA it is stipulated that ACJA can only apply in federal courts and the Federal Capital territory. On this note, what laws applies to the area courts, upper area

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and the neglect to empower institutions to investigate alleged torture and make adequate provision for compensation and rehabilitation for the victims of torture.[105] While the Administration of Criminal Justice Act, 2015 (ACJA) prohibited torture,[106] it failed to provide penalties for the perpetrators. The ACJA has also fallen short because each State within Nigeria must adopt an Act before it can apply it by Nigeria's domestic legal system,[107] and refusal to incorporate the ACJA in State Law by many States meant that torture might prevail in that State. The Federal Government has made little effort to enforce the Anti-Torture Act 2017, although no incorporation at the State level is needed, as it applies by the Nigerian legal system all over the 36 States of the federation.[108] There is little awareness of the Anti-Torture Act 2017 among police and law enforcement officers.[109]

Following the ratification of the UNCAT and the OPCAT, which created an obligation for States parties to prevent torture in all territories under its control, the debate shifted to dissecting the components of these obligations and examining the effectiveness of the institutions put in place to drive the agenda to prohibit all forms of torture in Nigeria. There have been several kinds of research conducted on what comprises the obligations to prevent torture as per international treaties and how States are in compliance. As such, studies have shown that there is a gap in implementation, as the legal and institutional mechanisms put in place to prohibit torture in a place like Nigeria have not been very effective.[110] The legal

courts and magistrate courts in each State? Although the ACJA does not address these questions, arguably, ACJA would only be applicable when domesticated by the States. See also, R O Ugbe, A Urueguagi and J B Ugbe 'A critique of the Nigeria Administration of Criminal Justice Act 2015 and challenges in the implementation of the Act' (2019) *African Journal of Criminal Law and Jurisprudence* 69 at 70.

[105] UN Human Rights Council UPR Briefing Note: 'Torture and detention in Nigeria' (2018) *irct.org.*

[106] Sec 8(1)(b) of ACJA.

[107] D N Wanjoku 'Overview of the administration of criminal justice act and laws' (2020) *Rivers State Judiciary* https://nji.gov.ng/wp-content/uploads/2020/11/Overview-of-the-Administration-of-Criminal-Justice-Act-and-Laws.pdf (accessed 5 July 2021). 'it is a known fact that about fifteen or more States have domesticated their own Administration of Criminal Justice Law, and as such would have several Unique Codifications of their respective Unique Laws tailored to suit their States Criminal Jurisprudence.' The problem that arises from non-domestication of ACJA by States would lead to lack of uniformities in law.

[108] Chapter 8 of the Constitution of Nigeria, 1999, Schedule two, Part one: Implementation of treaties falls under the exclusive rule of the National Assembly; thus, it applies throughout the 36 States of the Federation. See the 'In initial dialogue with Nigeria, experts of committee against torture ask about the fight against terrorism, and conditions of detentions' 17 November 2021.

[109] 'Activists seek enforcement of anti-torture law' *Premium Times* 6 May 2021 https://www.premiumtimesng.com/regional/ssouth-west/459872-activists-seek-enforcement-of-anti-torture-law.html (accessed 5 July 2021).

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mechanism comprises the Constitution, the Anti-Torture Act of 2017, the National Human Rights Commission (Amendment) Act 2010 and the Administration of Justice Act 2015, while the institutional mechanism includes the National Committee on Torture, the National Human Rights Commission, X-Squad, the Police Commission and the Human Rights Desk. As such, this study examines the effectiveness of the legal and institutional frameworks prohibiting torture in Nigeria.

1.7 RESEARCH QUESTIONS

The main question that this research seeks to answer is: To what extent has the Nigerian government domesticated its obligation to prohibit torture under its domestic law and how effective are the institutions prohibiting torture in Nigeria?

The main question gives rise to the following sub-questions:

1. What are the standards and obligations imposed by international treaties prohibiting torture on member States?
2. What are the legal and institutional frameworks prohibiting torture in Nigeria?
3. Do the objectives and responsibilities of these legal and institutional frameworks adhere to international obligations?
4. What are the challenges impeding the effective functioning of these legal and institutional frameworks prohibiting torture in Nigeria?
5. What are the implications of having ineffective institutions prohibiting torture in Nigeria?

1.8 RESEARCH OBJECTIVES

The aim of this research is to analyse Nigeria's compliance with international human rights standards concerning the prevention and prohibition of torture, punishment of perpetrators, and provision of redress to victims. On this note, the objectives include:

1. To analyse international human rights instruments and standards against torture and their implications for states' obligations;

[110] AFR 44/005/2014 *Under embargo until May 13th Stop Torture* Amnesty International. See also, Torture and extrajudicial killings in Nigeria 'A joint report to the universal periodic review (UPR) by prisoners' rehabilitation and welfare action (PRAWA) and network on police reforms in Nigeria (NOPRIN). See also, Nigeria: Time to end impunity torture and other violations by Special Anti-Robbery Squad (SARS). Amnesty International Nigeria 2020 at 6.

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2. To analyse the role of international law in Nigeria's legal system and determine if these international standards are incorporated into Nigerian laws;
3. To analyse the laws and institutional mechanisms against torture in Nigeria and assess their adherence to international human rights obligations, as well as identify any challenges hindering effective implementation;
4. To assess the prevalence of torture in Nigeria and highlight the extent of the issue, particularly due to insufficient funding and inadequate functioning institutions; and
5. To draw conclusions from the research and propose recommendations for ways in which Nigeria can eliminate torture.

1.9 SCOPE

Several international treaties prohibit torture; but this research will focus on UNCAT, OPCAT and ACHPR. The obligations under these treaties are highlighted and discussed in relation to what is obtainable and practised in Nigeria. On this note, this research adopts a human rights approach as it is understood that torture is not only a human rights issue, but also a political, judicial, and moral-religious issue.

From a political perspective, politicians and government have resorted to torture as a means to an end. The political reason may be that the government may be reluctant to investigate torture and, sometimes, reluctant to invest in the institutions available to prevent torture. Also, politically motivated torture is common, for example when torture is applied to those in detention centres who are viewed as the 'enemies of the State'. This mostly occurs in circumstances where the State puts forward the position that it has to fight a potential threat to national security.

Judicial purpose occurs whereby the accused is made to confess so as to allow the judge to be able to convict the accused person based on his or her own words. Section 29(1) of Evidence Act 2011 provides that a 'confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court' in pursuance of this section.

From a moral perspective, the 'ticking time bomb' analogy aims to support the moral assumption that torture can at least sometimes be justified.[111] The 'ticking time bomb'

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[111] The Association for the Prevention of Torture 'Defusing the ticking bomb scenario: Why we must say no to torture, always' 2007 6. See also, Shale (n 46 above).

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provides an assumption that 'a specific planned attack is known to exist, the attack will happen within a very short time, the attack will kill a large number of people, the person in custody is a perpetrator of the attack, torturing the person will obtain the information in time to prevent the attack, no other person means exist that might get the information in time, no other action could be taken to avoid the harm'.[112] The torturer, who is a State agent, assumes that he or she needs to get information to save lives and nothing more. The assumption presents a moral argument that could be used to justify torture. However, this argument can be refuted based on the position that the prohibition of torture is absolute, and allows for no exception.

UNCAT, OPCAT and ACHPR require member States to prohibit torture absolutely and to ensure that they avail institutions entrusted with such responsibilities with the resources and legislative backing required to monitor and prevent the use of torture.

To understand how far the Nigerian Government has implemented these treaties, this research focuses on the legal and institutional frameworks implemented to address and eradicate torture as specified by these treaties. The effective functioning of these legal and institutional mechanisms is crucial as it is an important stage of implementation in the fight against torture, as well as a key driver in the actualisation of the obligations contained in these treaties.

This study defines torture as contained in article 1 of UNCAT, article 5 of ACHPR and section 2 of the Nigerian Anti-Torture Act of 2017. While the Nigerian Anti-Torture Act of 2017 adopts a broad definition, this research focuses on all the elements of torture as specified in UNCAT article 1.

1.10 METHODOLOGY

In a study of this type, it is important to rely on other academic studies and diverse material from other sources that seek to answer related research questions. Thus, this research is conducted through a desktop study and will make use of:

1.10.1 Descriptive Approach

This research makes use of the descriptive approach. This enables the identification of obligations against torture, as contained in international human rights instruments. It also

[112] As above.

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enables the review of Nigeria's domestic Laws relating to the prevention, prohibition, and punishment of torture and its obligations as adopted in various international treaties, as well as the extent of torture in Nigeria and the reasons for it.

1.10.2 Analytical Approach

The research is conducted using an analytical approach to determine the relationship between international law and the legal system of Nigeria. It also includes the analysis of case law in Nigeria and studies in regional and international arenas such as treaties.

The activities of the National Human Rights Commission, National Committee Against Torture, Police Commission, Human Rights Desk and X-Squad are examined in reference to their legislation, reports published, cases law, and various official statements to determine whether all these institutions are in conformity with the provisions of treaties prohibiting torture and whether they are acting by these treaties' obligations.

More so, sources like the NPMs' annual reports, SPT annual reports, publications by the Association for the Prevention of Torture (APT), UNCAT General Comments, and concluding observations are used.

In giving an adequate answer to the above questions and the challenges associated with the adequate implementation of international standards or the problem of torture in Nigeria, this study will draw from various sources, including human rights laws, international law, sociology, political science. It also follows the work of renowned authors and professors, such as Frans Viljoen,[113] Manfred Nowak,[114] Richard Carver and Lisa Handley,[115] who have published in the area of State obligations to protect human rights, especially to prohibit torture and make available redress or repatriation to victims. Other sources, like the general comments, concluding observations, special rapporteur reports and NGO reports, like those of Amnesty International and Human Rights Watch, and the Association for the Prevention of Torture, will be used. This is based on the fact that Amnesty International, PRAWA and

[113] Viljoen & Odinkalu (n 35 above).

[114] Nowak (n 3 above). See also, M Nowak *Torture: An expert confrontation with an everyday evil* (2018). See also, M Nowak UN Human Rights Council. 'Report of the Special Rapporteur on torture and other cruel, in human or degrading treatment or punishment: Addendum A/HRC/13/39/Add.5 5 February 2010. M Nowak, 'What practices constitute torture? US and UN standards' (2006) 28 (4) *Human Rights Quarterly* 809. M Nowak, M Birk, and G Monina *The United Nations Convention Against Torture and its Optional Protocol: A commentary* (2019). See also, M Nowak & E McArthur 'The distinction between torture and cruel, inhuman or degrading treatment' (2006) 13 (3) *Torture* 147.

[115] R Caver & L Handley *Does torture prevention work?* (2016).

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Human Rights Watch have conducted extensive research that involves direct interviews with victims of torture in Nigeria. The research conducted by these three organisations was conducted nationally.

1.11 LITERATURE REVIEW

Nigeria is a party to numerous international and regional human rights treaties prohibiting torture, such as the International Convention for the Protection of All Persons from Enforced Disappearance,[116] the African Charter on the Rights and Welfare of the Child,[117] and the treaties mentioned in section 1 of this proposal. UNCAT is the most detailed treaty, prohibiting and preventing torture and providing for punishment of perpetrators and redress for victims. These obligations are also found at the regional level, such as in the African Commission's Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines or 'RIG').[118] They were adopted by the African Commission as the regional human rights body promoting the prohibition of torture in accordance with article 5 of the ACHPR.

On this note, this study focuses on the domestic incorporation of international laws prohibiting torture in Nigeria. Amid all the international human rights standards and national laws prohibiting torture, the use of torture in Nigeria persists. The research explores the debate surrounding the obligations of States against torture.

Several types of research have been conducted on the use of torture and the need to implement international treaties prohibiting torture in Nigeria. However, there is little research that has examined the effectiveness of the domestic incorporation in Nigeria of international human rights treaties prohibiting torture. This study seeks to fill the gap on the extent to which Nigeria legal system has complied with its international obligations against torture.

The literature review is divided into two sections. The first section addresses the international human rights standard against torture. This is important to examine, as the substantial part of

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[116] International Convention for the Protection of All Persons from Enforced Disappearance, 2006.

[117] African Charter on the Rights and Welfare of the Child *https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf* (accessed 8 June 2021).

[118] Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa; Practical Guide for Implementation *https://www.achpr.org/public/Document/file/Any/rig_practical_use_book.pdf* (accessed 8 June 2021).

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this research deals with international law, especially the obligations required by international treaties that have been ratified. The second section explores existing literature and identifies gaps that this study addresses.

1.12 EXISTING LITERATURE AND GAPS

Human Rights Watch's 2015 investigation spanned Lagos, Enugu and Kano, which are one of the three major cities in Nigeria.[119] It was reported that the widespread of torture is a daily routine among members of the NPF. The report argues that torture is being perpetrated by inspectors, senior police officers, divisional heads and deputy superintendents of police. The report argues that both local and State police stations always have an officer in charge of torture with a room dedicated to and equipped for torture. Although the report focuses on the use of torture by the NPF, it was argued that torture is administered on suspects held by other law enforcement agencies like EFCC, NDLEA. Piwuna argues that the various forms of torture used by the men of the NPF demonstrates the prevalence of torture in Nigeria despite its prohibition.[120] Amnesty International documented 82 cases of torture from 2017 to 2020 (when the Anti-Torture Act was promulgated) by various security agencies in which several forms of torture were being used on victims. These forms vary from beating, kicking, burning of cigarettes, mock executions, hanging punching, sexual violence, near-asphyxiation with plastic bags and waterboarding.[121] The United States' 2020 country reports on human rights practices in Nigeria affirmed the use of torture by several security agencies in Nigeria.[122] The network on police reform in Nigeria argues that personnel of the NPF routinely makes use of torture, like beating and rape, and that they rely on torture as a principal means of investigations.[123] Aborisade and Obileye, drawing on the collection of data from arrestees,

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[119] Human Right Watch 'Rest in pieces police torture and deaths in custody in Nigeria' https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria (accessed 26 September 2021).

[120] MA Piwuna 'The acts of torture and other forms of ill-treatment of citizens by some institutions and the role of criminal justice system in Nigeria' (2015) 5 (10) *International Journal of Humanities and Social Science* 208.

[121] Amnesty International 'Nigeria: Time to end impunity torture and other violations by special anti-robbery squad (SARS)' (2020) https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4495052020ENGLISH.pdf (accessed 28 September 2021).

[122] United State Department of State '2020 country reports on human rights practices: Nigeria' https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nigeria/ (accessed 28 September 2021).

[123] Network on Police Reform in Nigeria 'Criminal force: Torture, abuse, and extrajudicial killings by the Nigeria police force' *Open Society Justice Initiative* 2010.

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report that 59% agreed that members of the NPF make use of batons during an interaction, while 58% agreed that knives and other sharp objects are used on them in other to get a confession before a court hearing, 58% agreed that the use of wire, rope and horse whips is used on them during investigations, in addition to electric irons and boiling rings, while another 17% agreed that the member of the NPF hangs them into the air during investigations.[124] The UN Special Rapporteur on Torture reports further on the situation of torture in Nigeria. His argument spans treaties and national laws preventing torture in Nigeria; he concludes that corporal punishment is not a lawful exemption to torture and concurs that torture is being perpetrated by several law agencies in various States detentions centres.[125]

Nwapi, who discussed the application of international treaties in Nigerian and Canadian courts, argues that Nigeria makes use of the dualist approach, in which both the national and the State legislature has a role to play in domesticating international treaties. However, he argues that the dualist approach does not extend to the rule of customary international law, whether or not they are incorporated into treaties.[126] Diebo, who wrote a dissertation on the implementation and application of treaties in Nigeria, elaborates on how treaty becomes part of Nigerian law.[127] He concurs with Nwapi that Nigeria makes use of the dualist approach. He went further to analyse the place of treaties in the hierarchy of Nigerian law. What is noteworthy in this study is the discussion on the implementation of a treaty which ranges from treaty reporting to all the processes involved. However, Okebokola argues that the dualist approach is a façade. Okebolola's argument is based on the application of customary international law that forms part of Nigerian law without any process of domestication from the National Assembly.[128] These authors have established the ratifications and domestications

[124] RA Aborisade and AA Obileye 'Systematic brutality, torture and abuse of human rights by the Nigeria police: Narratives of inmates in Ogun State prisons' (2018) 15 *The Nigeria Journal of Sociology and Anthropology* 1 at 10.

[125] M Nowak 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment on punishment' (4 to 10 March 2007) *Human Rights Council Seventh Session*, Mission to Nigeria.

[126] C Nwapi, 'International treaties in Nigerian and Canadian Courts' (2011) 19 *African Journal of International and Comparative Law* 38 at 39.

[127] LC Diebo 'Implementation and application of treaties in Nigeria' unpublished LLM thesis, University of Lagos, 2010.

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process in Nigeria but what is not yet evident is the effectiveness of the domestication of international standards against torture in Nigeria. The purpose of this section is to show a better understanding of international treaties as part of Nigerian law and show a better understanding of section 12 of the Constitution of Nigeria,1999. A substantial part of this thesis analyses treaties as the background to the study.

Donnelly argues that 'the struggle for human rights will be won or lost at the national level'.[129] However, in a federal State like Nigeria, the struggle against torture and any human rights abuses could best be won at the State or institutional level. There are several oversight mechanisms in each of the institutions /law enforcement agencies that can hear complaints and see to the eradication of torture in Nigeria. When Nigeria acceded to OPCAT,[130] it duly installed a 'national preventive mechanism', also known as the NCAT, as required. Article 18 of the OPCAT spells out the duty of the States towards a functioning national preventive mechanism. PRAWA reports some of the challenges preventing NCAT from actualizing its mandate.[131] Maigari in his dissertation reviewed the flaws of NCAT,[132] while Diebo argues the role and functions of the NHRC according to its mandate,[133] Nnaji argues in her thesis that the NHRC has been unable to perform its duties as there are still several unlawful detentions by the NPF.[134] The NPF have an internal complaints service − for example, the X-Squad mandated to investigate alleged corruption and misconduct by police officers. The Human Rights Desks were established to investigate illegal arrests and to ensure that detainees were not abused or subjected to torture.[135] However, they lack adequate resources and are not

[128] EO Okebukola 'The application of international law in Nigeria and the façade of dualism' (2020) 11 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 15.

[129] J Donnelly 'Post-cold war reflections on the study of international human rights' (1994) 8 *Ethics & International Affairs* 97 at 111.

[130] Nigeria acceded to the OPCAT in July 2009 *https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN* (accessed 17 June 2021).

[131] Prisons Rehabilitation and Welfare Action (PRAWA) 'UPR Briefing Note: Nigeria torture and detention in Nigeria' (2018) International Rehabilitation Council for Torture Victims.

[132] BS Maigari 'Promotion of the right to dignity of person: The need for criminalization of torture in Nigeria' unpublished LLM thesis, Central European University, 2013 59.

[133] Diebo (n 127 above).

[134] NE Nnaji 'A comparative legal analysis of human rights norms and institutions in Nigeria and Canada, with a particular focus on the issue of unlawful arrest and detention' unpublished LLM thesis, University of Manitoba, 2016.

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independent.[136] The Police Service Commission (PSC) was established to secure the discipline of the police. Whilst it has identified cases of police abuse, it does not refer cases to Court, despite having the power to refer cases to prosecutors.[137] It is only when the case of criminal liability is serious,[138] perhaps having attracted public attention, that the PSC invokes its power to act. The UN Special Rapporteur argues that both oral and written complaints can be made against the police by members of the public to various channels like the Police Complaint Bureau, Human Rights Desks, Police Service Commission and the NHRC. The report briefly mentions the challenges associated with the NHRC, which is one of the reasons hindering most of the institutions from performing according to their mandate.[139] The purpose of this section is to understand the effectiveness of the institutions responsible for prohibiting torture in Nigeria.

International treaties assert the right to redress for the victims of torture. Article 14 of CAT obliges States parties to ensure that their legal systems avail redress for victims of torture. This is not limited to compensation but includes rehabilitation.[140] General Comment 3[141] aligns with the principles established in 'Basic principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines)'[142] specifying the type of redress available by way of restitution, compensation, rehabilitation and the guarantees of non-repetition.[143] In affirming article 5 of the ACHPR, paragraph 9 of

[135]As above

[136] Nigeria: 'Complaints mechanisms available for cases of police misconduct, including effectiveness' (2013-October 2014) *https://www.refworld.org/docid/54816ad04.html* last (accessed 24 June 2021).

[137] As above.

[138] As above.

[139] Nowak (n 125 above).

[140] Art 14 of CAT. See also, General Comment number 3 (2012): 'Implementation of article 13 by States parties.'

[141] Para 6 of General Comment number 3 (2012) implementation of article 13 by States parties. 'It is the duty of the State to make sure that the redress available to the victim is proportionate to the gravity of the violation committed against the victim.'

[142] United Nations 'Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', GA res 60/147. Art 14 to 24 set out States' obligations regarding redress. *https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx* (accessed 25 June 2021). See also, African Union 'Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa' (2003) Art, C.

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General Comment Number 4 obliges State parties to avail effective redress to victims,[144] requiring appropriate legislation and the establishment of 'quasi-judicial, administrative, traditional and other processes'. Section 46 of the Constitution of Nigeria, 1999, allows anyone with an interest in human rights to institute proceedings in the Federal or State High Court.[145] It has been reported that the National Human Rights Commission and the court have the power to award redress to victims, however, most of the redress awarded are only monetary compensations.[146] Obiagwu argues that 'there are low rates 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, [and] this has created an atmosphere of impunity and helplessness for victims.'[147] Dada wrote on the judicial and extrajudicial remedies available in Nigeria, and asserted that victims of human rights violation can seek redress from the Court as provided in section 46(1) of the Constitution of Nigeria, 1999,[148] however, he argues that, even if the victims get adequate redress at the court, the implementation of the order or redress might be cumbersome as the judiciary solely depends on the executive to enforce its judgement.[149] The UN Special Rapporteur on Torture has reported in the past that victims of torture have access to redress including to receive compensations as enshrined in the Constitution of Nigeria, 1999. However, the Rapporteur failed to discuss other types of redress available to victims except for a brief account of the impediments to the actualisation of compensation as a redress by victims.[150] On this note, a study of the Anti-Torture Act 2017 shows that there is no

[143] See also, General comment No. 3 paras 8 to 18, and United Nations Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA res 60/147 articles 15 to 24.

[144] General Comment number 4 on the African Charter on Human and Peoples' Rights: 'The right to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment' (Art 5).

[145] Sec 3(e) Fundamental Rights (Enforcement Procedure) Rules (2009).

[146] Nigeria: 'Complaints mechanisms available for cases of police misconduct, including effectiveness' (2013-October 2014) *https://www.refworld.org/docid/54816ad04.html* last (accessed 24 June 2021).

[147] CE Obiagwu 'Understanding and applying the provisions of the Anti-Torture Act 2017' 15 paper presented for the legal defence action project. See also, ICCPR Human rights committee concluding observations on Nigeria in the absence of its second periodic report 29 August 2019 at Art 33, where it was advised that there must be adequate remedies for the victims of torture including rehabilitations.

[148] JA Dada 'Judicial remedies for human rights violations in Nigeria: A critical appraisal' (2013) 10 *Journal of Law, Policy and Globalization* 1 at 5.

[149] As above 11

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provision available for witness protection. This section will capture the compatibility of the Anti-Torture Act 2017 with international treaties prohibiting torture.

1.13 CHAPTER OVERVIEW

This research is divided into eight chapters. The present chapter (Chapter one) provides the background to the thesis, which includes the clarification of terms, research question and the methodology used in the research. It also provides a general summary of the prevalence of torture in Nigeria and sets out the other chapter synopsis.

Chapter Two describes the process of ratification in Nigeria. While it is important to note how most of these treaties are ratified by the executive, it is important to understand section 12 of the Constitutions of Nigeria, 1999. This will shed more light on the system of ratification of treaties and national versus State assembly roles.

Chapter Three analyses the compatibility of the Anti-Torture Act 2017 with the provisions of UNCAT and OPCAT. This chapter will proceed with an examination of Nigeria's legal system to determine whether what is not covered by the Anti-Torture Act 2017 is addressed under another statutory provision with the same legal meaning under UNCAT.

Chapter Four analyses the Subcommittee on the Prevention of Torture, its mandate and its roles, including its ability to cooperate with its national counterpart, the National Preventive Mechanism. This chapter aims to shed light on the cooperation with the National Preventive Mechanism and lay out the requirements of OPCAT when establishing an NPM in a country like Nigeria.

Chapter Five analyses the mechanism available to eradicate torture in Nigeria. While OPCAT has its requirements, this chapter will analyse the relevant institutions, namely the National Committee on Torture, Police Service Commission, Human Rights Desk, National Human Rights Commission, X-Squad, Public Complaints Commission roles, with regard to their responsibilities and their effectiveness in practice.

Chapter Six examines the effectiveness of the Anti-Torture Act of 2017. While chapter 3 analyses the compatibility with UNCAT and OPCAT, this part examines if there are circumstances where the Anti-Torture Act has been used. The main purpose of this section is

[150] Nowak (n 125 above).

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to understand if the Act has been implemented in practice or simply regarded as an ineffective statute.

Chapter Seven examines the challenges impeding the effective functioning of the legal and institutional frameworks prohibiting torture in Nigeria. It concludes with an analysis of the implications of having ineffective institutions prohibiting torture.

Chapter Eight provides conclusions and recommendations for the study. The recommendations will suggest the steps Nigeria can take to effectively implement both the international human rights standards on preventing and repressing torture and the Anti-Torture Act.

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CHAPTER TWO
TREATY RATIFICATION AND DOMESTIC INCORPORATION OF THE INTERNATIONAL LEGAL PROHIBITION OF TORTURE IN NIGERIA

2.1 INTRODUCTION

Article 2 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[151] (UNCAT) obligates States parties to take judicial, administrative and legislative measures to prevent torture. Many States have provisions that prohibit torture in their respective constitutions or criminal law. In most cases, these provisions do not lead to a comprehensive jurisprudential anti-torture framework as required under UNCAT.[152] Article 26 of the Vienna Convention on the Law of Treaties (Vienna Convention) recalls the obligations on each State to ensure that their domestic laws are compatible with the obligations under any treaty it has ratified.[153] However, the way each State incorporates these international obligations into its national law depends on the legal system of the State itself.[154] The Committee against Torture (CAT)'s General Comment 2 directs States parties to eradicate any legal impediment that could hinder the eradication of torture in their laws and to regularly review national legislation with a view to eradicating torture.[155]

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[151] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, Entry into force 26 June 1987, in accordance with Art 27(1) United Nations, Treaty Series, Vol. 1465, p. 85. A total of 173 States are party to the Convention. Nigeria signed on 28 July 1988 and ratified on 28 June 2001

[152] The 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended), Cap C23, LFN,2004 (1999 Constitution) and the Administration of Criminal Justice Act of 2015, See also, Article 29(d) of the Kenya's Constitution of 2010. See also, Art 15 (2)(a) of the 1992 Constitution of Ghana. All these laws prohibited torture; however, they do not provide for effective prevention or punishment.

[153] Art 26 of the Vienna Convention on the Law of Treaties 1969. Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, treaty series, vol 1155, p. 331. There were 116 States parties as of writing. Nigeria signed on 23 May 1969 and ratified on 31 July 1969, See also, Reference: C.N.141.1969.Treaties-1.

[154] Similarly to article 2 of the UNCAT, article 1 of the African Charter on Human and Peoples' Rights (African Charter) obligates States to adopt legislative or any other measures to give effect to the rights proclaimed in the charter. Adopted on 1 June 1981 and entered into force on 21 October 1986. 54 States are party to the African Charter. Nigeria signed on 31 August 1982 and ratified domestically on 22 June 1983, depositing its instrument of ratification on 22 July 1983.

[155] Para 4 General Comment no 2: Implementation of article 2 by State Parties: CAT CAT/C/GC/2.

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More importantly, to have effective legislation that prohibits torture in the legal system of each State that has ratified UNCAT, the Convention against Torture Initiative (CTI)[156] commissioned the Association of the Prevention of Torture (APT) to draft guidelines on anti-torture legislation.[157] The guide presented by the APT aims to assist legislators when drafting anti-torture legislation, and specifies the necessary provisions that need to be incorporated in State laws prohibiting torture. It includes the definition of torture, identifies modes of liability, and describes the content of the exclusionary rule, jurisdiction, complaints, investigations, prosecutions, extradition, amnesty, non-refoulement, immunity, redress and statute of limitations. The argument that will be advanced in this chapter is that the international treaties that prohibit torture have been ratified and domesticated in Nigeria and indeed are applicable in all territories of the Federation. Further, that international treaties that have not yet been domesticated still have effect in the Nigeria legal system, particularly if they pertain to human rights.

2.2 CHAPTER SYNOPSIS

This chapter is divided into three parts. The first part discusses the ratification of international treaties prohibiting torture in Nigeria. UNCAT, OPCAT and the African Charter are international and regional treaties; however, they can only have a direct effect in Nigeria after being ratified by the State of Nigeria. While the executive is tasked with the procedural ratification of treaties, this section discusses in detail the specific arms of the Nigerian government obligated to ratify these treaties.

The second part of the chapter examines treaty domestication process(es) in Nigeria. It discussed theories of domestication and the provision of the 1999 Constitution on how treaties should be domesticated in Nigeria. The section analyses the position of the 1999 Constitution on what falls under the exclusive legislative and residual power of both the

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[156] The CTI is an initiative of the government of Chile, Denmark, Fiji, Ghana, Indonesia and Morocco. The aim of the CTI is to help any State that has ratified UNCAT to successfully implement its provisions. The most ways the CTI helps is through direct bilateral and multilateral diplomacy with other countries who wishes to implement UNCAT. CTI further operates by sharing and exchanging national practices among States and sometimes through hosting of activities.

[157] Convention Against Torture Initiative CTI2024.0RG 9. The guide is to assist legislatures in drafting, however, it does not have any binding effect nor are there any penalties for any State that did not follow the guide.

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national and (sub-national) State assemblies and discusses the hierarchy of domesticated international treaties in Nigeria.

However, when a treaty has not been ratified or domesticated, the question remains: Will that treaty be applicable in Nigeria, especially a human rights treaty such as UNCAT that prohibits torture? To answer this question, the third part of the chapter provides a detailed legal analysis of the status of non-ratified and non-domesticated treaties in Nigeria. The analysis of the application of customary international law in Nigeria is also provided and some of the international soft law instruments used as aids to interpretation of the law in national courts are examined.

2.3 THE PROCESS OF RATIFYING INTERNATIONAL TREATIES IN NIGERIA

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (1999 Constitution), is silent on who in Nigeria can legally sign,[158] approve,[159] accede[160] or ratify[161] a treaty on behalf of the Federal Republic. There has been a debate between the National Assembly and the Executive on who can ratify the treaty on behalf of Nigerians.[162] However, in practice, ratification has always been done by the executive arm of the Government, which bestows the duty on the Ministry of Foreign Affairs with legal assistance from the Federal Ministry of

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[158] In circumstance where a treaty is not ratified, or approved, signature establishes that the State is bound by the treaty. 'Most bilateral treaties dealing with more routine and less politicized matters are bought into force by definitive signature, without recourse to the procedure of ratification.' The signature can be appended by a representative under the condition that the signature is confirmed by the representative State. See also, Art 12 and 12(2)(b) of the Vienna Convention on the laws of treaties. See also, United Nations Treaty Collection 'Glossary of terms relating to treaty actions' *https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml* (accessed 5 January 2022).

[159] Acceptance has the same legal effect as ratification of a treaty. See Art 2(1)(b) and 14(2) of the Vienna Convention on the law of treaties 1969.

[160] Accession is the act in which the State accepts to become a party to a treaty without needing to sign first. This implies that the treaty has already entered into force. See also, Art 15 of the Vienna Convention on the law of treaties 1969.

[161] Ratification is when a State formally declares its wish to be bound by a treaty. See articles 14(1) and 16 of the Vienna Convention on the law of treaties 1969.

[162] 'Lawmakers threaten to overturn Bakassi agreement' *The New Humanitarian*. *https://www.thenewhumanitarian.org/news/2007/11/23/lawmakers-threaten-overturn-bakassi-agreement* (accessed 5 January 2022). It was argued that the former President Olusegun Obasanjo breached the 1999 Constitution when he entered into a binding bilateral agreement with Cameron without consulting the National Assembly, However, there is no provision in the 1999 Constitution that requires the President to consult before entering into a treaty or agreement. More details on this discussion in relation to the Green Tree Agreement will be shown below.

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Justice.[163] This is so, even though many treaties only allow accession to non-signatory States after their entry into force.[164] The same applies to Nigeria in which treaties are acceded to after entry into force.[165] Moreover, whether the treaty was ratified, signed or acceded to, the Constitution of Nigeria, 1999, provides that any treaty (including human rights treaty) cannot have legal effect in Nigeria unless it has been domesticated through an act of parliament, usually an enactment.[166]

Nigeria constitutionally allows for separation of powers between the three arms of government. One of the most important functions of the separation of powers is to assign particular functions to each organ of State and direct how these functions are discharged. The ratification of treaties forms an important aspect of a nation's foreign policy and diplomatic relations. External obligations need to be executed by the State. It is important to understand which organ is responsible for the ratification of treaties in Nigeria.

As a Federal State, Nigeria's central (Federal) Government is at the helm of national affairs and controls State affairs. Important features of a federation are autonomy and devolutions of powers.[167] In *Attorney General Lagos State v Attorney General, Federation,*[168] the Supreme Court was of the view that each State Government is autonomous with no subordination.[169]

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[163] More details will be provided below when discussing the Treaties (Making Procedure etc) Cap T Vol. 16 LFN 2004. The ratification referred to in Nigeria does not mean ratification of treaties alone; it also refers to the act of negotiations done by the executive arm of the government without including the National Assembly.

[164] Many treaties now allow accession prior to entry into force.

[165] There are some circumstances where Nigerian government acceded to or approved or ratified treaties. For instance, Nigeria acceded to the Vienna Convention for the protection of the Ozone layer, adopted at Vienna, 22 March 1985, entered into force 22 September 1988

[166] Sec 12(1) of the Constitution of Nigeria, 1999. More detail will be provided when discussing domestication of treaties in Nigeria.

[167] Sec 2(2) of the Constitution of Nigeria, 1999.

[168] (2003) LPELR-620(SC).

[169] The Constitution of Nigeria, 1999, specifies each (Federal and State) governmental functions. It did not allow for State governments to participate in matter of federal characters, arguably, because members of the National Assembly are from different States of the federation. The second schedule provides that only the federal government can legislate on the exclusive legislative list while in part two, the concurrent legislative list shows the extent of federal and State legislative powers. This shows that both federal and State governments can make laws on the 12 items listed in part two. These items grant exclusive powers to both the federal and State governments by specifying each functions and limitations. See *A.G Federation v A.G Lagos* (as above).The supreme court held that the State has the power to make laws or regulations for its State under the residual power and, the National Assembly cannot enact law that is in contravention to the Constitution by imposing

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Thus, each State has the right to exercise its own will in accordance with the Constitution of Nigeria, 1999, free from receiving directions from other State Governments.[170] The relationship between the Federal Government and each State Government is delineated in the Constitution of Nigeria, 1999, which spells out each State's jurisdictional powers.[171]

The Constitution of Nigeria, 1999, delineated the powers of the Federal and State Governments.[172] It contains two legislative lists: the Exclusive Legislative List and the Concurrent Legislative List,[173] while functions that are not expressly listed in the two Legislative lists make up the residual list.[174] The Exclusive Legislative List sets out the Legislative power of the Nigeria National Assembly (National Assembly), while the Concurrent Legislative List contains the legislative powers that are exercised by both the National and State Assemblies.[175] The residual matters are matters that do not fall under the

additional responsibility on the State. The National Assembly can only make planning laws for the Federal Capital territory (Abuja) by using its residual power.

[170] Chapter one, Part II of the Constitution of Nigeria, 1999.

[171] As above, See also, *AG Abia v AG of the Federation & ors (*2007) 6 NWLR 200 at 350. See also, sec 4 of the Constitution of Nigeria, 1999, which bestows the legislative power of the Federal government on the National assembly. The National Assembly is bestowed with the power to makes laws for the peace, order and good governance of the federation and matters that falls under the Exclusive Legislative list in part 1 of the Constitution of Nigeria, 1999 and Concurrent Legislative list in the first column of part II the second schedule of the Constitution of Nigeria, 1999. While each State house of assembly is bestowed with the power to make laws for the State which include any matter not included in the exclusive list but included in concurrent legislative list as set out in part II of the second schedule of the constitution. In sec 5 of the Constitution of Nigeria, 1999, the executive power of the Federation is vested in the President which can be exercised either by him or Vice president, Ministers, or Officers of the public service of the Federation. While the State executive power is vested on the Governor of the State which can either be exercised by him, deputy governor, commissioners or public service officers of the State. In subsection 5(3), the executive power of the State shall not be exercised in any way to impede or prejudice the exercise of the Federal Executive power of the Federal government.

[172] There are 36 States and one Federal Capital Territory in Nigeria. See Part 1, sec. 3(1) that listed all the 36 States of Nigeria as: 'Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe, and Zamfara'.

[173] Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Cap C23, LFN, 2004. The legislative list guides both the National Assembly and State House of Assembly. See also, the Interpretation in Part IV in sec 318 (1) of the Constitution of Nigeria, 1999. 'In this Constitution, unless it is otherwise expressly provided or the context otherwise requires, Concurrent Legislative list means the list of mattes set out in the first column in Part II of the second schedule to this constitution with respect to which the National Assembly and a House of Assembly may make laws to the extent prescribed, respectively, opposite thereto in the second column thereof: while Exclusive Legislative list means the list in part 1 of the second schedule to this constitution'. The Federal executive arm is regulated in sec 5(1) and the State in Sec 5(2) of the Constitution of Nigeria, 1999 and in the third schedule, Part 1 listed the federal executive bodies as established in sec 153 while Part II provides the State's executive bodies as established in sec 197 of the Constitution of Nigeria, 1999.

[174] *A.G. Federation* v *A.G. Lagos State* (2013) LPELR-20974(SC) P.93, paras A-G.

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Exclusive Legislative List or the Concurrent Legislative List; only the State House of Assembly can legislate on these matters.[176] Okeke and Anushiem hold the view that the ratification of treaties falls under the exclusive list as it is an 'external' responsibility.[177] The same position was maintained in *Attorney General, Federation v Attorney General, Abia State*,[178] where Ogundare JSC hold the view that the conduct of external affairs falls under the Exclusive List, which is the function of the Federal Government.[179] What is apparent in the Constitution of Nigeria, 1999, is the implementation of treaties.[180] In contrast, Nwabueze asserts that treaty ratifications fall under the functions of the executive arm of the Federal Government.[181] The same was affirmed in *Abacha v Fawehinmi,*[182] where the Supreme Court cited *Higgs v Minister of National Security*[183] where it was said that 'in the law of England and Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown'.[184]

[175] Sec 4(4)(a) and (7)(b) of the Constitution of Nigeria, 1999. The common law doctrine of 'covering the field' specifies that where there is dispute between legislation of the National Assembly and the State House of Assembly, the National Assembly prevails. Sec 4(5) of the Constitution of Nigeria, 1999.

[176] *AG of Ogun State v Abeniagba* (2002) Vol. 2 WRN 52 77.

[177] CE Okeke and MI Anushiem 'Implementation of treaties in Nigeria: Issues, challenges and the way forward' (2018) 9(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 216 218, See also, Second Schedule, Part 1, Item 26 of the Constitution of Nigeria, 1999. In the view of this thesis, the provision of the second schedule on external responsibility in item 26 which shows that the National Assembly can make laws regarding any external affairs between Nigeria and other countries, arguably this regulations could only guide the conduct of the executive when ratifying treaties, However, the Executive is the only one that has the power to ratify and carries out ceremonial conduct in ratifying treaties, either multilateral or bilateral, on behalf of the federation. External affairs in this context implies matters that deals with international relations and the representation of the country. Thus, the reading of item 26 and the judgement of Ogundare, JSC, in the *Attorney General of Federation v. Attorney General of Abia & Ors,* provides settled jurisprudence that 'in exercise of its sovereignty, Nigeria from time to time enters into treaties- both bilateral and multilateral. The conduct of external affairs is on the exclusive legislative list. The power to conduct such affairs is, therefore, in the government of the federation to the exclusion of any other political component unit in the Federation'.

[178] (2002) FWLR (Pt. 102) at 92-93.

[179] (2002) FWLR (Pt. 102) at 92-93.

[180] Sec 12(2) of the Constitution of Nigeria, 1999; 'The National Assembly may make laws for the federation or any part thereof with respect to matters not included in the Exclusive legislative list for the purpose of implementing treaty'.

[181] BO Nwabueze *Federalism in Nigeria under the presidential Constitution* (1983) 6. This thesis argues that the ratification of treaties falls under the purview of the executive. This view aligns with E Egede 'Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria' (2007) 51 (2) *Journal of African Law* 249 250.

[182] *General Sanni Abacha & Ors v Chief Gani Fawehinmi* (SC 45 of 1997) (2000) NGSC 1 (28 April 2000).

[183] PC 14 December 1999.

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As explained by Professor Nwabueze, the practice of ratification of treaties and their negotiation falls under the functions of the President.[185] However, the ratification and the domestication of treaties have led to great confusion in Nigeria, as many linked the issue of ratification to domestication. This confusion was demonstrated by the members of the National Assembly against the former President, Olusegun Obasanjo, where he was challenged on his failure to consult before the ratification of the 'Green Tree Agreement'.[186] The main contention regarding this 'Green Tree Agreement' was that the National Assembly of Nigeria, in reliance on section 12 of the Constitution of Nigeria, 1999,, argued that the former president, President Obasanjo, acted 'unconstitutionally' by ratifying the 'Green Tree Agreement' without the involvement of the National Assembly in the ratification process.[187] The 'Green Tree Agreement' is an example of an international treaty whose implementation falls under the National Assembly.[188]

Nevertheless, it has been suggested that the President may alternatively delegate duties to his subordinate, as provided for in section 5(1)(a) of the Constitution of Nigeria, 1999. The section vests the executive powers of the Federation in the President and allows that the power be exercised by him or through the Vice President, or Ministers of the Federation or Officers in the Public Service under the Federal Government. Egede holds the view that the President or any of the subordinates acting on his behalf do not need to involve members of the National Assembly in making treaties, and the State Government may not involve itself in the process, even if it is in the area of the jurisdiction of the State Government.[189]

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[184] *General Sanni Abacha v Chief Gani Fawehinmi* (n 32 above).

[185] BO Nwabueze *Federalism in Nigeria under the presidential Constitution* (1983) 6.

[186] The Green Tree Agreement gave up the Bakassi sovereignty to the Cameroonian government in compliance with the judgment of the International Court of Justice (ICJ). Although, the 'Green Tree Agreement' is not an international treaty that falls under the purview of this research, the controversy it generated is of importance. See also, International Court of Justice, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: (Equatorial Guinea intervening)* Judgment of 10 October 2002.

[187] 'Lawmakers threaten to overturn Bakassi agreement' *The New Humanitarian*. https://www.thenewhumanitarian.org/news/2007/11/23/lawmakers-threaten-overturn-bakassi-agreement (accessed 5 January 2022).

[188] As above.

[189] E Egede 'Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria' (2007) 51 (2) *Journal of African law* 249 250. See also, E Egede 'Bakassi: Critical look at the green tree agreement' http://www.nigerianlawguru.com/articles/international%20law/BAKASSI,%20A%20CRITICAL%20LOOK%20

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Omoregie asserted that the exclusion of State Government from treaty ratification and making was to avoid 'conflicts and discordance in the country's foreign policy'.[190] More than that, it is not clear whether section 12(1) of the Constitution of Nigeria, 1999, prohibits State governments from entering into treaties with another country. Nwapi asserts that the provision only envisions the ratification of a treaty between the federal government and any foreign country.[191] The question that might arise is this: What happens when a State Governor wishes to enter into a treaty on behalf of his State to the benefit of the citizen of the State? Or a State Governor, not on good terms with the President, may want to exploit the uncertainty of the Constitution of Nigeria, 1999, to enter into a treaty with another country without the aid of the Federal Government or any of its ministries. According to the International Law Commission (ILC), the right to enter into a treaty with another country by a State Government of a Federal State solely depends on the constitution of the country.[192]

The Nigerian Treaties (Making Procedure, Etc.) Act (Treaty Making Act)[193] was enacted to oversee the 'procedure and the designation of the Federal Ministry of Justice as the depository of all treaties entered into between the Federation and any other country'.[194] The Act makes the treaty-making procedure binding on any treaty that is made between the Federation and any other country in a matter under the Exclusive Legislative List as contained in the Constitution of Nigeria, 1999. Section 1(2) of the Treaty-Making Act intends to extend the person or ministry that can negotiate or sign a treaty on behalf of the Federation. It states:

AT%20THE%20GREEN%20TREE%20AGREEMENT.pdf (accessed 04 April 2022). The making of treaties entails negotiation and ratifications. In Nigeria, the National Assembly are not involved in the negotiation or ratification of any treaty except domestication which is the process of transformation of the treaty into Nigeria national laws.

[190] EB Omoregie *Implementation of treaties in Nigeria: Constitutional provisions, federalism imperative and the subsidiarity principle*. A paper delivered at the international conference on public policy (ICPP) 1-4 July 2015 in Milan, *https://www.ippapublicpolicy.org/file/paper/1433585864.pdf* ((accessed 5 January 2022).

[191] C Nwapi 'International treaties in Nigeria and Canada courts' (2011) 19 *African Journal of International and Comparative Law* 38 40. Nwapi based his argument on the claim that for a country like Nigeria that is still trying to concretise its democracy and unity, it is unsafe if a State governor enters into a treaty on behalf of Nigeria.

[192] HM Kindred *et al International law chiefly as interpreted and applied in Canada* 7th (2006) 196.

[193] Treaties (Making Procedure Etc) Act, Cap T. 20 Vol. 15, LFN 2004.

[194] BA Olutoyin 'Treaty making and its application under Nigerian law: The journey so far' (2014) 31 (3) *International Journal of Business and Management Invention* 7 11.

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> All treaties to be negotiated and entered into for and on behalf of the federation by any ministry, governmental agency, body or person, shall be made in accordance with the procedure specified in this Act or as may be modified, varied or amended by an Act of the National Assembly.

The provision seems ambiguous as it does not expressly provide for the exact person or ministry that can negotiate a treaty on behalf of the federal government. However, the Treaty-Making Act classifies treaties into three categories:

1. Law-making treaties which affect or modify existing legislation or powers of the National Assembly. These must be enacted into law.
2. Agreements which impose financial, political and social obligations or have scientific or technological importance. These must be ratified.
3. Those that deal with mutual exchange of cultural and educational facilities need no ratification.[195]

The important question to note is: If the National Assembly had ratified the UNCAT, OPCAT and the ACHPR, would it have been constitutional – especially since the Constitution of Nigeria, 1999, did not provide clear directives on what organ is responsible for ratifying treaties on behalf of the country? It would be hard to argue that it is unconstitutional were the National Assembly to decide to ratify.[196] However, practice and the Supreme Court pronouncements[197] have shown that the executive is always bestowed with the power to ratify treaties including UNCAT, OPCAT and the ACHPR. This implies that UNCAT, OPCAT and the ACHPR are rightly ratified in Nigeria without any constitutional challenge or dispute.[198]

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[195] Sec 3 of the Treaty Making Procedure Etc Act.

[196] Although the Constitution is silent, responsibility for external affairs fall under the executive arms. This aligns with the Vienna Convention on laws of treaty on who have the power of authority to represent the country in external matters. Article 7(b) of the Vienna Convention on the law of treaties stipulates that a person is considered to formally represent a State if '…it appears from the practice of the States concerned …'. 7(2)(a)(b) and (c) stipulate that the head of State, head of diplomatic missions and representatives accredited by the State are considered people who do not need to produce full powers. This implies that the National Assembly cannot ratify on behalf of Nigerians.

[197] *Attorney General of the Federation v A.G. Abia State* and 35 others (2002) 161 WRN.1 75.

[198] The ratification process was completed without any queries or debate from the National Assembly. This is unlike the situation with the Green Tree Agreement, adherence to which was expressly questioned by the National Assembly.

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Moreover, in practice, any treaty instrument that has been entered into by the Nigerian Federal Government must be deposited with the Federal Ministry of Justice (FMJ).[199] The FMJ also has the mandate to prepare and maintain a register of all treaties and must give notification of these treaties to the Federal Government printer for publication purposes.[200] It is the function of the individual ministers, departments and agencies (MDAS) with major participation from the FMJ and the Ministry of Foreign Affairs, to present a memorandum to the Federal Executive Council (FEC) for consideration of a treaty that is supposed to be ratified. Once FEC is satisfied that the memorandum prepared by the MDAS and ministers that it is in the best interest of the people of the country and government, the memorandum will be approved, and direction will be given to the FMJ to draw up the instrument of ratification. The FMJ will prepare the necessary instrument for ratification, present it to the president for signature and send it to the Ministry of Foreign Affairs for transmission to the depositary. Following the decision to ratify UNCAT by the FEC, the Ministry of Foreign Affairs was the representative of Nigeria with the full power of authority to sign and deposit the instrument of ratification. Thus the instrument of ratification of UNCAT was signed on 28 July 1988; however, UNCAT was only ratified by the Ministry of Foreign Affairs on 28 June 2001 and deposited with the United Nations Secretary-General in New York to complete the process,[201] while OPCAT was acceded to on 27 July 2009.[202] However upon deposition of UNCAT, Nigeria did not make any reservation, although article 22 of UNCAT is not applicable in Nigeria because Nigeria did not make the declaration required under

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[199] Sec 4 of the Treaty Making Procedure Etc Act.

[200] As above sec 6.

[201] United Nations Reference: C.N. 625. 2001. Treaties –11 (Depository Notification). The treaty entered into force for Nigeria on 28 July 2001 in accordance with its Art 27(2) which reads as follows: 'for each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession'. *https://treaties.un.org/doc/Publication/CN/2001/CN.625.2001-Eng.pdf* (accessed 16 March 2022).

[202] United Nations Reference: C.N.466. 2009.Treaties-8 (Depositary Notification). The treaty came into effect on 27 July 2009. The protocol entered into force for Nigeria on 26 August 2009 in accordance with its Art 28(2) which reads as follows 'for each State ratifying the present protocol or acceding it to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present protocol shall enter into force in the thirtieth day after the date of deposit of its own instrument of ratification or accession.' *https://treaties.un.org/doc/Publication/CN/2009/CN.466.2009-Eng.pdf* (accessed 16 March 2022). The Nigeria government did not make any further commitment on domestication. The commitment ends when Nigeria acceded to OPCAT. More details will be given in Chapter Four when discussing the National Preventive mechanisms.

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article 22.[203] Arguably, Nigeria did not make a reservation because UNCAT will still need to pass through the transformation process[204] before it can be applied.[205] This implies that the country would only incorporate what it deems necessary into the anti-torture framework.

As the UNCAT ratification instrument was deposited, the Nigerian Government engaged a number of civil society organisations on what should be detailed in the Anti-Torture Act. Prior to the advent of the Anti-Torture Act, Redress and the Human Rights Implementation Centre (HRIC) organised an expert roundtable discussion for the adoption of the anti-torture framework.[206] The discussion was in collaboration with the National Human Rights Commission (NHRC) and the Nigerian Law Reform Commission (NLRC).[207] This implies that, although civil society was not consulted during the ratification process or prior to the ratification of UNCAT, the engagement shows the participation of the public in the fight against torture. Although the government has ratified the UNCAT, some of the raised issues during the meeting were not incorporated into the final domesticated Anti-Torture Act 2017.[208]

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[203] Individual complaints procedure. This implies that the State party to UNCAT recognizes the competence of the Committee against torture to receive from and communicate to each individual that has claimed to have had their rights violated by being subjected to torture in that State's jurisdiction. See also, NS Rodley *The treatment of prisoners under international law* 3 ed (2009) 215. See also, United Nations Treaty body database, ratification status for Nigeria. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN (accessed 16 March 2022).

[204] Transformation system is usually associated with a dualist system like Nigeria. Where the country will need to modify the international treaties to suit its own law. This implies that the UNCAT have to go through a domestication process whereby the country will only adopt what is necessary as part of the law rather than adopting the international treaty as a whole.

[205] The process of transformation is discussed in detail under domestication of treaties in Nigeria.

[206] Redress and University of Bristol Anti-torture legislative frameworks in Nigeria: Report of roundtable discussion on the draft anti-torture bill Sheraton Hotel, Abuja 26 February 2016.

[207] As above. The NLRC was tasked to prepare an Anti-Torture bill, which must be submitted to the Attorney-General with an explanatory report.

[208] Some of the discussion was around the function of the national preventive mechanism in Nigeria, definition of victims, jurisdiction, compensation, rehabilitation, restitution, penalties and offences. While the report shows that the draft bill needed to be improved before domestication, a reading of the draft bill provide details on the composition and function of the national preventive mechanism which is excluded and in the draft bill provides that 'victims of torture have the rights to compensation, rehabilitation, restitution, satisfaction and guarantee of non-repetition' however, these are excluded from the domesticated Anti-Torture Act 2017, Although section 9 of the Anti-Torture Act allows victim to be able to access other legal remedies under existing laws, including the right to compensation'. More details is provided in Chapter Three of this work on the National preventive mechanism. See also, Redress and University of Bristol *Anti-torture legislative frameworks in Nigeria*: *Report of roundtable discussion on the draft anti-torture bill*, Abuja, 26 February 2016.

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2.4 THE DOMESTICATION OF INTERNATIONAL TREATIES IN NIGERIA

The domestication of treaties is important in a State as it determines when a treaty has fully become part of the law of the country. The interactions between international law and national laws have been categorised into three classes: dualism, monism and hybrid − a combination of dualism and monism.[209] It is the general application of international law by State either in the courts or through its legal system that defines whether a country observes the dualist, monist or hybrid system.[210] This implies that the Constitution mostly specifies the particular organ or arm of government that is responsible for the domestication of treaties. Section 12 of the Constitution of Nigeria, 1999, adopted the dualism approach. It states:

> 1. No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
> 2. The National Assembly may make laws for the federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty.
> 3. A bill for an Act of the National Assembly passed pursuant to the provisions of sub-section (2) shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

That said, the purpose of this section is to provide for the theories of treaty domestication in Nigeria, the role of the National and State Assembly and the hierarchy of domesticated treaties among national laws.

2.4.1 The Theories of Domestication of Treaties in Nigeria

Dualist States most often provide in their respective constitutions that treaties cannot be effective or do not automatically become part of the law of the nation unless they have been domesticated, usually through an act of parliament.[211] Section 12 of the Constitution of Nigeria, 1999, shows that Nigerian courts do not have the power to apply any treaties that have not been enacted into law by the National Assembly, even though the treaty has been

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[209] MN Shaw *International Law* 8th ed (2017) 97-100. See also, M Killander *International law and domestic human rights litigation in Africa* (2010) 5-12.

[210] W Mutubwa 'Monist or dualism in the application of international agreements under the South African Constitution' (2019) 3 *Journal of Conflict Management and Sustainable Development* 27 28.

[211] Sec 12 of the Constitution of Nigeria, 1999 explains that international law must be domesticated through an act of parliament enacted by the National Assembly.

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ratified by the executive and has entered into force for Nigeria. Such a treaty still needs to be domesticated by an Act of the National Assembly.[212] Dualism sees national law and international law as two separate and distinct legal systems, unlike monism, that views national law and international law as one part of the same legal system.[213] The dualist approach respects the separation of powers in constitutional States, in which it accords each organ specific power with necessary functions. As the executive signs the treaty, the legislature passes the instrument of ratification, the process of domestication then starts when the legislature incorporates the international norms and instruments into its national laws.[214]

Schaffer, who has examined the relationship between international law and national laws, raises an important question:

> Whether the rules of international law can become *per se* part of national law, that is, whether its rules have a direct legal effect on individual citizens and courts within the State without necessity of transforming them into national law by some legislative process, and whether the rule of international law automatically overrides conflicting rules of local laws.[215]

At the heart of the dualism theory lies the assertion that international law and local laws are two separate and distinct orders, both in objects and area of operations; the norms of which would not operate within the space of the other, without any possible transformation.[216] This implies that international law and local law are independent legal orders, with each having different intrinsic and structural characters.[217] Schaffer found that the legal orders differ as the

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[212] *Ibidapo v Lufthansa Airlines,* Wali JSC (1997) 4 NWLR (Part 498) 124 at 150.

[213] DP O'Connell 'The relationship between international law and municipal law' (1960) 4 *Georgetown Law Journal* 432. See also, Killander (n 59 above) 5-12.

[214] *Glenister v President of South Africa* (CCT 48/10)(2011) ZACC 6:2011(3) SA 347 (CC) 2011 (7) BCLR 651 (CC) (17 March 2011), where it was held by the Constitutional Court of South Africa, that the making of treaty falls under the executive and the domestication falls under the parliament's power. Thus, legislative action is required before a treaty can bind the courts in their interpretation of the law in the Republic of South Africa. A treaty does not become part of the law of the land unless it has been domesticated into national laws. See Arts 11, 14, 15, and 16 Vienna Convention on the law of treaties. Although this decision did not bind or serve as a persuasive case in Nigeria, in a comparative and international human rights study of this kind, it is best understood if compared to a similar African State jurisdiction. This affirmed that the executive is bestows with the power to ratifies treaties. It shows that the executive have the full power of authority to represent and act on behalf of State.

[215] RP Schaffer 'The inter-relationship between public international law and the law of South Africa: An overview' (1983) 32 (2) *International and Comparative Law Quarterly* 277.

[216] SO Ayewa 'The symmetry between international law and municipal law: A Nigeria perspective' (2014) 1 *Delta State University Public Law Series* 1 at 86-87.

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national laws derive their sources from the will of the State, which is exercised through the legislative and judicial organs and in some cases, can also manifest itself through customary law.[218] International law derives its sources from the will of the States, which is generally expressed by treaties, general principles of law or custom.[219]

In particular, the two differ in the area of the subject matter of the law, as the national law deals with the local organs like the 'juristic and natural *personae* which govern the relationship between the State and the individuals',[220] while international law only regulates the relationship between the States, which are the subject of the international law alone.[221] National law concerns itself with issues affecting individuals and the State organs, while the international law confines itself to the relationships on matters between the State and the international bodies. This implies that the national laws are concerned that the norms of its legislation are obeyed, and the international law is mostly conditioned by the principle of *pacta sunt servanda*.[222]

The dualist system as explained views international law and national law as two legal spaces that are derived from different subject matter; arguing that a rule of international law cannot operate directly on a national law and give rise to individual human rights that are justiciable before domestic courts, except through 'transformation'. Thus, the Supreme Court in *General Sani Abacha v Chief Gain Fawehinmi*[223] noted that international treaties entered into by the

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[217] T Maluwa 'The role of international law in the protection of human rights under the Malawian Constitution of 1995' (1995) 3 *African Yearbook of International law* 53.

[218] Schaffer (n 65 above) 277.

[219] As above.

[220] LLindholt *Questioning the universality of human rights: The African Charter on Human and Peoples' Rights in Botswana, Malawi and Mozambique* (1997) 84.

[221] As above. He notes that there are two type of laws that regulate the international and local laws: the local law governs individuals while the international law governs States. Local laws see the individual as the subject while international law sees the State as the subject.

[222] The principle implies that a State is bound to carry out in good faith the obligations which it has assumed in a treaty. Under international law, the mode of interest is always between the State as the subject of international law rather than individuals as the subject. See, Art 26 of the Vienna Convention on Law of treaties and See also, DOW Ceazar 'International law versus municipal law: A case study of six African countries: Three of which are monist and three of which are dualist' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2142977 (accessed 09 January 2022)

[223] (2000) 77 LRCN 1255.

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Nigerian government did not bind the country until they had been enacted into law by the National Assembly. Ejiwunmi JSC held:

> [‘i]t is therefore manifest that no matter how beneficial to the country or the citizenry, an international treaty to which Nigeria has become a signatory may be it remains unenforceable, if it is not enacted into the law of the country by the National Assembly.[224]

International treaties in dualist States can therefore only be legally effective on the domestic plane after transformation through the enactment of law by the National Assembly or parliament of that State.[225] In other words, as Felice Morgenstern states:

> [T]he doctrine of transformation is that each rule of international law must be individually incorporated in municipal law, as international law itself is, by its nature, inapplicable in the municipal sphere.[226]

Oyebode noted that Nigeria adopted two methods of treaty transformation, either by re-enactment or by reference.[227] Transformation by re-enactment is known as the force of Law system, which is adopted in the process of implementing a statute that directly enacts the entire provisions of a treaty or some specific parts of the provision of a treaty.[228] However, treaty transformation by reference allows the treaty to be transformed into the domestic law by mere reference to the treaty generally. The reference to a treaty could be either as a long or short title of a statute or in the preamble or the schedule. But the treaty by reference does not include implementation by an enactment;[229] ‘it can be considered as such if a comparison of the words of the statute with those of the treaty combined with an acknowledgement of the statute, legislative history or other extrinsic evidence shows that it is intended to be implementing legislation’.[230] Thus the Nigerian Government, through the provisions of

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[224] (2000) 77 LRCN 1255. The supreme court gives effect to sec 12 of the 1999 Constitution which provides that no international treaty can be enforceable in Nigeria unless it has been domesticated by the National Assembly.

[225] J Dugard *International law: A South African perspective* (2011) 46.

[226] F Morgenstern ‘Judicial practice and the supremacy of international law’ (1950) 27 *British Yearbook of International Law* 42 50.

[227] AO Oyebode ‘Treaty making and treaty implementation in Nigeria: An appraisal’ Unpublished D. Juris dissertation, Osgoode Hall Law School (1988) 77, See FA Onomrerhinor ‘A re-examination of the requirement of domestication of treaties in Nigeria’ (2016) 7 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 17 21. In this regard, transformation of treaties is when the treaty is domesticated by the National Assembly. In short, this means the domestic incorporation of the treaty into the national law of Nigeria.

[228] As above.

[229] As above.

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section 12 of the Constitution, adopted the transformation theory, in which no treaty can become part of the Nigeria national law unless it has been domesticated through an enactment by the National Assembly.

One of the most remarkable and most litigated transformations of a treaty in Nigeria is the domestication of the African Charter on Human and Peoples' Rights,[231] which was transformed by incorporation into Nigeria's national law as African Charter on Human and Peoples' Rights (Enforcement and Ratifications) Act 1983 (Enforcement and Ratification Act).[232] The Enforcement and Ratification Act adopted the African Charter on Human and Peoples' Rights without modification. According to Enabulele and as later affirmed by Egede, there is another approach that meets the requirement of section 12(1) without the enactment of a statute.[233] The National Assembly can also transform a treaty by way of national policy,[234] which reproduces an Act without necessarily transforming the ratified treaty into law.[235] Thus a treaty still has to go through the transformation process before it can be relied on by the courts in Nigeria. In *Medical Health Workers Union of Nigeria v Minister of Health & Productivity,*[236] the Court of Appeal hold the view that the provisions of any International Labour Organisation treaties could not be applied in any Nigeria Court until they had been enacted into Nigerian national law by the National Assembly.[237]

The theory, as explained in the foregoing paragraph, allows for the change in character and incorporation of international rules, which approach only allows norms that can be changed or transformed into the national legal order.[238] The same was asserted by Starke and Shearer,

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[230] As above.

[231] Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

[232] Act No. 2 of 1983 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Cap 10 LFN 1990.

[233] Enabulele 'Implementation of treaties in Nigeria and the status question: Whither Nigeria courts? (2000) 17 (2) *African Journal of International and Comparative Law* 326 331.

[234] As above.

[235] As above.

[236] (2005) 17 NWLR Part 953 120. See also, *Registered Trustees of National Association of Community Health Practitioners of Nigeria v Minister of labour and Productivity* S. C. 201/2005.

[237] (2005) 17 NWLR Part 155-157.

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namely, that conflict can never arise between national and international laws, and in a situation where it does arise, national law must prevail.[239]

2.4.2 The Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Domestication of Treaties

Section 12 of the Constitution of Nigeria, 1999 implies that it is only the National Assembly that can legislate on matters that fall within the exclusive list while subsection 2 expands the power of the National Assembly to include the making of treaty implementation laws that do not fall under the exclusive list.[240] This means that no treaties may be legally valid within Nigeria until domestication by the National Assembly.

Mbamalu asserted that section 12(1) of the Constitution of Nigeria, 1999 connotes that bilateral treaties will need to go through the process of domestication while multilateral treaties will take effect without the need for domestication.[241] However, there has never been any precedent or court pronunciations to support this assertion in Nigeria. Indeed, as Nwapi asserts, it would be hard for the Constitution of Nigeria, 1999 to allow the automatic use of a multilateral treaty without expressly providing for its domestication.[242] Further, if the enforcement of bilateral treaties was the aim of the Constitution, automatic enforcement of multinational treaties would complicate the set of obligations of ordinary bilateral treaties.[243]

The reading of section 12(2) refers to the power of the executive arm of the Federal Government to sign and ratify treaties;[244] but the National Assembly is bestowed with the

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[238] G Docker *The treaty-making power in the commonwealth of Australia* (1966) 165 166.

[239] JG Starke & I A Shearer *International law* (1994) 64.

[240] In Nigeria, there is a central government and the State government with two tiers of legislative system in which the National Assembly, which consists of both the house senate and the house of representation, while the State house of assembly governs the State legislation. The Constitution divides legislative powers between the National Assembly and the State House of Assembly. The National Assembly is empowered with the exclusive matters while the State House of Assembly shares the concurrent matters with the National Assembly. Thus, matters that do not fall under both exclusive and concurrent list are referred to as the residual list which falls under the State House of Assembly. See second schedule of the Constitution of Nigeria,1999.

[241] JO Mbamalu 'Nigeria's roadmap to accession to council of European convention on cybercrime' unpublished LLM dissertation, Queen Mary University London (2004) 2 *https://docplayer.net/91993738-Nigeria-s-roadmap-to-accession-to-council-of-europe-convention-on-cyber-crime.html* (accessed 12 January 2022).

[242] Nwapi (n 41 above) 38 at 48.

[243] As above.

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function of treaty implementation. Section 12(2) reads: 'The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty.' Arguably, the section divides the power between the Executive and the National Assembly to implement treaties, including those that fall outside the exclusive list of the 1999 Constitution.[245] The National Assembly is bestowed with the power to implement treaties relating to matters on the exclusive legislative list. This brings to the fore the imperative question of whether 'torture' falls under the exclusive power of the National Assembly.[246] Although, the Constitution of Nigeria, 1999, in its Exclusive Legislative List did not list 'torture or human rights' as part of its Exclusive Legislative List, a perusal of subsection 2 explains that the National Assembly has the power to enact laws that do not fall under the exclusive list.

More so, a critical reading of item 60(a) bestows on the National Assembly the power to make regulations in promoting and enforcing the fundamental objective and directive principles (FODP) contained in the 1999 Constitution.[247] The FODP as part of the Constitution of Nigeria, 1999, provides in section 17(1) that Nigeria is found on the 'ideals of freedom, equality and justice' while subsection 2(b) explains that the human rights dignity shall be maintained. Section 34 (1)(a) maintains that '[n]o person shall be subject to torture or to inhuman or degrading treatment'. The construction of item 60 shows that the National Assembly has the power to legislate on any human rights issue, including torture, as part of the FODP without involving State House of Assembly. This implies that the Anti-Torture Act 2017 falls under the Exclusive Legislative List although it is not listed in the exclusive or concurrent list, and further that it applies all over the federation (compared to the Administration of Criminal Justice Act 2015 that only applies within the Federal Capital Territory Abuja and all the Federal agencies excluding States agencies).[248]

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[244] The Constitution of Nigeria, 1999, is silent on the function of the executive to sign treaties; however, functions of foreign affairs fall under the domain of the executive. As explained above, the president or any one he delegates power to may represent the country in the signing and ratifications of treaties.

[245] Nwapi (n 41 above) 38 48.

[246] Any matter that does not fall under exclusive and concurrent legislative list falls under the residual legislative list, which falls solely on the State House of Assembly.

[247] Item 60(a) of the Second Schedule, Part 1 provides 'To promote and enforce the observance of the fundamental objectives and directive principles contained in this Constitution'.

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According to section 12(3), the President cannot assent to a bill whose subject matter falls outside the Exclusive Legislative List except where it has been ratified by the majority of the State House of Assemblies.[249] However, the provision of section 4(5) of the 1999 Constitution provides that,

> if any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other Law shall, to the extent of the inconsistency, be void.

Egede points out that in the event of conflict between the National and State Assemblies' legislation is tortuously complicated.[250] When the Law enacted by some State Assemblies is inconsistent with the Law enacted by the National Assembly − like the Enforcement and Ratification Act − the National Assembly prevails. In the Islamic States Northern Nigeria, the introduction of Islamic criminal law, if read with the Sharia Penal Code of the respective States, allows for amputations of arms, stoning to death and whipping as possible sentences following a conviction for certain offences.[251] These penalties, which are subject to Shari'a law, are in contravention with article 5 of the Enforcement and Ratification Act, which is an enactment of the National Assembly domesticating the African Charter on Human and Peoples' Rights. Thus, in Egede's view, section 4(5) of the Constitution of Nigeria, 1999 and the Enforcement and Ratification Act, specifically, section 12(1) read together, render the Shari'a law of the State void.[252]

The provision of 12(2) if read with section 4(4)(b) provides the National Assembly with power to make law on 'any other matter' as prescribed in the Constitution of Nigeria, 1999.[253]

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[248] Federal agencies include but are not limited to the correctional service, Nigeria police, federal high courts, federal road safety, civil defence corps and State agencies, including the State high courts.

[249] Sec 12(3) of the Constitution of Nigeria,1999. This is not always the case in practice. The National Assembly legislates and send to the President for assent. Any State that wishes to adopt the enacted legislation will then adopt it to its system. For instance, the Administration of Criminal Justice Act 2015 only applies to federal agencies and any State can adopt it, compared to the Anti-Torture Act 2017, which applies all over the State of Nigeria.

[250] Egede (n 39 above) 249 260.

[251] ON Ogbu 'Punishments in Islamic criminal law as antithetical to human dignity: The Nigeria experience' (2005) 9 (2) *International Journal of Human Rights* 165 166 Bauchi, Borno, Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, and Yobe all practise Shari'a law.

[252] Egede (n 39 above) 249 at 260.

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The treaty-implementing enactment falls under the Act of the National Assembly. However, if section 4(4)(b) is read with section 12(2) with section 12(3), the role of the National Assembly allows the State House of Assembly to join it in the process of treaty implementation on subject matters that fall outside the exclusive list. According to Nwapi, section 12(2) could draw a lot of inconsistent interpretations:

One may interpret the 'may' used in the provision as permitting concurrent jurisdiction with State legislatures, since in matters outside the exclusive legislative list – matters that are in the Residual list excepted − both the same and federal legislatures [have legislative] power. One may also interpret the 'may' as 'shall' by placing the emphasis on the words 'for the purpose of implementing a treaty' to indicate that, where [the] purpose of the legislation is to implement a treaty, the State legislature should defer to the federal legislature. Whichever view is taken, the fact remains that the provision is unclear.[254]

Abegunde asserts that the Constitution provides for State participation in the implementation of treaties; however, in practice, the National Assembly does not carry the State along in the implementation of treaties, which has since then caused uncertainty and confusion.[255] Olutoyin states that section 12(1) is straightforward; however, sections 12(2) and (3) remain unclear and problematic.[256] Nwapi raised some concerns about the problematic nature posed by section 12(2) and (3) of the Constitution of Nigeria, 1999.[257] In a situation where the subject matter of a treaty touches on State jurisdiction, for example, a matter in the residual list, subject to the legislative power of the State, should presumably not be interfered with just because the federal government wishes to implement the treaty?[258] The reading of sections 12(2) and 4(2) and (3) shows that the National Assembly has the power to legislate

[253] Sec 4(4)(b) Constitution of Nigeria, 1999 provides: 'In addition and without prejudice to the powers conferred by subsection (2) of (section 4), the National Assembly shall have power to make laws with respect to... any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.'

[254] Nwapi (n 41 above) 38 at 48.

[255] B Abegunde 'Reflecting on the syndrome of non-domestication of international treaties in Nigeria: Charting the way forward' (2018) 26 *Sri Lanka Journal of International Law* 149 at 165.

[256] Olutoyin (n 44 above) 7 at 15.

[257] Nwapi (n 41 above) 38 49.

[258] As above.

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on any matter on the exclusive list and share power with the State assembly to enact any law before it becomes law where the subject matter of that treaty cuts across State jurisdiction.[259]

Furthermore, in a State that has already implemented a law dealing with the subject matter of a treaty that the National Assembly is trying to implement, what is going to happen? Olutoyin asserts that, in such a scenario, the National Assembly will legislate on the treaty and pass it on to the State to adopt;[260] and if the law of the State is inconsistent with that of the National Assembly, the Constitution provides that where there is a conflict between the two legislative arms, the National Assembly prevails.[261] Nwapi suggests that the best way to end the problems caused by the provision of section 12(2) and (3) is to adopt the Canadian approach, which allows for State participation in treaty-making on treaties that affect the State.[262] Although Nwapi provides laudable solutions, a critical look at the solutions suggest that the involvement of the State house of assembly participation in the treaty-making process/ ratification would arguably slow down the process.[263]

2.4.3 The Hierarchy of Treaties Incorporated into National Laws in Nigeria

In *Oshevire v British Caledonian Airways Ltd,*[264] the Court of Appeal placed international

[259] As above.

[260] As above.

[261] Sec 4(5) of the Constitution of Nigeria, 1999.

[262] As above.

[263] There has never been a situation where States have formally participated in the treaty making process in Nigeria, though, comparably, evidence has shown that States do take years before they adopt domesticated treaties of the National Assembly. Thus, Nwapi's solutions might be out of reach as State participation would delay the process of ratifications. In some circumstances, the State officials would need to consult with relevant stakeholders in their respective States, which might end up delaying and rejecting the treaty to be ratified, for example, on domestication (which is similar to ratifications. Nigeria ratified the United Nations Convention on the Rights of the Child, New York, 20 November 1989, entry into force, 2 September 1990, in accordance with article 49(1), signatories 141, parties 196, UN Treaty series, Vol. 1577, p 3, depository notification C.N.147.1993. Ratifies by Nigeria on the 19 April 1991 and domesticated it as the Child Act 2003. However, it has only be adopted by 28 States out of the 36 States in Nigeria. States like Adamawa, Borno, Bauchi, Gombe, Jigawa, Kebbi, Yobe, Kano, and Zamfara have not yet adopted the Act, arguably because of Shari'a law. Thus, if a State that practise Shari'a law is called upon during treaty-making perhaps to a treaty that do not tandem with the Shari'a law principles rules, arguably, the State would abstain from or delay the ratification process.

[264] (1990) 7 NWLR(PT.163) at 607 the judge while considering the provision of the Warsaw Convention on international Carriage by Air which was enacted by the National Assembly to Carriage by Air (Colonies, Protectorates and Trust Territories) Order Laws of Nigeria of 1958 held that 'An international agreement embodied in a convention or treaty is autonomous, as the high contracting persons have submitted themselves to

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treaties above all domestic legislation. The same view was reached in *UAC (NIG) Ltd v. Global Transport S.A.*[265] However, the case of *Abacha v Fawehinmi*[266] placed the Constitution and incorporation of treaties above domestic legislation. Judgments by the Court of Appeal (CA) and the Supreme Court of Nigeria (SC) have both affirmed that the hierarchy of domesticated treaties is higher than national legislation, apart from the Constitution. The respondent (Gani), who was a legal practitioner, was arrested by six men from State Security Service (SSS) and policemen without a warrant on 30 January 1996. He was detained at the SSS office without charge and was not informed of the offence for which he was being held. He was later transferred to Bauchi prison. The respondent applied for an ex-parte order to the Federal High Court (FHC) in Lagos for the enforcement of his fundamental human rights.

However, the Fundamental Human Rights in Chapter IV of the Constitution of the Federal Republic of Nigeria (the Constitution in use during the time of arrest) had been suspended by the military rule of General Sani Abacha. Thus, the respondent relied on the Ratification and Enforcement Act that had been domesticated into the national law by the National Assembly. The respondent sought a declaration that the arrest constituted a violation of his fundamental human rights under sections 31, 32, and 38 of the Constitution of Nigeria, 1979, and articles 4, 5, 6 and 12 of the Ratification and Enforcement Act; a declaration that the detention and continued detention violated his fundamental human rights, and a mandatory order compelling his release. However, the appellant filed a preliminary objection, claiming that the State Security (Detention of Persons) Decree did not afford the court jurisdiction to entertain such matter, since the decree ousted the jurisdiction of the court.[267] The trial judge struck out the case for lack of jurisdiction. A retrial was ordered on the ground that the Ratification and Enforcement Act was a statute that carried international weight which could not be superseded by the decree of the Federal Military Government.[268] However, only the

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be bound by its provisions which are above domestic legislations. Thus, any domestic legislation in conflict with the convention is void'.

[265] (1996) 5 NWLR (PT. 448) at 221-229.

[266] (2000) 6 NWLR (Part 660) 228 see AA Oba 'The African Charter on Human and Peoples' Rights and Ouster clauses under the military regimes in Nigeria: Before and after September 11' (2004) 4 *African Human Rights Law Journal* *https://www.corteidh.or.cr/tablas/R21563.pdf* (accessed 11 May 2021). See *https://nigerialii.org/ng/judgment/supreme-court/2000/17* (accessed 11 May 2021).

[267] No. 2 of 1994 (now repealed), The Military Council promulgated its decrees into law, rendering them superior to law made enacted by the civilians. 'Secs 219 and 259 of the Constitution shall not apply in relation to any question.' See Egede (n 39 above) 252.

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Constitution could supersede the Ratification and Enforcement Act.[269] In other words, the fact the African Charter had been enacted into Nigerian national law meant that it assumed a superior position to all other national laws.[270]

As pointed out by Egede, the decision of the court was reached as a way of protecting Nigerian citizens from the then military government and to ensure that Nigeria did not forfeit its international obligations.[271] The detainee appealed to the Supreme Court, which had to interpret section 12(1) of the Africa Charter in relation to its domestication into national law. In a split decision of four to three on the hierarchy of the laws in the federation, Ogundare JSC held that the statute, due to its international flavour, was higher than any other domestic statute except the Constitution,[272] while Achier JSC and Pats-Echelon JCA asserted that it ranked on a par with the national law.[273]

According to Atidoga and others, the decision in *Fareham v Abacha* has received much criticism[274] for ranking the domestic enactment of international treaties above any other domestic legislation. As far as this thesis is concerned, this decision can be confirmed in the provision of the Anti-Torture Act in its section 13, where it points out that 'all laws, rules and regulations that are contrary to, or inconsistent with the provisions of this Act are repealed or modified accordingly'.[275] This implies that any other domestic legislation that is inconsistent with the provision of this enactment that gives effect to UNCAT is repealed, thus, placing the Act[276] above all other enactments by the National Assembly or any inconsistent laws of the

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[268] The Court of Appeal decision in *Fawehimi v Abacha* (1996) 9 NWLR (475) at 710, 747.

[269] As above.

[270] *Fawehimi v Abacha* (1996) 9 NWLR (Part 475) 710 at 747. Mustapher JSC held 'while the Decree of the Federal Military Government may override other municipal laws, they cannot oust the jurisdiction of the court whenever properly called upon to do so in relation to matters pertaining to human rights under the African Charter. The Federal Military Government is not legally permitted to legislate out its obligations'.

[271] Egede (n 39 above) 249 at 253.

[272] *Fawehimi v Abacha* (n 116 above 289. See also, Egede (n 39 above 249 at 257) See also, Enabulele (n 83 above) '326 354-355.

[273] *Fawehimi v Abacha* (n 116 above) 316-317

[274] DF Atidoga I Abdulkarim & AD Opaluwa 'A bird's eyes view examination of application of treaties in Nigeria: A caution against tactical ambush' (2019) 2 *University of the Gambia Law Review* 213.

[275] Sec 13 of the Anti-Torture Act 2017.

[276] Which is no longer international law anymore, but a national law with international goals.

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Federation. It is not, though, clear if this Act can be repealed, or whether any provision of the Constitution of Nigeria, 1999 is inconsistent with its provisions. With the decision of the case of *Fawehimi v Abacha,*[277] the Constitution of Nigeria, 1999 is the supreme law, even with the international effect of any treaties. The Constitution is still placed above all laws including international treaties.[278] The decision was given in reliance with the provisions of section 1(3) of the 1999 Constitution[279] and section 4(5) of the same Constitution, which places the enactments of the National Assembly second in the hierarchy of laws in Nigeria.[280] Hence, judging from the decision of *Fawehimi v Abacha* and the provisions of section 4(5) of the 1999 Constitution, which places National Assembly enactments second in the hierarchy of Nigerian Laws, it can be argued that the Anti-Torture Act 2017, which has international objectives, would take precedent over all other Acts, particularly when it comes to any enactment of the National Assembly that is inconsistent with its provisions.[281]

2.5 THE STATUS OF NON-RATIFIED AND NON-DOMESTICATED TREATIES IN NIGERIA

The Constitution of Nigeria, 1999, stipulates that before a treaty can become part of the Nigeria law, the treaty must be domesticated into law by an enactment of the National Assembly, while also providing that the ratification of treaties is executed by the executive arm of the government.[282] However, there is no provision on how non-ratified and non-domesticated treaties are applicable in Nigeria or the nature of the application of customary

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[277] *Fawehimi v Abacha* (n 116 above) 316-317.

[278] *Fawehimi v Abacha* (n 116 above) 316-317.

[279] 'If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void'

[280] It uses the State Assembly enactment as an inferior enactment to the National Assembly. 'If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall, to the extent of the inconsistency, be void'

[281] Sec. 13 of the Anti-Torture Act reads, 'all laws, rules and regulations that are contrary to, or inconsistent with the provisions of this act are repealed or modified accordingly' while this provision did not place the Anti-torture Act above any other laws, however, a critical read shows that any provision that is inconsistent with its provision is void. Thus, this implies that the provision of the Anti-torture Act is arguable above all other laws as per secs 4(5) of the Constitution of Nigeria, 1999.

[282] Sec. 12(1) Constitution of Nigeria, 1999. Although the executive is not mandated as the Constitution of Nigeria, 1999, is silent about it, however, from *AG Federation v. AG Abia,* (2002) FWLR (Pt. 102) at 92-93 it was held that it falls under external affairs.

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international laws as part of Nigeria law. Thus, the purpose of this section is to provide details and insight on how non-ratified or domesticated treaties are applicable in Nigeria. This includes the application of customary international law and international soft law as an aid to court interpretations.

2.5.1 Non-Ratified and Non-Domesticated International Human Rights Treaties as a Tool of Interpretation in Nigeria Courts

The process explained in section 12 of the Constitution of Nigeria, 1999, is sometimes misconstrued. It is wrongly argued that a treaty does not have a force of law in Nigeria until it has been ratified. Article 2(1)(b) of the Vienna Convention on the Law of Treaties spells out that 'acceptance, ratification, approval and accession' mean that a State has established its consent to be bound by a treaty on the international plane.[283] The process of transformation of international treaties into the national law (incorporation) is purely a domestic process. On the other hand, ratification of an international act consists of the 'execution of an instrument or ratification by or on behalf of the State or in exchange for the instrument of ratification of the other State (bilateral treaty) or of its lodging with the depositary of the treaty (multilateral treaty)'.[284]

Therefore, there must exist two events before a treaty can be said to have been ratified in Nigeria. The first is that the instrument of ratification has to be executed by the Nigerian Government, and the second is the instrument of ratification is deposited.[285] Thus, the confusion that a treaty is binding on a State once it has been ratified is a façade, as a treaty is only binding on a State once the treaty has entered into force for that State.[286]

While ratification and domestication of treaties are important, the provision of section 12 of the Constitution of Nigeria, 1999 allows for transformation of treaties before they can be relied on in any Court of law in Nigeria. On the other hand, courts mostly rely on non-

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[283] As above.

[284] A Aust *Handbook of international law* (2005) at 60.

[285] EO Okebukola 'The application of international law in Nigeria and the façade of dualism' (2020) 11 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 15 at 25.

[286] As above. See Art 24(1) of the Vienna Convention. 'A treaty enters into force in such a manner and upon such date as it may provide or as the negotiating States may agree'.

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domesticated or ratified treaties for interpretation. In the case of *Fawehimi v Abacha,* although the court did not elaborate, it was rightly pointed out by Ejiwumi JSC that, even though an unincorporated treaty cannot have the force of law in Nigeria, it can however be relied on indirectly in the construction of statute or 'give rights to a legitimate expectation by citizens that the Government, in its Act affecting them, would observe the terms of the treaty'.[287] This was also confirmed in the case of *Mojekwu v. Ejikeme,*[288] which concerned inheritance of property by a female child according to tradition, and the judge held that the custom was repugnant with reference to article 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

There are cases where the judges and lawyers have to use international treaties not ratified or domesticated to interpret some part of the Constitution. Nigeria domesticated UNCAT in 2017; but, before 2017, lawyers and judges had been using UNCAT to interpret the meaning of torture in relation to section 34(1)(a) of the Constitution of Nigeria, 1999.[289] In *Odiong v Assistant Inspector General of Police, Zone 6, Calabar,* Joseph Tine Tur, JCA referred to articles 1 and 2 UNCAT and article 5 of the African Charter which domesticated the Enforcement and Ratification Act.[290] He affirmed that torture was prohibited under different treaties, and quoted cases showing that torture is a criminal offence that is not allowed in most of the world's jurisdictions, referring back to section 34(1)(a) of the Constitution to conclude that torture was prohibited in Nigeria,.[291]

While UNCAT and the ACHPR have been both duly ratified and domesticated, OPCAT has been ratified but not yet domesticated. Specific reference was made in section 10 of the Anti-Torture Act to the fact that that the office of the Attorney General had the mandate to assign the functional overseeing of the Act to an agency. This could perhaps be a national preventive mechanism, even though Nigeria might not have ratified or domesticated a treaty. Courts sometimes find such inchoate treaties persuasive to use as a tool to interpret legislation with similar provisions. Although OPCAT has not been used in any Court of law in Nigeria as a

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[287] *Fawehimi v Abacha* (n 116 above) 357.

[288] (2000) 5 NWLR 402 1.

[289] 'No person shall be subject to torture or to inhuman or degrading treatment'.

[290] (2013) LPELR- 20698(CA) Per Joseph Tine Tur, JCA at 21-25 paras A-F.

[291] As above.

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tool for interpretation or enforcement for what it is needed to be done for visitation at detention centres, there is an establishment of the National Committee on Torture with a mandate to visit detention centres.

2.5.2 Non-Ratified and Non-Domesticated Human Rights Treaties Codifying Customary International Law Applicable in Nigeria

Customary international law is law born out of practices which are accepted as binding international law by States.[292] Article 38(1) of the Statute of the International Court of Justice (ICJ)[293] provides three primary sources of international law: treaties, customary international law and general principles of law. Subsidiary means for the determination of rules of law are judicial decisions and the writing of most qualified publicists.[294] The provisions of article 38(1) of the ICJ have been accepted as the most authoritative and complete statement on the sources of international law.[295] According to article 38 of the ICJ, the wording presents two constituent element of customary international law: a general practice and its acceptance as binding international law (the latter often referred to as *opinio juris*).[296] In a circumstance where these two elements are not found, the existence of customary international law cannot be established.[297] The ICJ established that, before international customary law can function, these two elements must be established and fulfilled.[298] This is to say the presence of a 'settled practice and *opinio juris'* must be met.[299] In a case that involves international customary law,

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[292] *Draft conclusions on identification of customary international law, with commentaries* adopted by the International Law Commission at its seventieth session, in 2018, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/73/10).

[293] Statute of the International Court of Justice.

[294] As above.

[295] Shaw (n 59 above) 70.

[296] Draft conclusions on identification of customary international law, (n 137 above). Statute of the International Court of justice at 133. See also, I Brownlie's *Principles of public international law* 2003 6. See also, Aust (n 130 above) 6-7. See also, Report of the International law Commission, 68th Session, (2 May-10 June to 4 July - 12 August 2016) at Chapter V. Draft Conclusion part two 'to determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (*opinio juris)*'.

[297] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* at para 93-96. (1984) ICJ Rep 392.

[298] Draft conclusions on identification of customary international law, (n 142 above).

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there must be a practice that has been accepted among States that can be considered as the expression of legal rights or obligations that are permitted or prohibited as a matter of law.[300] There must always be a question whether a general practice is accepted as law.[301] In its judgment in the *North Sea Continental Shelf Cases,*[302] the ICJ stated that, to constitute customary international law, 'not only must the act concerned amount to settled practice but it must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it'.[303] This was also affirmed in the Continental Shelf (*Libya v Malta*) case,[304] where the ICJ stated that 'it is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States . . . '[305]

The International Law Commission (ILC) interpreted the meaning of 'general practice' to mean 'primarily the practice of States that contributes to the formation, or expression of, rules of customary international law'.[306] Tladi asserts that the word 'primarily' was referred to because the practice of international organisations can also contribute to the rules of customary international law.[307] The application of treaties is well set out by the Constitution of Nigeria, 1999;[308] however, on the application and position of customary international law it

[299] As above.

[300] As above.

[301] As above.

[302] *North Sea Continental Shelf Cases, (Federal Republic of Germany/Denmark: Federal Republic of Germany/Netherlands*) (1969) ICJ Rep 3.

[303] As above.

[304] (1985) ICJ Rep 13.

[305] As above 29-30 at para 27.

[306] Draft conclusions on identification of customary international law, (n 142 above).

[307] D Tladi 'Interpretation and international law in South African Courts: The Supreme Court of Appeal and the Al Bashir saga' (2016) 16 African *Human Rights Law Journal* 310 315.

[308] As explained above, Nigeria practises the dualism system which means there must be a transformation of treaty before it can become part of Nigerian law. However, where treaties are of labour matters, it automatically becomes part of Nigeria law. Sec 254C (2) of the 1999 Constitution (Third Alteration Act), which was amended in 2010, empowers the National Industrial Court to apply international labour treaties even though not domesticated by the National Assembly. 'Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the Jurisdiction and power to deal with the any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith'.

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remains silent (compared to the South African and Kenyan Constitutions that expressly provide for the application of the customary international law).[309] The Constitution of Nigeria, 1999, is limited in respect of customary international law application because the principles of customary international law are not codified or defined as required in section 12 of the Constitution of Nigeria, 1999.

Scholars like Egede have argued that treaties that have attained the status of customary international law can be applied directly in Nigeria.[310] However, this assertion has not been corroborated by any judgment or pronouncement of Court in Nigeria. The Supreme Court in *Ibidapo v Lufthansa Airlines* failed to affirm the status of customary international law but found it as a guide for application of international treaties dealing with bilateral and multilateral agreements.[311] Moreover, in *African Continental Bank v Eagles Super Pack Ltd.*[312] the court was tasked with determining whether under the Uniform Customs and Practice (UCP) documents of credit were applicable in Nigeria. The aim of the UCP was to have a standardised letter of credit in all international commerce; however, it was held by Per Ononuju J. that UCP was not applicable in Nigeria. An alternative decision was made in the Court of Appeal where it was held that UCP fell under customary international law.[313] This implied the applicability of customary international law in Nigeria. In *Akinsanya v United Bank of Africa* the Supreme Court did not mention whether customary international law was applicable in Nigeria; however, the Supreme Court took judicial notice of UCP.[314]

It is evident that from the two cases that Nigerian courts can only take judicial notice of customary international law, subject to Evidence Act 2011.[315] Section 17 of the Evidence Act does not stipulate whether the custom is local or international, but what matters is whether a

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[309] Art 232 of the Constitution of South Africa (1996). See also, 2010 Kenyan Constitution, Art 2(5) 'where it provides that general rules of international law shall form part of the law of Kenya.'

[310] Egede (n 39 above) 276-278.

[311] (1997) 4 NWLR (Part 498) 124.

[312] (1995) 2 NWLR (Part 379) at 590.

[313] As above.

[314] (1986) LPELR – 355 (SC).

[315] Evidence Act 2011 'A custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence.'

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superior court has already taken judicial notice of that type of custom.[316] Adigun suggests that the court cannot simply take judicial notice of customary international law as it is not provided in the Evidence Act.[317] The Act only treats foreign law as a fact on which the court can take judicial notice.[318]

In *Trendtex Trading Corporation v Central Bank of Nigeria,*[319] it was held that customary international law is not the same as treaties that need incorporation by the enactment of the National Assembly. The application of customary international law automatically becomes part of the Nigerian legal system without ratification or incorporation.[320]

Contrarily, Oji asserts that, before customary international law can be applicable in Nigeria, it has to pass through the 'repugnancy' test.[321] The same position was maintained by Magashi that, before any customary international law rule can be applicable in Nigeria, it must not be repugnant to the Constitution.[322]

In *Abacha v Fawehinmi* the supremacy of the Constitution was upheld, and any law, including treaties, must fall within its ambit.[323] However, subjecting customary international law to the supremacy of the Constitution could create a problem, especially in human rights issues. It can therefore be said that *jus cogens* norms are superior norms to treaties; however, the provision of section 1(1) of the Constitution of Nigeria, 1999,[324] arguably places the

[316] 'A custom may be judicially noticed when it has been adjudicated upon once by a Superior Court of record.'

[317] Evidence Act 2011 122-124.

[318] Evidence Act Sec 68-69 and sec 124(1), See also, M Adigun 'The status of customary international law under Nigerian legal system' (2019) 45 *Commonwealth law Bulletin* 115 133.

[319] (1977) 2 WLR 356.

[320] As above.

[321] EA Oji 'Application of customary international law in Nigeria courts' (2010) *NIALS Law and Development Journal* 151 161, See also, CJS Azoro 'The place of customary international law in the Nigeria legal system – A jurisprudential perspective' (2014) 1 *International Journal of Research* 74 94.

[322] S B Magashi 'The Human Right to Development in Nigeria' Unpublished LLD dissertation, Stellenbosch University, (2016) 169.

[323] (2006) 6 NWLR (PART 660) 228 at 315-316.

[324] 'The Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria' and in Secs 1(3) 'If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and other law shall to the extent of the inconsistency be void'.

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Constitution above *jus cogens* norms as customary international law, even though it cannot be derogable. For the Constitution of Nigeria, 1999 to maintain its supremacy and act accordingly in the international plane, it will subsume all non-derogable norms like torture, inhuman and degrading treatment and slavery.[325] Thus, since both UNCAT and ACHPRs have been duly ratified and domesticated in Nigeria, it applies in all States, however, in a situation where both have not been ratified or domesticated, arguably, the *jus cogens* norm as part of customary international law which has also been subsumed by the Constitution of Nigeria, 1999, would be applicable in all Courts.[326]

2.5.3 The Application of Soft Law against Torture by Judges in Nigeria

The best way to describe soft law is to regard it as 'rules of conduct or 'commitment' that has no legal binding force but legal and practical effect.[327] Although it is not a treaty that create a legal obligations like UNCAT, its basis sometimes forms customary international law and binding treaties.[328] This has made the status of soft law generally applicable under international law.[329] As pointed out by Chinkin, the function of soft law is to fill in the gaps in hard law instruments.[330] In simple terms, soft law has no particular definition; however, it is 'a written international instrument, that is not a treaty but contain principles, norms, standards, and other statements of expected behaviour.[331] According to Shelton, 'soft laws come in

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[325] Sec 34(1)(a) & (b) Constitution of Nigeria, 1999.

[326] Prior to the enactment of the Anti-Torture Act 2017, lawyers and judges have been relying on sec 34 of the Constitution that prohibited torture. See also, *Adeymi & Ors v State* (2011) LPELP-3619 (CA). Article 53, 64 and 71 of the 1969 Vienna Convention of the law of Treaties shows that States are not allowed to 'contract out' from a *jus cogens* norm. See also, HJ Steiner and P Alston *International human rights in context: Law, politics, morals* (2000) 77. Both authors argue that torture has passed the *jus cogens* test. See also, MN Shaw *International Law* 8th ed (2017) 97-100. Where he asserted that it is 'founded upon an acceptance of fundamental and superior values within the system and in some respects is akin to the notion of public order or public policy in the domestic legal orders'.

[327] L Senden 'Soft law, self-regulation and co-regulation in European law: Where do they meet?' (2005) 9 *Electronic Journal of Competitive Law* 1 27.

[328] HO Yusuf 'Oil on troubled waters: Multinational corporations and realising human rights in the developing world, with specific reference to Nigeria' (2008) 8 *African Human Rights Law Journal* 79 104.

[329] As above.

[330] C Chinkin in DL Shelton *Commitment and compliance: The role of non-binding norms in the international legal system* (2000) 23.

[331] Chinkin (n 180 above) 25.

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almost infinite variety', which could include concluding observations, declarations and general comments. While treaties are binding and create binding obligations and all States that ratify them, soft law is not a binding instrument but expresses a preference that the State should act in a particular way or refrain to act.[332]

There are both United Nations and African Union soft law instruments that deal with torture.[333] The Court of Appeal has interpreted torture in several cases in accordance with article 5 of the Universal Declaration of Human Rights (which has become customary law). In *Dilly v Inspector General of Police*[334] the Nigerian Court of Appeal interpreted section 35 of the Constitution in accordance with article 5 of the Declaration to the effect that torture was prohibited and awarded the damages of five million naira in the favour of the appellant for the torture and death of her son in police custody.[335] In para 5 of General Comment No 3, the UN Committee against Torture obligates State members to ensure access to victims of torture to substantive and procedure redress,[336] but while there is no specific reference to the general comment in any court, the courts' interpretation of the Constitution made it known that it is the right of every citizen who has been wronged to have access to redress.[337] However, the application of African Commission's Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (RIG)[338] in Nigerian courts has not gained popularity and has not been used as an interpretation tool nor referred to in any case.[339]

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[332] DL Shelton *Soft law in the handbook of international law* (2008) 3 *https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2048&context=faculty_publications* (accessed 19 February 2022).

[333] The UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975), prohibits torture absolutely and provides for redress; however, much reliance is no longer placed on it as it later became the basis for CAT adopted in 1984.

[334] (L 12 of 2013) (2016) NGCA 21 (21 June 2016).

[335] As above.

[336] UN Committee Against Torture (CAT), General Comment No.3, 2021: Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation of art 14 by States parties, 14 December 2012.

[337] *Aiyewumi & Ors v Owoniyi & Ors* (2021) LPELR-54565 (CA).

[338] Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa.

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Notwithstanding, the courts have used similar provisions of RIG to decide some cases, demonstrating occasional reliance on soft laws to interpret certain provision of the Constitution or legislation. In *Omonyahuy v. IGP* the Court of Appeal was tasked on the issue whether the right to life of a dead person can be enforced by his dependants. The Court of Appeal made reference to several soft laws and hard laws to reach its conclusion, referring to the ACHPR and its protocol. In this case the applicant's husband died in the police custody as a result of torture and was shot in the head. However, the court was faced with the issue of whether the appellant as a wife of the deceased was entitled to redress. The Court of Appeal, relying on the Basic Principles and Guidelines on the Rights to a Remedy and Repatriation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,[340] interpreted the Constitution in accordance with principles 16 to 23 to the effect that the State was responsible to provide under its national law an effective reparation mechanism for victims, including, restitution, guarantees of non-repetition and satisfaction, emphasising compensation in principle 20 by way of 'economically assessable damage as appropriate and proportional to the gravity of the violations'. It was held that the lower court erred in dismissing the redress application by the appellant, finding that according to the Fundamental Rights of Enforcement Procedure Rules of 2009, any member of the family of a deceased could bring an action for redress where the fundamental rights had been infringed upon.

2.6 CONCLUSION

The Constitution of Nigeria, 1999, did not make a provision for ratification of treaties, leaving the issue open. However, several judicial pronouncements have been made which affirm that the ratification of treaties falls under the ambit of the executive. The President as the head of the country is in charge of the ratification process by signing and allowing the designated ministers to draft and deposit the instrument of ratification. UNCAT, OPCAT and the ACHPR have been ratified in Nigeria. It can be noted that these three treaties were ratified by the Federal Ministry of Justice and the instruments deposited by the Ministry of Foreign Affairs.

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[339] A search of All Nigeria Law Reports, Nigeria weekly law report and all electronic law reports (ELR) and discussions with practitioners and lecturers in the field revealed low level of awareness of RIG among judges and practitioners.

[340] Adopted and Proclaimed by General Assembly Resolution 60/147 of 16 December 2005.

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Section 12 of the Constitution of Nigeria, 1999, provides for domestication of treaties. Before a treaty can be domesticated, it has to pass through transformation. OPCAT has been ratified but not domesticated, while UNCAT and ACHPR rights have been domesticated by an enactment of the National Assembly. However, the question that comes to the fore deals with the hierarchy of the two domesticated treaties. While some judges assert that these treaties are of the same class as any other enactment of the National Assembly, others assert that the treaties, because of their international flavour, are above the national enactments of the National Assembly except for the Constitution. Thus, section 13 of the Anti-Torture Act 2017 provides that any law that is inconsistence with its provisions is void. This places the hierarchy of the Act above all other laws. It is crucial to reiterate that the Anti-Torture Act 2017 is an enactment from the National Assembly; and it is widely applicable in Nigeria by virtue of the exclusive list of the Constitution of Nigeria, 1999. Although some authors have argued that some States need to adopt it before it could be applicable, the provision of the Constitution declares that it applies automatically throughout the Federation.

In a nutshell, in this chapter it has been demonstrated that key international treaties prohibiting torture have indeed been domesticated in Nigeria. Secondly, other international treaties that have not yet been fully domesticated may still have effect within the Nigerian judicial system, though in these cases specific conditions may need to be met.

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CHAPTER THREE
LEGISLATIVE FRAMEWORK AND THE COMPATIBILITY WITH CAT AND OTHER TREATIES

3.1 INTRODUCTION

UNCAT, OPCAT and the ACHPR all impose obligations on State parties in each jurisdiction.[341] One of the core obligations is to ensure there are adequate laws that prohibit torture and provide redress for the victims of torture. Each State party must ensure that the definition of torture is in tandem with the international definition as specified in UNCAT. The Human Rights Committee, and Boulesbaa acknowledges that, for a State to be successful in accomplishing the objectives of UNCAT, it must not only abstain from the practice of torture but also should put in place adequate policies, laws and judicial and administrative standards that prohibit torture.[342] To fully apprehend the present situation in Nigeria, the argument advanced in this chapter is that the legislative framework prohibiting torture is in reality fully compatible with international standards that prohibit torture.

3.2 CHAPTER SYNOPSIS

This chapter is divided into three parts: the first part discusses the legal framework against torture in Nigeria, which outlines the legislative framework against torture in Nigeria. The provisions of the Constitution of Nigeria, 1999, the Administrative of Criminal Justice Act 2015, and the Evidence Act 2011 are all examined. The Constitution of Nigeria, 1999, is the apex law of Nigeria; and it is binding document for the government, citizens and residents of Nigeria. The Constitution provides that torture is prohibited in Nigeria. However, it does not lay down a penalty for the perpetrators of torture. This is justified because the Constitution is not criminal legislation. The Administration of Criminal Justice Act 2015 (ACJA) is the yardstick of the criminal justice system in Nigeria. This section analyses the provisions of the Act in relation to the African Charter and the findings suggest that most of the ACJA

[341] The obligations of these three treaties have been set out /discussed in Chapter One of this thesis.

[342] HRC, 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. See also, A Boulesbaa *The UN Convention on torture and prospect of enforcement* (1999) 3.

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provisions constitute safeguards for the prohibition against torture.[343] While UNCAT in its article 15 requires evidence obtained from torture to be excluded and the Evidence Act 2011 has the same provision, a critical look of the Act provided that the Evidence Act 2011 is far from meeting the obligations in article 15 of UNCAT.

The second part discusses the compatibility of the Anti-Torture Act 2017 with the UNCAT, OPCAT and the African Charter. While the obligations of these treaty differ, the provisions of UNCAT are used as the first benchmark for this compatibility analysis and, in other cases, the provisions of the African Charter. The third part discusses the additional obligations created by the African Charter and the gaps in the Anti-Torture Act 2017.

3.2.1 The Constitution of Nigeria, 1999

The Constitution of Nigeria, 1999, is the *grundnorm* in Nigeria, the apex and supreme law that binds individuals and authorities throughout the federation. Section 1 provides that the Constitution is the supreme law and binds all authorities and persons within the federation. Under section 1(3), any law that is inconsistent with a provision in the constitution is void. In *Chevron (Nig) Ltd. v Imo State House of Assembly,* Ignatius Igwe Agube JCA, held as follows:

> There is no doubt as the learned Senior Counsel for the Appellant has submitted that the Constitution of the Federal Republic is the grundnorm and fundamental law of the Land. By section 1(1) of the Constitution, the supremacy of the Constitution has been made sacrosanct and binding on all authorities and persons throughout Nigeria and more particularly section 1(3) provides in absolute and express terms that if any other laws is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of its inconsistency, be void.[344]

Section 34(1) of the Constitution guarantees the right to dignity and section 34(1)(a) prohibits torture with words 'No person shall be subject to torture'. The phrase 'shall' means that freedom from torture is absolute in Nigeria. This is confirmed in section 45 of the

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[343] Association for the Prevention of Torture listed safeguards as: 'access and contact with lawyers, access to judge, complaints procedures, files and records, inspection mechanisms, right to information' *https://www.apt.ch/en/knowledge-hub/detention-focus-database/safeguards* (accessed 2 June 2022).

[344] (2016) LPELR- 41463 (CA) at 56. See also, *Ibrahim v Nigeria Army* (2015) LPELR-24596 (CA), See also, *FRN v Kimono* (2010) LPELR -4154 (CA*),* See also*, Urban v Susan* (2014) LPELR -22882 (SC), See also, *First Bank v T.S.A. Industries Ltd.* (2010) LPELR-1283 (SC).

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Constitution of Nigeria, 1999, which provides a general restriction on derogation of fundamental human rights except the provision on torture (section 34).

Before the advent of the Anti-Torture Act, the Constitution of Nigeria, 1999, prohibited torture from human rights perspective; so, torture could not be said to have been a crime *per se* under the Constitution.[345] Any act or omission that constitutes torture in most circumstance falls under the heading of a civil claim that ends up with compensation.[346] The same act of torture or omission can also be prosecuted under the Criminal Code and the Penal Code respectively, although most cases are prosecuted as crimes that cause grievous bodily harm, or amount to attempted murder, assault and murder.[347] While the Constitution of Nigeria, 1999, did not elaborate (like UNCAT) on the meaning of torture, an interpretation of section 30 of Constitution of Nigeria, 1979, which has the same subject matter with section 34 of the Constitution of Nigeria, 1999, was done by the Tobi JCA in *Uzoukwu v Ezeonu* II,[348] where he asserted that the word 'torture' 'etymologically means to put a person to some form of pain which could be extreme… it also means to put a person to some form of anguish or excessive pain'.[349] He asserted that, under domestic law, torture could include physical brutalisation or mental pain.[350] Arguably, before the advent of the Anti-Torture Act 2017, the Constitution of Nigeria, 1999, failed to provide for the interpretation of what constituted torture or any directive for law enforcement officers, as the use of torture did not reduce even with the provision in the Constitution of Nigeria, 1999. In *Odiong v Assistant Inspector General of Police,* Joseph Tine Tur JCA, considering the meaning of torture in the Constitution of Nigeria, 1999, relied on Law Dictionaries and universal and regional human rights declarations and treaties and held that torture was a violation of fundamental human rights anywhere on the planet, including Nigeria.[351]

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[345] CE Obiagwu 'Understanding and applying the provisions of the Anti-torture Act 2017' *https://nji.gov.ng/wp-content/uploads/2020/11/Obiagwu-SAN-paper.pdf* (accessed 24 January 2022).

[346] As above.

[347] As above.

[348] (1991) 6 N.W.L.R. (pt 200) 708.

[349] As above 778.

[350] As above.

[351] *Black's Law Dictionary*, *Osborne's Concise Law Dictionary*, article 5 of the UDHR, Article 3 of the European Convention on Human Rights and article 5 of the ACHPR. See also, (2013) LPELR-20698 (CA).

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In contrast, the language used in the Constitution of Nigeria, 1999, is plain and easy to understand without special interpretation. In *Nigeria Customs Service Board v Mohammed,* Habeeb Adewale Olumuyiwa,[352] Abiru J held that the language in section 34(a) was clear and unambiguous and there was no need to afford it meaning other than its ordinary and grammatical meaning. The case involved the officials of the Board of Customs and Excise who used horsewhips and threatened to fire on market women. The complainant claimed that he was accosted by the men of the Nigeria customs for no particular reason, slapped and beaten with a belt, sustaining several injuries, coupled with humiliation from the assault being perpetrated in the presence of a colleague, and those who looked up to him. The Court held that the complaint of the respondent came within the meaning of section 34(a) of the Constitution of Nigeria, 1999.[353]

Also, in *NPF v Ahm*adu,[354] which was an appeal against a ruling of the Federal High Court in Yola, the Nigerian police raided a street in Yola in plain clothes, and arrested the respondent who asked the attackers to identify themselves. The respondent was taken to the police station because he had asked the men of the Nigeria police to show their identification cards. At the police station, he was beaten throughout the night until he slipped into coma. He was eventually taken via his home to Specialist Hospital in Yola and he was later referred to the Federal Medical Centre Yola. He remained in coma for 30 days and was admitted for 56 days. Upon discharge, the respondent filed an action in the Federal High Court Yola seeking enforcement of his fundamental human rights. The Federal High Court gave judgment in his favour, but against the appellant who appealed to the Court of Appeal. The police argued that section 4 of the Police Act,[355] section 29 of the Criminal Procedure Code,[356] sections 17 to 20 of the Criminal Procedure Act,[357] section 214(2)(b) of the Constitution of Nigeria, 1999 and section 18(J) and 44 of the Administration of Criminal Justice Act 2015 empowered the

[352] (2015) LPELR-25938 (CA) at 37-40 para D-B.

[353] (2015) LPELR-25938 (CA) at 37-40 para D-B.

[354] (2020) LPELR-50317 (CA).

[355] Nigeria Police Act, 2020.

[356] Criminal Code Act.

[357] L.N.112 of 19664.

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police to arrest and detain anyone they reasonably suspected of having committed any crime or offence. The Court held as follows:

> …the appellants did not deny that they took the respondent home and to the first and second hospital in a comatose state with bleeding ears and broken ribs. The appellants only deny that they beat up the respondent. But since the respondent was healthy and full of life when he was detained by the appellants, and spent the night with the appellants, then they are definitely responsible for him. The logical conclusion to be reached is that the respondent was assaulted to a coma state by the appellants and this is torture.[358]

3.2.2 The Administration of Criminal Justice Act 2015

The Administration of Criminal Justice Act 2015 (ACJA) is the yardstick for criminal justice in Nigeria. Section 1 of ACJA explains the purpose of the Act as

> to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspect, the defendant, and the victim.[359]

When one compares the provisions of those of the ACJA with UNCAT, OPCAT and ACHPR, the provisions flow in tandem with the safeguards on how to reduce or eradicate torture in RIG. ACJA comprises 495 sections, divided into 49 parts. It repeals the Criminal Procedure Act (CPA),[360] the Criminal Procedure (Northern State) Act,[361] and the Administration of Criminal Justice Act.[362] The provisions of the ACJA apply to all criminal trials convened by an act of the National Assembly and also offences punishable in the Federal Capital Territory (FCT) Abuja.[363] But it does not apply to courts martial.[364] From an elaborate interpretation of the ACJA, it can be misconstrued to mean that it applies to all courts in the Southern State, but that is not the case. Section 2(1) of the ACJA applies to any

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[358] Per Abdullahi Mahmud Bayero JCA at 23-24 para A-B.

[359] Sec. 1 of ACJA.

[360] Cap C41, LFN 2004.

[361] Cap C42, LFN 2004.

[362] Cap A3, LFN 2004.

[363] ACJA 2015, sec 2(1).

[364] ACJA 2015, sec 493.

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criminal offence created by an Act of the National Assembly and other offences punishable in the FCT. Thus, most of the Acts of the National Assembly establishing offences vest jurisdiction solely in the Federal High Court.[365]

More than that, the reading of section 494 ACJA interprets 'court' to include Federal High Courts, Magistrates Courts and the FCT Courts.[366] Despite the use of the word 'include', the law excludes the State High Courts and Magistrate Courts as linked in section 490 of ACJA by the fact that the Chief Judge of the Federal High Court or of the Federal Capital Territory or the President of the National Industrial Court has the power to make rules of courts.[367] The judges referred to above can only make rules to give effect to the ACJA in Federal Courts but not to State High Courts or Magistrate Courts, as these rules can only apply to courts under the supervision of the Federal Courts, FCT High Courts, Magistrate Courts in FCT, National Industrial Court and the Area Courts in FCT.

Furthermore, section 8 of ACJA provides that arresting officers should afford a suspect with respect for his or her human dignity, and a suspect cannot be subjected to any form of torture. This implies that any suspect, as provided by ACJA cannot be tortured under any circumstances.[368] However, it is crucial to reiterate that the provision created a lacuna for failing to provide for penalties for perpetrators.[369] Article 4 of UNCAT obligates the State to prohibit and criminalise torture in their respective national laws while article 4(2) makes it compulsory for State parties to make sure that their laws spell out the penalties for torture.[370]

A critical comparison shows that the prohibition of torture compared to article 5 ACHPR requirement, read with article 45(1) of ACHPR, depicts that the African Commission can

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[365] Exclusive jurisdiction is vested on the FHC for offences created by the Act of National Assembly, for example, sec 20 of the Money Laundering (Prohibition) Act 2011. Sec 26 National Drug Law Enforcement Agency Act, Cap, N30, LFN 2004.

[366] Sec 494 of ACJA: 'Court includes Federal Courts, the Magistrates' Court and Federal Capital Territory Area courts provided by legal practitioner'.

[367] Sec 490 of ACJA.

[368] ACJA Sec 8(1)(a) '…be accorded humane treatment, having regard to his right to the dignity of his person and (b) not be subject to any form of torture…'

[369] Human Rights Report Nigeria 2020 *https://www.state.gov/wp-content/uploads/2021/03/NIGERIA-2020-HUMAN-RIGHTS-REPORT.pdf* (accessed 26 January 2022).

[370] Art 4 of CAT.

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formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights, Thus, the RIG laid down pursuant to article 45(1) and 5 of ACHPR prohibiting torture in Africa refer back in article 4 that defines torture in accordance with article 1 of UNCAT. This implies that ACJA arguably would have been more effective if it had provided for or adopted the definition in UNCAT before the advent of the Anti-Torture Act 2017.

However, a better understanding of section 8(1)(b) of ACJA shows that law enforcement officers may not subject suspects or victims to 'any form' of torture, thus creating another lacuna as to what form torture takes. Such interpretation is left to the judiciary; moreover, the Anti-Torture Act 2017 now addresses all the forms of torture, although it is not an exclusive list but rather covers the most common forms of torture widely used by law enforcement agencies in Nigeria.[371]

ACJA captures most of the safeguards in RIG, prohibiting torture and creating a system that could prevent torture. Section 6 of ACJA provides for the notification of arrest and for recognising the suspect's rights. This entails that the officer making an arrest must notify the suspect of their right to remain silent and of not having to answer any question or write a statement without the presence of or consultation with a legal practitioner of his or her choice. Where the suspect does not have a lawyer, he or she can rely on the Legal Aid Council of Nigeria to provide free legal representation.[372] The Police Officer is also compelled to notify the family or next-of-kin, without charge, that the suspect has been arrested.[373] This provision takes care of the situation where a suspect could languish in a detention centre without the family or next-of-kin knowing where he/she was. The family would be aware of the health status of their relative, and if he/she has been tortured they can give crucial evidence in subsequent legal proceedings.

Section 17 of ACJA reaffirms this by stating that, where a person is arrested, his/her statement shall be taken in the presence of a legal practitioner of his choice, although the legal practitioner or legal aid councillor must not interfere with the suspect when he or she is

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[371] Anti-Torture Act 2017.

[372] ACJA.

[373] Sec 6 of ACJA 'Provided the authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect.'

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writing the statement.[374] The purpose of this section is to ensure that statements are not obtained by force from the suspect, aided if necessary by an interpreter in the language he or she understands.[375] The provisions of section 6 and 17 of ACJA run in tandem with article 20 of RIG that obligates State officials or authorities making an arrest to notify the suspect's family or appropriate third person.[376] RIG provide in article 20(c) and (d) that the suspect must have access to lawyer and, when notifying him or her of their rights, it must be done in the language best understood by the suspect.[377]

Section 15(4) of ACJA provides that the suspect may opt for his or her statement to be recorded with an electronic device (making it retrievable); however, this provision is optional, using the word 'may' rather than 'shall'.[378] Article 28 of RIG obligates the State to consider the use of a record by means of video or audio-tape during interrogation, aimed at ensuring that police officers do not make use of torture to coerce statement from suspects. However, Akinseye-George asserts that many of the police stations in the country did not have recording devices for taking statements, or might take the suspect to another room without a recording device, thus enabling torture.[379] The provision of article 30 of RIG obligates the State to have a full record in writing of those who have been detained; this record must be preserved at the place of detention. Such a record must set out the date, the time of detention and the relevant reason.[380] This is a novel provision that could eradicate the use of torture by officials who are there to enforce the law, if implemented.

Section 16(1) of ACJA provides for Central Criminal Record Registry for the Nigerian police. Subsection (2) provides that every State shall have its own Central Criminal Record Registry where records are kept and then conveyed to the headquarters, while subsection (3)

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[374] Sec 17 of ACJA.

[375] As above.

[376] Art 20(a) RIG.

[377] Art 20(c) and (d) RIG.

[378] 'Where a suspect volunteer to make a confessional statement, the police officers shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on retrievable video means.'

[379] Y Akinseye-George 'Summary of some of the innovative provisions of the administration of Criminal Justice Act (ACJA) 2015' *http://www.censolegs.org/publications/6.pdf* (accessed 27 January 2022).

[380] Art 30 of RIG.

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obligates the Chief Registrar of the Court to transmit court decisions in all criminal trials within 30 days of judgment to the Central Criminal Record Registry, failing which they would be disciplined by the Federal Judicial Service Commission.[381] This novel provision ensures that arrest of suspects and judgement delivered are well documented. The same extends to section 28 of ACJA, where the officer in charge of a police station or an agency must report arrests to the nearest magistrate on the last working day of every month. The report must contain the details of suspects arrested with and without warrant. Details must include the alleged offence, when the arrest took place and under what circumstances, the suspect's name, occupation, residential address, height, photograph and full fingerprint impression.[382] Once the magistrate receives the report, he is obligated to send it to the Administration of Criminal Justice Monitoring Committee, which must analyse the report and send it to the Attorney-General of the Federation. The section serves as a check and balance for the arresting officer and activities of the law enforcement agencies. Section 34 of ACJA also obligates the Chief Magistrate and, where there is none, the magistrate as assigned by the Chief Judge, to inspect police stations or any other law enforcement agencies that fall within their jurisdiction monthly. The magistrate conducting the inspection must call for and inspect records of arrest, direct the arraignment of the suspect and grant bail where appropriate.[383]

Furthermore, article 50(c) of RIG[384] obligates the State to provide appropriate compensation and support for those subject to torture; however, section 319 of ACJA addresses the issue of compensation, concerning which, judicial officers have the liberty to award costs, compensation and damages. The Court may provide compensation to anyone who is injured, irrespective of the punishment that might be imposed by the court. The lacuna here is that although the court may award damages and compensation, the section fails to include what happens if the torturer fails to make the payment of the damages.

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[381] Sec 16(1) of ACJA.

[382] Sec 15 of ACJA. See also, Human Rights Council, Working Group on the Universal Periodic Review Forty-fifth session 'National report submitted pursuant to human rights council resolution 5/1 and 16/21* Nigeria' Advanced unedited version 22 January – 2 February 2024 A/HRC/WG.6/45/NGA/1 para 252 that the government has made efforts to provide computerisation of data of inmates in about 89 out of the 244 correctional centres in Nigeria.

[383] Sec 34 of ACJA.

[384] Art 50 of RIG.

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In conclusion, the ACJA provides for most of the administrative safeguards dealing with torture in Nigeria, but the Act fails to provide for penalties for any perpetrator of torture and falls short in not being widely applied all over Nigeria. This means it can only realistically apply in States that deem it fit to strictly adopt the Act.

3.2.3 Evidence Act 2011

Section 29(2) of the Evidence Act 2011 prohibits the use of illegally obtained evidence, especially through 'oppression'.[385] The word 'oppression' used in the Act was later interpreted by the same Act to include torture.[386] Thus, the provisions act as an exception to the general rule of admissibility of evidence in law.[387] The prosecutor must prove beyond reasonable doubt that a confession was not obtained through torture.[388] The advent of section 29 put an end to the general rule of admissibility whereby evidence can be relied on in court inasmuch as it is relevant without considering how the evidence has been obtained. In *Musa Abubakar v E. I Chuks,*[389] and under the old rule the judge held that what determined admissibility of evidence was its relevance, and the court would not consider how the evidence was obtained.[390] The general rule of admissibility of evidence was its relevancy.[391] In

[385] Note that the Evidence Act 2011 has been amended to Evidence (Amendment) Act, 2023. However, Sec 29(1) of the Evidence Act 2011 remain the same. The Evidence Amendment Act 2023 only affects section 84, 93, 108, 109, 110, 119 255 and 258. Sec 29(1) 'In any proceedings a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuant of this section'. 29(2) If, in any proceedings 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 2(a) by oppression of the person who made it or'.

[386] Sec 29(5) 'In this section 'oppression' includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture'.

[387] The general rule of admissibly is that relevant evidence is admissible regardless of the method of retrieving the confession.

[388] 'Sec 29(2)(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 provisions of this section'.

[389] (2007) 18 NWLR (PT. 1066) 386.

[390] As above. See also, *Sadau v The State (*1968) 1 All NLR 124*, Ogonzee v State* (1997) 8 NWLR (PT.518) 566*, Igbinovia v The State* (1981) 2 SC 5 and *Elias v Disu* (1962) 1 SCNLR 361, *(*1962) 1 ALL NLR 214, where it was held what matter in evidence Is the relevance of the evidence not how the evidence was obtained.

[391] As above.

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Agunbiade v Sasegbon it was held by the Supreme Court that 'admissibility under the Evidence Act is evidence which is relevant and it should be borne in mind that what is not relevant is not admissible'.[392] The test of admissibility was whether the evidence was relevant to the matter in issue and if so the Court Would not concern itself with how the evidence was obtained.[393] In Nigeria, the common law principle on admissibility of illegally obtained evidence was its relevance to the issue at hand. In the period before the Evidence Act was enacted, the law in Nigeria was that court would not bother itself with how evidence was obtained, except in the case of an involuntary confession.

When a defendant makes a voluntary confession and there is no objection, all other things being equal, the court can convict the defendant on that statement alone. This shows the power of a confessional statement. In *Yusuf v The State*,[394] the Supreme Court held that

> [t]here is a long line of judicial authorities on the effect of confessions and we agree with the statement which establishes that in Nigeria, a free and voluntary confession of guilt by a prisoner, whether under cross-examinations by a magistrate or otherwise if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant conviction without any corroborative evidence so long as the court is satisfied of the truth of the confession.[395]

However, the onus is on the defendant to raise the issue that he or she did not make the confession voluntarily. In *Davo v Commissioner of Police*, it was held that if a defendant failed to object to the admission of an evidence of his or her confessional statement made to a police officer, s/he cannot then be heard to say that the confession is not true and voluntary.[396] The defendant can raise the issue of admissibility of a statement by saying he or she did not make the statement or s/he made the statement but it was not voluntary.[397] Once the defendant raises the issue of admissibility on the ground that the confession was not obtained voluntarily, the court is obliged to stop the main proceeding and proceed with a trial-within-

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[392] (1968) NNLR 203 at 223.

[393] *Obembe v Ekele* (2001) 8 WRN 68.

[394] (2008) All FWLR (PT 641) 1486.

[395] As above. Per Obaseki JSC. See also, *Idi v State* (2016) LPELR-41555 (CA) *Per Ibrahim Shata Bdliya* JCA 23-24.

[396] (1981) 3 P.L.R 203.

[397] *Nwangbomu v The State* (1992) 2 N.2.L.R.(P.7) 380.

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a-trial that will determine if the confessional statement was obtained voluntarily or not. In *Hassan v State* it was held that

> [t]hen in the course of trial the prosecution seeks to tender the confessional statement of an accused person, as it happened in this case and there is an objection on the grounds that it was obtained under duress and not voluntarily made, what is in issue is the admissibility in evidence of the confession and the trial judge must order that a trial-within-trial (mini trial) is held. The purpose of a trial-within-trial is to determine whether or not the confession was voluntary.[398]

The mini trial is a trial on his own, in which witnesses are re-sworn, testify and if needed additional witnesses are called (subject to cross-examination) and exhibits tendered. At the end of the trial, the court will give its ruling on the voluntariness; or otherwise of the statement.[399] In the mini trial, the onus will shift to the prosecutor to prove that the confessional statement was obtained voluntarily.[400] It is up to the prosecutor to demonstrate beyond reasonable doubt that the statement was made in accordance with section 29(2)(b) of the Evidence Act, which implies that the defendant was not oppressed during the time he or she was making the statement and the process accorded with section 29(5) of the same Act.[401]

One of the best ways to prohibit torture is excluding in court proceedings statements extracted through torture. The Human Rights Committee, in providing General Comment No. 20 on article 7 of the ICCPR, placed emphasis on the importance of excluding in court statements obtained through torture.[402] This implies that the State is obligated to deny the admissibility of confessional statement obtained through torture. The same assertion was made in the case of *Singarasa v Sri Lanka,* where it was held that in any criminal proceeding, the use of evidence obtained through torture should always be excluded.[403] This is in line with the provision of article 15 of UNCAT, which obligates State parties to exclude statements

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[398] (2016) LPELR-42554 (SC) 1 para 15 See also, *Sale v State* (2019) LPELR- 52899 (SC).

[399] *Adelarin Lateef v F.R.N* (2010) 37 WRN 85 107. See also, *Jimoh v The State* (2011) LPELR-4357 (CA) 19-20.

[400] *Berende v FRN* (2021) LPELR-54991 (SC) See *Nwangbomu v State* (2001) ACLR 9 per Mary Ukaego Peter - Odili JSC 46. See also UN Doc A/56/156 3 July 2001 at para 39(j) in which the Special Rapporteur explained that where torture is raised during the trial by the defendant, the burden of proof is on the prosecutor to prove beyond reasonable doubt that the confession or evidence was not obtained through torture.

[401] *Marris v. State* (2020) LPELR-52300 (CA).

[402] UN Human Rights Committee (HRC), CCPR General Comment No. 20 article 7. 10 March 1992, para 12.

[403] Communication No. 1033/2001. 21 July 2005 at para 7.4.

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extracted by torture in trial proceedings and that a State must not convict a defendant based on the confession statement made from torture but only the person accused of torture.[404]

According to Mujuzi[405] and Rodley[406] the evidence of a confessional statement obtained through torture is not admissible in any national court. The Committee against Torture held the same view in the case of *P.E. v France,* where the defendant raised the issue. The onus was then on the prosecutor to demonstrate the contrary.[407] Article 5 of the ACHPR 5 prohibits torture, and RIG in article 29 obligates the State to ensure that the evidence obtained from torture is excluded and can only be used against the person accused of torture. This was affirmed in *Egypt Initiative for Personal Rights and Interights v Arab Republic of Egypt* where the complainants alleged that the decision of the court was based solely on a confession obtained through torture.[408] The African Commission has made it clear that a court may never rely on evidence obtained as a result of torture to prove that the victim of that torture was guilty, whatever its probative value.[409] The Nigerian legal system, through the use of trial-within-a-trial, has substantially taken the settled stance that evidence obtained through torture is inadmissible. The onus is on the prosecutor to demonstrate beyond reasonable doubt that the evidence was not, in fact, obtained by torture.

Despite confessional statements obtained though torture having no evidential value in Nigerian courts, section 29 of the Evidence Act 2011 falls short by not pronouncing whether other evidence obtained through torture can be relied upon in court. With the advent of the Evidence Act, judges and magistrate are obligated to halt a proceeding if torture is alleged and conduct a mini trial to ascertain if the confessional statement is indeed obtained through torture. However, Amnesty International asserted that judges sometimes do rely on the

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[404] Art 15 of UNCAT.

[405] JD Mujuzi 'Evidence obtained through violating the right to freedom from torture and other cruel, inhuman or degrading treatment in South Africa' (2015) 15 *African Human Rights Law Journal* 90 94. See also, Concluding observations of the Committee against Torture on the Fourth Periodic report of Israel, CAT/C/ISR/CO/4, 23 June 2009 at para 25, Concluding observations of the Committee against Torture on the second periodic report of Yemen, CAT/C/YME/CO/2/ Rev 1, 25 May 2010 at para 28.

[406] NS Rodley *The treatment of prisoners under international law* 3 ed (2009) 164.

[407] CAT Communication No. 219/2002. (2003) at para 6.10.

[408] Communication No. 334/06 at para 9.

[409] As above para 214.

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confessional statement obtained from torture to convict.[410] In *State v Obodolo,*[411] the JSC questioned the lower court judgment for failing to do the needful by relying on confessional statement coerced by torture. 'One would not have had a quarrel with it if that statement had passed the test upon which such a confession can solely be utilised to sustain a conviction.'[412] The same was held in the case of *Banjo v State,*[413] where the confessional statement was admitted as evidence after a trial-within-trial was conducted in a lower court. The appellant testified in a trial-within-trial as follows:

> I was in fetter both on the hands and on the legs… the (police officer) brought in one small stool, they lifted me up and hooked my hands with the handcuffs to the ceiling fan hook on the ceiling of the small room. They removed the drum from my feet and I was hanging. They started beating me with the stick, the cutlass and wire urging me to confess… They later brought me down forcefully and I hit my head on wall.

The judge held that, in admitting the evidence by the court below, 'the court below did not comment on the injuries appellant asserted he sustained from the alleged torture nor did the court below make any observation on the failure of respondent to call other the two police officers as witnesses.'[414]A further reading of section 29 does not reveal that perpetrators of torture will be punished. Arguably, it was one of the reasons why torture persisted before the advent of the Anti-Torture Act of 2017 as perpetrators were hardly punished, even though section 341 of the Police Act stipulates that any police officer who misuses his or her power as a police officer shall be personally liable for any misuse of his power, or for any act done in excess of his authority.[415]

3.2.4 The Anti-Torture Act of 2017 and the Compatibility with UNCAT and ACHPR

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[410] Amnesty International 'Welcome to hell fire' 30. See also, VV Tarhule and Y Ornguga 'Curbing incidences of torture through legislation: Focus on the Nigeria Anti-Torture Act, 2017' (2018) 8 *Benue State University Law Journal* 31 at 39.

[411] (2017) LPELR-48405 (SC) 25.

[412] (2017) LPELR-48405 (SC) 25.

[413] (2011) LPELR-5090 (CA).

[414] As above Per Joseph Shagbaor Ikyegh, JCA at 12-15 para E-D.

[415] Police Regulation Cap P19.

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UNCAT, in its articles 1 to 16, provides the set of obligations required of State parties for domestic incorporations.[416] States are 'obligated to incorporate the definition of torture into its national legislation, take legislative administrative and judicial measures to absolutely prohibit, prevent and criminalise torture, provide adequate penalties, establish national jurisdiction and review of rules of interrogation, investigate promptly and impartially, allow victims to be able to complain, exclude evidence obtained through torture, provide redress, allow refoulment and prevent' CIDT.

Article 5 of the ACHPR prohibits torture. The obligations of UNCAT', from articles 1 to 16, repeat the obligations set out in RIG. However, the guidelines set out additional obligations. Thus, States parties are 'obligated to criminalise and absolutely prohibit torture, define torture in accordance with article 1 of UNCAT, assert jurisdiction, extradite, combat impunity by punishing those who perpetrate torture (penalties), allow victims to be able to complain, provide prompt and impartial investigation, have a basic procedure to safeguard those deprived of their liberty'. The procedure includes

> notification to relatives, the right to medical examinations, the right to lawyers, notification in the language best understand, making no use of an unauthorised place for detention, prohibition of the use of incommunicado detention, recognising that statements from torture are inadmissible, ensuring that conditions of detentions must align with international standards, requiring that there must be adequate oversight mechanisms in place, providing awareness and training for law enforcement officers and education of the civil society, and protecting witness and families from intimidation and reprisal.

The foregoing provision has reviewed the obligations set out in these two treaties, at the same time reporting the extent to which Nigeria has been able to meet up with these obligations. It has further referred to the RIG's additional stipulations that no immunity should be permitted for those in public service or any one at all who commits torture. The part has presented the evidence that the legislation available in Nigeria prohibiting torture is not up to the international standards prohibiting torture.

3.3 INCORPORATION OF THE DEFINITION OF TORTURE INTO THE LEGAL SYSTEMS OF DIFFERENT NATIONS

The Anti-Torture Act of 2017 is an enactment of the National Assembly that gives effect to the ratification and domestication of UNCAT in Nigeria. It is penal legislation that applies to

[416] This part discussed succinctly how Nigeria meet up with these obligations.

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all officials in the Federation and in all the States.[417] The Act combines 13 sections with a note explaining the legislation and an appropriate title; in so doing, it sets out clearly what the offence of torture is and what the punishment for perpetrators should be.[418]

Reflecting the UNCAT definition, section 2(1) provides that

> [t]orture 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 a third person 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… provided that it does not include pain or suffering in compliance with lawful sanctions.[419]

The foregoing provision makes it clear that the allegation of torture in Nigeria requires that some key elements are provided. This information includes the 'act, extent of intent and severity of pain or suffering, which can either be mental or physical'. Furthermore, the legislation specifically addresses the use of torture to 'extract confessional information, to punish, intimidate or discriminate, and this must be done at the hand of a public official or someone acting in an official capacity', although the definition does not include the pain and suffering that may follow when an official complies with lawful sanctions. The Act broadens the understanding of torture, as it applies to both a 'non-State actor or individual'. This follows article 1(2) of UNCAT which outlines how the definition applies more widely. The Anti-Torture Act includes in its section 2 a non-exhaustive list of what constitute torture.[420] A person has carries out any of the offences listed in section 2 commits an act of torture. However, any act causing pain and suffering by law officials acting in their official capacity that falls outside the list of offences in section 2 arguably will also fall in line by virtue of the *eiusdem generis* rule of interpretation.[421]

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[417] United Nations Human Rights Office of the High Commissioner 'In initial dialogue with Nigeria, experts of Committee Against Torture ask about the fight against terrorism, and conditions of detention', *https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27824&LangID=E* (accessed 31 January 2022).

[418] Anti-Torture Act 2017.

[419] Sec 2 of the Anti-torture Act 2017.

[420] See chapter one of this research for the list.

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Furthermore, article 1 of UNCAT provides key elements that must be present before one can say that torture has been done to a defendant or a victim. Torture means causing 'severe pain or suffering' which can either be 'physical or mental'. It also extends to omissions in certain circumstances. In the *Greek case,* the decision was that the 'failure of the Greek government to provide, food, water, clothing and medical care to prisoners amounted to torture'.[422] Boulesba thus sets out clearly the article 1 of UNCAT provides that torture includes the omissions or failure to act[423] where this amounts to severe suffering or pain.[424] In *Selmouni v France*[425] the European Court of Human Rights held that for an 'act to constitute torture, the duration of the treatment, the physical and mental effects, sex, age, state of health and the level of severity of the pain must be taken into considerations'.[426] It is in line with the foregoing principle that in *Alexander Grasimov v Kazakhstan,*[427] the court ruled that a blow to the 'victim's kidney, sexual violence and covering and suffocating the victim with a bag are examples of acts that constitute torture when the treatment causes severe pain and suffering'.[428] Similarly, article 1 of UNCAT States that, while the 'act of suffering and pain is an important element, the problem is how to ascertain the level of severity, as it is the intensity of the pain and suffering that distinguishes torture from cruel and inhuman treatment'. To determine how severe the pain and suffering are, the decision in the case of *Ireland v United Kingdom* was that determining the right threshold depended on the specifics of the case. The severity would be judged on the basis of the 'sex, age, duration of treatment, health of the victim and the mental health'.[429] Inglese points out that only the victim 'can

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[421] *Ehuwa v Osie* (2006) 18 NWLR (Pt. 1012) 544. It was held by the Supreme Court that the *eiusdem generis* rule simply means that in interpreting the provisions of a statute general words which follow particular and specific words of the same nature as themselves take their meaning from those specific words.

[422] European Commission of Human Rights, *The Greek Case*, Application No 3321/67- *Denmark v Greece* See also, Opinion of the Commission of 5 November 1969 in the *Greek Case* (1969) XII Yearbook 461.

[423] J Burgers & H Danelius *The United Nations Convention against Torture: A handbook on the convention against torture and other cruel, inhuman or degrading treatment or punishment* (1988) 118.

[424] Rodley (n 66 above) 91.

[425] (1999) 29 E.H.R.R.403 101.

[426] As above.

[427] *Communication 433/2010.* 10 July 2012. UN Doc CAT/C/48/D/433/2010 para 2.2 -2.3.

[428] *Communication 433/2010.* 10 July 2012. UN Doc CAT/C/48/D/433/2010 para 2.2 -2.3.

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ascertain the level of pain inflicted and that the victim perspective is the most important as both pain and suffering are fundamentally subjective'.[430] Rodley takes the view that the 'intensity of pain and suffering necessary to constitute cruel and inhuman treatment must therefore be something substantially less than severe'.[431] In contrast, the then Special Rapporteur on Torture and other Cruel Inhuman and Degrading Treatment or Punishment maintained that it is the powerlessness of the victim that also determines what constitute torture, although, even though the victim is powerless, all other element of torture as raised in the article 1 must be present.[432] In *Huri-Laws v Nigeria,* it was held that for a treatment to be defined as torture, it should be demonstrated that it reaches some 'level of severity; however, determining the severity depended on several variables such as the duration of the treatment, age, the effect of the physical and mental treatment on the victims, gender, and the state of health of the victim'.[433]

Article 1 of UNCAT refers to torture as the 'intentional infliction of pain'. Similarly, Nowak, writes that torture is always undertaken with a 'specific purpose in mind'.[434] It might be for 'extraction of a confession, information, money, punishment, welcome treatment for prisoners and the suppression of political dissent'.[435] In *Josu Arkauz Arana v France,*[436] relatives of an author experienced torture at the hands of Spanish authorities, with the desire of the torturers to find out where the author was. A similar finding was made in *Hajrizi DzemajI and Others v Yugoslavia;* here the complainants stated that they had been 'subjected to physical and mental suffering that could amount to torture as a punishment for an act committed by a third person'.[437]

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[429] (1979-80) 2 EHRR 25 at 162.

[430] C Ingelse *The United Nation Committee against Torture: An assessment* (2001) 209

[431] Rodley (n 66 above) 99.

[432] M Nowak 'Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' 5 February 2010 A/HRC/13/39/Add.5 para 37.

[433] Communication 225/98, Fourteenth Activity Report, (2000) AHRLR 273 (ACHPR 2000) at para 41. See also, F Viljoen & C Odinkalu *The prohibition of torture and ill-treatment in the African human rights system; A handbook for victims and their advocates* (2006) 41.

[434] Nowak (n 92 above) paras 58-71.

[435] Nowak (n 92 above) paras 58-71.

[436] CAT/C/23/D/63/1007 (2000).

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According to Nowak, negligent conduct is not included in what constitutes torture.[438] For example, in cases where an official forgets to provide food to a detainee and suffers as a result, this may well be judged not to be torture, but it would still be considered a violation of their human rights; but if the purpose of not providing food was to elicit a confession or to obtain information, then it would indeed be classified as torture.[439] Rodley reports that, in the Greek case, the European Commission of Human Rights gave its opinion that 'torture had been perpetrated with an intention or purpose either to collect information or confessions or to serve as a punishment'.[440]

According to article 1, for an act to be considered torture, it must be carried out by an officer of the State who acts in their official capacity, instigating the act or giving the consent for the act to be perpetrated on the victim.[441] Nowak asserts that the definition included torture that is inflicted on victim indirectly by State officials, which could include an act actively or passively agreed to.[442] However, there have been critics of the definition of torture for not including a non-State actor.[443] In *Sadiq Shek Elmi v Australia,* it was stated by the Committee against Torture that non-State actors would be liable for acts of torture if committed within the jurisdiction of a State without a central government.[444] A communication by the African Commission held that, in the circumstance where a 'State knew of the perpetration of torture occurring in its State by non-State actors or failed to investigate the perpetration of torture by non-State actors', liability rested with the State.[445]

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[437] CAT/C/29/D/161/2000 2 December 2002 para 18.3.

[438] Nowak (n 92 above) para 34.

[439] As above.

[440] Rodley (n 92 above) 118.

[441] Rodley (n 92 above) 112.

[442] Nowak (n 92 above) para 39.

[443] A Cullen 'Defining torture in international law: A critique of the concept employed by the European Court of Human Rights' (2003) 31 *California West International Law Journal* 29 34.

[444] CAT/C/22/D/12-/1998 United Nation Committee against Torture (UNCAT), 25 May 1999 para 6.5

[445] *Commission Nationale des Droits de I'Homme et des Libertés v Chad* Communication 74/92 (1995).

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In Nigeria, section 2(1) of the Anti-Torture Act of 2017 makes it clear that the element of 'severe pain and suffering, purpose and official capacity' is enough for it to constitute torture. There has been no adjudication of any provision of Nigerian Anti-Torture Act 2017;[446] but some Courts have given an interpretation of the definition in their rulings. They have interpreted torture in ways that cut across the elements set out in article 1 of UNCAT. They rely mainly on the definition of torture in *Black's Law Dictionary*. In the case of *Nigeria Customs Service Board v Mohammed,* the interpretation by the Court was for 'torture to include the infliction of an intense pain to the body or mind with the purpose of punishment and to extract confession or information'.[447] In the case of *Igweokolo v Akpoyibo,* the court interpreted it in similar ways, that torture is the 'infliction of intense pain to the body or mind to punish, to extract a confession or information, or obtain sadistic pleasure'.[448] Despite the clarity of this definition, it fails to make reference to the role of a public officer who participates in the act of torture. The court in *Odiong v Asst IGP* defined torture more accurately:

> [t]he offence of torture is committed by a public official or person acting in an official capacity who, in the performance of official duties, intentionally inflicts severe pain or suffering on another or someone who at the instigation of or with the consent or acquiescence of such person, does such an act.[449]

In *Ovuokeroye v State*,[450] the appellant claimed to have been subject to torture in his allegation that he was hit by 'a gun in the mouth by Sgt Utazi Ekeziel and stabbed in the chest and shoulder.' This evidence, though, was not enough to convince the court. The High Court judgement was, however, set aside on appeal, and the court decided to acquit the appellant. This case relied on the burden of proof, beyond reasonable doubt, on the prosecution, as well as the circumstances where an accused was forced to confess through being subject to torture. Though the law explicitly prohibits the use of torture by public officials, police officers are often not held accountable for such actions.

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[446] The available online resources used in Nigeria like Law Pavilion; All Nigeria Weekly law reports has not reported any case on torture where judges use the provision of the Anti-Torture Act 2017.

[447] (2015) LPELR-25938 (CA) at 37 -40 para D-B.

[448] (2017) LPELR-41882 (CA).

[449] (2013) LPELR-20698 (CA).

[450] (2020) LPELR-51247 (CA).

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3.3.1 The Principle of the Absolute Prohibition on Torture

According to article 2(2) of UNCAT,[451] the prohibition of torture is 'absolute and non-derogable',[452] implying 'no limitation or exception'. 'Public emergencies, war, terrorism, state of emergencies', do not allow for the use of torture. The General Comment of the Committee further affirms that 'torture cannot be justified' whether or not triggered by 'religion or political issues'.[453] It is 'non-derogable in any territory of the State'.[454] The fact that the Committee emphasised the phrase 'no exception[al] circumstances whatsoever' makes it abundantly clear that the Government of no State can 'rely on the threat of war or terrorism to justify the use of torture, nor can the Government allow it by granting amnesties' which 'preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violat[ing] the principle of non-derogability'.[455] Articles 9 and 10 of RIG prohibit the use of torture even in 'war, threat of war, internal political instability or public emergency' and, further, that a Government cannot use 'necessity, national emergency, public order' to explain away the use of torture.[456]

Section (3)(1) of the Anti-Torture Act 2017 similarly uses the phrase 'no exceptional circumstances whatsoever'. This implies, as it is stipulated in UNCAT, later interpreted by the Committee against Torture, that this prohibition is non-derogable. The statement was adopted in the Anti-Torture Act, section 3(1), which proceeded to add that a Government may not use a state of war, internal political instability (rampant in Africa)[457] or, in fact, any

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[451] Art 2 of CAT: '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 of torture.' See also I M Shale 'Domestic implementation of international human rights standards against torture in Lesotho' Unpublished PhD thesis, University of Witwatersrand, 2017 at 71. See also, T F Yerima 'Still searching for solution: From protection of individual human rights to individual criminal responsibility for serious violations of humanitarian law' (2010) 10 *ISIL Yearbook of International Humanitarian and Refugee Law* 40 56.

[452] ICCPR, Art 4.

[453] UN Committee against Torture, General Comment no 2: Implementation of Art 2 by States parties, 24 January 2008, CAT/C/GC/2 at Para 5.

[454] As above para 7.

[455] As above at para 5.

[456] Art 9 and 10 of RIG.

[457] An example of internal political instability could be many *coups d'état* that happened in Nigeria in 1966, 1975, 1976, 1983, 1990, and 1993.

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public emergency, to justify torture. In addition, section 3(2) states that the prohibition on torture applies to someone kept in a detention centre or in solitary confinement. This means that no prison officer or person in charge of any detention center is permitted to inflict torture on an offender or accused individual. Additionally, a superior officer's orders cannot be used as justification for carrying out torture.[458] Article 2(3) of UNCAT denies the right to claim an order from a superior officer as a rationale for torture. This point is further emphasised in section 8 of the Anti-Torture Act. Subsection (1) states that if a 'person participates in the infliction of torture or is present during the commission of the act of torture, that person will be as liable as the principal who committed the act of torture'. Subsection (2) prohibits any superior law enforcement officer, whether in the police, military, or Government, from giving a torture order to a junior officer. If such an order is given, both the superior and the junior officer will be held liable for the offence of torture. Subsection (3) emphasises that an order from a superior officer cannot be used to justify torture. In cases where such incidents occur, subsection (4) holds the immediate commanding officer of the unit liable as an accessory to the crime for any act, omission or negligence on their part that may have contributed to the commission of the act of torture by their subordinates.

3.3.2 How Torture is Criminalised and the Penalties for Torture

According to article 4 of UNCAT, there is an obligation on 'States parties to criminalise torture under their national laws'.[459] Each 'State party must criminalise attempts to commit torture and participation(complicity) of the act of torture'. In article 4(2), States parties are 'obligated to ensure that there is adequate punishment' for the perpetrators of torture in their criminal laws and this punishment must be appropriate to the nature of the gravity of such an offence. In General Comment No 20, the Human Rights Committee requires States parties to inform it when presenting their reports of the legislative, administrative, judicial and other measures taken to prevent torture and punish perpetrators of torture in their respective jurisdictions.[460] Nowak stated that the study of the 'travaux préparatoires' (drafting history)

[458] M Nowak 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' 5 February 2010 A/HRC/13/39/Add.5 at 42.

[459] Committee Against Torture, Convention against torture and other cruel, inhuman or degrading treatment or punishment, 24 January 2008, CAT/C/GC/2. See also, Shale (n 111 above) 78.

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made it clear that 'concealment, hiding and destruction of torture evidence' needs to be made into an offence within criminal law; adding that criminal law must cover all possible elements of the definition of torture that is set out in article 1 of UNCAT. He asserted that where a superior officer perpetrated or instigated torture, the penalty should be commensurate with the offence, and that demotion, delayed promotion or reduction in salary were not serious enough 'sanctions commensurate with the gravity of the offence' in most cases.[461]

Article 4 of RIG requires that States parties to the African Charter must be committed to this point, that the 'act of torture as specified in article 1 of UNCAT is present and criminalised in their respective national laws'. Thus, it would be hard for any Court to make an interpretation of torture except in the way it is presented in article 4 of RIG. Article 4 of RIG requires that the State's definition of torture aligns with article 1 of UNCAT so that the court's interpretation is consistent with international standards.

In the Anti-Torture Act, section 9(1) provides that 'anyone who contravenes section 2 is liable to be imprisoned for a term not exceeding 25 years.'[462] This means that if anyone deliberately 'inflicts,[463] instigates, consents to, acquiesces in, participates in or attempts to commit torture, that person will be liable for imprisonment not exceeding 25 years.' Section 8, has earlier made it an offence to 'inflict torture through participation, and a superior officer who issues an order to a junior colleague will be liable, together with the junior officer who perpetrates torture'. Under sections 8(3) and (4), no justification can be provided for torture that follows an order from a superior. If torture is committed, the commanding officer of that unit may be held responsible as an accessory if they failed to act and that led to their subordinates committing torture. The Anti-Torture Act 2017 does not set a minimum term of punishment, but the court must impose a punishment that is appropriate for the offence, without exceeding 25 years.

[460] United Nation Human Rights Committee, General Comment No. 20. Prohibition of Torture or other cruel, inhuman or degrading treatment or punishment (article 7) (1992). Adopted by the Human Rights Committee at the Forty -Fourth Session, A/44/40, 10 March 1992).

[461] Nowak (n 92 above) 47 48 49.

[462] 'A person who contravenes section 2 of this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding 25 years.'

[463] Sec 8(1) provides that anyone who participates in the infliction of torture will be liable as the principal.

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The Anti-Torture Act 2017 states that 'torture resulting in loss of life will be considered as murder and will be prosecuted under the relevant laws'. The Anti-Torture Act 2017 leaves open what is meant by 'relevant laws', but this will generally refer to the Criminal Code or section '316 of the Penal Code', which defines murder and stipulates that death is the penalty for murder.[464] The death must be the 'direct consequence of the act of torture, without intervening factors.' Where the perpetrator is aware of a victim's illness, this will not be taken to be an intervening factor.[465] The perpetrator would be liable since the threshold of *mens rea* is purely subjective.[466]

Prior to the advent of the Anti-Torture Act 2017, litigants relied on provisions of the Constitutions of Nigeria, 1979 and 1999 and the Evidence Act to prosecute. Both the Constitutions of Nigeria, 1999, and the Evidence Act, 2011, mandate the prohibition of torture and of using an 'involuntarily obtained statement' as evidence in Court. Despite that, in reality they have been no prosecutions for officers who have carried out torture that resulted in death of an accused. In *Okinawa v State,*[467] it was held that when an accused person's confession is obtained involuntarily and the issue is raised by the defendant, the court must carry out a trial-within-trial, placing the onus on the prosecutor. This case concerned two accused persons who were taken into police custody. The appellant gave evidence that he and the other accused (Emeka Okoloko) were tortured by the police, resulting in the death of Emeka Okoloko. In his complaint, the appellant claimed he and Emeka Okoloko were tortured by a vigilante group before they were handed over to the police. There was evidence from the head of this group, within this trial within trial:

> We went and mounted surveillance at Ebialins's house opposite Assumption Church by Zappa Primary School, getting to 6.30am, he came out of his gate and we held him and took him to our office at Ogbeilo Ogwa Uku Ahaba and interrogated him, he denied ever knowing anything, we now decided to torture him, he confessed to us that he and one 'Rogers' and one boy called 'Shakara' were standing in from of Philco's house and he carried Rogers with his bikes to the town after torturing him more we now went to

[464] L.N.112 of 1964. Cap C38. L.N. 47 of 1955.

[465] C E Obiagwu 'Understanding and applying the provisions of the Anti-torture Act 2017' *https://nji.gov.ng/wp-content/uploads/2020/11/Obiagwu-SAN-paper.pdf* (accessed 24 January 2022).

[466] As above.

[467] (2015) LPELR-24517 (CA).

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> look for Rogers and apprehend him and brought him to our office and torture him 'Rogers' he now told us to hold Ebialin, that Ebialin knows everything, Ebialin now called Shakara on phone but Shakara asked him what is happening he said nothing is happening, we not start to torture him again… we now took Ebialin, Rogers and the weapon to the anti-kidnap office and hand them over for prosecution.

According to the appellant, when the group gave them to the police, the police continued torturing the two until Okoloko died as a result. The judge thus ruled (aided by an autopsy report) that 'the boy died of unnatural death in the police custody and the appellant's confessional statement was a result of torture'.[468] With the advent of the Anti-Torture Act, both police and vigilantes would have been prosecuted; the Constitution of Nigeria, 1999 and the Evidence Act of 2011 did not provide the penalties that would apply to the perpetration of torture.

According to section 9(3) of the Anti-Torture Act 2017, the prosecution of the perpetrators of torture will not exclude the victims of torture from pursing any civil claim for compensation or instigating prosecutions for other offences such as rape or extortion.

3.3.3 Jurisdictions of National Courts

The obligation placed on States parties by article 4 of UNCAT is that States must criminalise torture. Furthermore, article 5(1) of UNCAT mandates that the State must clearly set out the appropriate jurisdiction for the offense of torture. This means that each jurisdiction, including, in Nigeria, the Federal Capital Territory, must ensure that its administration, judiciary and legislation address the crime of torture. Nowak and McArthur argue that the purpose of article 5 was to prevent perpetrators from escaping to another State or province where torture was not illegal.[469] Furthermore, each State party must take measures through law to set out the jurisdiction on torture.[470] Thus, section 9 of the Anti-Torture Act 2017 grants the Court the authority to impose penalties on individuals who violate the Anti-Torture Act 2017 or engage in torture. Additionally, section 13 of the Anti-Torture Act 2017 ensures that the Anti-Torture Act 2017 supersedes all other acts that are not consistent with its

[468] Per Philomena Mbua Ekpe, JCA 10-16.

[469] M Nowak & E McArthur *The United Nations Convention Against Torture: A commentary* (2008) 195.

[470] As above 196.

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provisions. As a result, since the Anti-Torture Act 2017 is an enactment of the National Assembly, it applies across Nigeria, and all Courts have jurisdiction over it.[471]

3.3.4 Exclusion of Evidence Obtained Through Torture

The Evidence Act, through section 4, is generally aligned to article 15 of CAT (using rather similar words and the same meaning), 'stipulating that any confession, admission or statement obtained through torture shall not be invoked as evidence, except against the perpetrators of torture'.[472] More about this section has been discussed in the section on the Evidence Act 2011 above. Importantly, the Anti-Torture Act of 2017 adds that the 'confession, admission or statement obtained from torture could not be used as evidence but could only be used to convict the perpetrators of torture'. This implies that evidence made based on a statement made through torture could not be used as evidence. This is an innovative provision, taking precedence over the provisions of the Evidence Act, which did not address the evidence to be used in prosecuting the perpetrators. This has the potential to achieve reduction of torture of those being held by police, once the officers are aware that they risk prosecution for perpetrating torture.

3.3.5 Safeguards against Torture

The obligation of States parties set out in article 11 of UNCAT is to keep their 'interrogation rules, instructions, method, practices, and detention conditions' in their jurisdictions under systematic review. In Nigeria, following the promulgation of the Administration of Criminal Justice Act 2015, the National Assembly was given the power to review the 'interrogation rules, forms of arrest and detention' with the view of changing the criminal justice system to stop torture in its jurisdiction. In terms of section 14 of ACJA, an arrested person shall be taken to the police station immediately he or she is arrested, and section 15 provides for a record of arrest showing all the details of the arrest and the accused person. In sections 16 and

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[471] Sec 31 of part one of the second schedule of the Constitution of Nigeria, 1999; see also United Nations Human Rights Office of the High Commissioner, in Initial Dialogue with Nigeria, Experts of Committee against Torture. It was also pointed out that the Anti-Torture Act 2017 applied to all States of the Federation.

[472] The use of the terms, confession, admission, or statement mean the same thing. Sec 20 of the Evidence Act 2011 states: 'An admission is a statement, oral or documentary or conduct which suggests any inferences as to any fact in issue or relevant fact,' while confession is defined in section 28 as 'an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime.'

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17, there is an obligation of each police station to 'maintain a central criminal record registry, entries which must be made in the presence of a legal practitioner' of his choice.[473] The Anti-Torture Act 2017 does not have provisions for reviewing laws on interrogation. However, the Administration of Criminal Justice Act and the Police Act 2020, part VII, set out clear instructions, methods, and practices, in addition to the practical arrangements for how people who have been taken into custody are treated within both detention centres and prisons.

According to section 35(2) of the Constitution of Nigeria, 1999, there is a 'right to remain silent and the right of an accused person to counsel'.[474] Section 35(3) provides that the 'accused person must be informed of the fact and the grounds for arrest or detention',[475] and the relevant officer must make sure that the arrested person is 'taken to the nearest police station within a reasonable time'[476] and to 'court within a reasonable time', which can either be '24 or 48 hours, depending on the closeness of the court to the police station'.[477] In section 35(4)(a) and (b), it is required that an accused person must receive a fair trial within a reasonable time. In cases where the accused person is arrested, the trial should take place within two months from the date of arrest. However, if the accused person is released on bail, the trial should take place within three months. If it seems likely that the accused person will attend the trial, they may be released unconditionally or under reasonable conditions.[478]

Section 31 of the Police Act 2020 requires police officers to 'conduct investigations in accordance with the law and report findings to the Attorney General or State for legal advice.'[479] Section 37 states that anyone arrested must be humanely treated in terms of their human dignity and they must not be subject to any form of torture.[480] According to section 43,

[473] Sec 67 of the Police Act 2020. See also, section 16 and 17 of ACJA.

[474] Sec 35(2) of the Constitution of Nigeria, 1999.

[475] As above sec 35(3) and sec 35(2) of the Police Act obligates arresting officer to inform the accused of his or her rights to remain silent and not say anything except in the presence of his legal practitioner; and if he cannot get a legal practitioner, free legal aid can be provided from the Legal Aid Council of Nigeria. See also, section 6 of AJCA.

[476] Sec 9 of the Nigeria Code of Criminal Procedure.

[477] Sec 35(4) and 35(5).

[478] Sec 35(4)(a) and (b).

[479] Sec 31 of the Police Act 2020 and sec 3 of the ACJA provides that a suspect arrested shall be investigated according to the law.

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individuals who have been arrested must be taken immediately to a police station. If a police station is not available, the arresting officer must take the accused to the closest reception centre for suspects. The officer responsible must explain the allegation to the accused in a language that they understand.[481] Additionally, the arresting officer must ensure that the accused person is given the opportunity to access legal advice from their counsel in the presence of the arresting officer or officers.[482] Section 44 obligates the arresting police officer to 'record the arrested person's details upon reaching the police station'[483] and that person must not be held for 'longer than 48 hours upon after arrest'.[484] These details must include the allegation, the date and circumstances of the arrest, height, photographs, fingerprints impression[485] and, if a suspect is willing to give a 'confessional statement, the statement must be writing and if possible recorded on an electronic device'.[486]

3.3.6 Complaint and Investigation

To be effective in making sure that torture is eradicated, there needs to be an avenue for complaints, leading to carrying out an 'impartial and prompt investigation' by competent authorities. UNCAT, ACHPR and RIG set out these obligations. According to article 13 of UNCAT each State has the responsibility to ensure that anyone who has been subject to torture has the right to file a complaint. Any complaint is to be examined promptly and impartially by the competent authority. The State is obligated, under article 12 of UNCAT, for ensuring that any investigation into allegations of torture is executed in an impartial and prompt way. According to article 17 of RIG, the State must provide a venue for such complaints that is accessible and independent; article 18 mandates that an investigation must

[480] The Nigeria Police Act 2020. See also, sec 8 of ACJA.

[481] As above sec 43.

[482] As above sec 43(3).

[483] As above sec 44(1).

[484] As above sec 44(2)

[485] As above, sec 44 and in sec 89, the arresting officer or officer in charge must keep updated details of the accused person daily, if the accused person remains in the police custody, and where an accused person is shot, killed, or wounded, the details must be recorded by the commanding officer and in what circumstance. Where the details are not recorded, the commanding officer risks disciplinary actions.

[486] As above, sect 44(4) and sec 60.

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be launched in accordance with the Istanbul Protocols in cases where a person who alleges torture lodges a complaint.[487]

Furthermore, section 5 of the Anti-Torture Act gives the right to victims of torture to complain to the relevant authority, and, according to section 6, anyone who has suffered torture can seek legal assistance in handling and filing of complaint forms. The phrase 'any interested party', who can make a complaint on behalf of the victim, is in line section 88 of ACJA 2015, where it is pointed out that a person may make a complaint against any other person alleged to have committed or to be committing an offence. 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.

In *Onah v Okenwa,* the court ruled that any Nigerian who has experienced abuse has the right to lodge a complaint with the Nigeria Police Force.[488] The Anti-Torture Act states that a complaint can also be referred to the Human Rights Commission, non-governmental organisation and private persons.[489]

The Human Rights Committee (HRC), in General Comment No. 20, enjoins States to conduct investigations impartially, promptly and by competent authorities.[490] Rodley advises that such investigations may be conducted even if the complainant is absent.[491] A State needs to take on its responsibilities for the investigation of alleged torture by ensuring the independence and impartiality of the investigator, who should have no connection with those who may have perpetrated the torture. This ensures an effective and prompt investigation.[492] Nowak and

[487] Article 19 of RIG. See also, United Nation Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol). See Shale (n 109 above) 81 82.

[488] (2010) 7 NWLR (Pt 1194) 512 see also, *Ajayi v The State* (2013) 9 NWLR (Pt 1360) 589.

[489] Sec 6 of the Anti-Torture Act 2017.

[490] United Nation Human Rights Committee, CCPR General Comment No.20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992 at para 14. See Nowak and McArthur (n 115 above) 347 The United Nations Convention against Torture: A commentary 2008 at 347 where they describe competent authority apart from court to include the National Human Rights Commission, ombudsman, detention monitoring commissions, public prosecutors, police chiefs, prison directors and administrative agencies.

[491] Rodley (n 66 above) 148.

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McArthur state further that the investigation should be conducted within a few hours and, if that is not possible, within a few days of the perpetration of torture.[493] In *Blanco Abad v Spain,*[494] the judgement of the Committee against Torture was that 'promptness ensures that victims cannot continue to be subjected to the same act, and that unless the injury is permanent', visible signs of injury could be lost.[495] In *Mohammed Alzery v Sweden,* the HRC took the view that an 'investigation conducted after two years of the victim making a complaint' breached the requirements of the ICCPR.[496] In *Zimbabwe Human Rights NGO Forum v Zimbabwe,* the court ruled that the State would be in 'violation if it had been aware of an alleged torture and failed' to conduct investigation.[497]

Section 5 of the Anti-Torture Act 2017 sets out that in the event that a complaint is filed, the relevant authority has the responsibility to be prompt and impartial in investigating the allegation. The authority needs further to ensure that the person making the complaint is has protection against intimidation or retaliation of any kind as a consequence of providing evidence or making the complaint.[498]

Article 13 of UNCAT makes provisions that obligate States parties to provide protection to complainants and witnesses from ill-treatment and intimidation that may result from their complaints or the evidence that they give.[499] Article 49 of RIG similarly puts an obligation on States to ensure that there is no intimidation of victims, witness's investigators and families.[500]

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[492] ICCPR General Comment No. 7 at para 1. See also, General Comment No. 20, article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) at para 14. See also, Rodley (n 66 above) 147.

[493] Nowak & McArthur (n 129 above) 346.

[494] (1998) UN Doc CAT/C/20/D/59/199, See also, *Rajapakse v Sri Lanka* (2006) UN Doc CCPR/C/87/D/1250/2004 at para 9.4-9.4.

[495] As above at para 8.2.

[496] United Nation Human Rights Committee CCPR /C/88/D/1416/2005 10 November 2006 para 11.7. See *Boniface Ntikarahera v Burundi,* No 503/2012, UN Doc CAT/C/52/D/503/2012 12 May 2014, where investigation was not conducted after four years.

[497] Communication No. 245/2002 (2006) ACHPR 73: (25 May 2006) para 58.

[498] Sec 5(2) of the Anti-Torture Act 2017.

[499] Art 13 of UNCAT.

[500] Art 49 of RIG.

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Section 5 of Anti-Torture Act 2017, however, did not address witness protection. Article 12 of the Basic Principles[501] mandates that the witnesses are protected in the full course of any judicial, administrative or other proceeding that could have an impact on the interest of the victims.[502] The protection of witnesses and victims is important in eradicating torture as it contributes to and strengthens institutions responsible for investigating. Thus, when witnesses are under protection, they are free to testify freely and without intimidation. Nigeria has complied with the relevant international standards, but the Anti-Torture Act 2017 does not provide for witness protection and there is no other Nigerian legislation that does so.[503]

For the full investigation of torture, it is necessary to have good medical reports, and their absence may lead to the failure of an investigation.[504] According to section 7 of the Anti-Torture Act, victims of torture are entitled to receive physical and psychological examination conducted by a medical practitioner of their own choosing, without the interference of police or security officers. The requirements of subsection (2) are that the medical report that is made following that process must set out the history and findings of the examinations, a report of which must be provided with the custodial investigation report. It makes allowance for the waiver of the medical report if the victim requests this in writing.[505]

3.3.7 Redress and Compensation

Article 14 of UNCAT enshrines the rights to redress and to fair and adequate compensation.[506] According to Rodley, victims of torture must have free access to a 'complaint mechanism under the national law, which in turn must have the power to grant compensation'.[507] Nowak

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[501] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights and Serious Violations of International Humanitarian Law.

[502] As above.

[503] The Witness Protection Bill passed second reading in the Senate on Tuesday 25 January 2022. *https://placng.org/Legist/witness-protection-bill-passes-second-reading-at-the-senate/* (accessed 9 February 2022).

[504] Sec 7(2) of the Anti-Torture Act 2017.

[505] Sec 7(4) of the Anti-Torture Act 2017.

[506] Art 14 of CAT. See also, article 50 of RIG. See also, Shale (n 111 above) 82.

[507] Rodley (n 66 above) 155. See also, UN General Comment No 3. Art 29-36.

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and McArthur similarly pointed out that victims of torture must always be given 'access to facilities that could provide them with the resources' needed.[508] General Comment No 4 of the ACHPR, in article 1,[509] requires States parties to ensure that victims of torture are allowed access to redress, both by law and in practical implementation.[510] These links redress are to the right to dignity. Article 5 of the ACHPR obligates the State to respect human dignity, which means an absolute prohibition of torture and, where it has been perpetrated, redress must be best suited to restore the dignity of the victim.[511]

In General Comment No 3, the Committee Against Torture states that 'redress' entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[512] 'Restitution is an attempt to restore the victim to pre-torture status'.[513] Compensation is intended to 'economically restore the victims,[514] while rehabilitation encompasses medical and psychological care, which includes the legal services to the victims of torture'.[515] Satisfaction 'incorporates the notion that the perpetrator apologises to the victims and discloses the truth[516] while the guarantee of non-repetition ensures that there is no re-

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[508] Nowak & McArthur (n 129 above) 468-469.

[509] The rights to redress for victims of torture and other cruel, inhuman or degrading punishment or treatment (article 5) adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 23 February to 4 March 2017 in Banjui, The Gambia.

[510] ACHPR General Comment No 4, art 21 The rights to redress for victims of torture (Art 5) adopted at the 21st Extra-Ordinary Session of the African Commission on Human and Peoples' Rights in The Gambia, requires States to have both law and institutions that provide for redress. UN General Comment No 3 article 5 and 19-22.

[511] Rodley (n 66 above) 159, See, UN General Comment No 3. Art 4, See ACHPRs General Comment No 3 Art 3.

[512] Art 6 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3 of the Committee against torture, implementation of art 14 by States parties. CAT/C/GC/3. 19 November 2012. See Rodley (n 66 above) 155; See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights and Serious Violations of International Humanitarian law at art 15-23.

[513] UN General Comment No 3. art 8. See also, ACHPRs General Comment No 4 Art 36.

[514] General Comment No 3 article 9-10, the Committee held that monetary compensation might not be enough; however, the compensation awarded to the victim must be sufficient. See also, *Keppa Urra Guridi v Spain,* Communication No.212/2002. U.N Doc. CAT/C/34/D212/2002 at para 6.8. See ACHPRs General Comment No.4 article 37-39. See also, Rodley (n 66 above) 156.

[515] UN General Comment No. 3 article 11-15, where it was pointed out that rehabilitation must entail that the victim is self-sufficient and if possible acquires a new set of skills. See also, ACHPR General Comment No. 4 at article 40-43.

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occurrence of torture' against the victim.[517]

In terms of section 9(3) of the Anti-Torture Act, victims of torture have full rights of redress under any law and also to compensation.[518] The crucial question that comes to the fore is what is the applicable existing legislation for redress for such victims in Nigeria. It is necessary to reiterate that section 35(6) of the Constitution of Nigeria, 1999, states that a person who is unlawfully detained or arrested has entitlement to compensation and a public apology. It is, however, not clear whether victims of torture are included in this section. It is possible for someone to be unlawfully detained without being tortured, while others may be lawfully detained but are subject to torture. In cases where people feel that their rights have been infringed upon, section 46 of the Constitution of Nigeria, 1999, allows Nigerian citizens to apply for redress in the Federal High Court or State High Court.[519] In part 32 of ACJA 2015, section 319 provides that a judge can 'order a convicted person to pay compensation to an injured person',[520] or to pay medical expenses[521] and restitution.[522] One of the most important factors of redress is that the victim is promised access to a complaint mechanism as enshrined in the Fundamental Rights (Enforcement Procedure) rule. This allows victims and organisations such as human rights groups the right to be able to address the court without having to prove *locus standi*.[523]

The Anti-Torture Act also provides for compensation, understandably so, as the principle of economic compensation matters greatly in Nigeria; as pointed out in the case of Nepal, 'economic compensation' works.[524] The United Nations fund for torture victims has been used

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[516] UN General Comment No 3 article 16 -17 specifies that satisfaction entails that there is a stop on the continued violation of the victims' rights and there must be a full disclosure of the truth to the public with an apology. See also, ACHPR General Comment No. 4 at 44.

[517] UN General Comment No.3 at article 18. See also, ACHPR General Comment No. 4 45-49.

[518] '…other legal remedies available to the victim under existing laws, including the right to claim compensation.'

[519] Secs 46(1)-(4) of the Constitution of Nigeria, 1999.

[520] Sec 319(1) of ACJA.

[521] Sec 319(1)(c) of ACJA.

[522] Sec 321 of ACJA.

[523] Preamble 3(e) Fundamental Rights (Enforcement Procedure) rule 2009.

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to provide such compensation to victims of torture. Oguchi Kelechi Ihejirika, who was arrested in his high school, in 2006, for armed robbery, was shot and beaten with machetes during interrogation. Ultimately, he was awarded ₦2,000,000 as compensation for unlawful, illegal and unconstitutional violation of his human rights.[525]

3.3.8 Non-Refoulement

Article 3 of UNCAT provides that a State violates the 'principle of non-refoulement when it sends a person or an accused person to a State where he or she might be tortured'.[526] Burgers and Danelius explain that 'expel, return, *refouler* or extradite' in this article means that such a person is 'physically transferred to another State'.[527] Similarly, the ICCPR Human Rights Committee held that a State was required not to extradite an accused person to a country where it was likely that they would be tortured.[528] The State that carried out the arrest is also required to establish whether the relevant country is or is not likely to engage in torture or other similar violation of human rights.[529] The arresting country is also obligated to take the accused person into custody,[530] commence an inquiry,[531] communicate with representatives of

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[524] However, what is lacking is adequate provision in the Anti-Torture Act of 2017 that addresses reparation and rehabilitation. Compensation is an integral part of the redress; the Anti-Torture Act must be able to provide that victims of torture are entitled to rehabilitation and reparations. See, The United Nations Human Rights Council Working Group on the Universal Periodic Review 'Summary of stakeholders' submissions on Nigeria' Thirty-first session 5-16 November 2018 A/HRC/WG.6/31/NGA/3 para 28, which provides that the Anti-Torture Act 2017 has significant gaps in rehabilitation and reparations. See also, JR Sharma & T Kelly 'Monetary compensation for survivors of torture: Some lessons from Nepal' (2018) 10(2) *Journal of Human Rights Practice* 307-326.

[525] United Nations Human Rights Office of the High Commissioner, Justice for Nigeria. Complainants supported by the UN fund for torture victims. 30 October 2019. *https://www.ohchr.org/EN/NewsEvents/Pages/JusticeForNigerian.aspx* (accessed 10 February 2022).

[526] Article 3 of CAT; See *Mutombo v Switzerland* (1994) UN Doc CAT/C/12/D/13/1993. See also, UN Committee Against Torture, General Comment No.1: Implementation of article 3 of the Convention in the Context of article 22(Refoulement and Communications), 21 November 1997, A/53/44, annex IX. See also Shale (n 111 above) 74.

[527] JH Burgers & H Danelius *The UN Convention against torture: A handbook on the Convention against torture and other Cruel inhuman or degrading treatment or punishment* (1988) 148.

[528] UN Human Rights Committee, CCPR General Comment No.20: Article 7 (Prohibition of Torture, or other Cruel, inhuman or Degrading Treatment or Punishment), 10 March 1992 at para 9. See also, UN Human Rights Committee, General Comment no.31 (80), The nature of the general legal obligation imposed on States parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13 at para 12.

[529] Art 3(2) of UNCAT.

[530] Art 6(1) of UNCAT.

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the accused person's country,[532] report its finding and make it known if it wishes to extradite or exercise jurisdiction.[533] On the other hand, if the State making the arrest does not want to proceed with extradition, then it is required to submit the case 'to a competent authority for prosecution'.[534] Furthermore, the person is entitled to a 'fair hearing,[535] judicial assistance,[536] fair treatment in all circumstances.' In cases where the State making the arrest does not have an extradition treaty with the other country, the legal basis for an extradition to take place could be through UNCAT.[537]

Rodley asserts that an accused must take on the burden of proof to demonstrate how they are at risk in returning to their own country; on the other hand, the country that arrested that person must assume the burden of disproving the risk.[538] General Comment No. 1 of the UN Human Rights Committee states that 'the risk of torture must be assessed on grounds that go beyond mere theory or suspicion; the risk does not have to meet the test of being highly probable'[539] In terms of ACHPR, article 5 puts on obligation on member States not to return 'persons to a place or country where they can be tortured'.[540] Those States who plan to carry out extradition must meet this condition before they proceed to extradite someone.[541] They are required to provide full rights to such a person, including 'access to lawyer, free legal aid, the right to he heard and judicial assistance'.[542]

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[531] Art 6(2) of UNCAT.

[532] Art 6(3) of UNCAT.

[533] Art 6(4) of UNCAT.

[534] Art 7(1) of UNCAT.

[535] Art 7(3) of UNCAT.

[536] Art 9 of UNCAT.

[537] Art 8 of UNCAT.

[538] Rodley (n 66 above) 173.

[539] UN Committee Against Torture, General Comment No.1: Implementation of article 3 of the Convention in the Context of article 22 (Refoulement and Communications), 21 November 1997, A/53/44, annex IX para 6 See also as above.

[540] RIG para 15.

[541] F Viljoen & C Odinkalu *The prohibition of torture and ill-treatment in the African human rights system* (2006) 52.

[542] Art 7 of ACHPR.

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The Anti-Torture Act 2017 did not have an extradition section, arguably on the basis that the appropriate law that would be apply in this kind of case would be the section 17 of the Refugees, Migrants and Internally Displaced Persons Act[543] and the Ratification and Enforcement Act.[544]

3.3.9 Education

Articles 10(1) and (2) of UNCAT require of States that they educate their official fully against the use of torture. The HRC emphasises that the training of personnel at detention or correctional centres would help prevent torture. The HRC General Comment No. 20 sets out the requirement for officers to be trained on this issue, for work within detention centres.[545] This point about training of staff is not made in the African Charter, but RIG specifies that each State should 'devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel'.[546]

Section 11 of the Anti-Torture Act 2017 empowers the Attorney-General of the Federation and related parties the power to educate and train on these issues.[547] The Anti-Torture Act 2017 requires that all staff who supervise any detention centre in Nigeria must have good information and effective training on the legal requirements regarding torture. The implication of section 11 is that material used to train and educate staff responsible for detention centres, per the provision of section 11, should include clarifying that torture is prohibited, the wording of both the Act and UNCAT being similar: 'fully included in the training of law enforcement personnel'. This meant that training materials had to cover not

[543] Refugees, Migrants and Internally Displaced Persons Act, 2022.

[544] Cap 10 LFN 1990.

[545] CCPR General Comment no. 20: Art 7 (Prohibition of Torture, or other Cruel, Inhuman or Degrading Punishment) 1992 at para 10 *https://www.refworld.org/docid/453883fb0.html* (accessed 22 March 2022).

[546] Art 46 of RIG.

[547] 'The Attorney-General of the Federation and other concerned parties shall ensure that education and information regarding the prohibition against torture is fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other person who may be involved in the custody interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment'.

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only that torture was prohibited, but also how to prevent the occurrence of torture in the areas for which they were responsible.

The Network of Police Reform in Nigeria (NOPRIN) once reported that the use of torture in Nigeria was 'informally institutionalised' in various police stations with so-called 'torture chambers' and with an 'OC', meaning 'officer in charge of torture'.[548] The presidential committee report in 2008 concluded that the Nigeria police 'grossly compromised standards and resulted in widespread abuse of established procedure and became saddled with a very large number of unqualified, under-trained and ill-equipped officers – in sum an undesirable workforce.'[549] Training extends beyond physical training; each NPF member is required to have in place basic education, and a full understanding of their own powers and duties. In reality, such members have been inadequately trained and educated, thus,[550] arguably, typical police officers fail to grasp the fundamental principles of human rights. In 2011, 'Prisoners Rehabilitation and Welfare Action' (PRAWA),[551] NPF and the Swiss embassy in Nigeria collaborated in developing a manual for training on issues of human rights and the prevention of torture prevention for the police (Manual).[552] There are nine modules in the Manual covering various topics.[553] It would, though, seem that the manual is not in effective use, as in 2016 Amnesty International reported that the 'Special Anti-Robbery Squad' (SARS) tortured suspects who had been put under arrest; these actions included beatings,

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[548] Network of Police Reform in Nigeria (NOPRIN) 'Criminal force: Torture, abuse and Extrajudicial Killings by the Nigeria Police Force 2010' https://www.justiceinitiative.org/publications/criminal-force-torture-abuse-and-extrajudicial-killings-nigeria-police-force accessed 22 March 2022).

[549] Torture and Extrajudicial Killings in Nigeria. A joint Report to the Universal Periodic Review (UPR) by Prisoners' Rehabilitation and Welfare Action (PRAWA) and Network on Police Reforms in Nigeria (NOPRIN).

[550] MB Baban-Umma, M Maiwada & A Ibrahim 'Extra judicial killing and the rule of engagement in the Nigeria Police Force' (2019) 4 (3) *Kogi State University Journal of Sociology* 31 38.

[551] This is a non-governmental organization that provide human rights to people in prisons and help those who have survived prison to integrate back to the society. https://www.prawa.org (accessed 28 March 2022).

[552] U Agomoh, I Opara, A Agbor & H Anoliefo *Manual on Human rights training and torture prevention for the police* (2011) 001.

[553] 'Module one looks at the introduction to the Nigerian Police, while module two examines the training on what human rights entails. Module three looks at why it is necessary to protect the rights of detainees and prisoners, and four provide an overview of human rights instrument, module five focuses on the 1979 UN code of conduct for law enforcement officials'. 'Modules six, seven and eight focuses on the instruments in relation to torture, cruel, inhuman and degrading treatment or punishment, effect of non-observance of human rights principles and provides exercise'. 'Module nine focuses on questioning the police officers attending or who will attend the training in future to recommend what could enhance the implementation of national or international legislation'.

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suspects being shot and mock executions.[554] According to Ladapo. most 'members of the NPF have only physical drilling knowledge acquired at the three-month training schools but lack understanding of the art of policing'.[555] This is despite the fact that an initiative to strengthen training in human rights within the NPF, the Nigeria government collaborated in a programme with the Government of the United State Government, enabling 28 officers to graduate from the programme.[556] This was a positive development on the part of the Nigerian government, but we may query what the eventual impact was of the training of these officers.[557]

3.3.10 Omissions in the Anti-Torture Act 2017, and further Obligations arising from the ACHPR

The most significant piece of Nigerian legislation that prohibits torture is the Anti-Torture Act. It was promulgated with the aim of eradicating torture and to comply with the international standards prohibiting torture. It was assumed to give no room for torture by absolute prohibition and punishment of perpetrators. However, there are some circumstances where perpetrators could go unpunished or where the abolition of torture would be undermined, based on some situations that are not provided for in the act. Thus, this section analyses some provisions that should have been included in the Act.

3.3.11 Amnesty and Immunity

Principle 1 of the United Nations Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity deals with the situation where a State fails in its obligation to investigate, to take appropriate measures by prosecuting, trying and

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[554] Amnesty International, 'Nigeria Special Police Squad: Get rich torturing detainees. *https://www.amnesty.org/en/latest/news/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/* (accessed 22 March 2022).

[555] OA Ladapo 'Effective investigations, A pivot to efficient criminal justice administration: Challenges in Nigeria' (2011) 5 *African Journal of Criminology and Justice Studies* 79 82.

[556] US Human Rights Training to the Nigeria Police Force *https://ng.usembassy.gov/u-s-human-rights-training-nigerian-police-force/* (accessed 28 March 2022).

[557] The best solution to this type of training is to involve all area commandants in the training who will then go back to their unit and empower each officer. Moreover, training of officers should arguably increase to one year in which six months would be on human rights training.

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punishing those responsible for perpetrating human rights violation, and to provide the victims with adequate redress with a means to prevent the re-occurrence of the violations.[558] The Basic Principles aim to provide victims of human rights or humanitarian rights violations access to equal justice and redress, irrespective of who the perpetrator of the offence might be.[559] In General Comment No. 3,[560] the Committee against Torture observes that the State is obligated to provide adequate redress; however, there are some impediments to adequate redress, like inadequate national legislation, immunities, witness protection and amnesty.[561] Thus, granting of immunity and amnesty to State actors or non-State actors is contrary to international law.[562]

While the Nigeria Anti-Torture Act does not contain a provision on immunity and amnesty, section 3 prohibits torture. However, with respect to both personal and functional immunities, the Constitution of Nigeria, 1999, restricts both civil and criminal proceedings against the President, Vice President, Governors and Deputy Governors until the lapse of their tenure.[563] Functional immunity in section 239[564] means that

> no action, prosecution or other proceeding shall lie against a person subject to service law under this Act for an act done in pursuance or execution or intended execution of this Act or any regulation, service duty or authority or in respect of an alleged neglect or default in the execution of this Act, regulation, duty or authority, if it is done in aid to civil authority or in execution of military rules.[565]

Thus, the implication of the section is that, if a Governor gives an order to the military to perpetrate torture, who will be liable, as the Armed Forces Act already excludes liability for

[558] United Nations Economic and Social Council, Promotion and Protection of Human Rights Impunity, Updated set of principles for the protection and promotion of human rights through action to combat impunity. Commission on Human Rights Sixty-first session E/CN.4/2005/102/Add.1 8 February 2005.

[559] General Assembly Resolution 60/147. 16 December 2005. Article 3(c).

[560] UN Committee against Torture, General Comment no.3, 2012: Convention against torture and other cruel, inhuman or degrading treatment or punishment: Implementation of article 14 by State parties. 13 December 2012.

[561] As above para 38-41, See also, UN Committee Against Torture (UNCAT), General Comment No 2: Implementation of Art 2 by States Parties, 24 January 2008, CAT/C/GC2. para 5.

[562] As above para 42 See also, art 16(b) of RIG.

[563] Sec 308 of the Constitution of Nigeria, 1999.

[564] Armed Force Act LFN 1994.

[565] As above.

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an order given by a civil authority? However, section 13 of the Anti-Torture Act stipulates that any act or regulation that is inconsistent with the Act is void. Arguably, the hierarchy of the Act places it higher than any other enactment of the National Assembly apart from the Constitution. Thus, while personal immunity might prevent proceeding against the Governor, section 8 of the Anti-Torture Act would make the person who perpetrated the act of torture liable − the police who carried out the act.

3.3.12 Statutory Limitations

Each State party to UNCAT is obligated to ensure that victims of torture receive adequate redress unaffected by statutory limitations.[566]The key reason for lifting the bar on statutory limitation is to see that victims receive redress. The law stipulates that 'on account of the continuous nature of the effects of torture, statutes of limitation should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them'.[567] Moreover, some serious crimes under international law cannot be taken away by time limits irrespective of the time or date of commission.[568] Orentlicher defines 'serious crime under international law' as including torture.[569] Thus, torture as a crime cannot be time-barred. In observations on Turkey[570] and Chile,[571] the committee advises Turkey to repeal all its laws on statutory limitations on torture.[572] Similarly, the committee recommended that Chile remove the statutory limitation on torture or extended it for more than the current 10 years.[573]

[566] UN Committee against Torture, General Comment no.3, 2012: Convention against torture and other cruel, inhuman or degrading treatment or punishment: Implementation of article 14 by State parties. 13 December 2012 para 40.

[567] As above.

[568] The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted and opened for signature, ratification and accession by General Assembly Resolution 2391 (XXIII) of 26 November 1968 at article 1.

[569] Commission on Human Rights Sixty-first session: Promotion and Protection of Human Rights, Impunity. Report of the Independent expert to update the Set of Principles to combat Impunity. E/CN.4/2005/102/Add.1 8 February 2005 at para B.

[570] Conclusions and Recommendations of the Committee against torture Turkey UN Doc. CAT/C/CR/30/5,2003 para 7(c).

[571] UN Committee against torture, Conclusion and recommendations, Chile, 14 May 2004 UN Doc. CAT/C/CR/32/5,2004 at para 7(f).

[572] Conclusions and Recommendations of the Committee against torture Turkey UN Doc. CAT/C/CR/30/5,2003 para 7(c).

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There are no regulations or laws that govern statutory limitations in Nigeria. However, the Public Officers Protection Act[574] and the Public Protection Act affords protection to officers in respect of anything done when carrying out their duties, although the protection will only come into play after the expiration of three months from the date of the commission of the act that give cause to the action.[575] In *Mining Cadastre Office v UIG Petroleum & Transport Investment Ltd*[576], it was held that section 2(a) of the Act required that action against a public officer must be commenced within three months of the accrual cause of action.[577] This implies that where the case of torture is brought against a public officer, if the case did not commence within three months of the commission of the act, the victims would lose their rights.

3.4 CONCLUSION

UNCAT prohibits torture and obliges States to enact legislation to bring them in conformity with their respective provisions. However, the State is at liberty to provide for a wider definition of torture, providing that each of the elements in the definition are included. While the Nigerian definition is in tandem with these two treaties, experience has shown that the definition is wider than the definition of UNCAT by extending it to include private actors and the exclusive list of what could constitute torture.

While Laws in Nigeria prohibit torture, none of these Laws − the 1999 Constitution, Administration of Criminal Justice Act 2015, Police Act 2020, and the Evidence Act – provides for penalties for the perpetrators of torture. The Evidence Act prohibits the use of confession obtained by 'oppression', which includes torture, making them inadmissible. However, the Act falls short by failing to provide that ae confession may be used against the perpetrators or provide available penalties for the perpetrators. Despite this, the Anti-Torture Act provides that evidence obtained through torture is not admissible in any Court of Law,

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[573] UN Committee against torture, Conclusion and recommendations, Chile, 14 May 2004 UN Doc. CAT/C/CR/32/5, 2004 at para 7(f).

[574] Public Officers Protection Act 1916. See also, Public Protection Act, LFN, 2004.

[575] As above section 2. See also, *Egbe v Alhaji* (1990) 1 NWLR (pt.128) 546, See also, *Bureau of Public Enterprises v Reinsurance Acquisition Group Ltd & Ors* (2008) LPELR-8560 (CA). Per Mary Ukaego Peter-Odili, JCA (at 41 para B-D).

[576] (2018) LPELR-46046 (CA).

[577] As above, Per Bouloukuromo Moses Ugo, JCA at 13-18 para F-B.

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and cures the lacunae created in other laws by stating that the evidence can only be used to convict the perpetrators of torture, although the Anti-Torture 2017 Act falls short by leaving out the issue of non-refoulement and redress to other laws. While the NCRA does not cover all obligations dealt with by UNCAT, the NCRA made non refoulement optional rather than absolute for a potential victim of torture to be repatriated back to his/her State of origin, if depending on whether he/she met the specified criteria.

UNCAT provides that torture must be absolutely prohibited in all jurisdictions, while the Anti-Torture Act 2017 prohibits torture absolutely, no provision for witness protection, amnesty, immunity and statutory limitation. This raises the question as to whether torture is absolutely prohibited in Nigeria. When the law fails to provide for adequate or necessary provision that would eradicate torture, another avenue is to rely on the institutions that can eradicate torture.

In conclusion, the definition of torture applied within Nigerian law is extensive and goes beyond UNCAT. There is also ample evidence that torture is absolutely prohibited in Nigerian law, though there are some gaps in the Anti-Torture Act 2017.

The next chapter therefore turns to the analyses of the national preventive mechanisms available for the prevention of torture in Nigeria.

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CHAPTER FOUR

MANDATES OF THE SUBCOMMITTEE ON THE PREVENTION OF TORTURE AND THE NATIONAL PREVENTIVE MECHANISM

4.1 INTRODUCTION

The main aim of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is to prevent torture from occurring.[578]

Article 2(1) of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), engages State parties to 'take effective legislative, administrative, judicial and other measures to prevent the act of torture'.[579] This obligation was affirmed in *Prosecutor v Furundžija* that it was not enough to prohibit torture; that the State was obliged to forestall its occurrence.[580] It went further to state that it was not

[578] Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 18 December 2002, entry into force 22 June 2006 by article 28(1) which reads as follows:

1. The present protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its instrument of ratification or accession.

Registration 22 June 2006, No. 24841. Status: Signatories 76, Parties:91 United Nations, *Treaty Series,* Vol. 2375, p.237; GA Resolution A/RES/57/199 of January 2003. C.N.25.2010 TREATIES-1 of 29 January 2010. Nigeria acceded on 27 July 2009. See also, the United Nations treaty collection depositary *https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4* (accessed 31 March 2022). Also, there is no provision for redress in the circumstances where there is a breach of the domestic or international prohibition on torture in OPCAT. See also, E Steinerte 'The changing nature of the relationship between the United Nations Subcommittee on Prevention of Torture and national preventive mechanisms: In search for equilibrium' (2013) 31 (2) *Netherlands Quarterly of Human Rights* 132-133. It implies that OPCAT aim to have a preventive effect and serve as a deterrent for the reoccurrence of torture.

[579] United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 10 December 1984. Entry into force: 26 June 1987, by article 27(1). Registration 26 June 1987, No. 24841, Status: Signatories: 84, Parties: 173 *United Nations, Treaty Series,* vol.1465 at 85. Signed by Nigeria on 28 July 1988 and ratified on 28 June 2001. See also, the United Nations treaty collection depositary *https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en* (accessed 11 April 2022).

[580] *Prosecutor v Furundzija* (10 December 1998), no IT-95-19-1, trial judgment, para 148. See also, N S Rodley *The treatment of prisoners under international law* 3 ed (2009) 229.

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enough to intervene after torture had been inflicted on the victim's body or mind, but the State was bound to ensure that it provided adequate measures to prevent torture.[581]

The Committee against Torture, in its General Comment No. 2, explains that the obligation to prevent torture is wide-ranging,[582] and States parties can choose the measures to fulfil the obligation. However, these measures must be 'effective and consistent' with the purpose set out by UNCAT.[583] The Human Rights Committee, in its General Comment No. 20, affirms that States must prohibit torture, but the prohibition or criminalisation of the act of torture was not enough.[584] Thus, States are to report to the Human Rights Committee on the preventive (legislative, judicial and administrative) measures taken.[585]

OPCAT seeks to prevent torture by emphasizing regular visits to place where people are deprived of their liberties.[586] The obligation to prevent torture under OPCAT is placed on both international and national bodies, which means that the visitation to places of deprivation of liberties can be conducted by the supervisory body established under OPCAT, the Subcommittee on Prevention of Torture (SPT),[587] and the National Preventive Mechanisms (NPM).[588]

The visitation to places of detention and deprivation of liberties is not new in international law.[589] However, OPCAT presents a unique system by which the national bodies that are

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[581] As above.

[582] United Nations Committee against Torture, General Comment No.2: Implementation of article 2 by States Parties, 24 January 2008, CAT/C/GC/2 at para 3.

[583] As above para 6.

[584] General Comment No.20. Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) (Replaces General Comment No.7). Human Rights Committee Forty-fourth session, adopted: 10 March 1992 HRI/GEN/1/Rev.9 (Vol.1) para 8 'The Committee notes that it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture....'

[585] As above.

[586] Art 1 of OPCAT.

[587] Art 2 of OPCAT.

[588] Art 17 of OPCAT.

[589] R Murray 'National preventive mechanisms under the Optional Protocol to the Torture Convention: One size does not fit all' (2008) 26(4) *Netherlands Quarterly of Human Rights* at 485 487.

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created (NPM) can liaise with international bodies and the Government.[590] This implies that the NPM must be independent of the Government and must be staffed with personnel who are knowledgeable about torture prevention.[591]

The monitoring of places of detention assists in decreasing acts of torture,[592] which mostly occur in places that lack effective monitoring by independent national or international bodies.[593] The Committee against Torture details the need to have 'impartial mechanisms to inspect and conduct visitations to places of detention or any holding facilities.'[594]

4.2 CHAPTER SYNOPSIS

This chapter analyses the institutions that serve as oversight mechanisms and have both roles and duties to prevent the use of torture. This chapter is divided into two parts. The first part analyses the roles and mandates of the SPT in preventing torture. The part presents a diverse mandate that entails the visits to places of detention in State party territories;[595] giving advice and, where necessary, assisting State parties to form NPM; maintaining direct contact, offering training to NPM members, and making observations and recommendations to State parties.[596]

Under OPCAT, there is a requirement that the SPT and NPM cooperate. As part of this cooperation, the SPT provides funding for the NPM[597] and makes recommendations when necessary. Additionally, this part discusses how the SPT interacts with other international and

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[590] As above.

[591] Art 18 of OPCAT.

[592] The Association for the Prevention of Torture (APT) Geneva *Monitoring places of detention: A practical guide,* 2003 24.

[593] Penal Reform International 'Preventive monitoring' *https://www.penalreform.org/issues/torture-prevention/preventive-monitoring/* (accessed 22 August 2022).

[594] United Nations Committee against Torture, General Comment No.2: *Implementation of article 2 by States Parties,* 24 January 2008, CAT/C/GC/2 at para 13.

[595] Art 4 of OPCAT.

[596] Art 11 of OPCAT.

[597] A total of 84 projects have been funded in 22 countries since the inception of the SPT special funds excluding Nigeria. See also, Human Rights Council 'Special fund established by the Optional Protocol to the Convention against Torture and other, Cruel, Inhuman or Degrading Treatment or Punishment' Forty-sixth session 22 February -19 March 2021 A/HRC/4/42

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regional bodies that contribute to the prevention of torture. Among these are the UN High Commissioner for Refugees, the Office of the United Nations High Commissioner for Human Rights, and the Committee against Torture. SPT and the State are also involved in this cooperation.

The second part proceeds with an overview of the requirement of an NPM. This includes the NPM's mandate to visit places of detention, to advise, cooperate with and seek advice from the SPT. This analyses the requirements that OPCAT expects from NPM. As soon as OPCAT has been ratified by the State, the NPM must be established within one year. This part begins with the requirement that an NPM must adhere to the Paris Principles when established. Part of the requirement in OPCAT articles 18 to 21 specifies that the NPM must be independent of the State. This part clarifies the context of the functional, personnel, and financial independence requirements in articles 18 to 21 of OPCAT. OPCAT expects the State to guarantee the functional independence of the NPM through statutory documents.

This part also analyses the roles and mandates of NPM, which are more than merely visiting the place where people are deprived of their liberties but also in assessing the situation, providing information to detained persons, and recommending and drafting legislation.

4.3 THE ROLE AND MANDATE OF THE SUBCOMMITTEE ON PREVENTION OF TORTURE (SPT) IN THE PREVENTION OF TORTURE

OPCAT's preamble stipulates that further supportive measures are needed for UNCAT.[598] This implies that OPCAT and UNCAT are linked; for either to function adequately or reach their aims, both OPCAT and UNCAT must work together.[599]

The coming into force of OPCAT established the SPT. The Secretary General of the United Nations was required to write to State parties informing them to send nominees to act as members of the subcommittee.[600] There are currently 25 members drawn from State parties to OPCAT.[601] The committee members are elected for four years and may be re-elected for a

[598] 'Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment'.

[599] R Murray et al *The Optional Protocol to The UN Convention against Torture* (2011) 139.

[600] Art 6(3) of OPCAT.

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second term.[602] Drawn from different regions of the world and backgrounds,[603] they are experts in different fields that help to prevent torture. They include lawyers, doctors, detention officers, interpreters and researchers.[604]

The subcommittee's mandate is to carry out regular visits and follow-ups to places of detention or anywhere where people are deprived of their liberty, mostly under State party or OPCAT jurisdictions.[605] The subcommittee visits places of detention where deprivation of liberty has been declared.[606]

Before the visitation, the SPT conducts research on the political, social, economic and legal situation of the country[607] to better understand the status of human rights in the state.[608] The

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[601]United Nations: Membership Subcommittee on Prevention of Torture. *https://www.ohchr.org/en/treaty-bodies/spt/membership* (accessed 10 May 2022).

[602] United Nations: Membership Subcommittee on Prevention of Torture. *https://www.ohchr.org/en/treaty-bodies/spt/membership* (accessed 10 May 2022).

[603] The SPT comprises of 25 members who are independent and impartial. The current members include, 'Ms. Patricia Arias from Chile, Ms Vasiliki Artinopoulou from Greece, Mr Massimiliano Bagaglini from Italy, Ms. Maria Andrea Casamento from Argentina, Ms Mari Brasholt from Denmark, Ms Carmen Comas-Mata Mira (Vice Chairperson for visits) from Spain, Mr Jakub Julian Czepek from Poland, Ms Marija Definis-Gojanovic from Croatia, Mr Hameth Saloum Diakhate from Senegal, Mr Satyabhooshum Gupt Domah from Mauritius, Ms Hamida Dridi from Tunisia, Mr Roberto Michel Feher Perez from Uruguay, Mr Marco Feoli Villalobos from Costa Rica, Ms Suzanne Jabbour from Lebanon, Mr Daniel Fink from Switzerland, Mr Gnambi Garba Kodjo from Togo, Mr Nika Kvaratskhelia from Georgia, Ms Marina Langfeldt from Germany, Ms Aisha Shujune Muhammad (Vice Chairperson for NPM) from Maldives, Mr Abdallah Ounnir from Morocco (Vice Chairperson and Rapporteur), Ms Catherine Paulet from France, Ms Zdenka Perovic from Montenegro, Ms Maria Luisa Romero from Panama, Ms Nora Sveaass from Norway and Mr Juan Pablo Vegas from Peru *https://www.ohchr.org/en/treaty-bodies/spt/membership* accessed 8 September 2022.

[604] L G Pinto 'Prevention of torture: The effects of preventive action' (2022) *Journal of Human Rights Practice* 1 3.

[605] Art 11 of OPCAT. See also, article 4(2) of OPCAT on the definition of deprivation of liberty to mean 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. As per the definition, this implies that the police cells, prisons, immigration cells, EFFC cells, Nigerian army cells and anywhere there is a holding facility under any authority in Nigeria will qualify as a detention centre. See also Art 13(4) where the subcommittee can follow-up on the place of detentions. The procedure for visitation is that two subcommittee members can visit any member State as a delegation. The members visiting can also be accompanied by experts who have experience in the field of unlawful detention. The Office of the UN High Commissioner for Human Rights and the UN Centre for International Crime Prevention helps to compile the body of experts that can accompany the two members of the Subcommittee. See Art 13 (3) of OPCAT.

[606] Art 4 and 11 of OPCAT.

[607] Pinto (n 27 above) at 1 4. The SPT will collect laws and legislation that are available to prevent torture in the State it is visiting. This allows the SPT to understand the form of government and the level of independence of the NPM and other relevant organisations available to prevent torture.

[608] Pinto (n 27 above).

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visits include preparation, in which the State is notified.[609] Other agencies include the National Human Rights Commission, NPM, civil society organisations, academics who specialise in the area of torture prevention, United Nations agencies that have offices in the State party territory and any other organisations that help in the prevention of torture are also notified.[610]

The visitation mandates oblige the SPT to issue recommendations to both the NPM and the State party with the aim of improving the nature of the detention centres and the detainees.[611] During the visitation, the SPT is bound by confidentiality and impartiality and is guided by the principles of non-selective, universality and objectivity.[612] This includes SPT's confidential recommendations to the State party.[613] Such confidentiality is critically referred to by Pinto as discouraging State parties from taking action.[614] However, this assertion cannot be confirmed as more than half of the States visited by the SPT allowed the recommendations to be made public on the SPT website.[615] Arguably this is not the case in Nigeria, as the SPT visited Nigeria in 2014 for a State visit.[616] The SPT provided a confidential recommendation to the Nigerian government as a State party;[617] arguably, if made public, the recommendations would allow the Nigerian government to act on the prevention of torture.[618]

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[609] Pinto (n 27 above) at 1 4.

[610] As above.

[611] Art 11(1)(a). This can also serve as advice that will assist the State party in preventing torture. See Art 11(b)(i)

[612] Art 2(3) of OPCAT. See also art 11(b)(ii).

[613] Art 16(1) of OPCAT.

[614] Pinto (n 27 above) at 1 9.

[615] UN Treaty Body Database 'Optional Protocol of the Convention against Torture (CAT-OP)' *https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological* (accessed 12 September 2022). The database shows the country visited by the SPT, the date of the visits, the report sent to the State party and NPM, comments received from the State party and NPM.

[616] As above. The SPT visited Nigeria from 1 April 2014 to 3 April 2014.

[617] As above. The SPT sent a confidential report to Nigeria on the 9 July 2014 and to date, the SPT has not received any feedback from the Nigerian government.

[618] The countries that allowed recommendations to be made public acted faster than those that voted them to be made confidential. This is reflected in the list of countries on the SPT websites. Sweden, Benin Mexico, Paraguay, Brazil, Argentina, Germany, New Zealand, Armenia, Peru, Togo, Maldives, Netherlands, Italy, Chile, Romania, Kazakhstan, Hungary, North Macedonia, Panama, Spain, United Kingdom of Great Britain and

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Article 4(1) of OPCAT specifies that each party to OPCAT shall afford both the NPM and the SPT access to any place where people are deprived of their liberty by authorities. Article 4(2) defines the 'deprivation of liberty in terms of any place where people or human beings are being imprisoned or held either in private or public custody'.[619] This imprisonment extends to immigration cells, police cells, army cells, and prisons (correctional facilities, penitentiaries) and includes places where people are being deprived of their liberty by the State or any of its agencies.[620]

The State parties are obligated by article 4 to allow the SPT visitation access to all places of deprivation of liberty in its territory.[621] This is also provided in article 29 of OPCAT.[622] However, the problem created is that the national government of a federal State might not necessarily have the power over all detention centres, as some might be controlled by a provincial government. Buckland and Olivier-Muraolt refer to the challenge related to the implementation of OPCAT as the issue of 'jurisdiction and responsibility for different places of deprivation of liberty'.[623]

Moreover, during the visitations, the State party is obligated to provide the SPT free access to places of detention or where there is deprivation of liberty.[624] The SPT must have all the information regarding the number of persons deprived of their liberty,[625] access to details

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Northern *https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronologica*l (accessed 12 September 2022).

[619] Art 4(2) of OPCAT.

[620] This includes, children's homes, psychiatric hospitals, civil defence cells and road safety cells.

[621] Pinto (n 27 above) at 1 4.

[622] Art 29 of OPCAT

[623] B Buckland & A Olivier- Muralt 'OPCAT in federal States: Towards a better understanding of NPM models and challenges' (2019) 25 (1) *Australian Journal of Human Rights* 23 25. In a federal State, the authority over places of deprivation of liberty is divided by the national, State, provincial and local governments. In Nigeria, the Constitution of Nigeria, 1999 set out the function of each tier of government. The federal armed forces and detention centres under the police, and civil defence being controlled by the Nigeria federal government as stipulated in the Constitution of Nigeria, 1999. This implies that the SPT should be able to visit any detention centres in Nigeria as all detention centres are federal government agencies rather than the State (provincial) governments.

[624] Art 12(a) of OPCAT.

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regarding the deprived person's treatment,[626] and the authorisation to interview persons deprived of their liberty.[627]

The SPT must also choose any place of detention they wish to visit or persons they want to interview without interference from the government of the member State.[628] This allows the SPT to obtain the testimony statement from detainees, which they can use to understand the level of torture in the country and how they can prevent the use of torture.[629] The State party is obliged to refrain from reprisal against or any punishment of those who agree to be interviewed by the SPT.[630] Articles 15 and 21 of OPCAT emphasise that the authority should not punish anyone who communicates or furnishes an interview to the SPT.[631]

A State member might only refuse the SPT visitation to a particular place of detention[632] on compelling grounds like the corona virus pandemic, health disasters, natural disasters, public safety and the national defence of the country.[633] The provision of article 14(2) of OPCAT restricts state parties from refusing visitation from the SPT based on the declaration of state

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[625] Art 14(1)(a). Whilst the SPT has the right to know the number of people deprived of their liberty, it is arguably impossible in Nigeria to know the number of people who are deprived of their liberties as there is no database of people who are detained on daily basis. Considering the definition of deprivation of liberty in art 4 of OPCAT, Nigeria cannot account for how many persons are behind bars or in various detention centres.
Sec 16 of the Administration of Criminal Justice Act 2015 proposes a central registry but it cannot be said to be enforced. See also United Nations Committee against Torture, *First annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment* February 2007 to March 2009, 14 May 2008, CAT/C/40/2. *https://www.refworld.org/docid/52fa414c4.html* (accessed 16 May 2022).

[626] Art 14(1)(b) of OPCAT.

[627] Art 14(1)(d) of OPCAT.

[628] Art 14(1)(e) of OPCAT.

[629] Art 20(e) of OPCAT. See also, Pinto (n 27 above) at 1 6.

[630] Art 15 and 21 of OPCAT.

[631] As above.

[632] Art 14(2) of OPCAT. 'Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State party as a reason to object to a visit.'

[633] Advice of the Subcommittee on Prevention of Torture to State Parties and National Preventive Mechanisms in Relation to the Corona Virus Pandemic (adopted on 25th March 2020) *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf* (accessed 8 September 2022).

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of emergency.[634] This implies that the SPT has an obligation to visit a State party during the time of the state emergency.

4.3.1 Cooperation of the Subcommittee on Prevention of Torture and National Preventive Mechanism

The prevention of torture is a global assignment that implies cooperation between several different agencies and organisations. Article 11(c) of OPCAT mandates the SPT to cooperate with all relevant United Nations bodies and international or national organisations that are working towards the prevention of torture.[635] However, this cooperation is limited, as the NPM do not have a similar mandate; OPCAT and the SPT do not offer guidelines on the national preventive mechanism.[636] Nevertheless, the SPT serves as an adviser to the NPM and State parties.[637] It also has the capacity to train and assist while maintaining direct contact with both the NPM and the State party.[638] This implies that NPM and State parties have an established relationship with the SPT.

Article 12(c) further provides that, for the SPT to be able to perform their mandate, the Government of a State party must ensure that they provide the SPT with the necessary information when requested.[639] The first annual report of the SPTs it provides that one of their main mandates apart from visiting is to:[640]

> …advise and assist State parties, when necessary, in their establishment; maintain direct contact with national preventive mechanisms and offer them training and technical assistance; advise and assist national preventive mechanisms in evaluating the needs and necessary means to improve safeguards

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[634] As above.

[635] Art 11(c).

[636] Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Guidelines on national preventive mechanism. Geneva, 15-19 November 2010, CAT/OP/12/5 (*Guidelines on NPM*).

[637] Art 11 of OPCAT.

[638] As above.

[639] Art 12(c) of OPCAT.

[640] The mandate of the SPT as established in article 11 is to visit State parties where people are deprived of their liberties. The visitations are of two types: regular in-country visits and a follow-visits as provided in article 13(1) of OPCAT.

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> against ill-treatment, and make necessary recommendations and observations to State parties with a view to strengthening the capacity and mandate of the Nation Preventing mechanisms.[641]

As part of the effort of the SPT to facilitate cooperation with the NPM, the SPT would normally ask for some information including the 'details of the establishment of the NPM, such as the legal mandate, composition, size, expertise, financial resources at their disposal and frequency of visits'.[642] This shows the level of engagement the SPT have with the NPM. In 2020, the SPT transmitted 94 visit reports to both State parties and the NPM. The reports include those from 'Ghana, Senegal, Switzerland, and the United Kingdom of Great Britain and Northern Ireland (to both the State party and the national preventive mechanism), while a total of 58 visitation reports were published following requests of both the State party and the NPM.[643] Once the State party and the NPM receive the reports, they are both obligated to transmit a reply to the SPT on the action that has been taken to implement the recommendations made by the SPT.[644]

The cooperation includes funding,[645] usually on request by the NPM in accordance with article 26(1) of OPCAT,[646] with the purpose of helping the NPM finance the implementation of the recommendations of the SPT as well as the proposed educational programmes for the

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[641] Art 7(b) of the United Nations Committee Against Torture, *First annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment* February 2007 to March 2009, 14 May 2008, CAT/C/40/2. *https://www.refworld.org/docid/52fa414c4.html* (accessed 16 May 2022). See also, the United Nations Committee Against Torture, *Fourth annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment* CAT/C/46/2 article 63 where it provides that '... [whilst] the Subcommittee does not, nor does it intend to formally assess the extent to which the NPM conforms to OPCAT requirements, it does consider it a vital part of its role to advise and to assist States and NPM to fulfil their obligations under the Optional Protocol'.

[642] As above 24.

[643] Art 13 and 14 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Fourteenth annual report of the Subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment 8 March 2021 CAT/C/70/2.

[644] Art 21 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Thirteenth annual report of the Subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment 16 March 2020 CAT/C/69/3.

[645] United Nations Committee against Torture. Forty-eighth session 7 May-1 June 2012, Item 5 of the Provisional Agenda, organizational and other matters '*Fifth annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment'* CAT/C/48/3.

[646] 'A special fund shall be set up by the relevant procedures of the General Assembly, to be administered by the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on prevention after visits to a State party, as well as education programmes of the national preventive mechanisms.'

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NPM.[647] The SPT always 'identifies on annual basis the thematic priorities for the annual call for applications by countries with the aim of funding the recommendation made by the SPT during the State visits.[648] Once the SPT receives the application, it reviews it and grants the award.[649]

Moreover, the SPT also receives contributions from countries, and from 2008 to 2011, it received $US29,704.98 from the Czech Republic, $US5,000 from Maldives, $US82,266.30 from Spain and $US855,263.16 from the United Kingdom.[650] In 2021, the SPT granted a total of $US449,019 to 17 torture prevention projects across 13 State parties.[651] It also received $US9,380 from the Czech, $US200,609 from Denmark, $US60, 975 from France, $US116,279 from Germany and $US11,947 from Portugal.[652]

According to Steiner, the SPT's job is to offer cooperation between itself and other agencies but not to see itself as an auditor.[653] This implies that the relationship as provided in article 11 of OPCAT is for the SPT to strengthen the effectiveness of the NPM rather than to condemn or supervise them.[654] Nevertheless, the NPM is inevitably evaluated by the SPT as the SPT will want to know if it can rely on its national partners.[655] On the other hand, as the NPM wants to be viewed as the national partner of the SPT, there need to be equal treatment and adequate cooperation between the SPT and the NPM.[656]

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[647] United Nations Committee against Torture. Forty-eighth session 7 May-1 June 2012, Item 5 of the Provisional Agenda, organizational and other matters 'Fifth annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment' CAT/C/48/3.

[648] As above.

[649] As above.

[650] As above.

[651] United Nations Committee against Torture. Seventy-third session 19 April-13 May 2022, Item 5 of the provisional agenda, organizational and other matters 'Fifteenth annual report of the Subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment' CAT/C/73/2.

[652] As above.

[653] Steinerte (n 1 above) at 153

[654] As above

[655] As above at 154

[656] As above

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UNCAT requires that the State party must put in place laws that prohibit and prevent torture.[657] When the State party is formulating or amending legislation, the NPM has the authority to request a legal opinion from the SPT.[658] This enhances the level of cooperation between the two institutions. This cooperation has been demonstrated in Brazil, where the Brazilian President introduced Decree No 9.831 of 10 June 2009, which brought a substantive change to torture prevention in Brazil.[659] The Decree withheld financial support and removed members of the Brazilian NPM from office,[660] and the members ceased to be remunerated.[661] It removed the requirement of membership to be appointed on a diverse basis (sex, gender, race), removed office space (administration support) and provided that the use of offices could only be available to the members of the NPM on a request in advance; support staff of the NPM would be distributed to the other unit of the Ministry of Women, Family and Human Rights, and members of the NPM would have to return the official badges and telephones and any other official equipment with them to the government.[662] The Decree removed the NPM's functional and financial independence thus, preventing the ability of the NPM to prevent torture.[663] The SPT advised that the changes made by the Decree had rendered the NPM unable to perform its mandate and advised that the Decree be revoked.[664]

The SPT in fulfilling its mandate in article 11(b) of OPCAT, in its 13th session, stated that it had met the Estonian NPM[665] for the purpose of 'exchanging information and its experience

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[657] Art 2 and 4 of UNCAT.

[658] Pinto (n 27 above) at 19. See also Steinerte (n 1 above). The SPT always has an interest in the interpretation of national legislations, the definition of torture set out in the national legislations, implementation of the legislation, and keen on examining gaps in both primary and secondary law of a federal State, the transformation of international obligations into domestic laws.

[659] Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 'Views of the Subcommittee on Prevention of Torture on the compatibility, with the optional protocol to the convention against torture, of presidential decree No. 9.831/2019, relating to the national preventive mechanism of Brazil' *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Views_NPM_Brazil.pdf* (accessed 13 September 2022).

[660] As above.

[661] As above.

[662] As above.

[663] As above.

[664] As above.

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and discussing areas for future cooperation'.[666] A similar meeting was held with the Georgian NPM in its 14th session.[667] Finally, at the 15th session, the SPT met the Honduras NPM and the Senegalese authorities.[668] In the latter case it advised the Senegalese on the measures needed to have a functional and operational NPM.[669]

4.3.2 The Relationship between the SPT and Regional and other UN bodies

The SPT did not collaborate and cooperate with the NPM alone but also with other international and United Nations and regional bodies that dealt with the prevention of torture.[670] In the 15th annual report of the SPT, the Chair of the SPT, the Chair of the Committee against Torture and the Special Reporter on Torture presented the 13th annual report of the SPT to the UN General Assembly in its 76th session. On June 26, which is the United Nations International Day in the support of Victims of Torture, the SPT with other agencies (Committee against Torture, UN Voluntary Fund for Victims of Torture and the Special Reporter on Torture) issued a joint statement on the need for accountability and redress to be available for the victims of torture.

The provisions of article 11(c) of OPCAT extend the cooperation of the STP to include regional institutions[671] such as the European Convention for the Prevention of Torture (ECPT) and the Committee for the Prevention of Torture in Africa (CPTA). During the eighth session of the SPT, the then Vice Chairperson of the African Commission on Human and Peoples' Rights (ACHPR) and the Special Rapporteur on Prisons and Conditions of Detention in Africa met the SPT in a plenary to discuss how to prevent the use of torture in Africa and possible collaborations between the SPT and the ACHPR.[672] In September 2016, the SPT

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[665] United Nations Committee against Torture. Forty-eighth session 7 May-1 June 2012, Item 5 of the Provisional Agenda, organizational and other matters 'Fifth annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment' CAT/C/48/3, para 22.

[666] As above.

[667] As above.

[668] As above.

[669] As above.

[670] Art 11(c) of OPCAT.

[671] Art 11(c) of OPCAT.

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further collaborated with the CPTA[673] when both institutions met in Bristol, United Kingdom, to discuss the mode of operations, the mandate of the two institutions and to identify areas for short-term, mid-term and long-term collaboration.[674]

The SPT also collaborated with the Inter-American Commission on Human Rights at an international workshop organised by the OHCHR and the Organisation of the American States in Washington D.C and attended by Mario Corolano on the 8 and 9 of December 2009 with the sole aim of strengthening the cooperation between the two institutions.[675] The collaboration extended to the European Union in which the SPT made a presentation at the Working Party for Human Rights (COHOM) meeting in 2009 in Brussels, Belgium.[676] The meeting was combined with a visit to a detention centre with a Chinese delegation, within the context of EU-China human rights dialogue organised by the Czech EU Presidency.[677] It extended to a meeting between the European Commission Vice President Jacques Barrot and European states on the supervision of detention centres.[678]

However, when a State falls under the aegis of a regional body and OPCAT, article 31 of OPCAT specifies that 'cooperation is encouraged but must avoid any duplications'. The cooperation as envisaged in article 11 read with article 31 is as follows:

[672] Committee against Torture 'Third annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' Forty-forth session Geneva, 26 April-14 May 2010. UN doc. CAT/C/44/2*.

[673] African Commission on Human and Peoples' Rights 'Press release on meeting between committee for the prevention of torture in Africa and members of the United Nations Sub-Committee for the Prevention of Torture' 5 September 2016, Banjul, the Islamic Republic of The Gambia. *https://www.achpr.org/pressrelease/detail?id=121* (accessed 19 September 2020).

[674] As above. The meeting brought together nine participants from both institutions, including 'Commissioner Lawrence M Mute, Chairperson of CPTA, Commissioner Lucy Asuagbor, Member of CPTA; Mari Amos, Member of SPT; Hans-Jorg Viktor Bannwart, Member of SPT, Armen Avetisyan, SPT Secretariat; Professor Rachel Murray and Debra Long, Representing HRIC; Albab Tesfaye, ACHPR-CPTA Secretariat; and Reginald Moriah, Assistant to Commissioner Mute'.

[675] Committee against Torture 'Third annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' Forty-fourth session Geneva, 26 April-14 May 2010. CAT/C/44/2*.

[676] As above.

[677] As above.

[678] As above para 32.

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> The provision of the OPCAT shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The (SPT) and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objective of OPCAT.[679]

The aim of the cooperation is to have an effective way of reducing and preventing torture in each of the regions and states. According to Nowak and McArthur,

> For states that are party to both instruments, i.e. ACHPR and the CAT, two crucial questions will be raised at the moment of ratifying the OPCAT: What added value will the Protocol have for such states and how will the different preventive mechanisms cooperate with and complement each other.[680]

Article 5 of ACHPR prohibits torture. In 2002, the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) established a Follow-Up Committee.[681] This Committee and other mechanisms established by the ACHPR included the Special Rapporteur on Prisons and Other Conditions of Detention, which is an office that was formerly supported by the non-governmental organisation of Penal Reform International that conducted several visits to places of detention centres across African States.[682] The Follow-Up Committee had a broader mandate to organise, support, and present seminars to disseminate the Robben Island Guidelines to both the national parties and stakeholders.[683] They were to develop and make a proposal for the Africa Commission on strategies for the implementation of Robben Island Guidelines at the regional and national level and to make a progress report to the African Commission at each ordinary session.[684] The Follow-Up Committee's mandate did not include visitations to places of detention; however, this was being carried out by the Special Rapporteur, who had the mandate to conduct examinations of State prisons and make recommendations for improvement.[685] This enabled the Special Rapporteur to visit several

[679] Art 31 of OPCAT.

[680] M Nowak and E McArthur *The United Nations Convention Against Torture* (2008) 1154.

[681] ACHPR/Res 61 (XXXII)02: Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (2002), adopted thirty-second Ordinary Session, October 2002.

[682] R Murray 'Special Rapporteurs' in MD Evans and R Murray *The African Charter on Human and Peoples' Rights* 2 ed 2008.

[683] R Murray *et al The optional protocol to the UN convention against torture* (2011) 151.

[684] As above.

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African state detention centres and make follow-up visitations.[686] The Special Rapporteur in 2008 asserted that his office could engage with the SPT by using the relationships 'developed by the African Commission with African States and alerting it to any sensitivities; making documentation and studies available to the SPT; as well as looking at the possibility of joint missions'.[687]

The SPT also has the mandate to cooperate with other UN bodies in preventing torture. OPCAT has established a unique relationship between the SPT and the Committee against Torture by which both hold a simultaneous session at least once a year.[688] The ninth session of the SPT was held simultaneously with the Forty-Third session of the Committee against Torture and the third joint meeting between both bodies took place on 17 November 2009.[689] Issues covered at the joint meeting were the implementation of OPCAT and the cooperation between the two bodies as envisaged in articles 11(c), 16 para 4 (c) and 24.[690] The bodies exchanged information on the countries that had been visited and those that were soon to be visited. Exchange of information also took place between the chairperson of the SPT and the chairperson of the Committee against Torture.[691]

The SPT continues to share information in several inter-committee meetings of the United Nations human rights bodies. This has extended to the SPT meeting officials of the Office of the United Nations High Commissioner for Refugees (UNHCR in the ninth session, in which strategic information was shared that included information the SPT acquired in the context of its mandate to visit detention centres for asylum seekers.[692]

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[685] As above.

[686] As above.

[687] Murray et al (n 22 above) at 154.

[688] Art 10(3) of OPCAT.

[689] As above para 54.

[690] As above para 55.

[691] As above para 56.

[692] Committee against Torture 'Third annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' 44th session Geneva, 26 April-14 May 2010. CAT/C/44/2* para 63.

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The SPT and the UN Special Reporter on torture share similar mandates that require them to keep close contact and exchange ideas.[693] On 26 June each year, the UN Special Rapporteur, the Committee against Torture and the SPT issue a joint statement on the International Day in the support of victims of torture.[694]

The SPT has also collaborated with several academic institutions and civil society organisations. When the SPT was created, it received material from the Association for the Prevention of Torture which had vast experience in the prevention of torture,[695] and training from the International Committee of Red Cross[696] Several academic institutions have played an important role in promoting the prevention of torture in their respective countries. The University of Bristol helps by facilitating meetings between the SPT and the CPTA.[697]

4.3.3 The SPT and State Collaboration

According to Nowak and McArthur, cooperation between State and SPT in articles 11 and 12 is fundamental in the prevention of torture.[698] Article 11(c) of OPCAT requires that the SPT cooperate with international bodies – UN bodies as well as national and other organisations working towards the prevention of torture.[699]

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[693] Committee against Torture, Fortieth session 'First annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment' February 2007 to March 2008 CAT/C/40/2 para 35.

[694] International day in support of victims of torture: UN human rights experts call for justice and rehabilitation *https://www.ohchr.org/en/press-releases/2019/06/international-day-support-victims-torture-un-human-rights-experts-call?LangID=E&NewsID=24739* (accessed 19 September 2022).

[695] Committee against Torture 'Third annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' 44th session Geneva, 26 April-14 May 2010. CAT/C/44/2* para 37.

[696] Committee Against Torture, 46th session, 9 May-3 June 2011 'Fourth annual report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' April -December 2010 CAT/C/46/2 para 37.

[697] Human Rights Implementation Centre 'Policy paper on the possible future role and activities of the committee for the prevention of torture in Africa (CPTA)' University of Bristol 2011. *https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/cptafuturepolicy.pdf* (accessed 20 September 2022).

[698] M Nowak and E McArthur *The United Nations Convention Against Torture* (2008) 1000.

[699] Art 11(c) of OPCAT.

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In terms of article 11(c) in conjunction with article 12, the State parties to OPCAT must allow the SPT access to the detention centres as stated in article 4 within the territories under the control of the State.[700] Article 12(a) provides a unique system by which the SPT does not require prior consent from the State before it conducts its in-country visitations.[701] Traditionally, before a UN special procedure like the Special Rapporteur on torture or treaty body such as the Committee against Torture can conduct in-country visitations, prior consent is needed from the state.[702] However, the requirement that the SPT does not need prior consent to visit does not mean that it will not inform the State of its incoming visitation.[703] Article 13 of OPCAT specifies that the SPT must notify the State of the programme of its incoming visitation[704] and make necessary logistical arrangements with all relevant authorities, including human rights and civil society organisations.[705] Whilst the notification provides general information to the State parties about the visitation and operational plan, the notification does not include the location of the detention centres that the SPT will visit.[706]

The notification also helps the State parties to OPCAT to help to facilitate contact with the NPM.[707] Articles 12(c) and 11(b) obligate the State parties to assist the NPM to have direct contact with the SPT.[708] Article11(b)(ii) provides that the State, in ensuring that the NPM have direct contact with the SPT, must not interfere with any confidential meeting between the two institutions.[709] More so, the provision of article 12(d) obligates State parties to

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[700] Art 12(a) of OPCAT.

[701] Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) (2010) 75.

[702] As above.

[703] As above.

[704] Art 12(b) requires the State parties to furnish the SPT with all necessary information that will helps the functions of its mandates.

[705] Art 13 of OPCAT.

[706] Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) as (n124 above).

[707] Art 12(c) of OPCAT.

[708] Art 11(b) of OPCAT.

[709] Art 11(b)(ii) of OPCAT. 'Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities'.

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examine the recommendation provided by the SPT, to enable both the State party and the SPT to discuss how to implement the recommendations.[710]

The issue with implementing Articles 11 and 12 is that a State party to OPCAT may refuse to cooperate with the SPT. The ability to cooperate lies more on the State party, creating an unequal balance between the SPT and the State party. In October 2017, the SPT suspended its visit to Rwanda on day five of its planned seven-day mission due to the need for more cooperation from the Rwandan Government. The SPT alleged that it had been barred from accessing specific detention centres within the country and disallowed from conducting private and confidential interviews with some person deprived of their liberty.[711]

Similarly, In November 2022, the UN Committee against Torture and the SPT issued a joint statement highlighting the lack of cooperation from the Government of Nicaragua. When the SPT visited Nicaragua in 2014, they found issues such as overpopulation and overcrowding of detention centres, lack of medical examinations and records, absence of safeguards, and the ongoing use of torture in detention centres contributing to the prevalence of torture in Nicaragua. As part of efforts to prevent torture, the SPT requested information on Nicaragua's implementation of its visitation recommendations. However, Nicaragua did not respond to the request. Furthermore, in 2023, Nicaragua declined the SPT's plan to visit. In response to Nicaragua's actions, both the UN Committee against Torture and the SPT decided to publicly release the confidential SPT visit report to underscore the seriousness of the situation and the necessity for a coordinated response to prevent torture.[712]

The cooperation between the State and the SPT aims to further achieve the mandate of OPCAT in preventing torture and in implementing the OPCAT vision.[713] In circumstances where a State party refuses to cooperate with the SPT or refuses to prevent the use of torture, the SPT, in accordance with article 16(4), may publish the report of the in-country visitation for the public.[714]

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[710] Art 12(d) of OPCAT.

[711] Prevention of Torture: UN human rights body suspends Rwanda visit citing obstructions. Geneva/Kigali, 20 October 2017.

[712] Nicaragua: Two UN rights committees deplore refusal to cooperate and lack of information. Geneva, 29 November 2022.

[713] Art 2(4) of OPCAT.

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The SPT had its first visit to Nigeria in 2014 as part of the function of the SPT to visit countries in which torture was reported.[715] The meeting in Abuja, involving government officials, National Committee against Torture members and the NHRC, focused on how the SPT could help implement OPCAT in Nigeria.[716] Whilst the SPT communicated its views on reform, the Nigerian Government has not yet made the SPT advice known to the public or has it responded to the confidential information provided by the SPT.[717] The confidentiality provision makes it difficult to access information about a State Party. Its purpose is to build trust and facilitate dialogue between State Parties and the SPT without fear of reprisal. It allows them to openly share their challenges and receive the help and support they need to improve the conditions and treatment of persons deprived of their liberty.[718] However, cooperation with the SPT is essential. Unfortunately, confidentiality becomes a hindrance when there is no willingness to cooperate, thus serving as a weakness in OPCAT.

4.4 THE NATIONAL PREVENTIVE MEASURES REQUIREMENT AS ESTABLISHED BY OPCAT

[714] Art 16(4) of OPCAT. 'If the State Party refuses to cooperate with the Subcommittee on Prevention according to article 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decided, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention'.

[715] Nigeria: UN torture prevention body concludes its high level advisory visit, as a first steps to strengthen the national capacity to prevent torture' *https://www.ohchr.org/en/press-releases/2014/04/nigeria-un-torture-prevention-body-concludes-its-high-level-advisory-visit* (accessed 14 August 2022).

[716] As above.

[717] The process of an SPT State visit involves written notification to the State party by SPT. This notification includes the list of the SPT members, delegates, secretarial staff, and external experts expected for the visitation. Once it arrives, the SPT will conduct a confidential visitation during which, the SPT meets the ministry of the law enforcement agencies like the police, the senior officers of anywhere pre-trial or any of the detention centers. The SPT also meets the NPM, civil society organisations and the National Human Rights Commission. At end of the visitation, the SPT will have a final meeting with the senior officials of several ministries in which it will present its preliminary observations to identify some issues that need immediate action and other important elements that need improvement. The SPT then will issue a press statement briefly stating that it visited a particular country. After the visitation, the SPT will draw up and adopt a confidential recommendation report that will be sent to the State party. However, the State party can request that the report be made public. Moreover, the SPT may also make a follow-up country visit to see how the recommendation has been implemented. This visitation enables the SPT to advise the NPM on the legal framework and any other practical framework that the NPM is working on. *https://www.ohchr.org/en/treaty-bodies/spt/visits#1* (accessed 26 September 2022).

[718] Lagat C J 'Effectiveness of national preventive mechanisms in prevention of torture: The case of interconnectedness and cooperation' Unpublished Master theses, University of Ljubljana, 2018.

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Once a State ratifies OPCAT, the State is obligated after one year to set up or maintain an NPM.[719] While some States will need to set up a new national mechanism, some already have such a mechanism.[720] OPCAT does not specify the forms of the NPM,[721] meaning that State parties to OPCAT are at liberty to decide on the details of the NPM. In some circumstances, a State may find it convenient to maintain the NHRC, while others might establish new NPM.[722]

Article 18(4) of OPCAT directs that States must ensure that, when establishing NPM, they comply with the principles relating to the status of national institutions, and if there is an already existing NPM, due consideration must be given to the Paris Principles.[723]

In 2010, the SPT issued a guideline for the establishment of NPM.[724] The guideline's introduction directs States to ensure that in establishing new or existing NPM, they embody provisions of articles 3, 4, 17-23, 29 and 35 of OPCAT; however, other provisions are not unimportant.[725] The purpose of the guidelines is not to repeat OPCAT provisions but to seek more clarity on establishing NPM.[726]

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[719] Art 3 of OPCAT. See also, Art 31 of the guidelines on national preventive mechanisms Twelfth session Geneva, 15-19 November 2010.

[720] Art 17 of OPCAT.

[721] The NPM can be Human Rights Commissions, Offices of the Ombudsman and several agencies or non-governmental organisations. These various forms are necessary for NPM to be suited to the need of the country in question. OPCAT does not specify the form of the NPM. However, each NPM must conform to the key requirement of OPCAT of independence and the specification of part IV of OPCAT. See also, E Steinerte 'The jewel in the crown and its three guardians: Independence of national preventive mechanisms under the optional protocol to the UN torture convention' (2014) 14(1) *Human Rights Law Review* 1 3.

[722] As above.

[723] 'When establishing national preventing mechanisms, States Parties shall give due consideration to the principles relating to the status of national institutions for the promotion and protection of human rights.' The principles relating to the status of national institutions are the Paris Principles which serve as a benchmark for the establishment of any national human rights institution. See also, United Nations: Principles relating to the status of national institutions *https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris* (accessed 11 May 2022). See also, M Nowak & E McArthur (n 103 above) at 1072.

[724] Art 1 of the Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Guidelines on national preventive mechanism. Geneva, 15-19 November 2010, CAT/OP/12/5 (Guidelines on NPM).

[725] As above.

[726] Art 3 of the Guidelines on NPM.

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Given the variety of NPM, the question of the requirement for the formation of an NPM arises. What did OPCAT expect from each country designing an NPM or one with an existing NPM? This part sets out the requirement of the NPM as specified in part IV of OPCAT. OPCAT will serve as the benchmark and more additional clarity will be included from the SPT guidelines.

4.4.1 Independence of the NPM

Article 17 guarantees the right of NPM to take different forms.[727] However, for the NPM to be effective in the prevention of torture in any country, they must be independent,[728] implying that the government (State) or any of its officials cannot interfere with the function and operation of the NPM.[729]

Article 18(4) of OPCAT also encourages State parties to ensure that they accord adequate consideration to the Paris Principles when establishing NPM. In the 'composition and guarantees of independence and pluralism section of the Paris Principles, article 1 holds that when establishing national institutions, members shall be appointed by the law that guarantees pluralist representations.'[730]

Article 2 deals with providing infrastructure and adequate funding for the institutions.[731] The sole aim of the funding is to ensure that these institutions are independent and are not being controlled by the government − which can either be administrative, legislative or judicial control. The government must provide the NPM with adequate funding for the staff to act in accordance with the mandates; in article 3, and the members of staff are appointed for a specific duration, albeit renewable.[732]

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[727] Art 17 of OPCAT.

[728] Art 18 of OPCAT.

[729] Art 18(1) of OPCAT.

[730] Principles relating to the Status of National Institutions (The Paris Principles) Adopted by General Assembly resolution 48/134 of 20 December 1993.

[731] As above.

[732] As above.

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Article 18 of OPCAT lists the three important features for every NPM to perform its mandate adequately. Article 18(1) provides that State members must guarantee functional independence to the NPM and the personnel working for the NPM.[733] Article 18(2) sets out that the personnel of the NPM must have the required 'capacities and professional knowledge to execute the mandates of the NPMs'.[734] In a diversified country like Nigeria, the State must consider balancing the gender of the personnel and ensure there is an adequate representation of the ethnic and minority groups of the country.[735] Article 18(3) requires adequate resources for the functioning of the NPM,[736] including cars, buses, the internet, laptops and other resources to enable the NPM to carry out their mandates. Hence, the next part of this study will analyse these functions as set out in article 18 of OPCAT.

4.4.2 Functional Independence

The independence of the NPM is important for them to perform their visitation mandate to prevent the use of torture in any country or establishment.[737] Article 18 directs that the NPM must enjoy independence, which implies that they must be independent of the State authorities, especially the executive and authorities responsible for prisons, police stations and any other places where people are deprived of their liberty as specified in article 4(2) of OPCAT.[738]

The provisions of OPCAT do not elaborate on the meaning of functional independence. Nowak explains that functional independence must embody legislative structures that differentiate NPM from all other branches of the government.[739] The legislative structures refer to the NPM being established by an act of parliament.[740] The preliminary guidelines for

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[733] Art 18(1) of OPCAT.

[734] Art 18(2) of OPCAT.

[735] Art 18(2) of OPCAT.

[736] Art 18(3) of OPCAT.

[737] Art 8 of the Guidelines of the NPM.

[738] M Nowak and E McArthur *The United Nations Convention Against Torture* (2008) 1074.

[739] As above 1075.

[740] Steinerte (n 1 above) at 1 9.

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the development of an NPM echo the need for the State to have the NPM established by an act of parliament or in the country's constitution.[741] This legislative backing affords functional independence and institutional stability to NPM.[742]

Article 18(4) mandated the State parties to accord the Paris Principles due consideration when establishing the NPM,[743] underlining the need for National Human Rights Institutes to be established by an 'official act' or the Constitution.[744] The SPT adds that constitutional status was preferable to the legislative enactment,[745] as this would demonstrate both neutrality and importance as an institution.[746]

Moreover, whether the NPM are created by a constitution or through an act of parliament, they must not be placed under the control of the executive, ministries, or any arm of the government.[747] This implies the NPM existence could only be altered by the law creating it and not by any executive decree or action by any arm of the government.[748]

4.4.3 Independence of Personnel

The independence of staff entails that the members of the NPM are elected or appointed transparently − spelt out in a legislative text.[749] To this end, article 9 of the guidelines of the

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[741] Committee against Torture. Fortieth session Geneva, 28 April-16 May 2008. 'First annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment' February 2007 to March 2008 CAT/C/40/2. Para 28. See also, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The 12th session, Geneva, 15-19 November 2010 'Guidelines on national preventive mechanisms' CAT/OP/12/5 Para 7.

[742] Subcommittee on Prevention of Torture 'Report on the visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras' CAT/OP/HND/1 10 February 2010. Para 262.

[743] Art 18(4) of OPCAT.

[744] Principle B(3) of the Paris Principles.

[745] Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The 12th session, Geneva, 15-19 November 2010 'Guidelines on national preventive mechanisms' CAT/OP/12/5 Para 7.

[746] Steinerte (n 1 above) at 1 10.

[747] Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) 2010 93.

[748] As above.

[749] Nowak & McArthur (n 161 above) at 1074.

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NPM directs that there must be a legislative text that spells out a member's term of office and the terms of renewal.[750] Reif, in his explanation of the independence of the human rights institutions, holds the view that

> …maximising the independence of the institution from governments is important for effectiveness and can be achieved through various means. The independence factors require that heads of national institutions are appointed in a manner (e.g., appointment by the legislative branch, inserting the office in the Constitution) that gives them independence from influence or control by the arm of government the office is designed to investigate − the executive/administrative branch − and other government and non-government bodies that could influence its activities. Independence of the institution is also enhanced by giving the head of the institution security of tenure and giving the institution independence in matters such as the investigation and reporting process, the budget and the hiring of personnel.[751]

This would make it clear that the institution is free from control from any arms of the government,[752] allowing the NPM to function independently.[753]

The NPM, as an important mechanism to prevent torture, must have the liberty to choose their personnel under the law creating it. Article 3 in the Paris Principle 3 provides:

> to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of their mandate. The mandate may be renewable, provided that the pluralism of the institution's membership is ensured.[754]

The Paris Principles emphasise that membership of the NPM must reflect the pluralistic composition of national human rights institutions[755] as also directed in article 18(4) of

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[750] Art 9 of the Guidelines of the NPM.

[751] LC Reif 'Building democratic institutions: The role of national human rights institutions in good governance and human rights protection' (2000) 13 (1) *Harvard Human Rights Journal* 1 25.

[752] Art 7 of the Guidelines of the NPM.

[753] Steinerte (n 1 above) at 10. As an independent institution, it must be able to investigate at any time and be able to visit and write its recommendation at any time without the need to get approval from the executive or the legislature or judiciary.

[754] Art 3 of the Paris Principles.

[755] The Paris Principles in the Composition and Guarantees of Independence and Pluralism 1. 'The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces(of civilian society) involved in the protection and promotion of human rights, particularly by power which will enable effective cooperation to be established with, through the presence of, representatives, of

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OPCAT.[756] The members of the NPM are expected to be of high moral integrity, to come from different backgrounds and to be qualified in their respective fields of specialisation.[757] This entails that each of the appointed or elected members must be knowledgeable in their field of profession, which could include human rights, law, police service, administration of criminal justice, security, medicine, psychology and many more.[758]

Over and above the legislative framework, the members must be able to speak for themselves,[759] i.e. given independence to perform their duties without fear of arrest by the government.[760] They should be personally and institutionally independent of State authorities.[761] This implies that people like judges, policemen, correctional officers and prosecutors who may be on the side of authority are not eligible to be members of an NPM on grounds of possible conflict of interest.[762]

The appointment process of NPM must be transparent and involve various civil society organisations, such as universities and non-governmental organisations.[763] The transparency must involve the presentation of the names of the NPM to the parliament in a constitutional

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(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists:

(b) Trends in philosophical or religious thought;

(c) universities and qualified experts;

(d) Parliament

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)'.

[756] Art 18(4) of OPCAT.

[757] Art 18(2) of OPCAT.

[758] Pinto (n 27 above) at 1 14.

[759] Murray (n 22 above) at 127.

[760] Inter-American Institute of Human Rights *Optional protocol to the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment: A manual for prevention* (2004) 133.

[761] As above.

[762] United Nations Human Rights, Office of the High Commissioner *Preventing torture*: *The role of national preventive mechanisms. A practical Guide, professional training series* No.21 (2018) 17. See Guidelines of the NPM art 18 and 19.

[763] Inter-American Institute of Human Rights *Optional Protocol to the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment: A manual for prevention* (2004) 133.

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setting where these members are vetted through interviews in an open gallery, accessible to members of the community or aired on television for the nation to participate in the whole process.[764] Article 35 of OPCAT protects the members of the NPM by granting immunities and privileges to perform their duties.[765]

4.4.4 Financial Independence

Article 18(3) of OPCAT obliges the State to ensure that the NPM have the resources to function effectively.[766] This applies to resources for each NPM member[767] to enable them to organise and arrange visits to places of detention and perform his or her mandate to prevent torture.[768]

Article 18(3) and OPCAT do not include a State funding provision for the operation of the NPM. However, the direct influence of the Paris Principles in article 18(4) of OPCAT, read with in principles B-2 of the Paris Principles, provides:

> The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not to be subject to financial control which might affect its independence.[769]

The funding helps the NPM to decide their budgeting[770] free to make their own decisions rather than being controlled by the government.[771] The funds also allow the NPM to decide when to hire personnel and conduct investigations when necessary.[772]

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[764] As above 134.

[765] Art 35 of OPCAT.

[766] Art 18(3) of OPCAT.

[767] Art 12 of the Guidelines of NPM.

[768] Art 18(3) of OPCAT.

[769] Art 2 of the Paris Principles.

[770] Art 32 of the Guidelines of the NPM.

[771] Steinerte (n 1 above) at 1 15.

[772] Reif (n 174 above) at 1 25.

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According to Steinerte, the funding helps the NPM to act independently and effectively. She proceeds to add that the funding is a continuous responsibility of the State.[773] Nowak and McArthur assert that financial independence supports their operational autonomy.[774]

In democratic States, the budget of the NPM is best allocated by the parliament rather than the executive.[775] The instrument establishing the NPM should therefore be able to specify the funding sources.[776]

Despite the guarantee of funding and resources by OPCAT and the Paris Principles, the question that needs to be asked is: What is the source of the fund? Is it from the State party? An NPM cannot be independent if it receives its funding from the executive.[777] The best approach is for parliament to allocate the funds through a legislative pronouncement (act).[778] This would prevent the executive from being able to direct or control the activities of the NPM.[779]

Moreover, a State party could at the same time evade responsibility under article 18(3), which states that OPCAT requires only the provision of 'necessary resources for the functioning' of the NPM rather than effective functioning.[780] The SPT has recommended that financial independence is core to the functioning of an NPM[781] and providing NPM with adequate funding enables them to perform their mandate as required by OPCAT.[782]

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[773] As above.

[774] Nowak and McArthur (n 22 above) at 1075.

[775] As above.

[776] Inter-American Institute of Human Rights *Optional protocol to the United Nations Convention against torture and other cruel, inhuman or degrading treatment or punishment: A manual for prevention* (2004) 134.

[777] Steinerte (n 1 above) at 1 15.

[778] As above.

[779] As above.

[780] As above.

[781] Subcommittee on Prevention of Torture 'Report on the visit of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment to the Republic of Paraguay' 7 June 2010 CAP/OP/PRY/1.

[782] SPT Guideline para 11 and 12 stipulate that 'The necessary resources should be provided to permit the effective operation of the NPM in accordance with the requirements of the Optional Protocol and in para 12, the

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4.4.5 Mandates and Powers of NPM

The NPM have a mandate to conduct visitations to places of deprivation of liberty.[783] OPCAT allows NPM to visit any detention centres within the State party jurisdiction, [784] and in article 4(2), the place of deprivation of liberty extends to any holding facilities by any authority.[785] Article 4 with article 19(a) empowers NPM to regularly examine anyone who has been deprived of liberty and provide necessary aid against the case of torture.[786] Importantly, NPM can access any selected place of deprivation of liberty without restrictions from the government.

Article 20(c) ensures that the NPM have access to detention places and facilities.[787] While the article did not mention unrestricted access. Nowak and McArthur explain that the final text of OPCAT shows that the NPM cannot be restricted from visiting any place of deprivation of liberty.[788]

A further provision in article 19(a) stipulates that the NPM must 'regularly examine', but does not specify how often the NPM may visit/examine the place of deprivation of liberty.[789] As a result, it implies that the NPM can design a programme for themselves and choose when to visit and where to go.[790] Thus, the NPM are expected to have a preventive monitoring programme that is tailored to the challenges faced by the country concerned.[791]

NPM should enjoy complete financial and operational autonomy when carrying out its function under the Optional Protocol'.

[783] Art 10 of the Guidelines on NPM.

[784] Art 4(1) of OPCAT.

[785] Art 4(2) of OPCAT.

[786] Art 19(a) of OPCAT.

[787] Art 20(c) of OPCAT.

[788] Nowak & McArthur (n 161 above) at 1094.

[789] Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) (2010) 96.

[790] As above.

[791] As above. In a country where there are many detainees in detention centres, it is often expected that the NPM conduct visitations more than once in a year.

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Under article 19(b), the NPM are required to make recommendations to the appropriate authorities on the conditions of a person deprived of liberty in the place they visited for further consideration or improvement.[792] It is imperative that the recommendations of the NPM take into account other pertinent United Nations norms.[793] In this regard, the provision for making visitation recommendations extends beyond merely observing what occurs at the detention centre. It includes lacunae in the legislation, as well as a complete overview of the country's approach to preventing torture.[794]

As part of their mandate, NMP are expected to submit proposals or raise issues concerning existing legislation or draft legislation.[795] In this way, the NPM are able to shape national legislation in order to avoid torture against persons deprived of liberty.

According to article 20, the State party must ensure that NPM have access to all information concerning the person detained.[796] In most cases, the information will include the date and time of the arrest, the case number, the incident registers, medical records, and any other information necessary to ensure that the accused person has not been tortured.

An NPM may choose the place to visit and whether to visit announced or unannounced,[797] arguably by day or at night. It is imperative that NPM have access to all persons deprived of their liberty without the presence of or interference by the authorities.[798] Non-interference includes the NPM member's ability to interview anyone and have adequate information regarding persons deprived of liberty without interference from the authority.[799]

In order to protect the privacy of those deprived of liberty, NPM must keep the information confidential.[800] It may not be published without the authorisation of the detainee.[801] According

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[792] Art 19(b) of OPCAT.

[793] As above.

[794] Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) (2010) 96.

[795] Art 19 (c) of OPCAT.

[796] Art 20(a) of OPCAT.

[797] Art 20(e) of OPCAT.

[798] As above.

[799] Art 20(a) and (b) of OPCAT.

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to Nowak and McArthur, information collected from the detained persons should be privileged.[802] No government authority has the power to force the NPM to disclose this information. The NPM is also forbidden from disclosing the information to a third party without the consent of those deprived of liberty.[803] They further argue that the NPM must protect the personal data of those deprived of liberty.[804]

Article 22 requires the State party to evaluate the recommendations of the NPM and to discuss how to implement them.[805] The NPM are also mandated to educate, train and create awareness regarding the prevention of torture; as part of this process, they are allowed to publish their opinions, as well as any other information that could be helpful in creating awareness.[806]

It has been shown above that NPM are an essential institution in the prevention of torture by virtue of visitations, recommendations and collaborations with the SPT. Nevertheless, this is dependent on adequate independence in funding, personnel and functional offices. Article 3 of OPCAT specifies that the State must equip an NPM to visit places of detention.[807]

4.5 CONCLUSION

In 2002, the UN General Assembly adopted OPCAT, which entered into force in 2006. It is an operational treaty designed to assist State parties in implementing some of their obligations to prevent torture. It regularly visits places where people have been detained who have been deprived of their liberty. The SPT is responsible for regular visits at the international level, while at the national level the NPM are responsible.

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[800] Art 21(2) of OPCAT.

[801] As above.

[802] Nowak & McArthur (n 161 above) at 1095.

[803] As above.

[804] As above.

[805] Art 22 of OPCAT.

[806] The preamble of OPCAT stipulates that States parties are to take effective measures to prevent torture. Effective measures include education, training, and creating awareness of what torture is and how to prevent it in society.

[807] Art 3 of OPCAT.

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To prevent torture rather than simply condemning it, OPCAT emphasises the need for cooperation between States and dialogue with national authorities. As a result, OPCAT focuses on identifying the risks, such as detention practices, and proposing possible solutions and policies before the problem arises. It does not focus on previous violations but on how to prevent them from occurring. In order to prevent torture, an NPM should be both functionally and financially independent of the State. The state must ensure that when establishing the NPM, it gives proper consideration to the Paris Principles. It also must be established in a constitution or act of parliament.

OPCAT, in its preamble, emphasises the need for a non-judicial body to prevent torture by conducting regular visitations to places of deprivation of liberty.[808] Each country is expected to establish a visiting body for that purpose,[809] financially and functionally independent.[810] The personnel must also be independent.[811] The State government must provide resources for the functioning of the NPM. The NPM must have the power to recommend improvement of conditions of persons deprived of liberty,[812] to conduct regular constant examinations of persons deprived of liberty,[813] propose new laws,[814] have access to information about persons deprived of liberty and places of detention,[815] and liberty to choose where and when to visit,[816] access to any detention centres within the country,[817] and must be able to contact the subcommittee on prevention of torture.[818] The establishment of NPM does not present a

[808] OPCAT preamble.

[809] Art 3 and 17 of OPCAT.

[810] Art 1, 4 and 18 of OPCAT.

[811] Art 18 of OPCAT.

[812] Art 19(b) of OPCAT.

[813] Art 19(a) of OPCAT.

[814] Art 19(c) of OPCAT.

[815] Art 20(a) and (b) of OPCAT.

[816] Art 20(d) and (e) of OPCAT.

[817] As above.

[818] Art 20(f) of OPCAT.

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perfect way of preventing torture; however, it reduces torture's continued use among various securities agencies.

The following chapter explores the operation and effectiveness of the NPM within Nigeria.

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CHAPTER FIVE

THE NATIONAL INSTITUTIONAL MECHANISM(S) FOR THE PREVENTION OF TORTURE IN NIGERIA

5.1 INTRODUCTION

The Nigerian Government signed the UNCAT on 28 June 1988 and ratified it on 28 June 2001;[819] it ratified OPCAT on 27 July 2009.[820] OPCAT imposed obligations on each State that ratified it to ensure that they established a working NPM.[821] After two months of the OPCAT ratification, on 29 September 2009, the Federal Government inaugurated the NCAT.[822] The inaugural NCAT acted as an NPM in Nigeria per article 3 and part IV of the OPCAT specification.[823]

However, before NCAT, the National Human Rights Commission had been protecting and promoting human rights in Nigeria under Decree No 22 of 1995.[824] The Government inaugurated the NHRC Governing Council eight months after its establishment. Furthermore, the law establishing the NHRC was amended in 2010 and signed into law.[825]

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[819] United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 10 December 1984. Entry into force: 26 June 1987, by article 27(1). Registration 26 June 1987, No. 24841, Status: Signatories: 84, Parties: 173 *United Nations, Treaty Series,* vol.1465, 85. Signed by Nigeria on 28 July 1988 and ratified on 28 June 2001. See also, the United Nations treaty collection depository *https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en* (accessed 11 April 2022).

[820] Federal Ministry of Justice 'Mandate of the national committee on torture' *https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 26 July 2022).

[821] Art 3 of OPCAT.

[822] S S Ameh (Chairman National Committee against Torture) '4th Quarterly report of the National Committee Against Torture for the Period Ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland'.

[823] Federal Ministry of Justice 'Mandate of the national committee on torture' *https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 26 July 2022).

[824] Decree No 22 of October 1995. The military regime that is known for the abuse of human rights established a human rights institution. This was an ironical as it is impossible for such an institution to function independently without State control or influence. It was later known as National Human Rights Commission Act Cap. N46, Laws of the Federation of Nigeria, 2004.

[825] National Human Rights Commission (Amendment) Act, 2010 (NHRC 2010 as Amended). See also, I Anaba 'Jonathan signs human rights commission bill into law' 28 March 2011 *Vanguard Newspaper*

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The purpose of this chapter of the study is to analyse NCAT and NHRC, checking whether these institutions are independent and created by legal texts. It is imperative that each institution complies with the requirements set forth in part IV OPCAT; and lastly, their strength and weaknesses will be assessed.

5.2 CHAPTER SYNOPSIS

The objective of this chapter is to analyse the institutions available in Nigeria for preventing torture and determine whether they comply with OPCAT's requirements. This chapter is divided into three parts. The first part looks at the oversight mechanism that serves as the NPM in Nigeria. Nigeria's National Committee on Torture (NCAT) is one of the major NPM with the mandate to visit any detention area in Nigeria. This part outlines the process by which the NCAT was formed and if it was established by a statutory act or by the Constitution. It also analyses the functional, personnel and financial independence of NCAT. It provides a list of persons who are members of the NCAT and analyses whether members of the NPM can be detached from the government. It discusses the roles and effectiveness of the NCAT. This role includes the visitations done by the NCAT, recommendations, cooperation with the SPT and the drafting of legislation.

This part also looks at the National Human Rights Commission (NHRC) in Nigeria. While the NHRC was set up to protect and promote human rights in Nigeria, this part analyses if the NHRC will be able to function as an NPM. In order to determine whether the NHRC is an NPM, this part looks at whether it has the same mandates and other requirements as specified in articles 18 and 21 of OPCAT.

Further, article 17 of OPCAT allows a State to create a new NPM or retain an existing body that serves as an NPM. In spite of this, the NPM must be able to operate independently while communicating with the SPT as specified in Part IV of OPCAT. Article 29 of OPCAT extends the coverage of OPCAT to all parts of a Federal State. The purpose of this part is to analyse Federalism and the choice of NPM in Nigeria.

5.3 The National Committee Against Torture

https://www.vanguardngr.com/2011/03/jonathan-signs-human-rights-commission-bill-into-law/ (accessed 14 December 2022).

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The Anti-Torture Act 2017 failed to include the establishment of the NPM, apart from section 10, which provides that the Attorney General and other law enforcement or investigative agencies shall ensure the oversight of the implementation of the Anti-Torture Act 2017.[826] Section 10 did not mention the establishment of an oversight mechanism that would see to eradicating torture or act as an agency that would serve as an NPM.

The objective of this part of the study is to examine whether the NCAT meets the requirements for functional independence, is staffed by professional experts, and complies with the Paris Principles, as well as the rules on visitation and recommendation mandate, as specified in part IV of the OPCAT. The part will commence with the outline from articles 18 to 22 of OPCAT.

5.3.1 Functional Independence of the NCAT

A key component of OPCAT's provision for the establishment of NPM is to assure that they are functionally independent.[827] As explained by Nowak, functional independence must be based upon legislation that makes the NPM stand out from the other branches of Government, in order to maintain control over their institutions.[828] In general, the relevant legislative structures consist of acts of parliament that create NPM.[829] As stated in the preliminary guidelines and the first annual report of the NPM, it is necessary for the State to establish the NPM through legislation or within its constitution.[830] The NPM needs legislative backing to function properly and remain stable.[831] It also needs to be autonomous as an

[826] Sec 10 of the Anti-Torture Act 2017.

[827] Art 18 of OPCAT.

[828] M Nowak & E McArthur *The United Nations Convention Against Torture* (2008) 1075.

[829] E Steinerte 'The changing nature of the relationship between the United Nations Subcommittee on Prevention of Torture and national preventive mechanisms: In search for equilibrium' (2013) 31 (2) *Netherlands Quarterly of Human Rights* 132-1 9.

[830] Committee against Torture. Fortieth session Geneva, 28 April-16 May 2008. *First annual report of the subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment* February 2007 to March 2008 CAT/C/40/2. Para 28. See also, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The twelfth session, Geneva, 15-19 November 2010 'Guidelines on national preventive mechanisms' CAT/OP/12/5 Para 7.

[831] Subcommittee on Prevention of Torture Report on the visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Honduras CAT/OP/HND/1 10 February 2010. Para 262.

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institution − a factor crucial to its success and stability.[832]

NCAT was established through an inauguration in order to fulfil the mandate of OPCAT, but no legislative text was attached to its establishment.[833] NCAT was established under the authority of the Federal Ministry of Justice, but the instrument of establishment[834] does not have legislative status because it is not an act of parliament or a part of the Constitution of Nigeria,1999.[835] Amnesty International in 2014 noted that NCAT does not possess the legal independence necessary to fulfil any of its functions and mandates.[836]

As NCAT has no law establishing it, its involvement with the Federal Ministry of Justice suggests that it is an institution controlled by whoever is the head the Ministry.[837] The Attorney General of the Federal Ministry of Justice is appointed by the President, who is confirmed by the Senate. In light of the fact that there is no legislative text establishing the existence of the NCAT, the Attorney General may arguably be able to prevent it from performing its duties.

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[832] As above.

[833] Nigeria. Joint alternative report submitted in application of article 19 of the UN Committee against Torture and Cruel Inhuman and degrading treatment 72nd session of the UN Committee against Torture for the examination of Nigeria. 2021 at 11.

[834] The inaugural documents contain the Nigerian coat of arms, a symbol of the federal government. This document begins with the phrase 'Federal Ministry of Justice' followed by the phrase 'Mandate of the National Committee on Torture.' All capital letters are used. The document can only be (accessed online through the University of Bristol website. A concise outline of the mandate can also be found in the document provided by the former Director of the NCAT, Dr Samson Sani Ameh to the SPT in 2014. Dr Samson Sani Ameh *NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31st December 2014* to the *United Nations* Subcommittee against torture in Geneva, Switzerland' 2014 15 *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf* (accessed 12 October 2022). This implies that the NCAT had no website either on its own or under the Ministry of Justice that could be accessed by the general public who want to file a complaint, and thus the NCAT mandate is only accessible to those who possess the necessary skills to search the internet.

[835] The document that established the NCAT can be see here at *https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 7 July/2022).

[836] Amnesty International *Torture in Nigeria;* In summary' AFR 44/005/2014 *https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440052014en.pdf* (accessed 10 July 2022). See also, See, The United Nations Human Rights Council Working Group on the Universal Periodic Review 'Summary of stakeholders' submissions on Nigeria' Thirty-first session 5-16 November 2018 A/HRC/WG.6/31/NGA/3 para 30. It was submitted by PRAWA that NCAT has been unable to fulfil its duties due to various issues, such as lack of resources and effective access to places of detention.

[837] Nigeria. Joint alternative report submitted in application of article 19 of the UN Committee against Torture and Cruel Inhuman and degrading treatment 72nd session of the UN Committee against Torture for the examination of Nigeria. 2021 at 12.

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OPCAT's torture prevention objective depends on an independent national and international body capable of visiting places where people are deprived of their freedom.[838] As a means of accomplishing this goal, countries that have ratified the OPCAT must establish national bodies to visit places where people are being deprived of their liberty.[839] The ostensible purpose of NCAT is to visit places of detention,[840] but since NCAT is not established by a legal text, it cannot function as required by article 18 of OPCAT.[841]

Moreover, article 18(3) obligates States to provide 'necessary resources for the functioning' of the NPM.[842] According to Murray, and as noted above, the NPM need 'the necessary resources' to function.[843] The functional independence of NPM is characterised by an adequately staffed and funded statutory establishment based on an act of parliament or the constitution.[844]

5.3.2 Independence of Personnel

According to article 18(2) of OPCAT, NPM must have capable staff members who possess professional expertise.[845] In other words, experts with appropriate knowledge in relevant areas (as per the APT).[846] Through the Federal Ministry of Justice and the Attorney General, the Nigerian Federal Government inaugurated a newly appointed NCAT on 11 September

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[838] Art 1 of OPCAT.

[839] Art 3 of OPCAT.

[840] Federal Ministry of Justice *Mandate of the national committee on torture https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 26 July 2022).

[841] Amnesty International *Torture in Nigeria*: (n 18 above) at 244

[842] Art 18(3) of OPCAT.

[843] R Murray 'National preventive mechanisms under the Optional Protocol to the Torture Convention: One size does not fit all' (2008) 26(4) *Netherlands Quarterly of Human rights* at 485 496. Among the resources that are required are offices, vehicles, furniture, computers, funds, and personnel. In spite of the fact that the necessary resources outlined in article 18(3) are a minimum requirement, many States argue that there is no additional funding available for NPM. Act. See too Murray as above As a result, the State is responsible for providing the necessary resources, which may be achieved by allocating funds to the NPM through the appropriations process by the legislature.

[844] As above.

[845] Art 18(2) of OPCAT.

[846] Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) 2010 91.

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2022.[847] with the mandate of preventing torture.[848] Among the newly appointed members are experts from a variety of fields, including human rights, police, academia, law, and non-governmental organisations (NGOs). They include the solicitor-general or the Permanent Secretary of the Ministry of Justice who serves as the Chairperson, the Executive Secretary of the National Human Rights Commission who alternates as the Chairperson; the Director of Citizens' Rights within the Ministry of Justice; the Director of Public Prosecutions of the Federation; The Director-General of the Legal Aid Council of Nigeria or any of the Director representatives; the Inspector-General of Police or any of his representatives not below the rank of Commissioner of Police; the Commandant-General of the Nigeria Security and Civil Defence Corps or any of his representatives but not below the rank of a commandant; the Director-General of the Department of State Service or any of his representatives not below the rank of a Director; and the Chief of Army Staff or any of his representatives not below the rank of colonel. In addition, the Chairman of the Economic and Financial Crimes Commission or any of his representatives not below the rank of a Director, and the President of the Nigeria Bar Association, or any of his representatives, act as members. The Director-General of the Nigeria Institute of Advanced Legal Studies or any of his members not below the rank of a director; the President of the International Federation of Woman Lawyer (FIDA) or any of her representatives; Avocats San Frontières, the Chairman of the Human Rights Agenda Network; Access to Justice; the Director of Nigeria Law School, and the Director of Monitoring Department of the National Human Rights Commission serves as the Secretary.

Providing the necessary resources and selecting the appropriate members are specific responsibilities of each State's government.[849] Nevertheless, criticisms of a constitution or statute body's appointment are often directed at its members rather than at the Government that made the appointment in the first place.[850]

As required by article 18(4), the Government must take into account the Paris Principle when establishing NPM.[851] The Paris Principles provides more guidance on how the members of a

[847] 'FG sets up committee to monitor compliance with laws against torture' *The Cable* *https://www.thecable.ng/fg-sets-up-committee-to-monitor-compliance-with-laws-against-torture* (accessed 8 October 2022).

[848] As above.

[849] Murray (n 25 above) at 485-97.

[850] As above.

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human rights institution should be appointed, instructing that representatives from a wide range of backgrounds should be appointed,[852] including NGOs, members of parliament, lawyers, and Government officials − but the latter should only serve as advisers.[853]

In accordance with the Paris Principles, the appointment of members must be outlined and stipulated in an official act or legal document,[854] which must also embody pluralism.[855] However, the appointments cited above cannot be said to cover a wide-enough range of pluralism, as military personnel are strongly represented as members and chairpersons respectively.[856] As a result of the Paris Principles, it can be argued that the armed forces chairperson and its members will act as advisors to the team. The Nigerian Government could potentially claim that torture is prevalent in all detention centres run by military personnel,[857] making the addition of military personnel to the NCAT imperative. However, this could also compromise the independence of the NCAT members and the institution as a whole.[858]

As outlined in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Czech Republic in 2002, an

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[851] Art 18(4) of OPCAT.

[852] Composition and guarantees of independence and pluralism Paris Principle 1.

[853] Composition and guarantees of independence and pluralism Paris Principle 1(a)-(e).

[854] Composition and guarantees of independence and pluralism in the Paris Principle 1(3).

[855] As above.

[856] The military personnel from the Chief of Army Staff to the Inspector-General of Police all belong to the same armed forces groups that report to the President of the Federation. Furthermore, the NCAT Committee may have contained representatives from each region of the Federation who are not military personnel, such as doctors, psychologists and retired judges. See also, Human Rights Council, Working Group on the Universal Periodic Review Forty-fifth session 'National report submitted pursuant to human rights council resolution 5/1 and 16/21* Nigeria' Advanced unedited version 22 January – 2 February 2024 A/HRC/WG.6/45/NGA/1 para 250 where Nigeria in reply to the 2018 report stated that the NPM is an independent department within the NHRC and the NCAT has been reposition under the Federal Ministry of Justice. Thus, this leads to the question of whether the NCAT is independent. In the report of the Human Rights Council, Working Group on the Universal Periodic Review Forty-fifth session 'Summary of stakeholders' submissions on Nigeria' Report of the Office of the United Nations High Commission for Human Rights 22 January – 2 February 2024 A/HRC/WG.6/45/NGA/3 para 13 indicated that the NCAT lacks independent as most of its officials are law enforcement and security personnel. This indicates that the federal government is involved, as the security member reports to the executives. It also means that the executive members of the NCAT are indirectly controlled by the Federal Ministry of Justice and the NHRC, which reports directly to the Federal Ministry of Justice.

[857] As above.

[858] The present of the military personnel may hinder the independence as they are solely reporting to the President of the Federation and receive directions from the President as the Head of the Armed forces.

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NPM should be distinct from the police service[859]an independent body that is not administratively or organisationally subordinate to any government ministry.[860] In summary, this implies that the government should not be involved.[861]

It can be asked whether all NPM can be detached from the Government. According to Murray, NPM must maintain a close relationship with the Government so that its recommendations and findings are implemented.[862] One benefit of an NPM is that it cannot be completely detached from the Government as would be in the case of NGOs.[863] Murray recommends that NPM be established by statutes or legal documents that take on a status that extends beyond those of NGOs.[864] This would bring them closer to the Government while providing them with some influence.[865] While being an independent body does not mean the NPM must be "friends" with the Government,[866] it does mean that the NPM must be able to distance itself from the Government while also engaging in constructive dialogue with the Government and monitoring detention centres.[867] This would enable the NPM to create a relationship and a partnership with the Government that would produce lasting trust.[868] Thus, it is argued that the inclusion of the Chief of Army Staff, Inspector-General of Police, Director of Public Prosecutions, and Controller General of Corrections on the NCAT

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[859] Council of Europe 'Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2002. Strasbourg, 12 March 2004 CPT/INF/(2004) 4 para 102. h*ttps://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680695650* (accessed 10 October 2022).

[860] As above.

[861] As above.

[862] Murray (n 25 above) at 485-500.

[863] As above.

[864] As above.

[865] University of Bristol *The Optional Protocol to the UNCAT: Preventive mechanism and standards' conference report*; report on the First Annual Conference on the Implementation of the Optional Protocol to OPCAT. Law School, University of Bristol 19-20 April 2007 32 *https://research-information.bris.ac.uk/ws/portalfiles/portal/190916323/First_Annual_Conference_on_the_implementation_of_OPCAT_19_20_April_2007_Bristol_UK_Final_Proceedings.pdf* (accessed 10 October 2022).

[866] As above.

[867] As above.

[868] Murray (n 25 above) at 485-500.

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committee will provide a balance between NCAT's capacity as an NPM and the ability to maintain influence on government through these officials, which is not possible for an NGO.

Nevertheless, when these Government-appointed individuals are unable to distance themselves from the government's influence, the NCAT committee, as a whole, and its independence will be at risk.[869]

In addition, the Paris Principles stipulate that for an expert to be independent,[870] a legal document detailing their terms of service and terms of renewal must be provided.[871] However, it is not stated in the inaugural document of NCAT whether members can renew their positions or what the duration of the term of office will be.[872] Moreover, the document that created NCAT members is neither in a constitutional document nor a statute.[873]

5.3.3 Financial Independence

In accordance with OPCAT article 18(3), State parties are required to provide 'necessary resources' for the proper functioning of NPM.[874] OPCAT did not specify what 'necessary resources' entail, however, the NPM guidelines indicate that adequate funding is required for the NPM to perform their functions.[875]

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869 In addition, the government may appoint members from different NGOs who have previous experience in civil society organisations. As such, any recommendations made may not be implemented on time or have less influence on the government. In this regard, the thesis argues that government members should serve only as advisers to the NCAT rather than being members. The members should possess expertise in civil society organisations and human rights. The government members would have an influence on the government and would also create a relationship of trust between the government and the NCAT committee. See also, Composition and guarantees of independence and pluralism Paris Principle 1(e) Government departments (If these are included, their representative should participate in the deliberations only in an advisory capacity).

870 Composition and guarantees of independence and pluralism Paris Principle 1(3).

871 As above.

872 Federal Ministry of Justice 'Mandate of the National Committee on Torture' *https://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 10 October 2022).

873 As above.

874 Art 18(3) of OPCAT.

875 Para 11 of the Guidelines on NPM.

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Having adequate funding allows NPM to be financially autonomous, allowing them to hire their own staff and direct their own activities.[876] Therefore, financial independence is a fundamental requirement for the NPM to function effectively, and without it, the NPM cannot make independent decisions or operate efficiently.[877]

According to the APT manual guide, the NPM must be able to develop its own budget that will enable it to function independently of the Government.[878] This will enable it to make its own decisions.[879] Consequently, the founding documents establishing the NPM must specify the sources of funding and how they should be spent.[880] In spite of this, there are no legislative documents establishing the NCAT.

The former chairman of the NCAT, Sanni Amenh (Senior Advocate of Nigeria), in a technical consultation on implementing the Anti-Torture Act 2017 held in Abuja on an international day supporting victims of torture, alleged that the NCAT lacked adequate financial resources to investigate and send periodic reports to the United Nations.[881]

The 2021 country reports on human rights alleged that the NCAT also lacked operational independence and legal backing, which had hindered the NCAT from working effectively.[882] This implied that NCAT, despite having broad mandates, lacked legal, operational and

[876] United Nations 'Principles relating to the status of national institutions (The Paris Principles)' Adopted 20 December 1993 by the General Assembly resolution 48/134. *https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris* (accessed 14 August 2022) Para 2.

[877] Amnesty International 'Checklist for the effective implementation of the OPCAT establishment of National Preventive Mechanisms (NPM)' 2 *https://www.amnesty.org/en/wp-content/uploads/2021/06/ior500012014en.pdf* (accessed 15 December 2022).

[878] Association for the Prevention of Torture (APT) and Intern-American Institute for Human Rights (IIHR) *Optional Protocol to the UN Convention against Torture implementation manual* (revised edition) 2010 100.

[879] As above.

[880] As above.

[881] S Ogunlowo 'We are suffering from lack of funding-FG's anti-torture committee' 21 June 2022 *Premium Times Newspaper https://www.premiumtimesng.com/news/more-news/538425-we-are-suffering-from-lack-of-funding-fgs-anti-torture-committee.html* (accessed 10 July 2022).

[882] United State Department of State '2021 Country reports on human rights practices: Nigeria' *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/nigeria* (accessed 10 July 2022).

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financial independence to perform any of its tasks. Arguably, this has resulted in a low number of visitations to prisons and none to any police cells.

Furthermore, article 26 of OPCAT establishes the SPT Special Fund, which provides funding for SPT recommendations to State Parties and for NPM's educational training.[883] The special fund is a result of the contributions of various governments, non-governmental organizations, and private, public, and intergovernmental organizations.[884]

A request for funding is submitted by the NPM of each State that agree to the publication of the SPT visit report in accordance with article 16(2) of OPCAT, and the application may also be submitted by the NHRC.[885] Also, NPM can make applications in accordance with article 26(1) of OPCAT for training and education of their staff or for creating awareness.[886]

A total of 84 projects have been funded in 22 countries since the inception of the SPT Special Funds.[887] This fund was released to address legislative changes, anti-torture laws, the establishment of a national prosecution manager, and the alignment of the country's criminal legislation with international law.[888]

In 2021, 23 applications were received concerning 12 eligible States (Argentina, Benin, Brazil, Honduras, Kyrgyzstan, Maldives, Mauritania, Mexico, Paraguay, Senegal, Togo, and Ukraine). Educational training programs for the NPM were submitted by Nigeria, Niger, Kazakhstan, Palestine and Turkey.[889] After reviewing the proposals and consulting with regional offices and country rapporteurs, 12 grants were awarded.[890] These grants were for the

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[883] Art 26(1) of OPCAT.

[884] Art 26(2) of OPCAT.

[885] Human Rights Council 'Special fund established by the Optional Protocol to the Convention against Torture and other, Cruel, Inhuman or Degrading Treatment or Punishment' Forty-sixth session 22 February -19 March 2021 A/HRC/4/42 para 5.

[886] As above para 6.

[887] As above para 9.

[888] As above.

[889] As above para 8.

[890] As above.

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implementation of the SPT recommendations and the strengthening of the NPM.[891] The grants were awarded to States, including Argentina, Brazil, Honduras, Maldives, Mexico, Paraguay, Kyrgyzstan, and Togo.[892] In spite of this, Nigeria has not received any funds to support its project. Arguably, this is because it has not agreed to publish the recommendations of the SPT.

5.3.4 Roles and Effectiveness of NCAT

The question of the effectiveness of any human rights institution is closely related to the roles of the institution.[893] In accordance with OPCAT, the role of an NPM is diverse. NPM are responsible for conducting regular visits to detention centres[894] and making recommendations to the relevant authorities in order to improve the conditions of deprived individuals.[895] In addition, they must submit proposals for and comments on any draft legislation.[896] Further, it serves as a point of contact for the SPT[897] and prepares reports for the SPT on the state of affairs and advises the Government when necessary.[898]

The mandates of NCAT envisage visitation to any place of detention as defined by OPCAT.[899] This includes prisons, immigration detention centres, police cells, and places where authorities hold people.[900] NCAT, in 2014, with the then Chairman and other members, visited Minna Old Prison, Minna New Medium Security Prison, Kontagora Medium Security Prison, Bida Prison, New Bussa Prison, Lapai Prison and Kagara Prison.[901] While the efforts

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[891] As above.

[892] As above.

[893] Murray (n 25 above) at 485-502.

[894] Art 19(a) of OPCAT.

[895] Art 19(b) of OPCAT.

[896] Art 19(c) of OPCAT.

[897] Art 11(b) of OPCAT.

[898] Art 11(b) of OPCAT.

[899] Federal Ministry of Justice *Mandate of the National Committee on Torture http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 10 October 2022).

[900] As above.

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of NCAT are laudable, places of detention do not stop at prisons; they include police station cells where the use of torture is most perpetrated in Nigeria.[902]

The use of torture is said by Human Rights Watch to be a norm in interrogation rooms used by officers of the Nigeria Police Force.[903] NCAT visited some police cells and interviewed detainees about their living conditions.[904] According to the detainees, they were treated well.[905] In spite of this, the NCAT committee members observed that the surroundings were not conducive to the detainees' well-being.[906]

Moreover, only Niger State is mentioned in the report out of the 36 States in the Federation.[907] It is commendable that the efforts have been made, but there is still a lot more that needs to be done in order to prevent torture in Nigeria. For NCAT to fulfil its mandate and be effective as required by OPCAT, it must be able to visit other detention centres across the country as prescribed in article 4(2) of OPCAT.[908]

Article 19(c) obligates each NPM the power to submit a proposal about a draft or existing law.[909] The NCAT is tasked with the responsibility to continuously review interrogation rules, methods, instructions and practice.[910] This implies that the NCAT must ensure that the interrogation rules comply with international law.[911] The purpose of reviewing all laws that

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[901] As above.

[902] Human Rights Watch 'Rest in pieces: Police torture and deaths in custody in Nigeria' *https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria* (accessed 14 August 2022).

[903] As above.

[904] Dr Samson Sani Ameh 'NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland' 2014-2015 *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf* (accessed 12 October 2022).

[905] As above.

[906] As above.

[907] As above.

[908] Art 4(2) of OPCAT.

[909] Art 19(b) of OPCAT.

[910] Federal Ministry of Justice *Mandate of the National Committee on Torture http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 10 October 2022).

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deal with the practice and treatment of a person arrested is to ensure that torture is always prevented, demonstrating that the government has zero tolerance for the use of torture.[912]

The use of torture is prohibited, and the NCAT is tasked to report quarterly by briefing the Attorney General of the Federation on cases of torture and proposing administrative and judicial ways forward for eradicating torture in Nigeria.[913] This includes proposing laws prohibiting torture (Anti-Torture Act) and developing anti-torture policies for the Federation.[914] The NCAT with other civil society organisations (Bristol University, Nigeria Human Rights Commission, the United Nations Subcommittee on Prevention of Torture, Her Majesty's Inspectorate of Prisons, and Redress) helped develop the Anti-Torture Act of Nigeria 2017,[915] prior to which the title 'New Part V' of the proposed Anti-Torture Bill described the establishment of the National Preventive Mechanism in Nigeria as well as the composition, appointment, duties, and funding of the NCAT.[916] On the enactment of the Anti-Torture Act 2017, the NCAT session was removed.[917]

NCAT is designed to ensure that the police and other law enforcement officers, medical personnel, and public officials have adequate knowledge and information on the prohibition of torture in Nigeria.[918] This includes custody officials in different prisons, interrogation officers in different law enforcement agencies in Nigeria and people in charge of treating any person arrested or detained in a prison or any other detention centre.[919]

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911 As above.

912 As above.

913 As above.

914 As above.

915 University of Bristol Law school 'Nigeria OPCAT project' *https://www.bristol.ac.uk/law/research/centres/hric/projects/the-implementation-of-the-opcat-in-nigeria/* (accessed 11 October 2022).

916 Redress, University of Bristol 'Anti-Torture legislative frameworks in Nigeria' Report of round table discussion on the draft-anti-torture Bill. Sheraton Hotel, Abuja 26 February 2017. *https://redress.org/wp-content/uploads/2017/12/ANTI-TORTURE-LEGISLATIVE-FRAMEWORKS-IN-NIGERIA.pdf* (accessed 11 October 2022).

917 As above.

918 As above.

919 As above.

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Nevertheless, Murray contends that another component that may contribute to an NPM's effectiveness is its visibility.[920] NCAT can receive, and in some circumstances, consider communications from those tortured and those with the knowledge of what will happen or when it happened. This communication can come from civil society organisations, individuals and various government institutions.[921] In spite of this, the NCAT does not have a presence in the entire country as its only secretariat is located at the headquarters of the NHRC. Also, the NCAT does not have a website where the public may report cases of torture.[922]

Furthermore, Murray asserts that, for NPM to be effective, there must be a political will on the part of the government.[923] The government must support the work of the NPM. A State is required to provide NPM with access to information,[924] the place of deprived liberties,[925] access to private interviews with detainees without witnesses,[926] and the right to choose the location of the visit,[927] as specified in article 20 of OPCAT. The NCAT reports show it has visited various detention centres and has access to detainee information during interview processes.[928] Nevertheless, it is imperative to know whether NCAT communicates and stays in contact with the SPT as specified in articles 20(f) and 11(b).

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[920] Murray (n 25 above) 485 502.

[921] As above.

[922] In contrast, the South African National Preventive Mechanism has a website where members of the public can contact them either by phone or by completing a form on the website. The website contains an NPM fact sheet that is available in all South African languages. *https://sahrc.org.za/npm/index.php/about-the-npm* (accessed 11 October 2022).

[923] Murray (n 25 above).

[924] Art 20 (a) of OPCAT.

[925] Art 12(c) of OPCAT.

[926] Art 12(e) of OPCAT.

[927] As above. See also, Council of Europe Report to the Bulgarian government on the visit to Bulgaria carried out by the European committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 17 to 26 April 2002 Strasbourg, 24 June 2004. CPT/Inf (2004)21 para 158 and 25, where it was concluded that the NPM can visit places of detention centres unannounced and randomly.

[928] Dr Samson Sani Ameh NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland' (2014) 15 *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf* (accessed 12 October 2022).

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5.3.5 Cooperation between NCAT and SPT

Articles 11(b) and 12(c) of OPCAT set out the relationship between the two institutions. In article 11(b), the SPT must be able to 'advise and assist state parties,' and in doing so, the SPTs must 'maintain direct contact', which could be confidential.[929] NCAT, through its then chairman, Samson Sane Amah (SAN), submitted a report to the SPT in 2014 showing what the NCAT had done and what detention centres it had inspected.[930] According to the report, the NCAT has been mandated to receive communications from both individuals and civil society organisations.[931] It also visits places of detention, ensures that there is sufficient information regarding the prohibition of torture, and reviews laws and legislation.[932] The report indicates that Niger state is the only State among the 36 in which centres have been visited[933] and convicted inmates, unconvinced inmates, and inmates serving life sentences interviewed.[934]

The SPT first visited Nigeria in 2014 in accordance with its function to visit countries facing claims of torture.[935] The meeting in Abuja involving government officials, NCAT members and the NHRC, focused on how the SPT could help implement OPCAT in Nigeria.[936] However, it seems that there has been a weakening in the relationship between the two institutions in recent years on account of the former chairman of the NCAT advising that the NCAT was unable to send a report to the United Nations due to lack of funds.[937]

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[929] Art 11(b) of OPCAT

[930] Ameh (n 110 above).

[931] As above.

[932] As above.

[933] As above.

[934] As above.

[935] Nigeria: 'UN torture prevention body concludes its high level advisory visit, as a first step to strengthen the national capacity to prevent torture' *https://www.ohchr.org/en/press-releases/2014/04/nigeria-un-torture-prevention-body-concludes-its-high-level-advisory-visit* (accessed 14 August 2022).

[936] As above.

[937] Ogunlowo (n 63 above). See also, Human Rights Council, Working Group on the Universal Periodic Review Forty-fifth session 'National report submitted pursuant to human rights council resolution 5/1 and 16/21* Nigeria' Advanced unedited version 22 January – 2 February 2024 A/HRC/WG.6/45/NGA/1 para 248. It was

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The NCAT, with other members of the Federal Ministry of Justice, entered into a dialogue with the UN Committee against Torture but failed to submit a report in 2021.[938] During the dialogue, the UN Committee against Torture experts raised the fact that whilst 'the Constitution created a right not to be subjected to torture, and the Anti-Torture Law 2017 specifically criminalised acts of torture perpetrated by public officials'[939] there were no specific provisions included in the Anti-Torture Act establishing that the crime of torture was not subject to a statute of limitations and that amnesties and pardons were prohibited for acts of torture.[940] Nigerian authorities were also asked whether they ensured that video recorders were used during the interrogation of suspects to show that the suspects were not tortured.[941] Nigeria had ratified OPCAT and established that NCAT could visit detention centres. However, the UN Committee against Torture questioned whether NCAT was effectively performing its role as an NPM.[942]

The Nigerian delegation responded by informing the UN Committee on Torture that the Federal Government was restructuring NCAT to make it more independent and responsive.[943] Most responses of the delegates focused more on prison decongestion in Nigeria rather than on statutory limitations, functions and roles of the NCAT and its effectiveness.[944] It was further claimed that the Anti-Torture Act 2017 applied all over the Federation.[945] The UN Committee on Torture and the Rapporteur replied that:

stated that the NCAT closely interfaces with the SPT; however, the report did not provide additional details about this relationship.

[938] In initial dialogue with Nigeria, experts of committee against torture ask about the fight against terrorism, and conditions of detention' *https://www.ungeneva.org/ar/news-media/meeting-summary/2021/11/loccasion-de-son-premier-dialogue-avec-le-nigeria-le-comit*e (accessed 10 July 2022).

[939] As above.

[940] As above.

[941] As above.

[942] As above.

[943] As above.

[944] As above.

[945] As above.

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> …it was good to pass laws, but it was better to act on them. The legal framework of Nigeria was not called into question: rather, the questions raised had been more about the implementations of those laws.[946]

State reporting under an international human rights treaty is important to ensure the accountability of each member country's government.[947] This enables the UN Committee to point the government's attention to areas that need improvement.[948]

Article 17 permits an NPM to be established in a decentralised system, provided that it complies with the provisions of OPCAT.[949] Nigeria consists of 36 States, and the NCAT secretariat is located only at the National Human Rights Commission headquarters. Having a single secretariat for the whole country effectively makes it impossible to prevent torture.

5.4 THE NHRC AS AN NPM IN NIGERIA

The government set up the NHRC in 1995 to protect and promote human rights in Nigeria under Decree No.22 of 1995 (1995 Act).[950] Eight months after its establishment, the Government inaugurated the Governing Council with the power to oversee the institution. It acquired a rented office in 1997, established the first set of zonal offices in six geopolitical zones and in 1988, with the first two zonal offices in Lagos and Kano,[951] later extended to Port Harcourt, Enugu, Jos and Maiduguri.[952]

The NHRC Act,1995 establishing the NHRC was amended in 2010 and signed into law in 2011.[953] The NHRC amended Act 2010 created the general mandate of the NHRC, which is to

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[946] As above.

[947] C D Creamer and B A Simmons 'Ratification, reporting, and rights: Quality of participation in the Convention Against Torture' (2015) 37(3) *Human Rights Quarterly* 579-580.

[948] As above at 584.

[949] Article 17 of OPCAT.

[950] Decree No 22 of October 1995. The military regime that is known for its abuse of human rights established a human rights institution. This is ironical, because it is impossible for such an institution to function independently when under State control or influence. It was later known as National Human Rights Commission Act Cap. N46, Laws of the Federation of Nigeria, 2004.

[951] As above. Nigeria is divided into six geopolitical zones, created during General Sani Abacha's rule as an administrative grouping of Nigeria.

[952] As above.

[953] National Human Rights Commission (Amendment) Act, 2010 (NHRC 2010 as amended).

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deal with all matters relating to human rights in Nigeria.[954] Specifically, it allows the NHRC to visit persons, police cells, and any detention centres to determine the detention centres' condition and make recommendations to the appropriate authorities.[955]

This section provides an overview of the NHRC and analyses if it is capable of serving as an NPM in Nigeria in accordance with OPCAT's requirements in Part IV.

5.4.1 The Roles and the Effectiveness of the NHRC as an NPM in Nigeria

Section 5 of the NHRC 2010 Amended Act and other international human rights treaties that Nigeria may sign may serve as guiding principles for the protection of human rights as well as secure the function of the NHRC.[956] Section 5 directs the NHRC[957] to comply with the 'United Nations Charter,[958] the Universal Declaration of Human Rights,[959] the International Convention on Civil and Political Rights,[960] the International Convention on the Elimination of all forms of Racial Discrimination,[961] the International Covenant on Economic, Social and Cultural Rights,[962] the Convention on the Rights of the Child,[963] the African Charter on Human and Peoples' Rights[964] and other international and regional instruments on human rights to

[954] Secs 5 (1) NHRC 2010 as Amended.

[955] Secs 6(1)(d) NHRC 2010 as Amended.

[956] Section 5 of the NHRC 2010 as amended.

[957] It stipulates that the NHRC has the mandate to deal with matters relating to promoting and protecting human rights as specified and guaranteed by the Constitution of Nigeria,1999.

[958] United Nations, Charter of the United Nations, San Francisco, 26 June 1945. Entry into force: 24 October 1945, 1 UNTS XVI.

[959] Universal Declaration of Human Rights (UDHR) was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A).

[960] International Covenant on Civil and Political Rights adopted 16 December 1966 by General Assembly resolution 2200A (XXI). Entry into force: 23 March 1976, in accordance with article 49.

[961] International Convention on the Elimination of all forms of racial discrimination adopted 21 December 1965 by UN General Assembly resolution 2106 (XXX).

[962] International Covenant on Economic, Social and Cultural Rights adopted 16 December 1966 by General Assembly resolution 2200A (XXI).

[963] Convention on the Rights of the Child adopted 20 November 1989 by General Assembly resolution 44/25. Entry into force: 2 September 1990, in accordance with article 49.

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which Nigeria is a party'[965] in all operations.[966]

Section 5(b) directs that the NHRC must be able to monitor and investigate any alleged human rights violation cases in Nigeria and is also obligated to recommend appropriate actions for prosecution to the President.[967] Section 5(c) extends the mandate of the NHRC to assist the victims of human rights violations in seeking redress and remedies. The NHRC in 2020 and 2021 acted as part of the independent investigation panel on human rights violations by the defunct Special Anti-Robbery and other units of the NPF.[968] The panel hears matters of police brutality and awards compensation to victims. In *Decision 2020/IIP-SARS/ABJ/15*, the panel awarded the sum of five million naira to the petitioner, who was a victim of police brutality.[969]

In sections 5(d) and (e), the NHRC is mandated to conduct research on human rights, and serves as a policy adviser to the Federal Government, States and Local Governments, especially when formulating laws for human rights protection and promotion in Nigeria. It further states that the NHRC may publish reports and then submit them to the President,

[964] African (Banjul) Charter on Human and Peoples' Rights. Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3rev. 5, 21 I.L.M. *58* (1982), entered into force 21 October 1986).

[965] Section 5(a) of the NHRC 2010 as amended.

[966] As above.

[967] In the 72nd section of the United Nations Committee against Torture, the NHRC submitted an individual report on the implementation of the UNCAT and OPCAT in Nigeria at 9. The NHRC in 2019 received 15 457 complaints of torture and in 2020 recorded 12 400 cases, making 27 858 in two years. The document was submitted to the researcher by Hillary Ogbonna and Halilu Adamu of the NHRC Abuja. However, this thesis concludes that while the provision is laudable, it is arguably not enough to recommend prosecution to the President. Moreover, the violation of human rights extends to the use of torture, which implies that the NHRC has the capacity to investigate cases of alleged torture but not to prevent the use of torture, as investigation may only be carried out after the use of torture has been perpetrated.

[968] O Ajayi 'NHRC inaugurates an independent investigative panel on allegations of violations by the defunct SARS' (3 November 2020) *Naira metrics* online newspaper. *https://nairametrics.com/2020/11/03/nhrc-inaugurates-independent-investigative-panel-on-allegations-of-violations-by-the-defunct-sars/* (accessed 18 May 2022). See also, F Olokor 'EndSARS panel resumes sitting today as NHRC secures funding'. (1 March 2022) *Punch Newspaper* *https://punchng.com/endsars-panel-resumes-sitting-today-as-nhrc-secures-funding/* (accessed 18 May 2022).

[969] The independent investigation panel on human rights violations by the defunct SARS and other units of the Nigeria police force (2020) sitting at the Federal Capital Territory, Abuja. *Decision 2020/IIP-SARS/ABJ/15.* See also, the *Decision on 2020/IIP-SARS/ABJ/120* where the petitioner was awarded five million naira in damages for the violation of his rights by the police. These cases were furnished to me by members of the NHRC. More facts on the case will be examined in Chapter Four.

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National Assembly, judiciary, and State and Local Government regarding issues of human rights protection and promotion in Nigeria.

NHRC was assigned the task of preparing Nigeria's National Plan of Action for the Promotion and Protection of Human Rights.[970] The Action Plan was conceived as a result of a Declaration of the World Human Rights Conference in Vienna, 1993, [971] by which each State Government was tasked with developing an action plan that showed various steps to be taken in order to improve the protection and promotion of human rights.[972] The Action Plan was initiated in 2000 in consultation with NGOs and the National Assembly.[973] The NHRC presented the final draft document to the Government in 2004 for approval.[974]

The Action Plan is divided into five categories.[975] These are civil and political rights; the right to development; rights of person with disabilities; women's, children's and youth's rights; peace and a protected environment, and economic, social and cultural rights.[976] The Plan outlines the Government's responsibilities, the strategies it must employ to address human rights issues, and the agencies responsible for implementing and monitoring the programme.[977]

Section 5(f) of the NHRC has the mandate to create public awareness by organising local and international seminars and conferences on human rights issues in Nigeria. This awareness includes meeting with civil society organisations, schools, correctional centres, and social

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[970] National Action Plan for the promotion and protection of human rights 2022-2026 *https://www.nigeriarights.gov.ng/activities/nap/201-draft-national-action-plan-2021-2025.html* (accessed 18 October 2022).

[971] United Nations *Vienna Declaration and Programme of Action* adopted 25 June 1993 by World Conference on Human Rights in Vienna *https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action* (accessed 18 October 2022).

[972] Article 83 of the Vienna Declaration and Programme of Action.

[973] Federal Republic of Nigeria *National action plan for the promotion and protection of human rights in Nigeria* 2009-2013 *https://www.ohchr.org/sites/default/files/Documents/Issues/Education/Training/actions-plans/Excerpts/Nigeria09_13.pdf* (accessed 18 October 2022).

[974] As above.

[975] As above.

[976] As above.

[977] As above.

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media. In 2021, as part of the awareness mandate, the NHRC issued a press release in 2019 to affirm that freedom from torture was a non-derogable right in Nigeria.[978] In July 2021, the NHRC with the NCAT trained 190 police officers under the Anti-Torture Act of 2017 and other legislation that prohibits the use of torture in Nigeria.[979]

The NHRC must also cooperate, liaise, and participate with other local and international organisations.[980] The NHRC must also collect data, disseminate information,[981] publish information,[982] promote public discussion of human rights,[983] receive and investigate complaints,[984] examine existing legislation or any proposed bills,[985] undertake research or coordinate any education programme to advance the promotion of human rights in Nigeria,[986] and act as a conciliator when appropriate,[987] referring human rights violation to the Attorney General,[988] and, when appropriate, can seek leave of the court to hear matters on human rights violations.[989]

Section 6 of the NHRC amended the 2010 Act, including further details of the mandate of the NHRC by stipulating that it should have the power to investigate and inquire,[990] introduce

[978] Press release issued by the Executive Secretary, National Human Rights Commission. 24 April 2019 *https://www.nhrc.gov.ng/nhrc-media/press-release/61-press-release-issued-by-the-executive-secretary-national-human-rights-commission.html* (accessed 18 May 2022).

[979] 'NHRC trains 190 police officers on Anti-torture legislation' *Vanguard Newspaper* 22 July 2021 *https://www.vanguardngr.com/2021/07/a2j-nhrc-trains-190-police-officers-on-anti-torture-act-legislation/* (accessed 18 May 2022).

[980] Sec 5(g) See also, section 6(1)(f) of the NHRC 2010 as amended.

[981] Sec 5(h) of the NHRC 2010 as amended.

[982] Sec 5(i) of the NHRC 2010 as amended.

[983] Sec 5(m) of the NHRC 2010 as amended.

[984] Sec 5(j) of the NHRC 2010 as amended.

[985] Sec 5(k) of the NHRC 2010 as amended.

[986] Sec 5(n) of the NHRC 2010 as amended.

[987] Sec 5(q) of the NHRC 2010 as amended.

[988] Sec 5(p) of the NHRC 2010 as amended.

[989] Sec 5(r) of the NHRC 2010 as amended.

[990] Sec 6(1)(a) of the NHRC 2010 as amended.

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civil actions,[991] appoint interpreters,[992] decide on compensation or damages to be awarded to victims of human rights abuse,[993] summon and interrogate,[994] issue warrants and compel any person or authority to appear before it,[995] enter any property to obtain evidence of a violation of human rights,[996] and visit places of detentions or cells.[997]

The NHRC, with its mandate to visit places of detention or deprived liberty, was able to set up an annual prison audit to deal with the issue of human rights in the Nigeria Correctional Services.[998] It is not clear if this includes visitations to police cells in each police station in Nigeria. The definition of 'deprived liberty' includes police cells and other holding facilities where people are not allowed to leave at their will under authority of law.[999] The visitations of the NHRC as directed by section 6(1)(d) includes visitation to police cells.[1000] The NHRC has conducted visitations to several correctional centres within the country; for it to prevent torture adequately in tandem with the OPCAT' reference to 'deprived of liberty', visitation must also be conducted in police cells. In February 2022, the NHRC started training staff to visit detention centres in the six geopolitical zones of Nigeria. However, the training takes place in only one State per geopolitical zone and Abuja.[1001]

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[991] Sec 6(1)(b) of the NHRC 2010 as amended.

[992] Sec 6(1)(c) of the NHRC 2010 as amended.

[993] Sec 6(1)(e). See also, Decision on 2020/IIP-SARS/ABJ/120 where the petitioner was awarded five-million-naira compensation for the violation of his rights by the police.

[994] Sec 6(2)(b) of the NHRC 2010 as amended.

[995] Sec 6(2)(c)(d)(e) of the NHRC 2010 as amended.

[996] Sec 6(2)(a) of the NHRC 2010 as amended.

[997] Sec 6(1)(e) of the NHRC 2010 as amended.

[998] 'NHRC flags off 2022 prison audit exercise, donates drugs to inmates.' 13 May 2022 *https://www.nigeriarights.gov.ng/nhrc-media/news-and-events/341-nhrc-flags-off-2022-prison-audit-exercise-donates-drugs-to-inmates.html* (accessed 19 May 2022). See also, 'NHRC chairperson commends officers of Kuje correctional service during 2022 facility audit 16 May 2022 *https://www.nigeriarights.gov.ng/nhrc-media/news-and-events/343-nhrc-chairperson-commends-officers-of-kuje-correctional-service-during-2022-facility-audit.htm*l (accessed 19 May 2022).

[999] Art 4(2) of OPCAT.

[1000] 'Visit persons, police cells and other places of detention in order to ascertain the conditions thereof and make recommendations to the appropriate authorities.'

[1001] S Ejike 'Human Rights Commission trains people to visit police detention facility' 16 February 2022 *Nigeria Tribune* *https://tribuneonlineng.com/human-rights-commission-trains-people-to-visit-police-detention-facility/*

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5.4.2 NHRC's Functional Independence

Article 18(1) of OPCAT requires the State to guarantee the NPM's functional independence.[1002] However, the meaning of functional independence was not defined in article 18. As outlined in the Practical Guide of the Office of the High Commissioner, functional independence implies a legislative mandate, operational independence, and financial independence.[1003] Legislative mandates include the establishment of an NPM by an act of parliament or in the State Constitution.[1004] The statutory document would probably include such information as visiting rights, access to information, communications with the SPT, independent experts, work stations, terms of office, and an election or appointment system for NPM members.[1005]

During the military regime of General Sani Abacha, the NHRC was established under Decree No.22 of 1995.[1006] This period was characterised by human rights violations, unlawful detentions and the use of force by various security agencies.[1007] It was not the intention of the

(accessed 19 May 2022). The included States are Sokoto (Northwest), Bauchi (North East), Benue (North Central), Oyo (South West), Imo (South East), Edo (South-South) and Abuja (Federal Capital Territory). What about the remaining States? Although it can be argued that each selected region would coordinate its own geopolitical zone, this could also take time. Since the NHRC has offices in 24 States out of the 36 States of the Federation, the question is why can't each office send a representative to do training who would then educate and train his colleague? The offices are located in Adamawa, Akwa-Ibom, Anambra, Benue, Cross River, Edo, Ekiti, Gombe, Imo, Kaduna, Kastina, Kwara, Nassarawa, Niger, Ondo, Osun and Sokoto, Enugu, Kano, Lago, Maiduguri, Port Harcourt, Jos, and Abuja Metropolitan Office. See also, M Olugbode 'Police states to be monitored for human rights compliance' 17 February 2022 *This Day Newspaper* *https://www.thisdaylive.com/index.php/2022/02/17/police-stations-to-be-monitored-for-human-rights-compliance/* (accessed 19 May 2022).

[1002] Art 18(1) of OPCAT.

[1003] United Nations Human Rights, Office of the High Commissioner *'Preventing torture: The role of national preventive mechanisms' A Practical Guide: Professional Training Series* No.21 15 *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf* (accessed 17 October 2022).

[1004] As above.

[1005] As above.

[1006] Decree No 22 of October 1995. The military regime that is known for the abuse of human rights established a human rights institution. This was ironical as it is impossible for such an institution to function independently without State control or influence. It was later known as National Human Rights Commission Act Cap. N46, Laws of the Federation of Nigeria, 2004.

[1007] N Mbelle 'The national human rights commission of Nigeria: Valuable, but struggling to enhance relevance' (2005) 48(3) *Centre for Conflict Resolution* 33 at 37.

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military regime to create a human rights institution that would address the needs of the people.[1008] Instead, it was a political uproar that led to the establishment of the National Human Rights Commission.[1009] The NHRC did not have legitimacy and credibility under the military regime, even though it was established by a decree making it notionally independent.[1010]

The Amended Act 2010 gives the NHRC functional independence. This is because it specifies that it is established as a corporation with perpetual succession and a common seal, and which can sue and be sued.[1011] Section 1 buttresses Newark's assertion that the NPM must be independent bodies free from Government interference or control.[1012]

Article 18(3) of OPCAT and the Paris Principle conclude that a State member must provide all the necessary resources for an NPM to function efficiently.[1013] These resources include a number of office locations, personnel, financial resources, and most importantly, accessibility to the nation's citizens. The NHRC established one office per State to reach people at the grassroots.[1014] According to the NHRC, it would have preferred to have had offices in all local government jurisdictions; however, due to resource limitations, State offices had to suffice.[1015]

5.4.3 NHRC's Independence of Personnel

[1008] As above.

[1009] As above.

[1010] As above.

[1011] Secs 1 of the NHRC 2010 as amended.

[1012] M Nowak & E McArthur *The United Nations Convention Against Torture* (2008) 1000 1075.

[1013] Art 18(3) of OPCAT. See also, United Nations 'Principles relating to the status of national institutions (The Paris Principles)' Adopted 20 December 1993 by the General Assembly resolution 48/134. *https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris* (accessed 14 August 2022). The Paris Principles required that each human rights institution must be competent and responsible and must be guaranteed independence. The Paris Principle 'Composition and guarantees of independence and pluralism principle' 2.

[1014] National Human Rights Commission. *https://www.nhrc.gov.ng/map.html* (accessed 18 October 2022).

[1015] Mbelle (n 189 above) 43.

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The NHRC consists of 16 members as a council[1016] made up of a retired judge of the Supreme Court, a representative from the Federal Ministry of Justice, Foreign and Internal Affairs, human rights organisations, media practitioners, legal practitioners and three others with a variety of interests and a secretary.[1017]

Upon the Attorney General of the Federation's recommendation and confirmation from the Senate, the President of the Republic of Nigeria appoints the members of the Council[1018] who serve for a term of four years,[1019] which may be renewed.[1020] Except for the Chairman and Secretary-General, each member of the council works part-time and the council meets once a month for three days.[1021] NHRC Council members may be removed by consultation with the National Assembly under section 4(1) of the 2010 Amended Act if the President determines that it is not in the public interest for members to continue in their positions.[1022] Specifically, the Amended Act, 2010 stipulates that a member of the council may be removed by the President on confirmation of a simple majority of the Senate.[1023] Members may only be removed by the President if they are incompetent, bankrupt, convicted of a felony, or otherwise behave improperly.[1024]

In terms of section 7 of the NHRC amended Act 2010, the President appoints the Executive Secretary to the Commission with approval from the Senate.[1025] The Executive Secretary acts

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[1016] 'NHRC governing council members inaugurated' 3 August 2021 *https://nhrc.gov.ng/nhrc-media/news-and-events/192-nhrc-governing-council-members-inaugurated.html* (accessed 18 October 2022).

[1017] 'NHRC governing council members inaugurated' 3 August 2021 *https://nhrc.gov.ng/nhrc-media/news-and-events/192-nhrc-governing-council-members-inaugurated.html* (accessed 18 October 2022). The current council members are: Dr Salamatu Husseini Suleiman as the chairperson, Tony Ojukwu (Executive Secretary), Joseph Mmamel, Ahmad Fingilla, Kemi Asiwaju-Okenyodo, Abubakar Muhammed, Femi Okewo, Sunday Etim Daniel, Agabaidu Jideani, Nella Andem-Rabana, Azubuike Nwakewenta, Jamila Isah, Idayat Hassana, Jeddy Agba J, the representative of foreign affairs and Dafe Adesida, representing Ministry of Interior.

[1018] Sec 2(3)(b) of the NHRC amended 2010.

[1019] Sec 3(1) of the NHRC amended 2010.

[1020] As above.

[1021] Mbelle (n 189 above) 40.

[1022] Section 4(2) of the NHRC amended 2010.

[1023] As above.

[1024] As above.

[1025] Sec 7(1)(c) NHRC amended 2010.

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as the Chief Executive Officer and the Accountant General of the Commission – a legal practitioner with over 20 years of post-qualification experience in human rights cases?[1026] The Executive Secretary is appointed for five years and can be re-appointed for a second term based on the Attorney General's recommendations.[1027] He or she is in charge of the day-to-day running of the Commission.[1028]

Prior to the NHRC amended Act 2010, the Special Representative of the United Nations Secretary-General, a human rights defender, visited Nigeria and raised the issue of the independence of the NHRC.[1029] Although it is based on a legal document, it cannot be said to be independent.[1030] This was apparent from its various events in 2006; Bukhara Bello, the then Executive Secretary as a member of the NHRC council, was removed from office by the then Minister of Justice on the allegation of criticising the national security agencies for the constant harassment and intimidation of journalists in the country.[1031] In 2009, the Executive Secretary Behind Ajani was removed from office by letter from the then Attorney General of the Federation.[1032]

Section 8 gives the NHRC the power to appoint anybody it deems fits and to transfer members of staff from the public service of the Federation with the required skills to help and assist the NHRC.[1033] The NHRC may determine an employee's remuneration, and has the power to pay such employees.[1034] The NHRC has the power to regulate the conditions of staff

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[1026] Sec 7 (1)(a) NHRC amended 2010.

[1027] Sec 7(2) NHRC 2010 as amended.

[1028] Sec 7(3) NHRC 2010 as amended.

[1029] Frontline Protection of Human Rights Defenders 'Nigeria: Defending human rights: Not everywhere not every right' *International Fact-Finding Missions Report* April 2010 at 18.

[1030] Frontline Protection of Human Rights Defenders 'Nigeria: Defending human rights: Not everywhere not every right' *International Fact-Finding Missions Report* April 2010 at 18.

[1031] Amnesty International *Nigeria: Government interference with the independence of the national human rights commission* 26 June 2006 AFR 44/012/2006 *https://www.amnesty.org/en/documents/afr44/012/2006/en/* (accessed 20 May 2022).

[1032] As above.

[1033] Sec 8(1) NHRC 2010 as amended.

[1034] Sec 8(2) NHRC 2010 as amended.

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promotion, salaries, dismissals, appointments, pensions, and gratuities. The pension must be in accordance with the Pensions Act.[1035]

Section 18 of the NHRC 2010 restricts the arrest or institution of a civil claim against the executive secretary or any of the staff while discharging their duties.[1036] However, for a civil claim to be instituted on other grounds against the members of the NHRC, it must be commenced within three months after the act, and in the case of damage or injury, it must be within six months.[1037] This is in accordance with the Public Offices Protection Act, which seeks to protect public officers in the course of their official duties.[1038]

5.4.4 NHRC‘s Financial Independence

The NHRC maintains a fund for its day-to-day running allocated from the Consolidated Revenue Fund of the Federation.[1039] The funds emanate from the Federal Government, which pays and credits the NHRC.[1040] The House of Representatives committee on Human Rights oversees the financial management of the NHRC.[1041]

Chief Tony Ojukwu, executive secretary of the National Human Rights Commission, addressed the chairman and members of the House of Representatives Human Rights Committee to actualise the human rights fund bill.[1042] The bill established the NHRC human rights fund in the annual budget of the Federal Government.[1043] According to Chief Tony Ojukwu, the bill's signing enabled the NHRC to better fulfil its mandates and increase its

[1035] Sec 9, 10, and 11 NHRC 2010 as amended.

[1036] Sec 18 of the NHRC 2010 as amended.

[1037] Sec 18 (2)(3) and (4) of the NHRC 2010 as amended.

[1038] Cap P41, Laws of the Federation 2004.

[1039] Sec 12(1) and (2) NHRC 2010 as amended.

[1040] Sec 12(3) NHRC 2010 as amended.

[1041] National Human Rights Commission 'Ojukwu tasks NASS on human rights funds, increased budget' 13 October 2022. *https://nhrc.gov.ng/nhrc-media/news-and-events/393-ojukwu-tasks-nass-on-human-rights-funds-increased-budget.html* (accessed 19 October 2022).

[1042] As above.

[1043] As above.

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reputation as an independent body.[1044] In addition, it addressed the issue of inadequate funding, which had hindered the NHRC since its inception in 1995.[1045]

The NHRC also has the liberty to receive gifts, lands, and funds from individuals or philanthropists; however, the gift must not be inconsistent with or prevent the NHRC from its mandate or delivering its functions.[1046] The NHRC's independence is further strengthened by being able to borrow from any sources in order to meet its mandates., It can invest any surplus, subject to the requirement of the Trustee Investments Act or any other securities Act in Nigeria.[1047]

Section 15 establishes the Human Rights Fund, which enables the NHRC to research any human rights issues and facilitate meetings with other non-governmental organisations, civil societies, or relevant stakeholders.[1048] The Federal, State and Local Governments and national and multinational companies are able to contribute to this fund on a tax-deductible basis.[1049]

The NHRC is obliged to submit an annual estimate of its expenditure and income to the Federal Executive Council before 30 September of every year for an audit conducted by an auditor from the list issued by the Auditor-General of the Federation.[1050] Once the account has been audited, the NHRC is obliged to submit a report showing the activities of the NHRC during the previous year to the National Assembly and the President.[1051]

[1044] L Baiyewu 'Senate amends NHRC Act, creates rights fund in annual budget' 5 April 2022 *The Punch Newspaper* *https://punchng.com/senate-amends-nhrc-act-creates-rights-fund-in-annual-budget/* (accessed 19 October 2022).

[1045] M Olugbode 'New law 'to enhance national human rights commission's performance' *This Day Newspaper* *https://www.thisdaylive.com/index.php/2022/04/11/new-law-ll-enhance-national-human-rights-commissions-performance/* (accessed 19 October 2022).

[1046] Sec 13 of the NHRC 2010 as amended. There is no available online data for the researcher about the compensation received by the NHRC at the time of writing this research.

[1047] Sec 14 NHRC 2010 as amended.

[1048] Sec 15 of the NHRC 2010 as amended. The NHRC has conducted several research through reports which can access on its website. Available at *https://www.nigeriarights.gov.ng/publications/journals.html* (accessed on 29 June 2024).

[1049] Sec 15(3) of the NHRC 2010 as amended.

[1050] Sec 16(1), (2) and (3) of the NHRC 2010 as amended.

[1051] Sec 17 of the NHRC 2010 as amended. The NHRC regularly publishes its report in accordance with section 5(c) of the NHRC Act 1995 (as amended), which requires the NHRC to publish and submit reports periodically to the President, National Assembly, Judiciary, States, and Local Governments. It has been releasing reports

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5.4.5 Cooperation with the SPT

The NPM must have adequate cooperation with the SPT In April 2014, the SPT visited Nigeria to discuss the establishment of an independent NPM.[1052] The discussion assured the SPTs that the Nigerian Government would establish an NPM. During the visit, the NHRC was also met by the SPT, which advised the NHRC on the steps needed for Nigeria to comply with its requirements under OPCAT.[1053] The NHRC has since then published no communication with the SPTs and it would seem that the NHRC did not directly communicate with the SPT.

In the 72nd section of the United Nations Committee against Torture, the NHRC submitted an individual report on implementing the UNCAT and OPCAT in Nigeria.[1054] In the report, the NHRC was held to have demonstrated adequate cooperation with the country's civil society organisations and other relevant stakeholders.[1055] From 2006 to 2008, the NHRC partnered the Network of Police Reform in Nigeria (NOPRIN) to carry out hearings on extrajudicial killings by the police. From 2016 to 2017, the NHRC collaborated with the Nigeria Bar Association and civil society organisations in the public hearings on police brutality by the Special Anti-Robbery Squad.[1056]

The NHRC cooperates with different civil society organisations, but it does not enjoy that cooperation with the SPT. If the NHRC were to approach the SPT in terms of article 20(f) of OPCAT for information and a meeting, it is argued that SPT would provide them with what they need to perform its mandate.

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since 2006 on its website. Available at *https://www.nigeriarights.gov.ng/publications/state-of-human-rights-report.html* (accessed on 28 June 2024).

[1052] United Nations 'Torture and inhuman treatment' *https://www.ohchr.org/en/taxonomy/term/1328?page=20* (accessed 23 May 2022).

[1053] As above.

[1054] In the 72nd session of the United Nations Committee against Torture, the NHRC submitted an individual report on the implementation of the UNCAT and OPCAT in Nigeria at 5. The document was submitted to the researcher by Hillary Ogbonna and Halilu Adamu of the NHRC Abuja. *https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/NGA/INT_CAT_NHS_NGA_47047_E.docx* (accessed 23 May 2022).

[1055] As above.

[1056] As above.

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The cooperation with civil society organisations has probably not included visitations to police cells but has rather focused on awareness creation. Although the Prisoner's Rehabilitation and Welfare Action) PRAWA[1057] constantly visits prisons, there is a lack of adequate visits to police cells by the NHRC.

5.5 FEDERALISM AND THE NPM IN NIGERIA

The purpose of this section is to provide a comprehensive understanding of Nigeria as a Federal State and the application of NPM in Nigeria. A Federal State is a country that is composed of several autonomous provinces or States that come together to form a single nation with an international legal personality.[1058]

Article 29 of OPCAT extends to all parts of a Federal State without limitations or exceptions.[1059] In article 17, OPCAT further clarifies that a State may opt to have more than one independent NPM; as a result, article 17 was clearly drafted with the decentralised State in mind.[1060]

However, whether at the Federal or State level, any NPM established must be able to visit any detention centre on a regular basis.[1061] This is to make recommendations to the SPT and government regarding the prohibition of torture.[1062] Therefore, any NPM established at the federal and State levels must be financially, functionally and operationally independent.[1063]

The OPCAT asserts that the State can create a new NPM or continue to maintain existing institutions as an NPM.[1064] The Federal Government of Nigeria inaugurated the NCAT with a

[1057] There are many NGOs that are capable of visiting prisons and detention centres. Although many of these NGOs, such as PRAWA and FIDA have visited places of detention in the past, they are not considered NPM in accordance with OPCAT PART IV. An examination of NGOs as NPM is outside the scope of this work. See also, FIDA Nigeria outreach to Bauchi State Correction Centre 21 June 2021 *https://fida.org.ng/2022/06/fida-nigeria-outreach-to-bauchi-state-correctional-centre/* (accessed 29 November 2022).

[1058] APT 'Implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in federal and other decentralised States' March 2011 1 3.

[1059] Art 29 of OPCAT.

[1060] Art 17 of OPCAT.

[1061] B Buckland & A Olivier-Muralt 'OPCAT in federal States: Towards a better understanding of NPM models and challenges' (2019) 25 (1) *Australian Journal of Human Rights* 23 34.

[1062] As above.

[1063] As above.

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secretariat at the national office of the National Human Rights Commission Abuja through the Ministry of Justice/Attorney General.[1065] As a result, the reason why Nigeria decided to establish a new NPM is not known, for it did not appear in any of the documents online or in the minutes of the consultation meeting held when drafting the Anti-Torture Act of 2017.[1066]

The application of OPCAT in a federal system presents a complex situation.[1067] This requires mapping out the place of detention.[1068] This will assist the State in determining the capacity and form of NPM that will be required.[1069] In order to determine the number of detention centres where people are deprived of their liberties both at the national and State levels, it is necessary to consider the legal framework, who is responsible for day-to-day activities, and to whom they report.[1070] In order to be successful, NPM must be able to comprehend the complexity of the legislation and frameworks used by these institutions.[1071]

The Nigerian Correctional Service Act repealed the 2014 Act. It categorised correctional service into two faculties.[1072] These are the 'Custodial Service and the Non-Custodial Service'.[1073] The Custodial service in section 10 specifies its function as

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[1064] Art 17 of OPCAT.

[1065] Federal Ministry of Justice 'Mandate of the National Committee on Torture' *http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 29 November 2022).

[1066] Redress and University of Bristol 'Anti-Torture legislative framework in Nigeria: Report of roundtable discussion on the draft-anti-torture Bill Sheration Hotel, Abuja' 26 February 2016 11. *https://redress.org/wp-content/uploads/2017/12/ANTI-TORTURE-LEGISLATIVE-FRAMEWORKS-IN-NIGERIA.pdf* (accessed 29 November 2022). 'It was recalled that previous consultations on the NPM had considered whether the mandate of the NPM should be given to a unit established within the National Human Rights Commission as it already has a detention monitoring function'. The committee, however, did not provide any additional information during its decision to create a new NPM.

[1067] B Buckland & A Olivier-Muralt 'OPCAT in federal States: Towards a better understanding of NPM models and challenges' (2019) 25 (1) *Australian Journal of Human Rights* 23 26.

[1068] As above.

[1069] As above.

[1070] As above.

[1071] As above.

[1072] Nigeria Correctional Service Act, 2019 (NCSA 2019). An Act to repeal the Prison Act Cap. P29 Laws of the Federation of Nigeria, 2004 and enact the Nigerian Correctional Service Act to make provision for the administration of prisons and non-custodial measures in Nigeria; and for related matters.

[1073] Secs 1(2) NCSA 2019.

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> …taking custody of all persons legally interned, providing safe, secure and humane custody for inmates, conveying remand person to and from courts in motorised formations, identifying the existence and causes of anti-social behaviour of inmates, conducting risk and needs assessment aimed at developing appropriate correctional treatment methods for reformation and rehabilitation and reintegration, implementing reformation and rehabilitation programmes to enhance the reintegration of inmates back into the society, initiating behaviour modification in inmates through the provision of medical, psychological, spiritual and counselling services for all offenders including violent extremist, empowering inmates through the deployment of educational and vocational skills training programmes and facilitating incentives and income generation through Custodial Centres, farms and industries, administering borstal and related institutions, providing support to facilitate the speedy disposal of cases of persons awaiting trial and performing other functions as may be required to further the general goals of the Service.[1074]

The Non-Custodial Service is responsible for the administrative 'community services, probation, parole, restorative justice measures, and any other non-custodial measure assigned to the Correctional Service by a court of competent jurisdiction.[1075]

The Correctional Service is headed by the Comptroller-General (CG) with eight deputies.[1076] The President of the Federation appoints the CG and his deputies upon recommendation of the Board and confirmation by the Senate.[1077] On the recommendation of the Board, the President may remove the CG from office.[1078] The Correctional Service headquarters is located in Abuja. Other offices include the Zonal Office, State Command, Custody and Non-Custody Centres, and Training Institutions.[1079]

The CG, in consultation with the State and the Federal Capital Territory Authority, appoints the State Committee on Non-Custodial Services with the approval of the National Committee on Non-Custodial Services.[1080] After receiving the recommendation, the CG is responsible for

[1074] Secs 10(a)-(k) NCSA 2019.

[1075] Secs 37(1) NCSA 2019.

[1076] Secs 1(3) NCSA 2019. See also, Secs 7(1) NCSA 2019.

[1077] Section 3(1) NCSA 2019.

[1078] Secs 6 NCSA 2019.

[1079] Secs 8(1) NCSA 2019.

[1080] Secs 38 NCSA 2019.The Governors of any States did not participate in the appointment process or have any authority over the Correctional Service. It is arguably solely the jurisdiction of the Federal government.

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submitting it to the Minister of Justice, Social Welfare, and Chairperson of the Administrative of Criminal Justice Monitoring Committee.[1081] Notwithstanding, Non-Custodial Services receive funding from the Federal government and State governments, donations, and philanthropic organizations.[1082]

The Nigerian Police Act 2020 repeals the Police Act of 2004.[1083] The Nigerian Police is responsible for preventing, detecting, and protecting all individual rights and freedoms in Nigeria in accordance with the Nigerian Constitution, the African Charter, and any other laws in force at the time.[1084]

The Nigeria Police Council (Council) is responsible for making laws and regulations for the Nigerian Police,[1085] advising the President on the appointment of the Inspector-General and supervision of the Police force, and deliberating on reports and security concerns from the States and the Federal Capital Territory, Abuja.[1086] The Council consist of the President who is the Chairman, governors of each State, the Chairman of the Police Service Commission and the Inspector-General of Police (IG).[1087]

In addition to heading the police service, the Inspector General of Police also presents its official report to the Attorney General of the Federation, who reviews and recommends its findings to the President, after which it is published on the Federation's official website.[1088]

The Police Service Commission (PSC), on the recommendation from the IG, appoints the Deputy IG and the Assistance IG.[1089] Furthermore, the Police Service Commission appoints

[1081] Secs 38(2-3) NCSA 2019.

[1082] Secs 44 NCSA 2019.

[1083] The Act repeals the Police Act Cap. P19, Law of the Federation, 2004 and enacts the Nigeria Police Act, 2020 (NPA 2020) to provide for a more effective and well-organized police force driven by the principle of transparency and accountability in its operations and management of its resources.

[1084] Secs 4 NPA 2020.

[1085] Secs 6(1) NPA 2020.

[1086] Secs 6(3) NPA 2020.

[1087] Secs 6(2) NPA 2020.

[1088] Secs 9(3) NPA 2020.

[1089] Secs 11(1) NPA 2020.

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the Police Commissioner of each State, and where the Police Service Commission does not appoint the Commissioner, the Inspector General has the authority to assign the head of each department to that State.[1090]

Nigerian Police is funded by an appropriation by the National Assembly, as well as by the Federal and State Governments, international organizations, and gifts from individuals.[1091]

Lagos State, Ekiti State, Kano State, Ondo State and most of the States in Nigeria have an office of the public defenders and citizen rights.[1092] This office provides legal aid and legal advice, as well as promotes the respect of civil liberties, constitutional rights, and equal access to justice for all.[1093] While the OPD has visited correctional facilities, the question that needs to be asked is whether these institutions can serve as NPM.

An NPM must be established with the participation of experts from various fields.[1094] It must have a preventive function and the capability to visit places of deprived liberties regularly, dialogue with civil society organizations, communicate with the SPT, and be financially and operationally independent.[1095]

The States established the OPD in order to assist citizens with legal matters; however, the OPD was not authorized to visit places that deprived citizens of their liberties.[1096] Though it has been done several times by these institutions at the State level, the OPD does not have the capacity to prevent torture.[1097] This is because it is not a specific mandate of the legislation

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[1090] Secs 12(1) NPA 2020. See secs 12(3) NPA 2020.

[1091] Secs 26 NPA 2020.

[1092] 'Lagos State Office of the Public Defender' *http://www.opdlagosstate.org* (accessed 05 December 2022). See also, Office of the Public Defender-OPD, Ekiti State. *https://www.facebook.com/people/Office-Of-The-Public-Defender-OPD-Ekiti-State/100068126444265/* (accessed 05 December 2022). See also, Kogi State Office of the Public Defender and Citizens' Rights Commission (PDCRC) *https://www.pdcrckogi.com.ng* (accessed 5 December 2022).

[1093] Secs 2(1) of the Office of Public Defender Act. Lagos State 2011. Secs 4 of the Kogi State Public Defender and Citizens' Rights Commission Law 2018 (PDCRC 2018).

[1094] Art 18(2) of OPCAT.

[1095] Art 18 of OPCAT.

[1096] Secs 2(1) of the Office of Public Defender Act. Lagos State 2011. Secs 4(1)(a)-(i) PDCRC 2018. These laws did not specify that visitation to places of detention as part of its function.

[1097] As above.

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that established it.[1098]

The OPD is an independent body that can be sued and sued.[1099] As an independent corporate entity, it is funded by the State's consolidated revenue fund.[1100] Upon recommendation by the Attorney General, the Governor appoints the Director, who serves on the Governing Council as prescribed by the legislation.[1101] It is the duty of the OPD to serve as the legal aid agency in every State as a human rights institution.[1102] As such, it does not possess the authority to regularly visit places of detention, communicate with the SPT, or make recommendations regarding existing legislation or draft legislation.

However, it has the authority to investigate any complaint that is referred to it.[1103] This implies that torture has already been committed prior to the complaint, thus defeating the purpose of OPCAT, which is to prevent torture.

According to article 1(c), NPM are authorized to make proposals and recommendations concerning any draft or existing legislation.[1104] NPM has legislative mandates dealing with the prevention of torture and deprivation of rights.[1105] Thus, the NPM has two facets of legislative authority. Firstly, it has the power to propose changes to existing laws, which implies that additional information will be provided regarding unsatisfactory legislation and detention facilities.[1106] Secondly, the NPM is empowered to draft legislation pertaining to the prevention of torture.[1107]

[1098] As above.

[1099] Secs 3 PDCRC 2018.

[1100] Secs 30 PDCRC 2018.

[1101] Secs 15 PDCRC 2018.

[1102] Secs 4 PDCRC 2018.

[1103] Secs 4(c) PDCRC 2018.

[1104] Art 19(b) of OPCAT.

[1105] Art 18 of OPCAT.

[1106] United Nations Human Rights, Office of the High Commissioner *'Preventing torture: The role of national preventive mechanisms' A Practical Guide:* Professional Training Series No.21 27 *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf* (accessed 17 October 2022).

[1107] As above.

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To ensure that the NPM has adequate time to analyse and provide its views, the government should proactively send draft legislation to the NPM.[1108] A mechanism should also be provided for the NPM itself to initiate proposals for new legislation or amendments to existing legislation, as prescribed by article 9(c).[1109]

In this regard, the OPD and the NHRC both have the authority to visit places of detention where people are deprived of their liberties. However, the existence of the NHRC and any other regulatory bodies in the States with similar mandates to those specified in the OPCAT might not be decisive. To avoid duplication, compliance with the Paris Principle only does not imply compliance with Part IV of OPCAT. Thus, a human rights institution established within a country with a modus operandi for receiving and treating complaints may face several challenges in carrying out its preventive functions.

Following the enacted laws and institutional traditions, the federal government of Nigeria has one NPM to serve the entire country. However, to be truly effective, it needs to have offices in every capital city of every State with its own staff, just like the NHRC. This is contrary to what prevails in Canada, which has different penitentiary laws in which the federal government controls the administration, maintenance and management functions, while the provincial governments have the power to 'establish, maintain and manage the public reformatory prison in and for the province'.[1110]

5.6 CONCLUSION

Article 18(4) of OPCAT requires State members to take into account the Paris Principles in establishing an NPM[1111] to clarify the concept of national human rights institutions by providing minimum criteria on their status and role as advisory bodies.[1112] In accordance with the Paris Principles, when a State party creates a NHRC, it must be incorporated in its

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[1108] APT 'Establishing and designation of National Preventing Mechanism' 26 https://www.apt.ch/sites/default/files/publications/NPM.Guide%20%281%29.pdf (accessed 6 December 2022).

[1109] As above.

[1110] B Buckland & A Olivier-Muralt 'OPCAT in federal States: Towards a better understanding of NPM models and challenges' (2019) 25 (1) *Australian Journal of Human Rights* 23 25.

[1111] Art 18(4) of OPCAT.

[1112] United Nations 'Principles relating to the status of national institutions' (The Paris Principles) adopted on 20 December 1993 by the General Assembly in Resolution 48/134.

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Constitution or legislation.[1113] By enshrining an NPM into legislative text or in the Constitution, the institution is given adequate power and autonomy to perform its functions.[1114] The concept of independence refers to being free from interference by the government.[1115] In accordance with the UN Handbook, 'power must relate to purpose', which means that both NCAT and the NHRC require adequate power to carry out its responsibilities.[1116] Arguably, adequate power cannot be granted when there is no law that creates an institution. The NCAT was established on 29 September 2009 with an inaugural document that is not legally binding.[1117] In spite of the fact that the inauguration documents specify the mandate of the NCAT, the body has not been established by the Constitution or an act of parliament.[1118]

The NHRC was created by the 2010 NHRC Act as an independent, incorporated body that has the authority to act in accordance with the law that established it.[1119] The provisions of section 2, read with section 5, gives the NHRC a clear and reasonable jurisdiction that entails broad mandates to deal with matters relating to the protection and promotion of human rights in Nigeria.[1120] The NHRC in section 6 has the mandate to visit places, prisons and persons deprived of their liberties in any of the correctional or detention centres in Nigeria.[1121] This mandate to visit and make recommendations to appropriate authorities aligns with the mandate of an NPM in OPCAT article 19, which allows the NPM to visit places where

[1113] Paris Principle 'Competence and responsibilities' Principle 2.

[1114] As above.

[1115] Paris Principle 'Composition and guarantees of independence and pluralism' Principle 3. The principle provides that 'In order to ensure stable mandate of members of the national institution, without which there can be no real independence…' The NCAT though has a mandate in the inaugural document, but this can be removed by the Attorney General of the Federation who inaugurated them.

[1116] United Nations *National human rights institutions: A handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights* (1995) 39 HR/P/PT4 *https://www.refworld.org/docid/4ae9acb7289.html* (accessed 20 October 2022).

[1117] Federal Ministry of Justice 'Mandate of the National Committee on Torture' *http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/nigeriatermsofreference.pdf* (accessed 10 October 2022).

[1118] As above.

[1119] Secs 2 of the NHRC 2010 as amended.

[1120] Secs 5 of the NHRC 2010 as amended.

[1121] Secs 6(1)(d) of the NHRC 2010 as amended.

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people are being deprived of their liberties and to make a recommendation to the appropriate authorities about the condition of the people at the detention centres.[1122]

Moreover, as part of the mandates of the NCAT to visit places of deprived liberties, the NCAT visited some prisons and police stations.[1123] However, the definition of deprived liberty does not end in prisons but includes police cells where torture is typically administered to detainees to obtain evidence in Nigeria.[1124] This implies that the visitation mandates must include that NCAT takes necessary steps to visit other detention centres within the country, especially across all the local governments of the federation.

The provisions of OPCAT emphasise that the NPM must be independent entities. The NCAT of Nigeria, through the former chairman, alleges that it cannot perform most of the NCAT functions due to the non-availability of funds as required in the Paris Principles,[1125] which it sees as crucial, to control its own activities and be independent of the government.[1126] It is not clear how NCAT receives its funding or the criteria used for its council members' appointment. As provided in the 2010 amended act, the NHRC is funded by the consolidated fund of the federal government.[1127] The NHRC receives funds from the Federal Government, which pays or credits the NHRC.[1128]

The NCAT must have an office location where people at the grassroots can contact the team.[1129] NCAT's only office is located within the NHRC secretariat in Abuja.[1130] The NHRC

[1122] Art 19(a) and (b) of OPCAT.

[1123] Dr Samson Sani Ameh 'NCAT 4th quarterly report of the National Committee Against Torture for the period ending 31st December 2014 to the United Nations Subcommittee against torture in Geneva, Switzerland' (2014) 15 *https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Nigeria2014.pdf* (accessed 12 October 2022).

[1124] Amnesty International *Under embargo until May 13th* AFR 44/005/2014. *https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440052014en.pdf* (accessed 20 October 2022).

[1125] Paris Principle 'Composition and guarantees of independence and pluralism' Principle 3.

[1126] As above.

[1127] Sec 12 (1) and (2) NHRC 2010 as amended.

[1128] Sec 12(3) NHRC 2010 as amended.

[1129] United Nations *National human rights institutions, A handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights* (1995) 100, 102, 105 HR/P/PT4 *https://www.refworld.org/docid/4ae9acb7289.html* (accessed 20 October 2022).

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established one office per State to reach people at the grassroots.[1131]

OPCATS requires NPM with the mandate to visit detention facilities and make recommendations to the authorities about draft legislation as well as existing legislation. The Anti-Torture Act 2017 prohibits the use of torture in Nigeria and excludes no one from its prohibition. In light of the fact that there are both legislative and institutional provisions in place in Nigeria, the next chapter will analyse whether the Anti-Torture Act 2017 has been implemented in practice rather than just legal enactment.

Based on the evidence presented in this chapter, it is clear that no specific legal text has established the NCAT, nor does it possess the independence required to function as a National Preventive Mechanism capable of effectively preventing torture in Nigeria. Despite the strong legislative prohibition on torture and Nigeria's domestication of the relevant international treaties, the key institutional mechanisms for implementing such a prohibition are clearly lacking.

The following chapter addresses the actual implementation of the Anti-Torture Act of 2017.

[1130] The document was submitted to the researcher by Hillary Ogbonna and Haliru Adamu of the NHRC Abuja.

[1131] National Human Rights Commission. *https://www.nhrc.gov.ng/map.html* (accessed 18 October 2022).

[1132] Section (Secs) 2, 3 and 9 of the Anti-Torture Act 2017. The Anti-Torture Act of 2017 is available online and can be accessed through LawPavilion, a legal database in Nigeria. While other versions of the Anti-Torture Act 2017 are available online, they are mostly the Bill. Though the Anti-Torture Act 2017 is not currently available on the National Assembly website at the time of writing, it contains the same content as the Bill but differs in section numbering. For example, the right to examination is found in secs 6 of the Bill and secs 7 of the Anti-Torture Act 2017. Similarly, secs 8 of the Bill corresponds to secs 9 of the Anti-Torture Act 2017, which outlines penalties for perpetrators of torture. See also, C E Obiagwu 'Understanding and applying the provisions of the Anti-Torture Act 2017' *https://nji.gov.ng/wp-content/uploads/2020/11/Obiagwu-SAN-paper.pdf* (accessed 12 June 2023). Obiagwu was a member of the National Committee against Torture (NCAT), which provides that secs 9 of the Anti-Torture Act 2017 outlines the penalties for perpetrators.

[1133] Secs 3 of the Anti-Torture Act 2017.

[1134] Nigerian police torture students returning from Cyprus, Norway, in protest, withdraws more than ₦5.5million from bank accounts after nine-day detention 7 February 2023 *https://saharareporters.com/2023/02/07/exclusive-nigerian-police-personnel-torture-students-returning-cyprus-norway-forcefully* (accessed 2 April 2023).

[1135] Secs 9(1) of Anti-Torture Act 2017.

[1136] Secs 9(2) of Anti-Torture Act 2017. The Penal Code applies to Northern Nigeria, which criminalises acts that approximate torture, such as infliction of injury and grievous bodily harm, while the Criminal Code Act L.N. 112 OF 1964, Cap. C38. L.N.47 of 1955 applies to the Southern Region of Nigeria, criminalising assault, homicide, offences endangering life and excessive use of force. The punishments for these offences range from fine, imprisonment or combinations. See secs 247, 221 228.

[1137] As above.

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CHAPTER SIX
THE USE OF THE ANTI-TORTURE ACT 2017 IN PRACTICE

6.1 INTRODUCTION

The Anti-Torture Act 2017 prohibits torture and provides for the punishment for perpetrators.[1132] However, despite the fact that section 3 of the Anti-Torture Act 2017 provides that no circumstances may justify torture in Nigeria,[1133] the use of torture by law enforcement agencies in Nigeria persists.[1134] The perpetuation of torture is an offence potentially making the perpetrator liable to 25 years imprisonment.[1135] Where torture leads to death, the perpetrator is subject to be punished under the relevant penal laws.[1136] While the provisions of section 9 specify that perpetrators of torture are liable to prosecution and imprisonment,[1137] the question remains whether there have been any prosecutions of perpetrators since the promulgation of the Anti-Torture Act 2017.

The prevention of torture requires an intervention that addresses the root causes before it occurs.[1138] This approach entails providing training, promoting awareness, and educating law

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enforcement personnel and staff members in detention facilities.[1139] The Anti-Torture Act 2017 provides that the Attorney General (AG) is responsible for ensuring that law enforcement agencies, the general public, and those involved in interrogations or detention centres are adequately educated on the prohibition of torture.[1140] However, law enforcement officers have not fully utilised the Anti-Torture Act 2017,[1141] creating the need for awareness campaigns to enable the full implementation of the Anti-Torture Act 2017.

Section 12 of the Anti-Torture Act 2017 requires the AG to make rules and regulations to effectively implement the Anti-Torture Act 2017.[1142] However, no law or regulation has been promulgated to support the Anti-Torture Act 2017 with procedures, processes, investigation guidelines and prosecution of torture perpetrators.[1143] As a result, this raises the question of whether the Anti-Torture Act 2017 as a law prohibiting torture is, in fact, effective in practice.[1144]

[1138] Association for the Prevention of Torture 'Preventing torture: An operational guide for national human rights institutions' (2010) *https://www.ohchr.org/sites/default/files/Documents/Publications/PreventingTorture.pdf* (accessed 13 June 2023).

[1139] Art 10 of United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York, 10 December 1984. Entry into force: 26 June 1987, by article 27(1). Registration 26 June 1987, No. 24841, Status: Signatories: 84, Parties: 173 *United Nations, Treaty Series,* vol.1465 at 85. Signed by Nigeria on 28 July 1988 and ratified on 28 June 2001. See also, the United Nations treaty collection depositary *https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=_en* (accessed 11 April 2022). See also, Human Rights Committee General Comment No. 20 at the Forty-fourth Session 'Enforcement personnel, medical personnel, police officers and any person involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training.' Para 10, A/44/40, March 1992. To increase awareness of the Anti-Torture Act 2017, it's important to provide sufficient training to law enforcement officers, other public servants, judges and lawyers. This will help them better understand the law and its implications.

[1140] Secs 11 of Anti-Torture Act 2017.

[1141] N Egenuka 'Time to create awareness, end impunity by criminalising torture' 17 August 2021 *The Guardian* newspaper *https://guardian.ng/features/law/time-to-create-awareness-end-impunity-by-criminalising-torture/* (accessed 3 January 2023: '…there is a huge lack of awareness among security agencies that the law directly targets.' See also, 'Why torture remains prevalent in Nigeria – RULAAC' 26 June 2021 *Sahara Reporters* *https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac* (accessed 3 January 2023: 'Awareness remains very low among law enforcement officials of the laws that should guide law enforcement practices.'

[1142] Secs 12 of Anti-Torture Act 2017.

[1143] Egenuka (n 10 above). The existing Anti-Torture Act 2017 needs regulations for its implementation that will promote policies, establish institutional mechanisms, and prescribes procedure and guidelines for the prevention of torture in Nigeria. Moreover, the rules need to point out the link between non-coercive interrogation techniques of accused persons. The regulations, if available, may further extend the need for prompt investigations and prescribe the procedure for punishing perpetrators.

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6.2 CHAPTER SYNOPSIS

This chapter analyses the effectiveness of the Anti-Torture Act 2017 in practice and, in the process, analyses specific provisions of the Anti-Torture Act 2017 concerning practical compliance and implementation, as well as the consequences of ineffective laws and institutions for the prohibition of torture.[1145]

The chapter is divided into five parts. The first part of this chapter analyses the right to a lawyer as a necessary and influential factor in preventing torture. The roles of lawyers are crucial in preventing torture. They ensure transparency within institutions and act as a liaison between detainees, police and their families.[1146] The Anti-Torture Act 2017 does not contain a clause for the right to a lawyer during an arrest. This raises a question about the effectiveness of the Anti-Torture Act 2017, as it fails to address the role of lawyers in preventing the torture of detainees upon arrival at a police station. This then raises the question as to what regulations may be necessary for the Anti-Torture Act 2017 to be effective.

The second part of this chapter analyses the Government's compliance with the Anti-Torture Act 2017 safeguards that seek to prevent torture in all detention centres. These safeguards include the use of medical examinations and the use of electronic video devices during interrogations. The analysis interprets the judgments of the Court of Appeal on using

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[1144] The Anti-Torture Act 2017 is not the only law that requires additional regulations for effective implementation. The National Health Act, 2014 (Act no.8 of 2014) has a National Health Policy, 2016 (revised 2019) that also regulates the country's health system. These regulations aim to support the new laws and are enforceable by law. See secs 59 of the National Health Act, 2014.

[1145] In order for a law to be considered effective, it must be adhered to by the legal community it was intended for. However, just because a law is being followed, it does not guarantee its effectiveness. A law can only be considered effective when legal norms are observed by legal subjects or institutions and there are consequences for those who violate the law. Conversely, a law is deemed ineffective when it is not observed and there are no consequences for those who breach its provisions. This chapter examines how effective the Anti-Torture Act 2017 is in preventing torture by institutions such as the Nigeria Police Force, judges, the National Human Rights Commission, and those working in detention centres. See also, J Hahn *Foundation of a sociology of canon law* (2022) 180-181. See also, A Allot 'The effectiveness of laws' (1981) 2 (15) *Valparaiso University Law Review* 229 234-235.

[1146] Lawyers have the responsibility of representing and providing assistance in legal procedures. One such procedure involves police officers informing the detainee of their rights, which may require a signature. It is the lawyer's duty to ensure that these rights are respected. Failure to comply with the procedures in relation to detainees could result in an investigation, sanctions, or disciplinary action against the police officer. Involving a lawyer can help prevent these consequences. See also, APT 'The role of lawyers in the prevention of torture' 2008 *https://www.apt.ch/sites/default/files/publications/roleoflawyers.pdf* (accessed 21 June 2023).

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electronic video devices. Further analysis is provided in this chapter regarding the impact of the word 'may' on the effectiveness of the Anti-Torture Act 2017, resulting in the recommendation that the word 'may' be changed to 'shall' to make clear to detention officers the necessity of recording the accused individuals during interrogations.

The third part of this chapter analyses the lodging of complaints to a competent authority. Complaints play a crucial role in preventing torture and providing detainees with a way to express their dissatisfaction with the treatment received from public officers. This re-establishes their sense of dignity.[1147] To ensure that complaints made by detainees are effective, it is crucial to have sufficient complaint bodies available to them. It is also important to have impartial officials handling the complaints. The key question to consider is whether detainees are aware of the bodies that receive their complaints. According to section 5 of the Anti-Torture Act 2017, anyone tortured has the right to file a complaint with a competent authority. The authority is then required to investigate the case promptly and impartially. According to section 5(2) of the Anti-Torture Act 2017, the competent authority should ensure that the complainant is not intimidated. However, section 5 of the Anti-Torture Act 2017 does not specify or name the authorities that are competent to receive complaints of torture.[1148] It is likely that they include the Nigeria Police Human Rights Desk and the National Human Rights Commission (NHRC). Therefore, the purpose of this part of this chapter is to analyse the Nigeria Police Human Rights Desk[1149] as a potentially competent

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[1147] Redress ' Taking Complaints of torture seriously: Rights of victims and responsibilities of authorities' (2004) *https://redress.org/wp-content/uploads/2018/01/Sept-TAKING-COMPLAINTS-OF-TORTURE-SERIOUSLY.pdf* (accessed 21 June 2023).

[1148] In Sec. 6 of the Anti-Torture Act 2017, a torture victim may seek legal assistance from the National Human Rights Commission or any non-governmental organisations or private individuals to file and handle their complaints properly. The provision lists the National Human Rights Commission as one of the agencies that may assist victims of torture in filing and handling complaints. Including other non-governmental organisations in Sec 6 gives the complainant alternative avenues for filing a complaint if the National Human Rights Commission is not accessible. The weakness of Sec 6 arises if non-governmental organisations are restricted from visiting detention centres.

[1149] The Public Complaints Commission (PCC) will not be analysed here as it does not have the power to prosecute police officers. However, its mandate is to investigate any complaints lodged by citizens. It can use its initiative where complaints are not lodged to investigate any public service, statutory corporation, local government, department and public institution. The investigation can also be extended to any individual in these institutions. As the mechanism available to control abuses of administrative power by officials in the Nigerian public service (primarily non-adherence to procedures and abuse of the law), the PCC can extend its investigative authority to NPF by providing an impartial investigation. However, Sec 6(d) of the PCC restricts the PCC from investigating any misconduct or abuses of an administrative procedure from the Nigerian armed

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authority as defined by section 5 of the Anti-Torture Act 2017, to determine whether this authority is effective in receiving and dealing with complaints as stipulated in section 5 of the Anti-Torture Act 2017. Human Rights Desks are expected to be situated in every police station.[1150] The further part analyses why the Anti-Torture Act 2017 has not been effectively applied at the police station human rights desk offices. The NHRC is also discussed as it can receive and investigate complaints related to human rights in Nigeria.[1151] It analyses further how the Commission applied the Anti-Torture Act 2017 to its quasi-judicial decisions.

The fourth part of the chapter analyses the prosecution of perpetrators. Article 5 of UNCAT requires State parties to assume jurisdiction over the offence of torture in all territories within its borders.[1152] As a result of the Anti-Torture Act 2017, Nigeria has jurisdiction over the crime of torture throughout the country.[1153] This includes both the courts of first instance and the superior courts. However, failing to arrest and punish torture perpetrators impedes the provision's effectiveness. This part analyses the accountability of perpetrators of torture in Nigeria and further provides an analysis of judgments that rely not on the Anti-Torture Act 2017 but on other legislation for their rulings; it gives the reason why judges should rely on the Anti-Torture Act 2017 as it provides more severe penalties to the perpetrator of tortures.

6.3 RIGHT OF ACCESS TO A LAWYER

The Association for the Prevention of Torture demonstrated in its study[1154] that to prevent

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forces. This implies that the PCC may not investigate the NPF. See Secs 5 and 6(d) of the Public Complaints Commission Act.

[1150] The Human Rights Desk was established with the Human Rights Manual, in which all police stations are expected to have officers that serve as human rights desk officers. The Human Rights officer ensures that suspects' rights are always protected. See also, 'Nigeria police chief tells officials to uphold human rights' *Channel Television* 9 December 2014 https://www.channelstv.com/2014/12/09/nigeria-police-chief-tells-officials-uphold-human-rights/ (accessed 12 May 2023).

[1151] Secs 5 of the National Human Rights Commission (Amendment) Act 2010.

[1152] As above.

[1153] Secs 9 of the Anti-Torture Act 2017.

[1154] R Carver and L Handley conducted independent research on reducing torture in fourteen different countries, including the United Kingdom, Chile, Hungary, Indonesia, Israel, Peru, South Africa, Georgia, Tunisia, Turkey, Ethiopia, India, Kyrgyzstan, and the Philippines. Their study provides valuable insights into preventing torture over a thirty-year period and concludes that it is possible to prevent torture. See R Carver & L Handley *Does torture prevention work?* (2016) Liverpool.

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torture effectively, all people arrested must receive necessary safeguards within hours of being detained.[1155] According to the study results published in 2016 by Richard and Handley, having access to a lawyer plays a vital role in preventing torture.[1156] A United Nations Human Rights Council resolution of 2016 provides that once an accused person has been arrested, access to a lawyer must be guaranteed as early as possible or within a few hours of the arrest.[1157] As stated by the United Nations Special Rapporteur on Torture, counsel must be provided immediately upon arrest and before any questions are asked by the authorities.[1158]

Article 20 of the Robben Island Guidelines (RIG) provides that every detention centre must have regulations in place to guide its operations. These regulations must include provisions for the detainee to have access to legal counsel and medical examinations.[1159] RIG justifies its proactive measure by stating that detainees may feel shocked, disoriented, and isolated during their initial period of custody, which could lead to them being unaware of their rights. It is widely acknowledged that during the initial stage of an arrest, police often use their authority to coerce detainees into talking, confessing, or providing information.[1160]

The Anti-Torture Act 2017 prohibits torture without providing for access to a lawyer during detention.[1161] However, the Administration of Criminal Justice Act (ACJA) is the legislation

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[1155] The APT commissioned academic research in 2012 asking: Does torture prevention work? The study was published in 2016 by R Carver & L Handley *Does torture prevention work?* (2016) Liverpool.

[1156] As above.

[1157] United Nations, 'Torture and other cruel, inhuman or degrading treatment or punishment: Safeguards to prevent torture during police custody and pretrial detention' Resolution adopted by the Human Rights Council on 24 March 2016, (2016), UN Doc A/HRC/RES/31/31, at 7.

[1158] United Nations Interim report of the Special Rapporteur on torture Juan E. Mendez (2016), UN Doc A/71/298 at 69. See also, United Nations, General Comment No. 32 of the Human Rights Committee at 34.

[1159] Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa. See also, Guidelines on the Condition of Arrest, Police Custody and Pre-Trial Detention in Africa. Article (14(c) that 'Pre-trial detainees shall have regular and confidential access to lawyers or other legal service providers. Detainees must be provided with information about the availability of lawyers and, where appropriate other legal service providers, the means to access them, and the facilities to prepare their defence.'

[1160] J B Niyizurugero & P Lessene 'Robben Island guidelines for the prohibition and prevention of torture in Africa: Practical guide for implementation' (2008) *https://www.ceja.ch/images/CEJA/DOCS/Publications-Droits-Homme/rig_practical_eng.pdf* (accessed 24 June 2023).

[1161] The Anti-Torture Act 2017 did not provide in any of its provisions that an arrested person has the right to access a lawyer upon detained. The importance of having a legal representative present once an accused person is detained is to help reduce torture.

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to ensure that the administration of criminal justice in Nigeria promotes efficient management of justice institutions while protecting suspects, defendants, and victims' rights and interests.[1162] Section 6 of the ACJA provides that, once an accused is arrested, the officer making the arrest must inform the accused that they have the right to remain silent, refrain from answering questions, or refrain from making, endorsing, or writing any statements until after consulting a legal practitioner or a person of the accused's choosing, and the legal aid council if applicable.[1163] However, in practice, that is not always the case. In 2021, numerous issues were documented in which detainees were denied access to lawyers, unable to consult lawyers of their choice and those who could consult lawyers were denied access.[1164]

As already noted, the Anti-Torture Act 2017 does not provide for access to a lawyer, and the police are not implementing the ACJA to respect the rights of victims to consult with lawyers after their arrest.[1165] Arguably, the police do not adhere to the ACJA as the provision of section 6 is significantly weak in that no requirement stipulates that the right to a lawyer needs to be available promptly upon arrest.[1166]

The Anti-Torture Act 2017 provides that the AG must make rules to implement the Anti-Torture Act 2017 effectively.[1167] Nevertheless, this regulation has not yet been issued by the

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[1162] Secs 1 of the Administration of Criminal Justice Act 2015 (ACJA).

[1163] Secs 6 of ACJA. It is important to mention that the accused has the right to stay silent, but they also have the option to speak if they choose to. This extends to their transfer to the police station and court within a reasonable time frame. With the aid of a lawyer, the accused can safeguard themselves from torture, make certain that their case is presented in court at the appropriate time, and keep their family informed about the proceedings. See Secs 35(1), (3), (4) and (5) of the Constitution of Nigeria, 1999.

[1164] Amnesty International, Nigeria: No justice for victims of police brutality one year after #EndSARS protests. *https://www.amnesty.org/en/latest/news/2021/10/nigeria-no-justice-for-victims-of-police-brutality-one-year-after-endsars-protests/* (accessed 5 May 2023).

[1165] 'He repeatedly asked to call a lawyer. He was told by a police officer to shut up. While in detention, he was denied access to a lawyer who had come to see him and was unable to meet with a lawyer until a week after being arrested'. See Amnesty International, Nigeria: No justice for victims of police brutality one year after #EndSARS protests. *https://www.amnesty.org/en/latest/news/2021/10/nigeria-no-justice-for-victims-of-police-brutality-one-year-after-endsars-protests/* (accessed 5 May 2023).

[1166] NS Rodley, 'Reflections on working for the prevention of torture' (2009) 6 *Essex Human Rights Review* 15-21. '…the longer they were denied access to and from the outside world (i.e., to families, lawyers, doctors, courts) the more they were vulnerable to abuse by those wishing to obtain information or confessions from them'. This implies that if they are given access to a lawyer promptly or immediately upon arrest, torture may be eradicated.

[1167] Secs 12 of the Anti-Torture Act 2017.

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AG. Further, such regulations should allow lawyers to communicate privately with detainees from the beginning of their detention.[1168] This includes those arrested during the weekend. The legal practitioner must be available before and during any interrogation or questioning, whether informal, formal, or official. This implies that providing an accused person access to a lawyer during trial preparation is insufficient. As such, the AG's regulation should include that, regardless of the reason for an arrest, a detained or accused person has access to an attorney from the outset, including at night. In case of detention without a lawyer, staff of the Nigerian legal aid offices must be in every police station to process those arrested before being questioned.

6.4 SAFEGUARDS THAT SEEK TO PREVENT TORTURE IN ALL DETENTION CENTRES

Safeguards against torture are rules designed to protect detainees from being subjected to torture. They are practical and cost-effective solutions that help prevent torture from being carried out in custody settings where the risk is highest.[1169] It is widely acknowledged that torture is often inflicted on detainees at the initial stage of the arrest.[1170] To prevent detained individuals from being tortured during this stage, as well as afterwards, safeguards must be implemented in practice. This requires State parties to invest in making it a reality and prioritising the protection of detainees. Therefore, this section of this chapter will be divided into two parts. The first part will discuss the importance of the right to medical examination

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[1168] It is widely acknowledged that most instances of torture occur during the initial stage of arrest, before the detainee's lawyer is allowed to see them. However, if a detainee has access to a lawyer at the beginning of the process, they can be informed of their rights and the lawyer's presence can serve as a restriction on police to perpetrate tortures. See also, APT, Asia Pacific Forum of National Human Rights Institutions and United Nations: Office of the High Commissioner For Human Rights 'Preventing torture: An operational guide for National Human Rights Institutions' (2010) at 3 *https://www.ohchr.org/sites/default/files/Documents/Publications/PreventingTorture.pdf* (accessed 24 June 2023). See also, JB Niyizurugero and P Lessene 'Robben Island guidelines for the prohibition and prevention of torture in Africa: Practical guide for implementation' (2008) *https://www.ceja.ch/images/CEJA/DOCS/Publications-Droits-Homme/rig_practical_eng.pdf* (accessed 24 June 2023).

[1169] Convention Against Torture Initiative 'Implementing anti-torture standards in common law Africa: Safeguards to prevent torture' CTI2024.ORG *https://redress.org/wp-content/uploads/2022/04/Factsheet-2_Prevention-of-Torture-v.4.pdf* (accessed 24 June 2023).

[1170] Convention Against Torture Initiative 'Safeguards in the first hours of police detention' UNCAT Implementation tool 2/2017 CTI2023.0RG *https://cti2024.org/wp-content/uploads/2021/01/CTI-Safeguards-final-rev.pdf* (accessed 24 June 2023).

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in preventing torture. The second part will analyse how electronic recording devices are necessary safeguards in detention centres.

6.4.1 Medical Examinations

Section 7 of the Anti-Torture Act 2017 provides that anyone arrested has the right to be medically examined by a private doctor, and the examination report must be attached to the investigation docket.[1171] Such examinations help to ascertain the detainee's condition when they arrive at the police station, and the absence of bodily marks at that stage will indicate that injuries suffered after interrogation point to torture. While the provision is laudable, the challenge rests with implementation.

PRAWA reported in 2013 that, while a medical examination is an essential component of a torture investigation, in Nigerian police stations, medical examinations were not always provided on account of a lack of trained medical professionals and private doctors not being allowed to access the police station.[1172] In 2021, it was reported during the dialogue with the Experts of the Committee against Torture that, while the detainee had the right to a medical examination either by an independent doctor or a government-provided doctor, the service was, in fact, non-existent.[1173]

The Anti-Torture Act 2017 further provides for the right of any arrested person or detainee to undergo a medical examination 'after' being interrogated.[1174] An accused person is examined medically by a doctor of his choice once they arrive at the police station and is again examined after interrogation. Nevertheless, the challenge here lies in the possibility that torture may have been perpetrated during interrogation,[1175] for which two-sided medical

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[1171] Secs 7 of the Anti-Torture Act 2107.

[1172] PRAWA, International Rehabilitation Council for Torture Victims: 'Access to documentation of torture allegations' *https://www.prawa.org/wp-content/uploads/2013/11/PRAWA_Factsheet-on-Access-to-Documentation-of-Torture-Allegations.pdf* (accessed 2 April 2023).

[1173] United Nations Human Rights 'In initial dialogue with Nigeria, experts of Committee against Torture ask about the fight against terrorism, and conditions of detention' 17 November 2021 *https://www.ohchr.org/en/press-releases/2021/11/initial-dialogue-nigeria-experts-committee-against-torture-ask-about-fight* (accessed 2 April 2023).

[1174] Secs 7 of the Anti-Torture Act 2017.

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examinations will be necessary. Consequently, police officers are limited in their ability to torture.[1176]

Section 7 of the Anti-Torture Act 2017 further provides that each medical report must contain the necessary bio-data of the accused person.[1177] However, section 7 does not specify which party bears the medical examination cost.[1178] Though it specified that the medical examination is outside the influence of police or security officers, it should have included that the implementation of the right to medical examination entails that if the accused cannot afford a service of their doctor, the State shall provide an independent and competent doctor to conduct the medical examination. The accused person shall also be allowed a psychological evaluation, and both the medical and psychological examination shall be conducted at no cost to the accused; under no circumstances shall the accused be expected to pay for laboratory test fees, e-rays, testing fees, urine/stool check or any other expenses necessary. This implies that the police do not have any influence or power to refuse medical examinations. This further includes that the failure of an accused person to pay for medical examination shall not be the reason to refuse medical and psychological examination.

6.4.2 Electronic Recording Device

[1175] As most torture happens during interrogations. See Amnesty International, Nigeria: Time to end impunity. https://www.justice.gov/eoir/page/file/1290111/download (accessed 6 May 2023). See also, the interrogation technique mostly used in Nigeria is coercive interrogation which involves the use of physical pain or pressure to obtain information from the victim. EO Onoja 'The law and practice of interrogation in Nigeria: Agenda for reform' (2017) *African Journal of Law and Human Rights* 159 170.

[1176] The ability to have a medical doctor examines a detained at the outset and after interrogation limits the ability of security agencies to perpetrate torture. As the medical doctor serves as an oversight mechanism.

[1177] It provides that each medical report must contain the name, age, address of the patient, next of kin, name and address of the person who brought the patient for physical and psychological examination, nature and probable cause of patient injuries, trauma, time and date when the injury or trauma was sustained, the place where the injury or trauma was sustained, time, date and nature of treatment and diagnosis, prognosis and disposition of the patient.

[1178] The officers of the Nigeria Police Force are known for demanding money from accused persons or families before carrying out their duties. Arguably, this will also occur before referring an accused person for medical examinations. See, B Titilola 'Police shouldn't demand money for processing court orders – Legal experts' 8 December 2022 https://punchng.com/police-shouldnt-demand-money-for-processing-court-orders-legal-experts/ (accessed 8 May 2023). See also, 'Mobilisation fee: How police charge poor Nigerians N30k, N50k to probe reported cases' 15 November 2022 https://www.thecable.ng/mobilisation-fee-how-police-charge-poor-nigerians-50k-30k-before-tracking-reported-cases (accessed 8 May 2023).

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Electronic recording devices used during interrogations have become a powerful tool for the criminal justice system to gather facts and information.[1179] The criminal justice system aims to determine the truth about an offence in order to punish the perpetrators.[1180] Electronic recording devices help prevent false confessions and torture, and provide evidence of confessions during a hearing.[1181]

In its initial discussion with Nigerian officials, the Committee against Torture highlighted the use of torture by police during criminal investigations.[1182] Thus, torture is still used by the Nigerian police during interrogations and investigations.[1183] Therefore, this part of the chapter analyses the electronic recording device as a crucial tool for preventing torture.

Section 3 of the Anti-Torture Act prohibits the use of confessional statements that have been obtained through the use of torture.[1184] The Administration of Criminal Justice Act also provides that interrogation officers *may* use electronic recording devices while interrogating detainees.[1185] Consequently, electronic recording devices have been interpreted as not compulsory. For example, the word '*may*' leads to lack of such devices within interrogations, which arguably explains why confessional statements obtained through torture are still tendered in Court as 'voluntary' statements.[1186]

[1179] G Johnson 'False confessions and fundamental fairness: The need for electronic recording of custodial interrogations' (1997) 6 (3) *Boston University Public Interest Law Journal* 719 721.

[1180] As above.

[1181] The purpose of having an electronic recording device during interrogation is to prevent the use of torture in a confessional statement. Association for the Prevention of Torture 'Video recording in police custody: Addressing risk factors to prevent torture and ill-treatment' https://www.apt.ch/sites/default/files/publications/factsheet-2_using-cctv-en_0.pdf (accessed 6 April 2023). See also, R Iraola 'The electronic recording of criminal interrogations' (2006) 40 (2) *University of Richmond Law Review* 463 464.

[1182] United Nations 'In initial dialogue with Nigeria, experts of the Committee against Torture ask about the fight against terrorism, and conditions of detention' 17 November 2021 https://www.ohchr.org/en/press-releases/2021/11/initial-dialogue-nigeria-experts-committee-against-torture-ask-about-fight (accessed 6 April 2023).

[1183] As above.

[1184] Sec 3 of the Anti-Torture Act 2017.

[1185] Secs 15 of the Administration of Criminal Justice Act 2015.

[1186] Secs 15(4) of the Administration of Criminal Justice Act 2015 reads that 'where a suspect who is arrested with or without a warrant volunteer to make a confessional statement, the police officer shall ensure that the

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In the case of *Oguntoyinbo v FRN,*[1187] the prosecution witnesses purported to tender a confessional statement of the appellant obtained during the investigation. The appellant's counsel objected that the information was not obtained voluntarily. The Court admitted the evidence, holding that the word 'may' was permissive.[1188] In *Nnajiofor v FRN,*[1189] the Court held that the word 'may' was permissive and not mandatory. However, the Court of Appeal held that the term 'may' is mandatory whenever it imposes an obligation on public functionaries beneficial to the citizens.[1190] Thus, sections 15 and 17 of the Administration of Criminal Justice Act impose an obligation on police and any law enforcement agencies to use an electronic recording device during interrogation.[1191] However, as much as the Administration of Criminal Justice Act purports to protect the rights and interests of detainees by obliging the interrogation officer to use an electronic recording device during interrogations, in reality, electronic recording devices are rarely used during interrogations.[1192]

It is necessary for the legislator to change the permissive word 'may' to 'shall' to ensure that the electronic recording of confessions is effectively implemented in various detention centres, including police cells, since this will imply that it is a mandatory procedure. Thus,

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making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio-visual means. However, as simple as the section seems, it has generated many conflicting judgments.

[1187] (2018) LPELR-45218(CA) The judge held that the draftsman of the Administration of Criminal Justice Act 2015 'dexterously mixes the use of the command word 'shall' and 'may' for textual accomplishment' The judge held that the word 'shall' is mandatory and 'may' is permissive, which implies discretion.

[1188] As above.

[1189] (2018) LPELR-43925.

[1190] (2018) LPELR-43925.

[1191] (2018) LPELR-43925, the judge reasoned that the word 'may' in sections 15 and 17 of the Administration of Criminal Justice Act 2015 'benefits private citizens who are suspected of committing crimes so that the enormous powers of the police or other law enforcement agencies may not be abused by intimidating them or bullying them in the course of taking their statement' — adding that 'the provisions also have another side to it, viz to protect law enforcement agents from false accusation of coercion in taking statements from suspects. Using the word "may" in those provisions is mandatory and not permissive in those circumstances.

[1192] United Nations 'In initial dialogue with Nigeria, experts of the Committee against Torture ask about the fight against terrorism, and conditions of detention' 17 November 2021 *https://www.ohchr.org/en/press-releases/2021/11/initial-dialogue-nigeria-experts-committee-against-torture-ask-about-fight* (accessed 6 April 2023).

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police officers would be unable to argue that the electronic recording of confessions is optional.

6.5 COMPETENT AUTHORITIES UNDER SECTION 5(2) OF THE ANTI-TORTURE ACT 2017

An individual who has endured torture has the right to file a complaint with a competent authority who will hear the matter in a 'timely and impartial manner'.[1193] Section 5(2) of the Anti-Torture Act 2017 also states that competent authorities must ensure that complainants are not intimidated due to their complaints.[1194] Accordingly, sections 5(1) and (2) of the Anti-Torture Act 2017 allow the victim to bring their complaint to a relevant authority who will hear the case 'promptly'.[1195]

It is imperative to ask whether these competent authorities referred to in section 5 of the Anti-Torture Act 2017, effectively receive complaints from torture victims and if the NHRC has applied the Anti-Torture Act 2017 in making its quasi-judicial decisions.[1196]

6.5.1 Nigeria Police Human Rights Desks

[1193] Secs 5(1) of the Anti-Torture Act 2017.

[1194] Secs 5(2) of the Anti-Torture Act 2017.

[1195] As above. The right to complain in sections 5 and 6 allows the victim to file a complaint with any authority that has jurisdiction over the matter. As a result of this right to complain, any interested person may file a complaint on behalf of a victim. Section 88 of the Administration of Criminal Justice Act provides that any individual may file a complaint against any other individual who has allegedly committed a crime. See also, CE Obiagwu 'Understanding and applying the provision of the Anti-Torture Act 2017' *https://nji.gov.ng/wp-content/uploads/2020/11/Obiagwu-SAN-paper.pdf* (accessed 9 June 2023).

[1196] Even though section 5 of the Anti-Torture Act 2017 does not specify the names of those institutions, the provision arguably refers to the institutions that have oversight functions over the Nigeria Police Force and are also capable of receiving complaints from the public. These include the Nigerian Police Human Rights Desk, the Public Complaints Commission, the Nigerian Police X-squad, and the National Human Rights Commission. The Public Complaints Commission (PCC) does not have the power to prosecute police officers, although its mandate is to investigate any complaints lodged by citizens. This implies that the PCC may not investigate the NPF. See Secs 5 and 6(d) of the Public Complaints Commission Act. The National Human Rights Commission receives complaints as specified in Secs 6; thus, its quasi-judicial function helps eradicate torture. The AG regulation is expected to list all agencies responsible for receiving complaints from the public, especially when it comes to torture. This will imply that these agencies are educated, aware and know how to handle the issue of torture. Moreso, the victim of torture's rights to complain extend to the right to impartial fact-finding and investigation within 60 days of complaints. This also includes that the victim shall be assisted in filing all necessary legal documents, including affidavits.

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This part of this chapter analyses the Nigeria Police Human Rights Desk (Human Rights Desk) by determining whether it is effective in eradicating torture. It is by law required to be located in every police station and serves as the first institution responsible for receiving public complaints, including torture victims.

Section 37 of the Nigeria Police Act 2020 mandates members of the Nigeria Police Force (NPF) to handle every suspect or detainee humanely and with respect for their human dignity.[1197] Police officers are legally obliged to treat all individuals arrested or present in their detention centres humanely. However, according to Amnesty International reports, torture occurs and persists in Nigeria's criminal justice system as police continue to torture detainees.[1198]

The human rights desk came into operation after the publication of a human rights practice manual,[1199] which contains human rights guidance for the police. Creating a human rights desk ensures human rights are adhered to in all the police stations in the 36 States of the Federation. The human rights desk officers must ensure that the rights of an accused person are respected at all times and that the rule of law is applied and respected when dispensing justice.[1200] This implies that the human rights desk's function is to monitor the conduct of the police[1201] regarding suspects or arrested persons in all police stations,[1202] whether arrested or in cells,[1203] implying that the NPF cannot torture any detained person. If that happens, the human

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[1197] Secs 37 of the Nigeria Police Act 2020.

[1198] Amnesty International 'Nigeria 2021' https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/ (accessed 31 July 2022).

[1199] 'Nigeria police chief tells officials to uphold human rights' *Channels Television* 9 December 2014 https://www.channelstv.com/2014/12/09/nigeria-police-chief-tells-officials-uphold-human-rights/ accessed 30 July 2022).

[1200] M Noak 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' Mission to Nigeria (4-10 March 2007) 47.

[1201] R A Aborisade and J A Fayemi 'Police corruption in Nigeria: A perspective on its nature and control' (2015) 18 (2) *Nigeria Journal of Social Science* 246 at 55.

[1202] 'Nigeria police chief tells officials to uphold human rights' *Channels Television* 9 December 2014 https://www.channelstv.com/2014/12/09/nigeria-police-chief-tells-officials-uphold-human-rights/ (accessed 30 July 2022).

[1203] As above.

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rights desk is mandated to refer the perpetrator to the appropriate authority for disciplinary action.

While the human rights desk was created to curb human rights violations,[1204] with the power to investigate misconduct of members of the NPF,[1205] it is ineffective because of lack of staff and human rights training. It is not an independent body that can conduct credible investigations.[1206] In 2007, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment showed that the establishment of the human rights desk in NPF command was not effective as there were various cells beyond the reach of the human rights desk where detainees were being tortured. [1207]

> The cell is at the end of a small corridor behind the human rights desk. The 72 male detainees accused of armed robbery inside have been there for five months to more than two years. The room is severely overcrowded, badly lit, and filthy. None of the detainees have left the cell since their arrival, have seen a lawyer or been visited by family members, who in many cases are not aware of their whereabouts. One detainee had been shot in the foot in the cell four weeks earlier. There are 16 female detainees held in the adjacent cell.'[1208]

In 2020, Amnesty International reported that human rights desks had been set up in most police command centres nationwide. However, this has had no impact on or reduction in torture or violation of human rights.[1209] Amnesty International interviewed 35 human rights defenders in Anambra, Lagos and Rivers States who asserted that they had not seen any human rights desk in any of the police stations in their respective States.[1210]

[1204] Human Rights Watch 'Rest in pieces: Police torture and deaths in custody in Nigeria', *https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria* (accessed 2 August 2022).

[1205] As above.

[1206] 'Nigeria: Complaints mechanisms available for cases of police misconduct including effectiveness: Responses to information request. ' *https://irb.gc.ca/en/country-information/rir/Pages/index.aspx?doc=455595&pls=1* (accessed 2 August 2022). See also, Human Rights Watch 'Rest in pieces: Police torture and deaths in custody in Nigeria' *https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria* (accessed 2 August 2022).

[1207] M Nowak 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' United Nation Human Rights Council Seventh Session 22 November 2007 A/HRC/7/3/Add.4

[1208] As above.

[1209] Amnesty International 'Nigeria: Time to end Impunity: Torture and other violations by Special Anti-Robbery Squad (SARS)' (2020) *https://www.justice.gov/eoir/page/file/1290111/download* (accessed 2 August 2022).

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For the practical application and functioning of the human rights desk as a complaint mechanism under the Anti-Torture Act 2017, the officers in charge of the human rights desk must be fully aware of the provisions of the Anti-Torture Act 2017. This implies that there must be enough awareness and training. According to the *Rule of Law and Accountability Advocacy Centre* (RULAAC), the Anti-Torture Act 2017 is not well-known among young police officers. This implies that the level of awareness is deficient and that most officers are unaware of the Anti-Torture Act 2017 provisions.[1211]

Furthermore, section 5 of the Anti-Torture Act 2017 permits torture victims to complain to the appropriate authority, but does not specify what that authority entails. As part of the complaint mechanism, the Anti-Torture Act 2017 created a lacuna by not providing for monthly torture case reporting to the Attorney General. Therefore, each unit head should report torture cases when necessary. This leads to the unit head being obligated to educate and create awareness for each person in his team that torture is not allowed under any circumstances.

6.5.2 National Human Rights Commission and the Anti-Torture Act 2017

Section 6 of the Anti-Torture Act 2017 allows the National Human Rights Commission (NHRC) to assist victims of torture in filing their complaints. This implies that a torture victim can approach the NHRC for assistance. The NHRC, as a quasi-judicial body, has an obligation to provide investigation and recommendations regarding the issue of human rights abuses in Nigeria, including the use of torture by law enforcement agencies. Therefore, it is imperative to understand if the NHRC has relied or not on the Anti-Torture Act 2017.

[1210] As above.

[1211] Why torture remains prevalent in Nigeria-RULAAC. 26 June 2021 *Sahara Reporters* https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac (accessed 27 April 2023). See also, the National Human Rights Commission Report of the Presidential Panel on the Reform of the Special Anti-Robbery Squad (SARS) of the Nigeria Police Force (2018) that 'some officers believed that they had the right to beat up suspects, force them to talk or injure them as the established practice of extracting confessions from suspects.' This implies a lack of awareness as it demonstrates that most of the police officers are not aware of the provisions of the Anti-Torture Act 2017 https://www.nigeriarights.gov.ng/files/publications/VOL%20I-%20EXECUTIVE%20SUMMARY%20OF%20REPORT%20OF%20THE%20PRESIDENTIAL%20PANEL%20ON%20SARS%20REFORM.pdf (accessed 27 April 2023).

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The NHRC has actively created awareness of the Anti-Torture Act 2017. As part of this, it has constantly trained men of the Nigeria Police Force (NPF) and other law enforcement agencies on the use of the Anti-Torture Act 2017.[1212]

NHRC, through the NHRC (amended) Act, has the mandate to promote human rights, investigate and make recommendations, including the case of torture.[1213] However, it does not have the mandate or function to enforce the Anti-Torture Act 2017 directly but can rely on it when making investigations and recommendations. It was reported that the NHRC lacks the authority to compel military leaders and other officials to prosecute those who have perpetrated or abused human rights.[1214]

In 2020, the NHRC conducted an independent investigation panel on human rights violations by the defunct Special Anti-Robbery Squad and other units of the NPF ('the panel'). The panel of inquiries investigated and awarded damages to those who have suffered human rights abuses, including torture by law enforcement officers. The petition of *John Ogbu v Inspector Edwin Kendiry and others*[1215] was a case of alleged unlawful arrest, detention, torture, and inhuman and degrading treatment brought before the panel by the petitioner, Mr John, against men and officers of the NPF. The panel relied on section 34 of the 1999 Constitution, section 2 of the Anti-Torture Act 2017[1216] and article 5 of the African Charter, to find in favour of the petitioner. It recommended that *Inspector Edwin Kendiry* be demoted and tender a public apology.[1217]

[1212] H Ojelu 'A2J NHRC trains 190 police officers on Anti-Torture Act, legislation' 22 July 2021 *Vanguard Newspaper* https://www.vanguardngr.com/2021/07/a2j-nhrc-trains-190-police-officers-on-anti-torture-act-legislation/ (accessed 27 April 2023).

[1213] Secs 5 of the NHRC (Amended) Act 2010. Cap. C23 LFN.

[1214] L George 'Nigerian rights panel, underfunded and overmatched, begins probe of powerful military' 7 February 2023 https://www.reuters.com/world/africa/nigerian-rights-panel-underfunded-overmatched-begins-probe-powerful-military-2023-02-07/ (accessed 28 April 2023).

[1215] Decision on 2020/IIP-SARS/ABJ/20.

[1216] In its report, the Panel did not explain why it relies on secs 2 of the Anti-Torture Act 2017. However, it should be noted that the petitioner was beaten with a big stick on the legs, leaving him with a broken leg and chained to the ceiling. Therefore, the beating and hanging on the ceiling fans would fall under secs 2 of the Anti-Torture Act 2017, which defines torture as the intentional infliction of pain or suffering on an individual. Secs 2 further defines systematic beating as torture.

[1217] According to Secs 9 of the Anti-Torture Act 2017, individuals who have committed torture are subject to a maximum sentence of 25 years. As a result, the question arises as to whether demotion in rank would be an appropriate punishment for the offence of torture. M. Mavrommatis recommended that the perpetrators of

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In *Timothy Ogbeye v Inspector Oriyomi Aregbelo and others,*[1218] the petitioner claimed he had been beaten and unlawfully detained for four months without being charged in court. The panel referred to sections 34 and 35 of the 1999 Constitution, section 2 of the Anti-Torture Act 2017, and articles 5 and 6 of the African Charter. According to the panel, the officers who perpetrated torture should be dismissed and five-million-naira compensation paid to the petitioner.[1219] The panel also recommended that the Inspector General of Police investigate the murder of the petitioner's friend, which was mentioned during the petitioner's testimony.

Despite the fact that the panel relied on the Anti-Torture Act 2017 and other laws to determine that torture is prohibited, there is a lack of accountability, as the NHRC mandates are limited to investigation and recommendations rather than enforcement.[1220]

6.6 Lack of Prosecution of Perpetrators

torture be appropriately punished in the Committee against Torture's consideration of the initial report of Uganda. Those who have committed torture and have been punished only by demotion have not been adequately punished. The perpetrator is expected to be punished to prevent the perpetuation of the culture of impunity. UN Office of the High Commissioner for Human Rights 'Committee against Torture begins consideration of the initial report of Uganda' 11 May 2005. *https://reliefweb.int/report/uganda/committee-against-torture-begins-consideration-initial-report-uganda* (accessed 28 April 2023). Although the NHRC recommended that *Inspector Edwin Kendiry* be demoted, it is also imperative to ask if the demotion will be implemented since it lacks the power to enforce its own decision. Although Secs 22 of the NHRC (Amendment) Act 2010 specifies that awards and recommendations made by the NHRC are recognised as court decisions. This also implies that the offence of torture is expected to be treated as a separate and independent crime which cannot be subsumed under any other crime and whose penalties shall be imposable without prejudice to any other criminal liability. In this case, the regulation that AG is expected to formulate needs to inform that the offence of torture penalties cannot be absorbed by any other crime, which implies that the punishment of an officer demotion is not adequate for the crime.

[1218] Unreported Decision on 2020/IIP-SARS/ABJ/120.

[1219] The officer's dismissal from the NPF may not be adequate punishment. The regulation from the AG should be able to showcase that whoever committed torture should not benefit from special amnesty law or law exempting the perpetrator from criminal proceedings. The NHRC, in this case, should recommend the perpetrator for further criminal prosecution.

[1220] The regulation should include that the NHRC should have an oversight function to implement the Anti-Torture Act 2017. This implies that the NHRC will have a unit with the mandate of periodically overseeing the Anti-Torture Act 2017. The team should meet regularly and submit an annual report to the President and the National Assembly. The focus of the information should include the Strengths and weaknesses of the Anti-Torture Act 2017, Government agencies' performance under the Anti-Torture 2017, call the attention of each government agency and department to perform their duties and prosecute any officer found guilty of torture, train and assist agencies on effective implementation of the Anti-Torture Act 2017. The findings of the NHRC and annual report shall be published and made open to the public with the name of officers who have perpetrated torture.

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The Courts of first instance (Magistrate Courts) and all Superior Courts must have jurisdiction over the offence of torture in Nigeria. Accordingly, section 9 of the Anti-Torture Act 2017 confers jurisdiction in cases of torture upon all Nigerian courts,[1221] in line with the provision of article 5 of UNCAT.

As provided in section 9(1) of the Anti-Torture Act 2017, offences that amount to torture carry a maximum sentence of 25 years imprisonment.[1222] However, the offences listed in section 2 do not have a minimum or prescribed sentence requirement, which means that the Court must decide on the length of the term of imprisonment, implying that the punishment must be proportional to the severity of the crime committed.

Section 9(2) refers to torture on a victim that results in death,[1223] in which case the perpetrator will be punished per the criminal and penal codes.[1224] Additionally, the provision specifies that the family of a victim or the victim himself may receive compensation for the violations committed.[1225]

The question arises whether the magistrates and the superior courts have exclusive jurisdiction to hear cases of torture, whether their jurisdiction is limited by statutory provisions, and significantly, whether there have been any prosecutions of perpetrators in any court in Nigeria.

Sections 6(2) and 4 of the Constitution of Nigeria, 1999 create magistrate's courts in Nigeria.[1226] Section 6(4) stipulates that the National Assembly establishes magistrate's courts

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[1221] Sec. 9 of the Anti-Torture Act 2017.

[1222] Sec. 9(1) of the Anti-Torture Act 2017.

[1223] Sec 9(2) of the Anti-Torture Act 2017.

[1224] The Penal Code is applicable to Northern Nigeria which criminalizes acts that are approximating to torture such as infliction of injury and grievous bodily harm while the Criminal Code Act L.N. 112 OF 1964, Cap. C38. L.N.47 of 1955 applies to the Southern Region Nigeria criminalizing assault, homicide, offences endangering life and excessive use of force.

[1225] Sec 9(3) of the Anti-Torture Act 2017.

[1226] Magistrates' courts were established by the Constitution of Nigeria, 1999. Secs 6(2) of the Constitution of Nigeria, 1999 provides: *The judicial powers of the State shall be vested in the Courts to which this section relates, being courts established, subject as provided by this Constitution for a State.* Secs 4 provides as follows: *Nothing in the foregoing provision of this section shall be construed as precluding: (a) The National Assembly or any House of Assembly from establishing Courts, other than those to which this section relates, with*

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in the Federal Capital Territory (Abuja), and the State House Assembly establishes the magistrates' courts in the State.[1227] The jurisdiction of magistrate's courts is governed by the Magistrate Rules of each State,[1228] with civil and criminal jurisdiction.

Section 9 of the Anti-Torture Act 2017 authorises all courts to try perpetrators of torture and award damages if necessary.[1229] However, the question remains whether a magistrate court can try murder cases resulting from torture or impose a sentence of up to 25 years as required by the Anti-Torture Act 2017, and also whether the magistrate's courts are permitted to award compensation in cases of torture outside of their ordinary jurisdiction under the Anti-Torture Act 2017.

Kogi State's magistrate court law categorises the magistrate courts into the following grades: Chief Magistrate Grade 1, Chief Magistrate Grade II, Senior Magistrate Grade 1, Senior Magistrate Grade II, Magistrate Grade I, and Magistrate Grade II.[1230] According to the Kogi State Administration of Criminal Justice Law,[1231] read with the Penal Code, the magistrate court is empowered to hear any offence listed on Schedule 7 of the Administration of Criminal Justice Act. However, fines and sentences of imprisonment are limited in magistrate courts.[1232] A Chief Magistrate Grade I may only impose sentences of imprisonment of not more than 14 years and fines not exceeding ₦500 000. The Chief Magistrate Grade II may sentence a defendant to not more than 12 years imprisonment and a fine not exceeding ₦400 000. In comparison, the Senior Magistrate Grade I may sentence a defendant to not

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subordinate jurisdiction to that of a High Court. Sec 4(5)(k) provides that *such other Courts as may be authorised by law to exercise jurisdiction at the first instance or on appeal on matters with respect to which a House of Assembly may make Laws.* See also, T F Yerima & H A Hammed 'Magistracy and internal security challenges in administration of criminal justice in contemporary Nigeria' (2014) 20 (1) *East African Journal of Peace & Human Rights* 91. The authors analysed the significance of Magistrates' Courts in the administration of the criminal justice system in Nigeria.

[1227] Sec 6(4) of the Constitution of Nigeria, 1999.

[1228] Magistrates' Courts Law, 2014, N0.5.0F 2014, Ekiti-State Nigeria. See also, Kano State Magistrate Courts Law 2018 (1439 A.H) No. 2 Kano-26th April 2018, Kano State of Nigeria. See also, Lagos State Magistrates' Court Law.

[1229] Sec 9 of the Act.

[1230] Sec 4(1) of the Kogi State Magistrates Courts Law 2020.

[1231] Kogi State Administration of Criminal Justice Law 2017.

[1232] Sec 11(1) and (2) of the Kogi State Magistrates Courts Law 2020 limits jurisdiction in criminal cases.

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more than ten years imprisonment and a fine not exceeding ₦200 000. The magistrate grade I is limited to impose sentences of no more than four years imprisonment and a fine of no more than ₦70 000, and the magistrate grade II may impose sentences of no more than two years imprisonment and fines of no more than ₦50 000.[1233]

Section 29 of the Lagos State Magistrate law provides that the magistrate courts have criminal jurisdiction to handle summary trials and determine criminal cases,[1234] subject to maximum sentences of 14 years.[1235]

In addition, the Magistrate's Court lacks jurisdiction when torture results in the death of victims, which falls under the jurisdiction of the State High Courts.[1236] This implies that the Magistrates Court cannot sentence the defendant to more than 14 years in prison. However, no alleged perpetrator has been convicted as of the time of writing this thesis.

Section 272 of the 1999 Constitution affords jurisdiction on the State High Courts to hear both criminal and civil matters,[1237] under which the State High Court has unlimited jurisdiction, including the jurisdiction to hear torture matters and sentence perpetrators.[1238]As

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[1233] Secs 8 of the Kogi State Magistrates Courts Law 2020.

[1234] Lagos State Magistrate Courts Law 2009.

[1235] As above.

[1236] In this circumstance, it is expected that the magistrate court cannot try torture resulting in murder. This implies that it will cede jurisdiction to the High Court if that is the case. However, this would make the magistrate court rule for remand, which in most cases results in the continuation of torture. In section 293 of the Administration of Criminal Justice Act 2015, an accused person arrested for an offence in which the magistrate court has no jurisdiction to try shall be brought before a magistrate court for remand within a reasonable time of the arrest. The application for remand is made *ex-parte,* which allows yet-to-be-charge suspects to be kept in custody pending their bail, trial or release and pending when the AG legal advice is issued. The problem with this is that the perpetrator continues perpetrating the torture on the victim. See also Joint Alternative Report submitted in the application to article 19 of the UN Committee against Torture and Cruel Inhuman and Degrading Treatment 'Absolute prohibition of torture in Nigeria: Words without deeds?' *https://www.omct.org/site-resources/legacy/Final-Copy-of-Report-on-Torture-and-other-Cruel-Inhuman-or-Degrading-Treatment-in-Nigeria.pdf* (accessed 2 April 2023). 'The police usually refer suspects charged with capital offences, such as armed robbery and murder, to Magistrates Courts, knowing they do not have the competent jurisdiction to hear such cases'.

[1237] Sec 272 of the Constitution of Nigeria, 1999.

[1238] The question is whether the Federal High Court has jurisdiction to hear criminal cases on torture. Secs 251(1) of the Constitution of Nigeria, 1999 provides that 'notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court has and exercises jurisdiction to the exclusion of any other Court in Civil cases and matters.' Secs 251(1) lists 18 specific areas (paragraphs (a) to (r)) where the Federal High Court has

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jurisdiction is established, examining whether the courts have prosecuted any perpetrators is imperative.[1239]

In *Aruma Michael v Commissioner of Police Enugu State,*[1240] the Applicant filed a motion (concerning torture) according to sections 2(1) and 2(2), 3, 4, 5, and 7(4) of the Anti-Torture Act 2017, Order 2 Rules (1) (2) and (3) of the Enforcement Procedure Rules,[1241] section 34 and 46 of the 1999 Constitution, and articles 5, 6, and 12 of the Ratification and Enforcement Act.[1242] In March 2017, the Applicant was arrested, and during the arrest, the police officer hit the Applicant on the forehead with a gun, knocking the Applicant unconscious. The Police revived the Applicant but continued to torture him when they got to the police station. The Applicant's counsel cited section 2 of the Anti-Torture Act 2017 and provided examples of what constitutes torture under section 2(2) of the Anti-Torture Act 2017 and cited section 3 of the Anti-Torture Act 2017 to argue that torture was, without exception, unjustifiable.

In accordance with section 34(1) of the Constitution of Nigeria, 1999, the Judge found that every individual had the right to have their dignity respected and could not be subjected to torture or inhuman or degrading treatment. Furthermore, the Judge cited article 5 of the Ratification and Enforcement Act,[1243] which provided that every individual had the right to have their dignity as a human being respected. He referred to section 10 of the Administration

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exclusive jurisdiction. In paragraph (s), the jurisdiction extends to civil and criminal matters as conferred by the Act of the National Assembly. *Akanji v Federal Ministry of Lands, Housing and Urban Development* (2016) LPELR-41631(Court of Appeal) held that the provision made the Federal High Court the court of 'enumerated jurisdiction and not one of general jurisdiction and as such, for the Federal High Court to have jurisdiction over a matter, the subject matter of action must fit into one of the enumerated areas of its jurisdiction'. While torture is not listed, torture is not derogable and is also a human rights issue that falls under the jurisdiction of the Federal High Court.

[1239] The State High Court and the Magistrate's Court have the jurisdiction to hear matters of torture or any criminal matters. However, it has been reported that there is no prosecution record of perpetrators under the Anti-Torture Act 2017. One may therefore conclude that the Anti-Torture Act 2017 is indeed 'word without deeds' as promoted by The Rule of Law and Anti-Corruption (RoLAC) programme in combination with the Avocats Sans Frontières and Access to Justice in Nigeria June 2022, *https://www.justice-security.ng/rolac-and-partners-promote-actions-against-torture-nigeria* (accessed 02 April 2023).

[1240] Unreported, Suit No: E/1063/2019. The document was collected from Barrister James Emmanuel Chiezue Ugwu Member of the Judicial Service Commission Enugu State Nigeria.

[1241] Fundamental Rights (Enforcement Procedure) Rules 2009.

[1242] Cap, 10 LFN 2004.

[1243] Cap, 10 LFN 1999.

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of Criminal Justice Law (ACJL),[1244] which conferred on all the right of every person arrested to be treated humanely. The Judge ruled that the bodily injuries sustained by the Applicant constituted torture in violation of section 35 of the Constitution of Nigeria, 1999, ACJL, and article 5 of the Ratification and Enforcement Act and awarded him ₦3 million in damages.[1245]

In the case of *Bassey Samuel v Commissioner of Police, Enugu State,* the Applicant, through Lawyers Without Borders, France, brought an action to enforce his fundamental rights under sections 2(1)(2), 3,4,5, 7(4) of the Anti-Torture Act 2017.[1246] He claimed to have been arrested by Nigeria Police for armed robbery on 25 November 2008 and was taken to the Central Police Station (CPS) in Enugu, Nigeria, where he was required to pay bail of ₦500 000.[1247] The Applicant claimed that the officer beat him, handcuffed him, and hung him naked from the ceiling fan while handcuffed below his knees. While being hung, he was hit on his head by other officers. As he cried out for help, blood gushed from his mouth, and he bled profusely from a stab wound to his right side due to a stabbing by the investigating police officer (IPO).[1248]

The Judge held that the bodily injuries inflicted on the Applicant by the agent of the respondent while in their custody at the Central Police Station and SARS Police Station, Enugu, was a violation of the Applicant's fundamental rights as guaranteed by section 34(1) of the 1999 Constitution, section ACJL 2017 Enugu[1249] and awarded him ₦5,000 000 as damages for the gross violation of his fundamental rights by the various acts of torture.[1250]

[1244] Administration of Criminal Justice Law Enugu 2017.

[1245] Unreported, Suit No: E/1063/2019. The document was collected from a lawyer in Enugu, Nigeria. The Judges relied on section 35 of the Constitution of Nigeria, 1999. However, if the Judge relies on the Anti-Torture Act 2017, the sentencing would have been against the police officer who perpetrated torture and activated section 8 of the Anti-Torture Act 2017, which implies that the principal and the superior officers and any other person who is aware of the perpetration would be liable for the offence of torture.

[1246] As above.

[1247] As above at 3.

[1248] As above at 12.

[1249] As above.

[1250] As above at 16.

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The Judge based his decision on domestic and international law but omitted any reference to or reliance on the Anti-Torture Act of 2017. Section 2(a)(i) of the Anti-Torture Act 2017 prohibited systematic beatings and kicks. The Judge could have placed reliance on or at least invoked the Anti-Torture Act 2017 to find that the perpetrators, superior and junior officers, were liable for acts of torture under section 2 of the Anti-Torture Act 2017 and penalised under section 9. In light of this, the question arises as to why the judges omitted the Anti-Torture Act 2017 in their decision and instead relied on order 2 Rules (1) (2) and (3) of the Enforcement Procedure Rules,[1251] sections 34 and 46 of the Constitution of Nigeria, 1999, and articles 5, 6, and 12 of the Ratification and Enforcement Act.[1252]

The Fundamental Rights Enforcement Procedure Rules (FEPR) was first made in 1979 and came into effect on 1 January 1980.[1253] However, it was amended in 2009 to deal with the shortcomings in the previous FEPR.[1254] Thus, the preamble and paragraph 3 of the FEPR make it clear that its overriding purpose is to ensure that constitutional provisions and African Charter provisions are interpreted and applied expansively and purposefully,[1255] with the aim of advancing and ensuring that rights and freedoms contained therein are realised, and protections are provided as intended.[1256] According to *Udombana*, the Constitution's commitment to human rights is futile if not enforced by institutions established to interpret it. Consequently, courts are required to adhere to municipal, regional, and international bills of rights whenever they are cited to or brought to their attention.[1257] Therefore, the FEPR aims to empower judges to interpret and apply the Constitution of Nigeria, 1999 and the African Charter on Human and Peoples' Rights to advance human rights in Nigeria.[1258]

[1251] Fundamental Rights (Enforcement Procedure) Rules 2009.

[1252] Cap, 10 LFN 2004.

[1253] A Sani 'Fundamental rights enforcement procedure rules 2009 as a tool for the enforcement of the African Charter on Human and Peoples rights in Nigeria: The need for far-reaching reform' (2011) 11 *African Human Rights Law Journal* 511 512.

[1254] As above.

[1255] N J Udombana 'Interpreting rights globally: Courts and constitutional rights in emerging democracies' (2005) 5 *African Human Rights Law Journal* 47 55.

[1256] Fundamental Rights (Enforcement Procedure) Rules 2009.

[1257] Fundamental Rights (Enforcement Procedure) Rules 2009.

[1258] Constitution of Nigeria, 1999.

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The Ratification and Enforcement Act have the force of law in Nigeria, and courts must give effects to its provision, just like any other legislation falling under the courts' judicial power.[1259] Moreover, the Ratification and Enforcement Act domesticated the African Charter on Human and Peoples' Rights through section 12 of the Constitution of Nigeria, 1999. In both *Bassey Samuel v Commissioner of Police Enugu State*[1260] and *Aruma Michael v Commissioner of Police Enugu State*,[1261] the Court has relied on sections 5, 6, and 12 of the Ratification and Enforcement Act[1262] without using the Anti-Torture Act 2017. Therefore, it is imperative to analyse sections 5, 6 and 12 of the Ratification and Enforcement Act and compare them with the Anti-Torture Act 2017.

Section 5 of the Ratification and Enforcement Act prohibits torture and cruel, inhuman, or degrading treatment. As a result of section 6, arbitrary arrests and detentions are prohibited. Section 12 provides everyone with the freedom of movement and residence. Thus, the Ratification and Enforcement Act prohibits torture and provides essential safeguards in which arbitrary arrest and detentions are prohibited. Judges have relied on the Ratification and Enforcement Act as it has been widely interpreted by different courts of law in Nigeria, especially in the case of *Abacha v Fawehinmi.*[1263] However, the Anti-Torture Act 2017 goes beyond the prohibition of torture; it includes key definitions, no justification and non-admissibility of torture evidence and other essential safeguards in its provisions.

Section 5 of the Ratification and Enforcement Act prohibits torture but does not provide a detailed explanation, leaving the interpretation to the judiciary.[1264] As a result, the Court is left

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[1259] E Egede 'Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria' (2007) 51 *Journal of African Law* 249 261.

[1260] Unreported, Suit No: E/1063/2019. The document was collected from a lawyer in Enugu Nigeria.

[1261] Unreported, Suit No: E/1063/2019. The document was collected from Barrister James Emmanuel Chiezue Ugwu, Member of the Judicial Service Commission Enugu State Nigeria.

[1262] Cap, 10 LFN 2004.

[1263] (2000) 6 NWLR (Part 660) 228.

[1264] '…All forms of man's exploitation and degradation, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'. The problem here is that torture is not explained or defined. The prohibition of torture is absolute, but the question is, what is torture? In *John D. Ouko v Kenya* the complainant was detained in a cell for ten months without trial, contrary to the precepts of article 6 of the ACHPR. He was denied access to the bathroom and subjected to continuous exposure to harsh light. The commission held that this amounted to inhuman and degrading treatment but failed to constitute torture and

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to interpret torture.[1265] However, section 2 of the Anti-Torture Act 20127 provides a more detailed interpretation and definition.[1266]

In *Aruma Michael v Commissioner of Police Enugu State,*[1267] the applicant was hit with a gun in the forehead by the Police. When ruling, the judge may have referred to the Anti-Torture Act 2017 to define torture and determine that the Police violate the applicant's rights. Also, when the NPF refused to provide medical treatment to the applicant, the appropriate law for the Judge to have relied upon was section 7 of the Anti-Torture Act 2017. Nevertheless, the judge relied on the Ratification and Enforcement Act to prohibit torture without providing explicit safeguards against it.

Invoking the Anti-Torture Act of 2017 entails that there is no exception. Moreover, the applicant's lawyer prayed for compensation and excluded prayers for perpetrator arrest. As such, the lawyer's prayers could have sought that the perpetrators be arrested and brought to justice.[1268]

The jurisdiction of the courts extends to both criminal and civil matters involving torture; torture allegations must be investigated before the victim approaches the court.[1269] The

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'cruel' treatment as the evidence did not show 'physical and mental torture' see, Communication 232/99, *John D Ouko v Kenya,* 28th Ordinary Session, (2000) AHRLR 135 9 (ACHPR 2000), Reprinted in (2002) 9 *International Human Rights Reports* 246. In its interpretation of Art 5 of ACHPR, the Commission adopted the definition provided in Art 1 of CAT. See also, Communication 379/09, *Monim Elgak, Osman Hummeida and Amir Suliman v Sudan,* 15th Extra-Ordinary Session, 07 March to 14 March 2014, para 98. However, how often do the Nigerian judges rely on the Commission's communications?

[1265] In *Oseni v Nigeria Army* (2022) LPELR-58815(CA), The Court of Appeal relied on 'dictionary.com' to define torture as 'the act of inflicting excruciating pains, as punishment or revenge, as a means of getting a confession to information or for sheer cruelty'. The definition is laudable but does not provide a complete element of torture. This implies that torture must be perpetrated by a public official and can be punished for an act a person or third person has committed or is suspected of having committed or for discrimination purposes.

[1266] For torture to occur, there must be some form of physical or mental pain and suffering. The act of pain and suffering must be intentionally inflicted on the victims to obtain information or confessions or to punish the victim for an act he or a third party has committed or is suspected of having committed, as well as intimidate, coerce, or threaten anyone based on any discrimination. Public officers are expected to perpetrate pain and suffering.

[1267] Unreported, Suit No: E/1063/2019. The document was collected from Barrister James Emmanuel Chiezue Ugwu, Member of the Judicial Service Commission, Enugu State, Nigeria.

[1268] The Anti-Torture Act 2017 prohibits torture, and in Sec 9, perpetrators are liable for imprisonment of up to 24 years. This implies that the lawyer may sue the police in another case for perpetrating torture on the victim and prays that sec 9 of the Anti-Torture Act 2017 be enforced.

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Prisoners' Rehabilitation and Welfare Action (PRAWA) reports that most perpetrators of torture are not punished as they are not investigated.[1270] In circumstances where they are investigated, the cases are not concluded and, simultaneously investigated internally by the police, who fail to make the investigation public.[1271] Thus, the question remains: can the Anti-Torture Act 2017 be regarded as effective without any record of cases prosecuted for torture?[1272]

A report by the UN Special Rapporteur on torture suggested in 2007 that torture continues due to a lack of accountability among officials, and few steps are taken to investigate such incidents.[1273] To increase accountability, the AG regulation should allow the publication of statistical evidence on police and human rights organisations' websites, showing the number of perpetrators arrested and prosecuted.[1274] As a result, the exposing of past incidents of torture sends a message that it is prohibited and will not occur again.[1275]

[1269] Amnesty International in 2014 reported that most complaints of torture did not lead to an investigation. AFR 44/005/2014 *https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440052014en.pdf* (accessed 2 April 2023). Also, between 2017-2019 with the Anti-Torture Act 2017 in place, Amnesty International conducted 82 interviews and found that the police use torture on victims. Still, they promised the same when asked for an investigation but failed to keep their word. See Amnesty International 'Nigeria: Time to end impunity torture and other violations by Special Anti-Robbery Squad (SARS)' *https://www.justice.gov/eoir/page/file/1290111/download* (accessed 2 April 2023).

[1270] A joint report to the Universal Periodic Review (UPR) by Prisoners' Rehabilitation and Welfare Action (PRAWA) and Network on Police Reforms in Nigeria (NOPRIN) 'Torture and Extrajudicial Killings in Nigeria' *https://www.prawa.org/wp-content/uploads/2013/07/PRAWA-NOPRIN-UPR-Torture2-and-Extra-judicial-Killings1.pdf* (accessed 2 April 2023). See also Joint Alternative Report submitted in application to article 19 of the UN Committee against Torture and Cruel Inhuman and Degrading Treatment 'Absolute prohibition of torture in Nigeria: Words without deeds?' *https://www.omct.org/site-resources/legacy/Final-Copy-of-Report-on-Torture-and-other-Cruel-Inhuman-or-Degrading-Treatment-in-Nigeria.pdf* (accessed 2 April 2023).

[1271] As above.

[1272] Committee Against Torture 'Concluding observations in the absence of the initial report of Nigeria' 21 December 2021 *CAT/C/NGA/COAR/1* 7 The Committee raised the concerns that the Anti-Torture Act 2017 which is applicable in the whole Nigeria has not been actual use in practice by domestic courts.

[1273] M Nowak 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' Mission to Nigeria (4 to 10 March 2007) para 41-42.

[1274] The Anti-Torture Bill in Part VI provides that the 'Minister shall publish a report annually on reported cases on torture and other cruel, inhuman or degrading treatment or punishment, shall be made available on the Ministry of Justice's website.' Available on *https://redress.org/wp-content/uploads/2017/12/170404-Technical-Commentary-on-the-Anti-Torture-Framework-in-Nigeria.pdf* (accessed 12 June 2023).

[1275] To address the issue of torture, there is a need to establish a registry under the Ministry of Justice where the names of perpetrators are published. For instance, Ekiti State in Nigeria publishes the names of sex offenders on their website and social media platforms. The Ministry maintains a register that is accessible to the public and contains the names and pictures of the offenders. In addition, the offenders' names may also be posted in their

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Moreover, the Anti-Torture Act, 2017, in section 9, provides that anyone who perpetrates torture is liable to imprisonment not exceeding 25 years. This implies that torture offence carries more penalty than 'grievous harms.'[1276] The Criminal Code of Nigeria defines 'grievous harms' as harms that amount to a maiming or dangerous harm which seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement or any permanent or serious injury to any external or internal organs, member, or sense. Section 335 provides that anyone who unlawfully harms another is guilty of a felony and liable to imprisonment for seven years. The criminalisation of torture aims to establish the gravity of the crime in national legislation, which implies that torture cannot be subsumed in a generic offence.[1277] Therefore, the enacted Anti-Torture Act 2017 carries more weight than other crimes that cause grievous harm.[1278]

The Anti-Torture Act 2017 provides the right for anyone who has suffered or alleged torture to file a complaint.[1279] However, there is no clear procedure outlined for initiating criminal proceedings. The Anti-Torture Bill in section 7(1) states that a police officer may initiate proceedings if the accused is brought before a magistrate, regardless of whether or not a warrant is present.[1280] Additionally, a public prosecutor or police officer may lay charges against the accused by requesting a warrant or summons. The Anti-Torture Bill also allows

last known residence or other prominent locations in the community as a form of public shaming. See also, 'Ekiti govt name-shame first set of sex offenders in 2022' 31 January 2022. *https://tribuneonlineng.com/ekiti-govt-name-shames-first-set-of-sex-offenders-in-2022/* (accessed 29 June 2023).

[1276] Criminal Code Act L.N. 112 OF 1964, Cap. C38. L.N.47 of 1955 Secs 335.

[1277] Art 4 of the UNCAT. Each State party shall ensure that all acts of torture are offences under its criminal law.

[1278] The Criminal Code in Southern Nigeria classifies offence into assault, homicide, excessive use of force, and crime endangering lives. These offences' punishment ranges from one year of ordinary assault to fourteen years, seven years to life for grievous bodily harm, life imprisonment for manslaughter, and the death penalty for murder. The Penal Code that applies in the northern part of Nigeria classifies offences into infliction of injury, rape, and homicide, and under this, the damage can only be punished if the family or relatives seek punishment. For acts committed intentionally, the sentence is retaliation, which means punishment mirroring the injury inflicted and blood money can be paid to the family or relatives of the victim in place of retaliation. Thus, the Anti-Torture Act 2017 carries more penalties and requires that judges rely on it to make sentencing. See M Nowak, Human Rights Council, Seventh Session 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development' Report of the Special Rapporteur on Torture and other Cruel, Inhuman, or degrading treatment or punishment. Mission to Nigeria (4 to March 2007). A/HRC/7/3/Add. 19, 20, 21, 22.

[1279] Secs 5 of the Anti-Torture Act 2017.

[1280] Secs 7 of the Anti-Torture Bill 2016

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anyone other than a public prosecutor or police officer to file a complaint on behalf of the victim.[1281] As a result, an interested party may file a complaint against a police officer while the victim remains in custody. Also, any defects in the charge or circumstances where a summons or warrant was issued without a complaint will not affect the institution of proceedings by police officers, public prosecutors, or private individuals.[1282]

6.7 CONCLUSION

The effectiveness of the Anti-Torture Act 2017 is determined by its ability to accomplish the objective for which it was enacted. The Act prohibits torture and provides consequences for those who perpetrate torture, including during a state of emergency or war. This implies that no government officials are permitted to torture, and those who do so can face up to 25 years of imprisonment. The question is, however, whether any perpetrator has been punished in accordance with the Anti-Torture Act 2017 or whether the AG has provided additional regulations to ensure the effective application of the Anti-Torture Act 2017.

The Anti-Torture Act 2017 stipulates that the AG must ensure that the security agencies are fully aware of the provisions of the Anti-Torture Act 2017 so that the law enforcement agencies fully appreciate that torture is prohibited. Law enforcement agencies, medical personnel and everyone involved in the detention centres must be fully aware of the provisions of the Anti-Torture Act 2017 and its obligations, which have been fully set out in this chapter. However, anecdotal research reveals that detainees' right to medical examination and treatment is non-existent, and electronic recording devices are not always available at the police station despite the provisions of the law.

Section 5(2) of the Anti-Torture Act 2017 provides that an individual who has suffered torture may file a complaint with a competent authority. However, no competent authority is identified or nominated in the section. While organisations such as the National Human Rights Commission and the human rights desk of the NPF may receive complaints, according

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[1281] As above.

[1282] Secs 7(2) of the Anti-Torture Bill 2016. The provision provides that if a person believes torture has been perpetrated on a victim, the person may inform the court or any appropriate authorities with jurisdiction. A complaint can be made either orally or in writing, which enables those without the ability to write to file a complaint. If an authority receives an oral complaint, it must be signed by the complainant.

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to Amnesty International, establishing the human rights desk has not reduced torture. It is not available at all police stations, raising the question of how detainees can proceed with complaints. Consequently, the human rights desk officers require further training on the Anti-Torture Act 2017 and must be aware of the penalties associated with torture perpetration.

Section 9 of the Anti-Torture Act 2017 provides that perpetrators of torture may be sentenced to 25 years imprisonment, and perpetrators whose victims die on account of torture fall to be punished in accordance with the relevant penal laws. Despite UNCAT's article 5 requiring State parties to have exclusive jurisdiction over torture, Nigeria's magistrate courts, despite having exclusive jurisdiction to hear both civil and criminal cases, may not sentence perpetrators to imprisonment of more than 14 years. Therefore, if the crime of torture carries a sentence equivalent to 20 years, a magistrate court may only impose a sentence of 14 years due to its limited jurisdiction. In addition, magistrate's courts are not permitted to award compensation above ₦500 000 to victims of torture.

Although torture victims have sought compensation in courts, the courts have based decisions not on the Anti-Torture Act 2017 but on the Constitution of Nigeria, 1999, the Ratification and Enforcement Act and Fundamental Rights Rule. Moreover, the State High Courts have exclusive jurisdiction to hear criminal and civil matters. In contrast, the Federal High Court has jurisdiction to hear any civil cause and the matters listed in section 25(1) of the Constitution of Nigeria, 1999. However, despite the wide jurisdictional reach of the courts to hear torture cases, there has been no record of prosecution on a charge of torture. Arguably, this is consequent to the failure of the Attorney General of the Federation to issue appropriate instructions as required by section 12 of the Anti-Torture Act 2017, resulting in the absence of appropriate regulations for implementing the Anti-Torture Act 2017.

On this note, the AG regulations documents the need to address the accessibility of lawyers in all detention centres. This implies that, as a detainee reaches the detention centres, he needs to have a lawyer present before intake, interrogation and after interrogations. The AG regulations also need to direct the judges on the need to rely on the Anti-Torture Act 2017, as it provides adequate punishment for the perpetrator of torture. Also, the AG regulations need to publish the name of all detention centres, facilities, registers of detainees and organisations that can receive complaints in Nigeria.

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The effectiveness of the Anti-Torture Act of 2017 can be determined by the number of perpetrators prosecuted under the Act, which is none. As a result of the lack of prosecution, law enforcement officers are able to operate with impunity. Effectiveness would require that the AG has provided additional regulations to ensure the implementation and effective use of the Act. The fact that the government has not instituted additional regulations on implementing and using the Anti-Torture Act shows there is no willingness to eradicate torture in Nigeria. Therefore, the next chapter will address the factors impairing the effective functioning of the legal and institutional framework prohibiting torture in Nigeria.

In conclusion, despite the clear-cut provisions of Nigeria's Anti-Torture Act of 2017, there is ample evidence of the failure in reality to achieve compliance with even one of the safeguards required by the Act.

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CHAPTER SEVEN

CHALLENGES IN ERADICATION OF TORTURE IN NIGERIA

7.1 INTRODUCTION

The Constitution of Nigeria 1999 provides that every individual is entitled to respect for the dignity of their person, and no person is allowed to be subjected to torture.[1283] The Anti-Torture Act 2017 prohibits torture perpetrated by a public officials even during war and political unrest.[1284] Torture is prohibited under the Administration of Justice Act 2015 (ACJA) or the Police Act 2020.[1285] Anyone who commits torture is punishable by up to 25 years in prison.[1286] The legal position has, on occasion, been reinforced politically. The former Attorney General of Nigeria, in June 2022, for example, claimed that Nigeria does not condone torture.[1287]

According to Amnesty International, torture in Nigeria is widespread in police custody and particularly systematic in criminal investigations departments.[1288] While the Amnesty International report was in 2014, the Special Anti-Robbery Squad (SARS) reports of 2021 highlight the inefficacy of the Anti-Torture Act 2017 in preventing torture.[1289] Though the use

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[1283] Sec 34 of the Constitution of the Federal Republic of Nigeria, 1999 (1999 Constitution).

[1284] Sec 3 of the Anti-Torture Act, 2017.

[1285] Sec 37 of the Nigeria Police Act, 2020.

[1286] Sec 9 of the Anti-Torture Act 2017.

[1287] Why Torture remains prevalent in Nigeria- RULAAC' 26 June 2021 *Sahara Reporters, New York* *https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac* (accessed 8 July 2023). 'Despite these enactments, commitments, reforms and revolutionary changes in criminal justice laws and legislation, the practice of torture remains widespread in law enforcement practices in Nigeria just as lawlessness and violence remain the defining features of national life in Nigeria.'

[1288] Amnesty International 'Under embargo until May 13: AFR 44/005/2014' Nigeria *https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440052014en.pdf* (accessed 11/August 2023).

[1289] Lagos State Judicial Panel of Inquiry on restitution for victims of SARS-related abuses and other matters 'Consolidated report on General Police brutality cases', 10 October 2021. *https://lagosstatemoj.org/wp-content/uploads/2021/12/Consolidated-Report-of-the-Judicial-Panel-of-Inquiry-on-general-Police-brutality-cases.pdf* (accessed 8 July 2023). One of the findings that was Petition NO: LASG/JPI/08/2020, A petition was filed by an individual who was reportedly assaulted by female police officers and was only released with the help of lawyers. After investigating the matter, the committee found that while the police are aware of fundamental human rights outlined in the Constitution, certain officers have developed a culture of impunity and violence. This mindset leads them to believe that brutality and excessive force are necessary for successful

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of torture is mainly attributed to the SARS officers, the disbandment of the SARS unit did not eradicate torture as there continued the constant use of torture by officers of the Nigeria Police Force even after its abolition.[1290]

Research by Aborisade and Obileye based on data collection from Ogun State Prison reveals that systematic torture is being used in Nigeria detention centres.[1291] Their data was collected from five prisons and officials of these prisons. The data shows that 67.8 per cent of detainees interviewed who have been released agreed that they had been tortured by the Police.[1292]

Moreover, despite the legal prohibition of torture, it persists. For example, on 29 August 2021, 28-year-old Kubiat Akpan was arrested for alleged robbery and cultism. Hours after his arrest, the evidence showed that he was tortured to death.[1293] The police officers claimed that the victim died of illness. The autopsy report invalidated the claim and showed that the victim was tortured to death.[1294] On 17 January 2022, Shadrach Ochoche was beaten to death by the Federal Capital Territory Police after he was accused of stealing his ex-boss's car battery.[1295]

In this regard, one may ask what challenges prevent Nigeria's legal and institutional mechanisms from effectively preventing torture.

7.2 CHAPTER SYNOPSIS

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policing in Nigeria. The committee also noted that the failure to hold perpetrators of torture, abuse, and dehumanizing acts accountable contributes to the use of such tactics. Additionally, citizens feel powerless to seek justice against the police, as there is a lack of proper training on human rights issues for some police officers.

[1290] A Kabir 'Nigeria's notorious SARS unit is dead, but its atrocities live on' *https://humanglemedia.com/nigerias-notorious-sars-unit-is-dead-but-its-atrocities-live-on/* (accessed 18 August 2023). See also, 'the disbandment of SARS does not translate to police reform. The officers dropped their old names but maintained their human rights violations act in their stations.'

[1291] RA Aborisade & AA Obileye 'Systematic brutality, torture and abuse of human rights by the Nigeria police: Narratives of inmates in Ogun State prison' 2018 (15) 1 *The Nigeria Journal of Sociology and Anthropology* 10 11.

[1292] As above.

[1293] A Kabir 'Reign of Impunity: Nigeria's security forces torturing suspects to death' 2 February 2022. *https://humanglemedia.com/reign-of-impunity-1-nigerias-security-forces-torturing-suspects-to-death/* (accessed 07 July 2023).

[1294] As above.

[1295] As above.

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This chapter analyses the challenges that hinder the legal and institutional mechanisms in preventing torture in Nigeria. The Constitution of Nigeria, 1999 and other legislations provide necessary safeguards to prevent the use of torture. However, these safeguards and frameworks are inadequately implemented. This chapter interrogates the lack of implementation and seeks to understand its reasons. The chapter demonstrates that, although safeguards are in place, they are only sometimes complied with such patterns as police behaviour that relies too much on confessions, which may be supported over time by the judiciary.

This chapter is divided into two parts. The first part of the chapter analyses the challenges faced by Nigerians due to the lack of adequate implementation of the essential framework available to prevent torture. This framework consists of the constitutional requirement that detainees are to be taken to court within a reasonable period of time,[1296] and the authority granted under the ACJA allowing magistrates to visit places of detention.[1297]

The second part of the chapter analyses the challenges faced due to Nigeria's weak institutional framework in preventing torture. Such challenges include corruption, funding, and law enforcement agencies' lack of adequate training and awareness.

7.3 INADEQUATE IMPLEMENTATION OF SAFEGUARDS

The Nigerian police are required by the Constitution of Nigeria, 1999 and the Legal Aid Act 2011 to inform suspects or detainees of their right to legal services upon arrest.[1298] If they

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[1296] Secs 35(4) of the Constitution of Nigeria, 1999. Any person who is arrested, or detained in accordance with subsection 1(c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of 2 months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or 3 months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for a trial at a later date. Justice Kessington (rtd) of the Lagos High court granted bail to 136 inmates of the Ikoyi prisons in suit no. M/115 of 1994 because the detainees had been in detention for over 9 years without trial.

[1297] According to section 34(1)-(4), magistrates are authorized to inspect places of detention, while section 34(4) mandates High Court Judges to do the same to prevent police abuse. Additionally, section 34(5) states that any police officer who violates the provisions of subsection (3) will be punished. The punishment will be in accordance with police regulations or disciplinary procedures outlined in the relevant provisions that govern the conduct of the officer. However, despite the availability of punishment, the effectiveness of visitation is limited by factors such as logistics, funds, and workload. Furthermore, when reporting, police officers report to the magistrate, who then reports to the Administration and Criminal Justice Monitoring Committee. Nonetheless, the Monitoring Committee does not exist yet, despite the legal provision.

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cannot afford a legal practitioner, the police must notify the Legal Aid Council to represent them if they wish.[1299] However, many police officers do not inform suspects of this right, and suspects often do not seek legal advice.[1300] The purpose of this part of this chapter is to analyse the prevalence of torture in Nigeria due to the lack of effective safeguards that could prevent the use of torture.

This part is divided into two. The first part interrogates the importance of the prompt appearance of a detainee before a court to prevent torture. Furthermore, this emphasises the dangers of 'holding charge and pre-trial detention 'and the need to eliminate it as a safeguard against torture. The second part interrogates the constant reliance on confessional evidence as a contributing factor to the use of torture in Nigeria.

7.3.1 THE FIRST SAFEGUARD: THE REQUIREMENT OF PROMPT APPEARANCE BEFORE A COMPETENT COURT

7.3.1.1 The Importance of Prompt Appearance

Torture is often inflicted on vulnerable individuals, particularly those in pre-trial detention.[1301] The longer a detainee is held, the greater the risk of torture by law enforcement agencies.[1302] Although the Constitution of Nigeria, 1999, stipulates that detainees must be taken to court within a reasonable time, many have reported that Nigerian police officers demand payment before doing so.[1303]

[1298] Sec 35(2) of the Constitution of Nigeria, 1999.

[1299] According to secs 19(2) of the Legal Aid Act of 2011, it is the responsibility of the police and courts to notify suspects or accused individuals that they have the right to legal representation from the moment of their arrest. If they cannot afford a lawyer, they must inform the Legal Aid Council of their desire to be represented. To do this, they can obtain a form from the legal aid office, court, or prison, fill it out, and return it to the Legal Aid Council for consideration. If the Council determines the suspect cannot afford a lawyer, they will assign one. Additionally, other organisations, such as the Civil Liberties Organisation, Constitutional Rights Project, and Legal Defence and Assistance Project, offer free legal aid services to suspects.

[1300] United Nations 'In initial dialogue with Nigeria, experts of committee against torture ask about the fight against terrorism and conditions of detention' 17 November 2021 *https://www.ohchr.org/en/press-releases/2021/11/initial-dialogue-nigeria-experts-committee-against-torture-ask-about-fight* (accessed 08 July 2022). Additionally, the Legal Aid Council of Nigeria is underfunded, with limited capacity to take on cases, despite having offices throughout the country.

[1301] Association for the Prevention of Torture Preventing torture: An operation guide for national human rights institutions 2010 11.

[1302] As above.

[1303] According to Sec 35(4) of the Constitution of Nigeria, 1999, when a person is arrested, they must be brought before a court within 24 hours, or within 48 hours if there is no court within 40 kilometres. If the accused does not appear in court within two months of arrest, they must be released unconditionally or on the condition that

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The Constitution of Nigeria,1999**,** stipulated that detainees must be brought to the court within a reasonable time.[1304] If there is a competent court of jurisdiction within a 40 km radius, a reasonable time is defined as 24 hours. If there is no court within 40 km, arraignment must occur within 48 hours.[1305] However, in practice, the police rarely adhere to this. In many cases, police detention lasts for years.[1306] According to the 2021 United States Human Rights Report, numerous detainees stayed in police custody without being taken to court. When they were required to be taken to court, the police demanded bribes to take them to court for hearings or to release them.[1307]

Pre-trial detention contributes to the lack of prompt appearance in court which may leads to torture. A pre-trial detainee is an accused or defendant held in custody in relation to a criminal charge while awaiting trial or being denied release due to inability to satisfy the bail condition posted.[1308] Though pre-trial detainees are generally held in cells or prisons for more extended periods, most end up spending the maximum sentence they would have been sentenced to had they been convicted.[1309] An example of a long detention is the case of Abdullahi Mohammed, aged 49, was arrested in May 2013 for stealing a handset.[1310] He was held as a pre-trial detainee for five years despite his offence carrying a maximum prison term of five years under section 287 of the Penal Code.[1311]

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they will appear for trial at a later date. Unfortunately, in practice, police officers do not always follow these rules. The recent case *of Nigeria Navy & Ors v Labinjo* (2021) LPELR-53302 (CA) confirmed that the Navy has the power to arrest suspects, but must bring them to court within the specified time limits. Any detention beyond this period is a violation of the suspect's fundamental human rights. It has also been reported that the Nigerian police sometimes ask for money before transporting suspects to court.

[1304] Sec 35(4) of the Constitution of Nigeria, 1999.

[1305] Sec 35 of the Constitution of Nigeria, 1999.

[1306]United State department of State ' Nigeria 2021 Human Rights Report' https://www.state.gov/wp-content/uploads/2022/03/313615_NIGERIA-2021-HUMAN-RIGHTS-REPORT.pdf (accessed 19 August 2023).

[1307] As above.

[1308] Most often the cause of the delays in the administration of justice in Nigeria is rooted in a long police investigation, bribery and corruption, delay tactics from the representing counsel and in most cases lack of legal representation for the accused and several backlogs in the administration of the criminal justice system.

[1309] The term 'pretrial detainee' in Nigeria is often used interchangeably with 'prisoner' since many individuals awaiting trial are held in prisons or police cells until the conclusion of their trials.

[1310] E Onyeji & O Udegbunam '70% of Nigerian prisoners held without trial – Prisons chief' 10 April 2020 *The Premium Times* https://www.premiumtimesng.com/news/headlines/387068-70-of-nigerian-prisoners-held-without-trial-prisons-chief.html?tztc=1 (accessed 22 August 2023).

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The 2020 Prison Insider reported that over 70% of prison detainees in Nigeria are awaiting trial.[1312] The World Prison Brief reports that Nigeria's prison population, including pre-trial detainees, is 81,742.[1313] Of this population, 68.8% are pre-trial detainees. However, there are only 240 prisons in the country, which is insufficient to accommodate the growing number of detainees.[1314] According to the 2022 Human Rights Report of the United States, detainees often remain in custody for extended periods without access to court.[1315] In cases when detainees do have access to court, adjournments frequently cause year-long delays. The report also reveals that some inmates are in prison because the police have lost their case files, resulting in longer waiting periods.

7.3.1.2 Holding Charge

The holding charge practice increases the use of torture as it allows detainees to spend longer hours in detention centres.[1316] The holding charge practice entails that law enforcement

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[1311] As above. See World Prison Brief 'Nigeria' *https://www.prisonstudies.org/country/nigeria* (accessed 29 September 2023). According to the Joint Alternative Report, pretrial detention poses a severe risk of torture for detainees as detention facilities are consistently overcrowded, with more prisoners than the capacity allows. This puts detainees at risk of being exposed to torture by officers. Moreover, detainees in Nigeria face a high risk of pretrial detention and torture due to malfunctioning criminal justice systems. A lack of resources often results in inadequate management of detention facilities and officers lacking proper training and equipment for gathering evidence. According to the 1999 Constitution, a person arrested should not be detained for more than 24 hours in any location where a court has the authority to hear the case and is within a 40-kilometre radius. In any case, the detention period should not exceed 48 hours. However, the court of appeal has ruled that failing to arraign an accused person within a day in a court of competent jurisdiction within 40 kilometres violates the constitutionally guaranteed right to liberty for all Nigerian citizens. This implies that anyone in detention for more than two months should be released unconditionally or on bail, but this is not always followed, and those in detention in Nigeria are often subjected to abuse and torture. See also, the Joint Alternative Report submitted in the application to article 19 of the United Nations Committee against torture and cruel inhuman and degrading treatment. 72ND session of the UN committee against torture for the examination of Nigeria 2021 at 17. See also, *Ahmed v Commissioner of Police Bauchi State* (2012) 9 Nigerian Weekly Law Reports (Pt 1304) 909 (125-126 para H-B) where it held that the secs 35(4) of the 1999 Constitution provides that a person arrested or detained upon reasonable suspicion of his having committed a criminal offence, should be brought before a competent court of law within a reasonable time, and if such a person is not tried within a period of two months from the date of his arrest and detention, and in the case of a person who is in custody or is not entitled to bail, such an accused person shall/ is entitled to be released either unconditionally or upon conditions that are reasonably necessary to ensure his appearance for trial at a later date. See also, Secs 35(4) of the Constitution of Nigeria, 1999.

[1312] Prison Inside 'Nigeria: 70% of Nigerians prisoners held without trial' *https://www.prison-insider.com/en/articles/nigeria-70-of-nigerian-prisoners-held-without-trial* (accessed 29 September 2023).

[1313] World Prison Brief 'Nigeria' *https://www.prisonstudies.org/country/nigeria* (accessed 29 September 2023).

[1314] As above.

[1315] United States Department of State ' Nigeria 2022 Human Rights Report' *https://www.state.gov/wp-content/uploads/2023/03/415610_NIGERIA-2022-HUMAN-RIGHTS-REPORT.pdf* (accessed 26 October 2023).

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agencies secure remand orders against a detainee from a lower court with no jurisdiction to lawfully remand an accused person during an investigation.[1317] By doing this, the police officials have more time to buy time to investigate and collect evidence to build a stronger case against the accused before arraignment.[1318]

In the case of *Ogor v Kolawole*, the court ruled that the Constitution of Nigeria,1999 and existing laws do not allow for holding charges.[1319] Similarly, in *Ewere v Commissioner of Police,* the Court of Appeal stated that the Federal Government of Nigeria does not support holding charges.[1320] Any accused person who is arrested must be released on bail within a reasonable time before facing trial.

In the case of *Sikiru Alade v the Federal Republic of Nigeria*, Sikiru Alade was accused of armed robbery and arrested. As part of the holding charge procedure, he was brought before a court that lacked jurisdiction over the alleged offenses. In such cases, the Magistrate could not order the release of the suspect and had to remand them in custody on the basis of holding charge, without determining if there were sufficient grounds for detention.[1321]

[1316] Holding charge has become a common practice in Nigeria. However, it creates the impression that it is lawful and constitutional even though there is no clear definition of "holding charge" in Nigerian law at the federal or municipal level. This implies that there is no legal authority to define the term, and it is generally considered to be unknown to the law. According to Prisoners' Rehabilitation and Welfare Action (PRAWA), …Particularly damaging is the 'holding charge' under which arrestees can remanded into custody without even a minimal judicial investigation into the charges and without any opportunity to challenge the charges against them. Because no court is seized of the charges against such persons, the police have a nearly unfettered ability to detain them indefinitely…the Nigeria Bar Association has identified the holding charge as a gateway to serious abuse. See at A joint report to the Universal Periodic Review (UPR) by Prisoners' Rehabilitation and Welfare Action (PRAWA) and Network on Police Reforms in Nigeria (NOPRIN) 'Torture and extrajudicial killings in Nigeria' *https://www.prawa.org/wp-content/uploads/2013/07/PRAWA-NOPRIN-UPR-Torture2-and-Extra-judicial-Killings1.pdf* (accessed 20 October 2023).

[1317] M A Hamza Chief Magistrate 1 Kaduna State Judiciary 'Pre-trial detention and bail: Practice and procedure in the lower courts' being a paper delivered at the induction course for newly appointed magistrates and other judges of the lower courts holding at the national judicial institute Abuja. 31 May 2022. See also *Alhaji Toyin Jomoh v Cop* (2000) LPELR 11262 CA, where it was held that the holding charge is unknown in Nigeria's legal system and any accused person detained under it is entitled to be released on bail within a reasonable time before trial.

[1318] Y D U Hambali *Practice and procedure of criminal litigation in Nigeria* (2012) 539, asserted that the practice of holding charge involves taking a suspect who is under investigation to a magistrate or lower court under a false or minor charge by the police. This is done with the intention of requesting the court to order the remand of the suspect until the investigation is concluded. Once the investigation is completed, the suspect is then formally charged with the appropriate offence before the court with jurisdiction. At this point, the false or minor charge under which the suspect was initially remanded is withdrawn.

[1319] Nigerian Constitutional Law Report 1985, 534 at 540.

[1320] Nigerian Weekly Law Reports, 1993, 7 (Pt 303) 49 at 107.

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Alade was remanded in custody under the holding charge and held in Kirikiri Maximum Security Prison, Lagos for over nine years without being returned to court or charged with a crime under any law before a competent court. On September 18, 2012, after the ECOWAS Court ruling, he was released following a review by the Chief Judge of Lagos.[1322]

This implies that the term 'holding charge' refers to the inability of the Nigerian Police to investigate and prosecute an accused person within a reasonable time frame as stipulated by the law. As explained by Ozekhome, holding charge is when an accused person is charged by the Police or other law enforcement officers to an inferior court which lacks the jurisdiction to try the offence.[1323] This is done while awaiting legal advice from the office of the Director of Public Prosecution (DPP) to recommend the accused person's trial in a court of competent jurisdiction or tribunal that is set up to try the particular offence.[1324] Ozekhome further noted that the court had discredited the practice of 'arrest-before-investigation', which should be 'investigation-before-arrest'.[1325] This practice is common in inferior courts of records in Nigeria, especially the magistrate courts (as applicable in the Southern States) and the area courts (In the Northern States).[1326]

In practice, the designated DPP, supposed to provide legal advice in most circumstances, failed to provide advice for a year or more. As a result, the accused individuals are kept in prison custody without any trial, which increases the likelihood of torture.[1327]

According to ACJA, section 293, suspects who have been arrested in which a magistrate court has no jurisdiction must be taken to court within a reasonable period of time.[1328] As a

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[1321] Case No. ECW/CCJ/APP/05/11.

[1322] As above.

[1323] M Ozekhome 'A holding charge is patently illegal under the constitution' 19 November 2015 *Premium Newspaper* *https://www.premiumtimesng.com/features-and-interviews/195426-a-holding-charge-is-patently-illigal-under-the-constitution-part-1.html* (accessed 20 October 2023).

[1324] As above.

[1325] As above.

[1326] J Edobor 'Custodial congestion: An examination of the legal hurdles of holding charge practice in Nigeria' (7) 1 (2023) *Strathmore Law Journal* 26 29.

[1327] As above.

[1328] Sec 293 ACJA.

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result, the application for remand order is made *ex parte* by the police. Under the ACJA, police may obtain court orders to detain accused persons for a limited period of time. While this practice might be the best, the problem is that it allows abuse of power and torture to occur.[1329]

7.3.1.3 Overreliance on Confession-Based Evidence

There is a constant need for the criminal justice system to move away from the reliance on confessional-based evidence, as it is a significant reason for the use by law enforcement agencies of torture on their victims.[1330] In the criminal justice system, a confessional statement is seen as 'golden' as it is the sole evidence for a conviction, and many police officers consider it their job to get evidence from a suspect, even if it involves torture.[1331]

Confessional evidence is mainly derived from police interrogation. The interrogation is a systemic and formal form of questioning from police officers to determine the involvement of a detainee/suspect in a crime that may be used as evidence in a trial.[1332]

Section 29 of the Evidence Act 2011 prohibits confessions obtained through oppression.[1333] Section 14 allows evidence obtained improperly or contravening the law to be admissible in court unless the court deems it undesirable, while section 15 outlines the factors the court should consider when determining whether or not to admit illegally obtained evidence, such

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[1329] J Edobor 'Custodial congestion: An examination of the legal hurdles of holding charge practice in Nigeria' (7) 1 (2023) *Strathmore Law Journal* 26 29.

[1330] Juan Mendez, the former United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment asserted that 'Coerced confessions are, regrettably, admitted into evidence in many jurisdictions, in particular where law enforcement relies on confessions as the principal means of solving cases and courts fail to put an end to these practices. Although most countries have legal and procedural safeguards to prohibit forced confessions and to prevent the overreliance on confessions, these do not always provide effective protections against the use of torture. Obtaining a confession remains one of the principal incentives for torture, if not the main incentive.' See Organization for Security and Co-operation Europe and Office for Democratic Institutions and Human Rights *Eliminating incentives for torture in the OSCE region: Baseline study and practical guidance* 2020 15.

[1331] APT 'Finding the truth, not forcing a confession: a new tool for preventing torture' https://www.apt.ch/en/news_on_prevention/finding-truth-not-forcing-confession-new-tool-preventing-torture (accessed 19 September 2023).

[1332] EO Onoja 'The law and practice of interrogation in Nigeria: Agenda for reform' (2017) (1) *African Journal of Law and Human Rights* 158 161.

[1333] Evidence Act, Cap. E14, Laws of the Federation of Nigeria. Note that the Evidence Act 2011 has been amended to Evidence (Amendment) Act, 2023. However, Sec 29(1) of the Evidence Act 2011 remain the same. The Evidence Amendment Act 2023 only affects section 84, 93, 108, 109, 110, 119 255 and 258.

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as the probative value of the evidence, the gravity of the offence, and the difficulty of obtaining the evidence without breaking the law.[1334]

According to the Association for the Prevention of Torture (APT), over-reliance on the use of confession-based evidence in criminal investigations has been one of the most important incentives for law enforcement officials to use torture, as there is a constant demand for the officers to produce results, which also leads to the promotion of the officers.[1335] Thus, the lack of capacity by the Nigeria Police to conduct a criminal investigation has led to a methodological shift in a criminal investigation that entails the techniques of sourcing, analysing, and interpreting evidence to reach a conclusion compared to where the only available technique is the reliance on a confessional statement as evidence.[1336]

In the case of *Feyisayo Alatise v The State,*[1337] the appellant and two others were charged before the High Court of Ondo State in Akure on two counts of conspiracy to commit murder, contrary to and punishable under section 324 of the Criminal Code[1338]and murder contrary to section 316 (1) and punishable under section 319 (1) of the Criminal Code.[1339] The accused parties were found guilty by the trial court and received a sentence of 14 years imprisonment with hard labour on the first count and death by hanging on the second count. However, they were dissatisfied with the judgement and filed an appeal together before the Court of Appeal in Akure. One key issue during the appeal was whether Exhibit 'B,' a locally-made gun, was the weapon used to kill the deceased. While there was evidence that PW4 had taken the appellant's fingerprint and placed a copy in the file at the State C.I.D. office, no attempt was made to link the fingerprint with Exhibit B. Additionally, no report by a forensic expert was presented to confirm that the appellant had pulled the trigger of Exhibit B, especially as the shooter's identity was unknown. As a result, the trial court's judgement

[1334]As above.

[1335] Association for the Prevention of Torture 'Yes, torture prevention works: Insights from a global research study on 30 years of torture prevention' (2016) 22.

[1336] O Ladapo 'Effective investigations, A pivot to efficient criminal justice administration: Challenges in Nigeria' (2011) (5) 1 (2) *African Journal of Criminology and Justice* Studies 79 88.

[1337] (2012) LPELR-9469 (CA).

[1338] Cap. 30 Vol. II Laws of Ondo State Nigeria, 1978.

[1339] Cap. 30 Vol. II laws of Ondo State of Nigeria, 1978.

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convicting the appellant of conspiracy to commit murder and murder and sentencing him to 14 years imprisonment and death by hanging, respectively, was overturned. The appellant was subsequently acquitted and discharged.

The case of *Feyisayo Alatise v The State*[1340] indicates that forensic evidence is a more reliable option than traditional confessional statements, which are often falsified. The Nigeria Police is known for coercing suspects into making confessions through force and extreme torture.[1341] Eyewitnesses are also often manipulated to provide false evidence against suspects.[1342] As a result, during prosecutions, virtually all confessional statements are challenged on the grounds of police coercion.[1343] The unchecked use of these methods undermines the administration of justice in Nigeria.

APT further asserted that the incentive to torture falls when the police and prosecutors develop alternative methods of evidence gathering, which enable them to rely less on confession to secure conviction.[1344] This implies that the Nigerian Government needs to put in place other avenues, such as a forensic laboratory where trained police officers can conduct an adequate investigation.

The Nigerian police forces currently rely on the use of confessional statements as they lack professionals to handle their investigation, as most investigators are not equipped with modern-day apparatus. The Nigerian Government currently has three forensic laboratories located in Abuja and Lagos.[1345] However, the laboratories lack professionalism and lack crime detection and investigation equipment.[1346] Though the Constitution of Nigeria, 1999, provides

[1340] (2012) LPELR-9469(CA).

[1341] OJ Alisigwe & OM Oluwafemi 'The State of forensic science in crime investigation and administration of justice in Nigeria' (2019) 7 (10) *International Journal of Scientific and Engineering Research* 1720 1723.

[1342] As above.

[1343] As above.

[1344] Association for the Prevention of Torture 'Yes, torture prevention works: Insights from a global research study on 30 years of torture prevention' (2016) 22.

[1345] OJ Alisigwe & OM Oluwafemi 'The State of forensic science in crime investigation and administration of justice in Nigeria' (2019) (10) 7 *International Journal of Scientific & Engineering Research* 1720 1724.

[1346] As above.

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for the use of forensic evidence, the legislature and the executive lack the will to present a bill that will direct how the court will rely on forensic evidence.

7.4 THE SECOND SAFEGUARD: THE REQUIREMENT OF DOMESTIC OVERSIGHT

Nigeria has established various institutional mechanisms to protect and preserve human rights. These mechanisms include the judiciary, the National Human Rights Commission, the Legal Aid Council, the NCAT, and the Public Complaints Commission. However, these institutions need more robust mechanisms to effectively protect and promote human rights in Nigeria. This is because many institutions are not independent and lack the financial capability to function without depending on executives. This suggests that the executives are influencing these institutions through funding, the composition of their members, and operational guidelines. Thus, this part of this chapter discusses the factors contributing to inadequate implementation of institutional frameworks in Nigeria.

7.5 FACTORS CONTRIBUTING TO INADEQUATE IMPLEMENTATION OF INSTITUTIONAL FRAMEWORKS

This part of the chapter discusses four factors that have exacerbated torture in Nigeria. The first part discusses how inadequate funding can lead to the continued use of torture; the second part focuses on the lack of political will from the government. The third part analyses the culture of corruption, and the last part discusses the lack of training of officials.

7.5.1 Funding

According to the 2021 United States Country Report, Nigeria's NCAT is facing a funding shortage, hindering its effectiveness.[1347] The former chairman of the NCAT has alleged that the committee is struggling to fulfil its duties, including proper investigation and submission of periodic reports to the United Nations.[1348] The Optional Protocol against Torture obliges

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[1347] United States Department of State '2021 country reports on human rights practises: Nigeria' *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/nigeria* (accessed 20 September 2023).

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State parties to ensure that national institutions against torture receive adequate resources.[1349] These institutions have the duty to visit detention centres and make recommendations.[1350] However, the previous Nigeria Committee on Torture chairman complained of inadequate funds to perform their functions.[1351]

The OPCAT mandates that each State provides adequate resources to support the NPM.[1352] The State must give NPM the power to visit detention facilities, make recommendations, submit proposals, and provide observations on existing or draft legislation.[1353] However, due to a lack of funding, the NCAT cannot fulfil these obligations.

The Paris Principles emphasise the importance of financial independence for NPM,[1354] as it allows them to function independently and make decisions without relying on the executive branch.[1355] The International Council on Human Rights Policy (ICHRP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) suggest that institutions such as the NCAT require financial independence.[1356] This entails drafting an annual budget

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[1348] S Ogunlowo 'We are suffering from lack of funding – FG'S anti-torture committee' 21 June 2022 *The Premium Times* *https://www.premiumtimesng.com/news/more-news/538425-we-are-suffering-from-lack-of-funding-fgs-anti-torture-committee.html* (accessed 17 July 2023).

[1349] Art 17 and 18 of OPCAT.

[1350] Arts 17 and 18 of OPCAT.

[1351] S Ogunlowo 'We are suffering from lack of funding – FG'S anti-torture committee' 21 June 2022 *The Premium Times* *https://www.premiumtimesng.com/news/more-news/538425-we-are-suffering-from-lack-of-funding-fgs-anti-torture-committee.html* (accessed 17 July 2023).

[1352] Art 18(3) of OPCAT.

[1353] Art 19 of OPCAT.

[1354] National Human Rights Institutions (NHRIs) are independent organizations that are set up by the State to safeguard and promote human rights. They are recognised by the Global Alliance of NHRIs based on their adherence to the Paris Principles, which outline crucial criteria for such organisations, such as having a strong legal foundation and being impartial in overseeing other institutions. According to article 18 of the OPCAT, NHRIs should be given "due consideration" when establishing National Preventive Mechanisms (NPM). While there is no set model for NPM, most are NHRIs, with the remainder being either new specialised institutions or multiple-body NPM. The majority of NHRIs that have been designated as NPM were already in existence and were given greater authority and responsibility to carry out the NPM mandate. The secretariat of Nigeria's NCAT is currently located in Abuja at the NHRC headquarters. See also, APT 'What are the national human rights institutions as NPM?' *https://www.apt.ch/what-are-national-human-rights-institutions-npms* (accessed 27 October 2023).

[1355] General Assembly resolution 48/134. Principles Relating to the Status of National Human Rights Institutions (Paris Principles) 20 December 1993 Composition and guarantees of independence and pluralism art 2.

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and submitting it to Parliament for approval.[1357] Once approved, the NCAT will be able to plan its spending without interference from the government.

Having access to funds enables the NCAT to have comfortable office, transportation, and knowledgeable personnel to visit detention facilities and investigate cases of torture. It is crucial for the NCAT to have the financial independence to carry out its duties and fulfil its mandate effectively. Torture continues to be used in Nigeria, as the NCAT faces challenges in conducting visits to detention centres due to insufficient funding to carry out its responsibilities.[1358]

Moreover, the Nigeria Police's lack of adequate salary for its officers contributes to the persistent use of torture as torture is used to extract information and financial gain by the police.[1359] During the 2020 protests against police brutality, one of the demands was increased police salaries. This was seen as a way to reduce the likelihood of corruption and abuse.[1360]

Overcrowding in Nigerian police cells and prisons is leading to an increase in torture.[1361]

[1356] Association for the Prevention of Torture 'Guide establishment and designation of national preventive mechanisms' (2006) 46 47.

[1357] As above.

[1358] Joint Alternative Report submitted in the application to article 19 of the UN Committee against Torture and Cruel Inhuman and Degrading Treatment 'Absolute prohibition of torture in Nigeria: Words without deeds?' *https://www.omct.org/site-resources/legacy/Final-Copy-of-Report-on-Torture-and-other-Cruel-Inhuman-or-Degrading-Treatment-in-Nigeria.pdf* (accessed 2 April 2023) where it was recommended that for the NCAT to perform its mandates adequately, the government must be able to provide sufficient funding and resources for the NCAT.

[1359] Thus 'it is no news that the police force in Nigeria is not well paid. They live in squalid conditions in the so-called police quarters. As a result, many of them turn to other means to survive, including forcefully extorting and torturing citizens. All they need is money, and they are willing to do anything, including violating the human rights of individuals to get it.' N Ossai 'Causes and solutions to police brutality in Nigeria' *https://www.skabash.com/police-brutality-in-nigeria/#:~:text=brutality%20in%20Nigeria-,Poverty,forcefully%20extorting%20and%20torturing%20citizens*. (accessed 20 July 2023).

[1360] A Uwazuruike '*#EndSARS:* An evaluation of successes and failures one year later' 13 December 2021 *Georgetown Journal of International Affairs* *https://gjia.georgetown.edu/2021/12/13/endsars-a-evaluation-of-successes-and-failures-one-year-later/* (accessed 20 July 2023).

[1361] 'I was tortured in Prison' *This Day Newspaper* *https://www.thisdaylive.com/index.php/2022/09/06/i-was-tortured-in-prison* (accessed 27 October 2023). 'When I got to Ikot Ekpene prison, I was told there is what they called the 'special or privilege cell'. They told me that I would either adjust to the regular cell which is more horrible, or I had to pay for a space in the so-called special cell. The officers said it would cost me N50,000. I knew I had just two weeks to stay, but I had to pay the money so I could get a space. There were three of us in a small room, in the special cell. There was no bed. I had to sleep on a small mattress, battling with mosquitos. It was not surprising when I fell ill in Ikot Ekpene. I bought my drugs from outside because the clinic barely gave sick inmates more than paracetamol while I was there. I told myself that it would be unfair for me to go to the prison clinic to demand malaria tablets when other sick inmates are hardly given more than paracetamol. As I

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These detention centres facilities are not equipped to accommodate all those who are detained, resulting in a dire living situation that is feared to lead to an epidemic.[1362] The detention centres are inadequate, and courts have suggested alternative dispute-resolution (ADR) methods to settle disputes.[1363] However, the police have stated that ADR is not feasible for severe offences like murders and robberies. In some cases, suspects are transferred to other police stations, and some police offices are converted into cells due to the lack of space.[1364] The Comptroller of Prison in Lagos recently visited the Commissioner of Police in Lagos and expressed concern that all five prisons in the State, designed for 4,500 inmates each, currently hold over 9,500 inmates.[1365]

The Nigeria Police needs adequate funding to function effectively and implement the law.[1366] Due to the lack of funding, the police force needs help to fulfil its obligations as mandated by law.[1367] The ACJA requires that the interrogation of criminals must be recorded through video-recording devices.[1368] However, the police force lacks the necessary equipment and resources to procure the needed equipment to comply with this requirement.[1369]

7.5.2 Lack of Political Will

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said, I have always been mentally prepared for incarceration. That is why I pity those who celebrated my imprisonment. They miscalculated. I had to share a toilet with two other inmates in Ikot Ekpene prison. It wasn't palatable. But that is the same prison that some people even consider to be one of the best in the country because it was constructed some years ago by Akpabio. I don't think the special cell in Ikot Ekpene is even fit for any citizen of a serious country to be kept'.

[1362] As above. See also, E Nnadozie 'Fear of epidemic looms in police cells as court reject remand suspects in Lagos' 27 October 2023 *https://www.vanguardngr.com/2023/10/fear-of-epidemic-looms-in-police-cells-as-courts-reject-remand-suspects-in-lagos/* (accessed 27 October 2023).

[1363] As above.

[1364] As above.

[1365] As above.

[1366] 'Why torture remains prevalent in Nigeria-Rulaac' June 26 2021 *Sahara Reporters* *https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac* (accessed 27 October 2023).

[1367] As above.

[1368] See Secs 15(4) and 17(2) of Administration of Criminal Justice Act 2015.

[1369]'Why torture remains prevalent in Nigeria-Rulaac' June 26 2021 *Sahara Reporters* *https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac* (accessed 27 October 2023).

[1369] As above.

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To address the problem of impunity in Nigeria, it is crucial to conduct timely and thorough investigations into human rights violations, particularly cases of torture perpetrated by law enforcement agencies. Amnesty International has reported that the authorities have not taken sufficient action to prevent human rights abuses, including instances of torture by police officers.[1370] Despite public assurances that torture is prohibited within the police force, there is no concrete evidence that adequate measures are being taken to address this issue.[1371] The government's conduct in respect of Mrs Hannah Olugbodi is a case in point. She was shot by members of the Nigeria Police force in the leg, and as a result had to undergo several surgeries.[1372] According to a judicial panel set up to investigate restitution for victims of Special Anti-Robbery Squad (SARS) abuse and other matters, Mrs Hannah was shot without justification, and the police should investigate gunshot incidents and conduct a minimum of four human rights training sessions per year for members of the Nigerian police force.[1373] The Judicial Panel's recommendation supports Amnesty International's claim of an inadequate investigation by Nigerian authorities, indicating a lack of political will to investigate police torture.

Moreover, Ladapo concluded that most officers responsible for conducting investigations in Nigeria rank below sergeants.[1374] This implies that many investigations are carried out by constables who have only received three months of basic training at the police college. This training at the police college emphasises drill exercises rather than human rights, which is a crucial aspect of effective policing.[1375]

The Anti-Torture Act 2017 states that the Attorney-General of the Federation is responsible for ensuring that all law enforcement officers and personnel working in custody, interrogation

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[1370] Nigeria 'Submission to the UN committee against torture 72nd session, 8 Novermber-3 December 2021' Amnesty International https://www.amnesty.org/en/wp-content/uploads/2021/10/AFR4448722021ENGLISH.pdf (accessed 07 October 2023).

[1371] As above.

[1372] Petition No: LASG/JPI/32/2020 'Lagos State judicial panel of inquiry on restitution for victims of SARS related abuses and other matters' Consolidated report on general police brutality cases, 10 October 2021.

[1373] Petition No: LASG/JPI/32/2020 'Lagos State judicial panel of inquiry on restitution for victims of SARS related abuses and other matters' Consolidated report on general police brutality cases, 10 October 2021.

[1374] OA Ladapo 'Effective investigations: A pivot to efficient criminal justice administration: Challenges in Nigeria' (2011) 5 *African Journal of Criminology and Justice Studies* 79 88.

[1375] As above.

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rooms or detention centres are adequately educated, trained, and informed about the laws prohibiting torture.[1376] However, many personnel have undergone human rights training through various capacity-building sessions.[1377] The judicial panel set up to investigate restitution for victims of SARS abuse and other matters noted that some Nigeria Police force personnel lack basic human rights training and understanding.[1378]

Furthermore, a lack of statistical reports on torture makes it challenging to address the use of torture. To combat torture, it is essential for the authorities to establish a mechanism that ensures reporting of torture in all institutions, particularly in law enforcement agencies and detention centres. This will enable the country to identify areas or institutions where torture is prevalent. The compilation of statistics can be undertaken by the NCAT and periodically submitted to the National Assembly.

7.5.3 Corruption

The World Bank defines corruption as the "abuse of public office for private gain".[1379] This definition encompasses a broad range of unethical behaviours, such as bribery and the misappropriation of public funds.[1380]

Human Rights Watch conducted an investigation based on interviews with around 45 victims and witnesses of corruption within the Nigeria Police Force (NPF).[1381] These included traders, sex workers, commercial drivers, students, criminal suspects, and victims of common crimes.

[1376] Secs 11 of the Anti-Torture Act 2017.

[1377] Joint Alternative Report submitted in the application to article 19 of the UN Committee against Torture and Cruel Inhuman and Degrading Treatment 'Absolute prohibition of torture in Nigeria: Words without deeds?' *https://www.omct.org/site-resources/legacy/Final-Copy-of-Report-on-Torture-and-other-Cruel-Inhuman-or-Degrading-Treatment-in-Nigeria.pdf* (accessed 2 April 2023).

[1378] 'Lagos State judicial panel of inquiry on restitution for victims of SARS related abuses and other matters' Consolidated report on general police brutality cases, 10 October 2021. *https://lagosstatemoj.org/wp-content/uploads/2021/12/Consolidated-Report-of-the-Judicial-Panel-of-Inquiry-on-general-Police-brutality-cases.pdf* (accessed 20 July 2023).

[1379] The World Bank 'Anticorruption fact sheet' *https://www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet#:~:text=Corruption%E2%80%94the%20abuse%20of%20public,affected%20by%20fragility%20and%20conflict*. (accessed 31 October 2023).

[1380] As above.

[1381] United States Department of State, 'Nigeria 2021 Human Rights Report' *https://www.state.gov/wp-content/uploads/2022/03/313615_NIGERIA-2021-HUMAN-RIGHTS-REPORT.pdf* (accessed 19 August 2023).

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Lawyers, federal government officials, prosecutors, diplomats, and religious leaders have acknowledged that the NPF is corrupt.[1382]

Furthermore, Human Rights Watch reports that corruption within the Nigeria Police Force involves senior and junior officers who carry out their duties without fear of being held accountable by higher authorities. Aside from collecting money from motorists, the Nigeria Police Force (NPF) is also involved in charging illegal bail fees. In some cases, even when bail is not necessary, the police would demand payment to release a suspect. The amount charged varies depending on the offence and is often based on the social status of the detainee. If the detainee is unable to pay the requested amount, they may remain in the police station for a prolonged period. Aside from collecting money from motorists, the Nigeria Police Force (NPF) is also involved in charging illegal bail fees. In some cases, even when bail is not necessary, the police would demand payment to release a suspect. The amount charged varies depending on the offence and is often based on the social status of the detainee. If the detainee is unable to pay the requested amount, they may remain in the police station for a prolonged period.

The United States asserted that the low wages and salaries paid to the officers are part of the cause of corruption in the Nigeria Police Force (NPF).[1383] The current entry-level salary for a police constable is not enough to support a typical family.[1384] Moreover, officers experience months of unpaid or delayed salaries.[1385] This creates an environment that promotes unprofessional, corrupt, and risk-averse law enforcement strategies, such as extortion.[1386] One worker revealed that more than 90% of the NPF live below the poverty line, and civil servants struggle to afford private school fees for their children when the public system is not working. This is why corruption is so pervasive in the force.[1387]

[1382] As above.

[1383] D Xu ‘ Local trust and national stability: A desk study on the Nigeria police force prepared for the international criminal investigates training assistance program (ICITAP), US Department of Justice’ *https://www.justice.gov/criminal-icitap/file/1492176/download* (accessed 31 October 2023).

[1384] As above.

[1385] As above.

[1386] As above.

[1387] As above.

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The Police Trust Fund Act has introduced the Police Trust Fund, which aims to recognize and reward members of the Nigeria Police Force who have shown outstanding service.[1388] The fund also aims to provide financial support to the families of deceased police officers, including covering funeral expenses.[1389] However, despite passing the Police Trust Fund Establishment Act in 2019, the government has yet to establish a board to oversee the trust fund. It took six years for the board to be established for the trust fund, which is supposed to support the welfare of the police, but it is not yet fully operational.[1390]

7.5.4 Lack of Training

The importance of training for NPF officers must be recognised for modern-day policing.[1391] However, the mandatory training provided by NPF needs revision to meet the needs of conventional or community policing.[1392] Assistant Commissioner Grave Longe from the NPF training department stated that the current training program for recruits, which lasts between six to nine months, is inadequate.[1393] There needs to be more emphasis on human rights training in the current training program, which primarily focuses on teaching recruits how to march, salute, recognize rank insignia, and memorize the law.[1394]

The Chairman of the Board of Trustees of the Nigeria Police Trust Fund, IGP Suleiman Abba, through the Public Relations Officer, revealed that a reform committee was established to tackle challenges within the Nigeria Police Force.[1395] The committee identified four key issues: inadequate funding, insufficient manpower, poor recruitment and training processes, and lack of special attention to the welfare of the police.[1396]

[1388] Sec 3 of the Nigeria Police Trust Fund (Establishment) Act, 2019.

[1389] Secs 5 and 6 of the Nigeria Police Trust Fund (Establishment) Act, 2019.

[1390] As above.

[1391] D Xu ‘ Local trust and national stability: A desk study on the Nigeria police force prepared for the international criminal investigates training assistance program (ICITAP), U.S Department of Justice’ *https://www.justice.gov/criminal-icitap/file/1492176/download* (accessed 31 October 2023).

[1392] As above.

[1393] As above.

[1394] As above.

[1395] CEOAFRICA ‘Lack of funding, training, welfare, equipment limiting Nigeria police-NPTF’ 16 November 2020. *https://www.ceoafrica.com/newsdetails.php?tabnews=74606* (accessed 5 November 2023).

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Moreover, the Rule of Law and Accountability Advocacy Centre (RULAAC) asserted that the NPF inherited the culture of violence that remains from the colonial police.[1397] Toyin Falola noted that the then British government in Nigeria faced a dilemma: on the one hand, appearing and acting civilized, but on the other hand, mandating its colonial police to employ force and sometimes an extreme amount of it, including Maxim guns to pacify the angry uncivilised Nigerians.[1398] Although this may seem like a thing of the past, there are still Nigerian detention centres where torture is still practised.[1399] The notion that torture is a legitimate means of extracting information remains prevalent among both police officers and the general public.[1400]

Police misconduct remains a critical concern in Nigeria, caused by inadequate training and poor welfare packages that lead to brutality and other forms of misconduct.[1401] Sahara Reporters report that the officials lack adequate forensic capabilities, equipment, and investigation training.[1402] This implies that the NPF can only rely on confessional statements,

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[1396] As above.

[1397] *Sahara Reporters* 'Why torture remains prevalent in Nigeria-RULAAC' 26 June 2021 https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaachttps://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac (accessed 01 November 2023).

[1398] T Falola Colonialism and violence in Nigeria (2009) 6 and 7.

[1399] Amnesty International 'Nigeria: Stop the medieval witch hunt' 12 January 2018 https://www.amnesty.org.uk/nigeria-torture#:~:text=Almost%2014%2C000%20of%20you%20signed,known%20locally%20as%20'Guantanamo'.(accessed 23 October 2023). See also, *Sahara Reporters* ' How five suspects died within two days in Nigeria police cells in Imo State-RULAAC petitions inspector-General over ruthless torture, extrajudicial killings by policemen' 11 October 2023 https://saharareporters.com/2023/10/11/how-five-suspects-died-within-two-days-nigerian-police-cell-imo-state-rulaac-petitions (accessed 29 October 2023).

[1400] *Sahara Reporters* 'Why torture remains prevalent in Nigeria-RULAAC' 26 June 2021 https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaachttps://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac (accessed 01 November 2023).

[1401] C Egboboh 'Poor welfare, inadequate training, major cause of police brutality in Nigeria-NOIPolls' 19 July 2019 https://businessday.ng/uncategorized/article/poor-welfare-inadequate-training-major-cause-of-police-brutality-in-nigeria-noipolls/ (accessed 4 November 2023).

[1402] *Sahara Reporters* 'Nigeria police opens up: We lack training, bomb dogs, explosive detectors to check terrorism' 12 September 2011 https://saharareporters.com/2011/09/12/nigeria-police-opens-%E2%80%9Cwe-lack-training-bomb-dogs-explosive-detectors-check-terrorism%E2%80%9D See also, C Egboboh 'Poor welfare, inadequate training, major cause of police brutality in Nigeria-NOIPolls' 19 July 2019 https://businessday.ng/uncategorized/article/poor-welfare-inadequate-training-major-cause-of-police-brutality-in-nigeria-noipolls/ (accessed 4 November 2023).

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which could lead to the interrogation and torture of detainees. However, to move away from confessional statements, the NPF must invest in forensic capabilities and officer training to better serve Nigerians' needs.

7.6 CONCLUSION

The use of torture is prohibited by the Anti-Torture Act 2017, the 1999 Constitution, and the Administration of Criminal Justice Act 2015. Despite this, torture is still taking place. The ACJA 2015 aims to improve the management of criminal justice institutions and ensure the speedy dispensation of justice while safeguarding the rights and interests of suspects, defendants, and victims. Section 15 of the ACJA requires the personal data of arrested persons to be recorded within 48 hours of arrest, and section 16 establishes a Central Criminal Record Registry. Section 33 requires the police to report to the supervising magistrate every month, and section 468(1) establishes a monitoring committee to ensure the practical application of the ACJA. Despite these measures, adequate safeguards still need to be improved, and there are consistent holding and pre-trial detention centres.

The Nigerian police rely on confessional-based evidence, increasing the torture risk. To prevent torture, the police need to be trained on alternative methods of interrogation and investigation, including forensic laboratory and scientifically induced evidence.

Moreover, the National Committee on Torture, responsible for visiting detention centres and making recommendations, lacks the necessary support, including funding, hindering its ability to carry out its mandates. This implies that the NCAT must be supported to achieve its mandates, including financial support to prevent interference from the executive.

In conclusion, there are two major obstacles that have meant that the legislative prohibition on torture has had little impact, in reality. The first is the failure to carry through the legislative requirements into actual implementation. The second is the lack of a clear and effective institutional framework that would enable compliance with the legislation.

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CHAPTER EIGHT
CONCLUSION AND RECOMMENDATIONS

8.1 CONCLUSION

There is continuous advocacy for the prevention of torture, especially in a country like Nigeria, where torture is used by law enforcement agencies mostly for their own gain and benefit. In accordance with its main goal, this study was to analyse how Nigeria has incorporated and institutionalised the international legal prohibition against torture within its domestic laws.

The study began by analysing the standards and obligations outlined in the international treaties prohibiting torture. The United Nations Convention on Torture prohibits torture and provides for an accountability mechanism. It obligates States to take the necessary legislative, administrative, judicial, and other appropriate measures to prevent torture. Similarly, the African Charter on Human and Peoples' Rights (ACHPR) provides that every individual has the right to dignity inherent in all human beings. It further prohibits all forms of exploitation, slavery, torture and inhuman treatment. While the international standards set out obligations, Nigeria has ratified these international standards and domesticates some of it into its national laws. Which implies that it applies all over the federation. However, torture still persists in Nigeria.

This thesis has argued that, though Nigeria has ratified and domesticated these international standards against torture, the problems associated with the persistent use of torture in Nigeria arise not from the process of ratification or domestication of the international standards but rather from the implementation. These international standards are indeed applicable in Nigeria by virtue of their domestication and the human rights nature which court relies on when making interpretations.

Moreover, before the Anti-Torture Act 2017, there exist the Constitution of Nigeria, 1999, and the Evidence Act 2017 which prohibits the use of torture but not to the extends of the Anti-Torture Act 2017 that prevents and prescribes punishment for the perpetrator of torture. However, with the Anti-Torture Act 2017 and the Administration of Criminal Justice Act 2017, the use of torture amongst the law enforcement agencies persists. Thus, that calls for consideration of whether the Anti-Torture Act 2017 is in fact, an effective domestication of

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the International Standards against torture. The thesis has argued that the definition of the Anti-Torture Act 2017 is in fact broader than UNCAT as it allows to private individuals apart from those in official duties. It further prohibits the court from relying on evidence obtained through torture, which is also prohibited by the Evidence Act 2011. However, this thesis has argued that, though the Anti-Torture Act 2017 aimed to prevent torture, there is many loopholes, as it does not protect witnesses adequately nor provide amnesty, immunity and statutory limitations. This raises the question of whether torture is absolutely prohibited in Nigeria. Thus, this shows a defect in the legal system and the legislation available to prevent torture in Nigeria. While there is other legislation available such as the Police Act 2020, Evidence Act 2011 and Administration of Criminal Justice Act 2015 to prevent torture, this thesis shows that these laws are words without deeds as there is continuous use of torture arising from the lack of implementations.

Linked to the lack of adequate domestic legislations to prevent torture is an effective national institution mechanism, which raises the questions of what institutions are available in Nigeria to prevent torture. This thesis argued that part of the duties of an NPM is to visit places of detention, which entails that they must be independent of the government to carry out their duties, and they must be able to appoint their own staff and have office space. Thus, the questions are whether the NCAT is independent and is able to carry out its functions without hindrances from the government. This thesis concludes that the NCAT and the NHRC are weak institutions with lack of the support from the Federal government that is needed to carry out their functions of visitations. The study further concludes that the NCAT does not have the legal backing required by the OPCAT nor does it appoint its own personnel.

Moreover, the study has shown that the lack of implementation and weak institutions reveals the lack of awareness and education regarding human rights among the police. Also, the study indicated that torture occurs due to the lack of an effective monitoring system of detention centres. Thus, while the legislation is defective and there are weak institutions, the question to ask is whether the Anti-Torture Act 2017 is in fact used. This thesis has argued that there is also a lack of implementation of the necessary safeguards presented in the Anti-Torture Act 2017. While there is the provision on the non-use of evidence obtained through torture, this thesis has argued that there is still persistent use and overreliance on evidence obtained through torture. It has further noted that there is a lack of implementation and low reliance on the Anti-Torture Act 2017 in law courts. It has further noted that there is minimal

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access to lawyers by detainees, and lack of medical facilities and personnel to attend to detainees. There continues to be a lack of an effective complaints systems and lack of implementation of the electronic recording system by several interrogations officers.

On this note, the question remains if there will ever be zero tolerance on torture in Nigeria, given that such zero tolerance is difficult to ascertain, since there is a seemingly defective Anti-Torture Act 2017 with lack of implementation and low awareness among judges, lawyers and the law enforcement officers. Moreover, the lack of prevention of torture further includes the lack of effective institutions, which begs the questions if at all these institutions are ever going to prevent torture as prescribed by the international standards. Thus, for the prevention of torture in Nigeria to be effective, there needs to be adequate legislation that is being implemented and adequate resources and independence for the NCAT as prescribed by the international standards. Until then, torture in Nigeria may continue among the law enforcement agencies.

8.2 RECOMMENDATIONS

Based on the findings presented, it is recommended that the Nigerian government take a comprehensive and all-encompassing approach to implement international obligations against torture in Nigeria effectively. This approach should include aligning the national legal framework with international standards. However, it is essential to note that the mere promulgation of laws is insufficient to prevent torture. In addition, effective measures to prevent torture must include the existence of independent National Preventive Mechanisms (NPM), provision of a medical examination upon arrest and release, training for personnel, access to legal representation and medical attention, notification to families, information about their rights, access to complaints mechanisms, and the ability to record audio and video in police detention centres and vehicles. In summary, this research recommends the following:

8.2.1 Access to Detention Centres for Monitoring

The Chief Judge of each State, as prescribed by the Administration of Criminal Justice Act 2015, is expected to visit detention centres every month for inspection purposes. The visitation extends to the Magistrate within their jurisdictions. Both the Chief Judge and the Magistrate are expected to inspect the police records that contain the arrest records and

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arraignment of suspects and, in many circumstances, are expected to grant bail when appropriate.

Moreover, there is limited visitation to places of detention in Nigeria despite the establishment of the Administration of Criminal Justice Act 2015. The visitation extends to be limited to civil society organisations and the NCAT. In circumstances where visitation occurs, it is difficult for the civil society organisation and the NCAT to ascertain the condition of the detention centres as, in most cases, the detainees concerned would have been removed, and evidence would have been destroyed. The visitation implies that it must not be announced by the visiting body, as they should be given the privilege to visit the place of detention of their choice without informing the detention officials.

8.2.2 Improve the NCAT

The Nigerian Government ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in July 2009 and has since inaugurated the National Committee against Torture (NCAT) as the national institution available to prevent torture. The NCAT, however, has yet to have a legislative mandate that codifies its existence as an act of parliament, nor does it have offices across the nation. This implies that the NCAT's instrument needs to specify where it receives its funding or how it appoints its chairman or any of the staff.

It currently has its Secretariat at the NHRC building in Abuja; however, it should be able to extend its work to office locations in other parts of the country or zones.

The NCAT also lacks operational independence, which implies that for it to be able to prevent torture, it must be able to function without the influence of the Executives, as the NCAT is currently placed within the Federal Ministry of Justice.

Moreover, the NCAT needs a platform to receive complaints comparable to the platform of the NHRC, which has a website where citizens can lodge complaints. The NCAT is charged with the responsibility of receiving complaints, conducting regular visitations to places of detention centres and examining allegations of torture; however, since it does not have the legislative documents establishing it, nor does it have a website where it can receive complaints, or have adequate financial resources, it does not have the requirement as prescribed by OPCAT to be an NPM.

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To prevent torture, the government needs to finance the NCAT and allow for its independence by first allowing it to be constituted legally by an act of parliament. This implies that it has its own budget and can appoint its own staff and pay them accordingly. It can also perform its visitation mandates without waiting for the Ministry of Justice's approval or release of funds.

8.2.3 Adequate Implementation of Essential Safeguards

Nigeria has made commendable strides in preventing torture by enacting several laws, including the Anti-Torture Act 2017, the Administration of Criminal Justice Act 2015, the Evidence Act, and the Constitution of Nigeria,1999. These laws establish necessary measures that aid in the prevention of torture.

Chapter Three of this research indicates a lack of systematic records of arrest and detention in Nigeria. Though the Administration of Criminal Justice Act 2015 requires the police to keep records of arrests, it is not being adequately implemented. This is mainly due to a lack of political will and resources, as the police are not adequately funded to gather evidence of arbitrary arrests, illegal detention and prolonged detention. This lack of proper records means that the police do not have statistics on how many of its officers have perpetrated torture, which in turn hampers effective investigation and prosecution of torture allegations. However, the availability of centralised records that show the number of detainees, arrests, and allegations of torture could help to keep track of the units where torture is mostly perpetrated.

Moreover, having the right to an independent medical examination is essential in documenting cases of torture. An independent medical practitioner should perform the examination when a detainee is apprehended at a detention centre. The Former Special Rapporteur on torture has stressed that medical assessments should be conducted regularly upon admission, at intervals during confinement, upon release, during all transfers, and upon request. Throughout the entire detention period, appropriate medical examinations should be made available.[1403]

[1403] The APT provides that the medical examination is key, providing that the physician is independent and receives appropriate training to document torture and other ill-treatment. The safeguard can be strengthened in both law and practice by ensuring the confidentiality of the medical examination (sometimes not secured as the exam occurs In the presence of the police) and preventing any actions by doctors that contribute to acts of

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Further, the Nigerian government needs to prevent torture by ensuring that all detention centres have adequate medical facilities and independent medical practitioners. The detainees should be allowed access to medical examinations without any cost or delays from officers. This implies having detainees checked upon arrest and after interrogation and regularly in all police cells and prisons.

To ensure the safety and well-being of detainees, it is proposed that all police stations have a fully equipped medical clinic with a dedicated medical officer stationed within the intake department. This medical officer will be responsible for assessing the condition of detainees upon their arrival and prior to their release. Additionally, it is recommended that a separate medical officer be assigned to the interrogation department to assess the medical status of detainees both before and after questioning.

Moreover, audio or video recording interrogations must be made mandatory for the police officers and all law enforcement officers in charge of interrogations. The APT asserted, 'Police and others speak positively of the effect of audio and video technology when it has been used. Police are said to have been more restrained when interrogations were videoed'.[1404] The use of video and audio recording is established in the Administration of Criminal Justice Act 2015, which implies that the Ministry of Justice and the Office of the Inspector General of Police need to equip and mandate every officer in charge of investigation to take video investigation that will be stored in the cloud and accessible to the court without doctoring.

In 2008, a presidential committee highlighted that the Nigeria Police Force suffered from severely compromised standards, leading to widespread power abuse. This was due to the presence of a significant number of unqualified, undertrained, and ill-equipped police officers, which contributed to the poor state of the police force.[1405] Therefore, it is crucial for the Nigerian government to educate and create awareness among police officers, particularly those stationed in rural areas, about human rights and the prohibition of torture.

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torture. See Association for the Prevention of Torture 'Yes, torture prevention works: Insights from a global research study on 30 years of torture prevention' (2016) 18.

[1404] Association for the Prevention of Torture 'Yes, torture prevention works: Insights from a global research study on 30 years of torture prevention' (2016) 22.

[1405] A joint report to the Universal Periodic Review (UPR) by Prisoners' Rehabilitation and Welfare Action (PRAWA) and network on Police Reforms in Nigeria (NOPRIN) 'Torture and extrajudicial killings in Nigeria'.

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8.2.4 Accessible Complaint System

Effective complaint procedures are a fundamental safeguard that helps detainees understand that their rights are being respected. Effective complaints can take different forms, but they should be confidential, impartial, and accessible to detainees. However, in most cases, a detainee can first complain at the Human Rights Desk of a police station. This means that a detainee can only file complaints to the officers who manage the Human Rights Desk, who are police officers' colleagues. Furthermore, this research has shown that these human rights desks lack independence and are absent from most police stations in Nigeria.

The National Human Rights Commission (NHRC) has established offices throughout the country. However, to adequately receive complaints, it is recommended that the commission open a complaint system or unit in each police station with staff independent of the police.

The NCAT, a national mechanism to prevent torture, has the ability to make recommendations. However, it lacks independence and the ability to receive complaints as it only has one office in Abuja's National Human Rights Commission secretariat. Additionally, it needs the ability to open offices across the 36 States of Nigeria as it depends on the executives for its function and finances. Therefore, there is a need to have a website that is easy to navigate for detainees or anyone with internet access to complain.

8.2.5 Accountability

To prevent the use of torture in Nigeria, there needs to be a reliable accountability system in place. Accountability requires timely investigations and prosecution of those who have committed acts of torture. However, the current accountability mechanism in Nigeria is very weak. As demonstrated in recent research, the government uses disciplinary boards to investigate police officers who have committed crimes, including the use of torture while on duty. However, the results of these investigations are not always made public. The NCAT should have a division that is independent to conduct investigations and make its findings public. Therefore, it is recommended that the Nigerian government establish a division within NCAT with the capacity to investigate perpetrators of torture and make its findings public.

The UNCAT envisages three aims, which includes the prevention of torture, State obligations to ensure justice and the availability of redress to the victims of torture. While those three

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pillars are important, the obligation to investigate the allegation of torture helps in the realisations of these pillars.[1406] Thus, the questions that one needs to ask is whether the current NCAT or the NHRC has the ability to conduct investigation. If properly established, as analysed in the previous chapters, they may be able to provide investigation. However, the Human Rights Desk at each police station may not be able to maintain independence as there are the same set of officers. Thus, the benefit of a division within the NCAT which is located in each police station will be to provide a quick independent investigation on torture and make its decision on erring police officers.

The composition of the division should include a division head who oversees the division investigation on police in each police station. The division should include medical doctors/nurses, forensic specialist, legal professionals and trained investigators. The division needs to reflect the diversity of each community where the police station is located. The division should be located close to each police station (not necessary in the same building).

The mandate of the division shall include the ability to install electronics devices in every aspect of the police station and monitor them, to be able to receives complaints from members of the public and the detainees and be able to investigate the torture. The investigation needs to be effective, which implies that the division needs to consider that the investigation must be prompt, impartial, independent and thorough.[1407] The investigation of the division should be done by considering the principle of independence and impartiality. This implies that officials involved in conducting investigations and making of decision cannot be part of the same institutions as the officers that are being investigated; this is one of the reasons why the Human Rights Desk at each police station is ineffective. This also includes that the officials making the investigation and decision making must be impartial in conducting their investigation.

Also, the investigation must be prompt, which requires that in the absence of an express complaint, investigations should be carry out promptly where there is reasonable belief that torture has been committed. The importance of prompt investigation helps the victim to have

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[1406] United Nations General Assembly 'Interim report of the Special Rapporteur on Torture and other Cruel, Inhuman or degrading treatment or punishment: Note by the Secretary-General' at para 21 23 September 2014 A/69/387.

[1407] European Committee for the Prevention of Torture and Inhuman or Degrading treatment or Punishment, CPT Standards, CPT/Inf/E (2002)1-Rev.2013.

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an assurance of protection and that clears the doubt that the trace of torture may disappear. This implies that the division needs to carry out investigation without delay, which could be within hours or in few days after the suspicion of torture.

8.3 LIMITATIONS AND FUTURE RESEARCH

In the current study, an extensive investigation was conducted into the legal incorporation and institutionalisation of the international and domestic legal prohibition of torture in Nigeria. Although a comprehensive review of several important aspects has been undertaken, a number of substantive limitations have been identified in respect of which further research is needed.

There is a need for further research on various aspects of this topic, including the prohibition of torture by non-State actors in Nigeria. Despite the fact that the Anti-Torture Act 2017 expands the definition of torture to include the conduct of non-State actors, it remains unclear how much attention the Government pays to the conduct of such individuals. Thus, in order to understand the responsibility of non-State actors for acts of torture, it is necessary to analyse national law and practice as well as the gaps in the legal framework. UNCAT limits the definition of torture to State officials, whereas in reality, torture is also perpetrated by armed groups, corporations and companies. As set forth in UNCAT, in the case of *Elmi v Australia*,[1408] when there is no State authority, non-State actors that also exercise quasi-governmental authority may be subject to UNCAT's article 1 definition. The question arises, however, since there is no power for non-State actors in Nigeria to perform quasi-governmental functions. Could this mean that they cannot commit acts of torture? Additionally, if the State fails to prevent, investigate, and prosecute non-State actors who perpetrate torture, the State may be held accountable. The question, however, is: Has any Nigerian court prosecuted a non-State actor for torturing? As a result, future research could explore the prohibition of torture by non-State actors.

Further, while this study discusses legal and institutional frameworks and their effectiveness, it could benefit from incorporating perspectives from those who have experienced torture. Aborisade and Oni analyses how Nigerian police violated human rights, constitutional provisions, and the Criminal Code during the arrest, detention, and interrogation of female

[1408] *Sadiq Shek Elmi v Australia* Communication No. 120/1998, CAT/C/22/D/120/1998.

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suspects.[1409] This study reveals poor adherence to the constitutional provisions, with infractions including sexual assault, intimidation, and deception reported.[1410] Focusing on the experiences of torture victims will provide a better understanding of the challenges in seeking justice, and difficulties in obtaining support services in Nigeria.

Though this study discusses the political motivations for torture, a more comprehensive analyses of the political and socio-economic factors contributing to torture persistence in Nigeria is required. An investigation of factors such as power dynamics, and societal attitudes towards torture could be explored further.[1411]

Intersectional analysis, which analyses the impact of factors such as gender, ethnicity, religion, and socio-economic status on torture and access to justice is of paramount importance.[1412] Such an investigation could disclose discrimination patterns and identify marginalised groups disproportionately affected by torture.

In order to provide a comprehensive assessment of the effectiveness of anti-torture measures, it would be necessary to assess their long-term effects beyond immediate results, such as changes in the culture of institutions, public attitudes towards torture, and the prevention of future abuses. It is also crucial to analyse the psychological effects of torture on victims, perpetrators, and society, as well as factors influencing the perpetration and justification of torture in Nigeria. Lastly, it is imperative[1413] to study societal attitudes toward torture, social norms regarding violence and coercion, and the role of social movements in advocating for anti-torture measures.[1414]

[1409] R A Aborisade & S Oni 'Crimes of the crime fighters: Nigerian police officers' sexual and physical abuses against female arrestees' (2020) 30 (4) *Women and Criminal Justice* 243 263.

[1410] As above.

[1411] See eg M Tarrant, N Branscombe, R H Warner & D Weston 'Social identity and perceptions of torture: It's moral when we do it' (2012) 2 (48) *Journal of Experimental Social Psychology* 513 518. The authors investigated the use of torture and concluded that torture is justifiable if it is perpetrated by an ingroup within the same society. This raises the question of whether torture is justifiable in some Nigerian cultures and how it is perceived.

[1412] See eg L Oette 'The prohibition of torture and persons living in poverty: From the margins to the centre' (2021) 70 *International and Comparative Law Quarterly* 307 341; and also, W Gorman 'Refugee survivors of torture: Trauma and treatment' (2001) 5 (32) *Professional Psychology: Research and Practice* 443 451.

[1413] The questions that need to be asked are: How do the Igbo, Yoruba, and the Hausa view torture? Is it considered a part of their culture, and is it still important today? Although the Anti-Torture Act of 2017 completely prohibits torture, could it be allowed in specific cultures if it is not carried out by State officials? This implies that cultural and historical context can influence the attitude towards torture.

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[1414] See eg A I Prince 'Social movements and human rights advocacy in Nigeria' (2023) 1 (8) *Journal of Law and Global Policy* 42 74 The author analyses the importance of social movements in human rights advocacy, implying that social movements have gained momentum and proven to be influential catalysts of social change.

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ANNEXURE: The 2017 Anti-Torture Act[1415]

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Government *Notice No.* 0

The following is published as Supplement to this *Gazette*:

Act No.	*Short Title*	*Page*
21	Anti-Torture Act, 2017	A205-211

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Annual Subscription from Ist January.2019 is Local: N45.000.00 Overseas: N60.500.00 I Surface Mail) N75.000.00 [Second Class Air Mail]. Present issue N1.500 per copy. Subscribers who wish to obtain Gazette after 1st January should apply to the Federal Government Printer. Lagos for amended Subscriptions.

[1415] The copy of the Anti-Torture Act 2017 as published in the official Gazette is available at https://archive.gazettes.africa/archive/ng/2018/ng-government-gazette-dated-2018-01-09-no-3.pdf accessed on 31 January 2024 However, there are many copies online that are bills but not the actual Anti-Torture Act 2017. I have thus included a copy of the Act.

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ANTI-TORTURE ACT, 2017

ARRANGEMENT OF SECTIONS

Section :

1. Duty of Government.
2. Acts of torture.
3. No justification for torture.
4. Non-admissibility of evidence obtained as a result of torture.
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ANTI-TORTURE ACT, 2017

ACT No. 21

AN ACT TO PENALISE THE ACTS OF TORTURE ANO OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT AND PRESCRIBE PENALTIES FOR SUCH ACTS; AND FOR RELATED MATTERS

2

[*20th of December,* 2017] Commence-ment

ENACTED by the National Assembly of the Federal Republic of Nigeria-

1. The Government shall- — Duty of Government.

(a) ensure that the rights of all persons, including suspects, detainees and prisoners are respected at all times and that no person placed under investigation or held in custody of any person in authority shall he subjected to physical harm, force, violence, threat or intimidation or any act that impairs his free will: and

(b) fully adhere to the principles and standards on the absolute condemnation and prohibition of torture set by the Constitution of the Federal Republic of Nigeria and various international instruments to which Nigeria is a State party. — Act No. 23. 1999.

2.-(I) Torture is deemed committed when an act by which pain or suffering. whether physical or mental. is intentionally inflicted on a person to — Acts of Torture.

(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 a third person 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 provided that it does not include pain or suffering in compliance with lawful sanctions.

(2) For the purpose of this Act, torture includes-

(*a*) physical torture, which refers to such cruel, inhuman or degrading treatment which causes pain. exhaustion. disability or dysfunction of one or more parts of the body. such as-

(*i*) systematic beatings, head-bangings, punching, kicking, striking with rifle butts and jumping on the stomach,

(*ii*) food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten,

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(iii) electric shocks.

(iv) cigarette burning, burning by electrically heated rods, hot oi I. acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wounds,

(v) the submersion of the head in water or water polluted with excrement, urine, vomit or blood,

(vi) being tied or forced to assume fixed and stressful bodily positions,

(vii) rape and sexual abuse, including the insertion of foreign bodies into the sex organs or rectum or electrical torture of the genitals,

(viii) other forms of sexual abuse,

(ix) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears or tongue and any other part of the body,

(x) dental torture or the forced extraction of the teeth,

(xi) harmful exposure to the elements such as sunlight and extreme cold,

(xii) the use of plastic bags and other materials placed over the head to the point of asphyxiation:

(xiii) the use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as administration of drugs to induce confession or reduce mental competency, or the use of drugs to induce pain or certain symptoms of disease, or

(xiv) other forms of aggravated and deliberate cruel; inhuman or degrading physical or pharmacological treatment or punishment: and

(b) mental or psychological torture, which is understood as referring to such cruel, inhuman or degrading treatment calculated to affect or confuse the mind or undermine a person's dignity and morale. such as-

(i) blindfolding.

(ii) threatening a person or such persons related or known to him with bodily harm, execution or other wrongful acts,

(iii) confinement in solitary cells put up in public places,

(iv) confinement in solitary cells against their will or without prejudice to their security,

(v) prolonged interrogation to deny normal length of sleep or rest,

(vi) causing unscheduled transfer of a person from one place to another, creating the belief that he shall be summarily executed,

(vii) maltreating a member of the person's family,

(viii) causing the tortured sessions to be witnessed by the person's family. relatives or any third party,

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(*ix*) inducing generalised fear among certain sections of the population,

(*x*) denial of sleep or rest,

(*xi*) inflicting shame by stripping a person naked, parading him in a public place, shaving his head or putting marks on his body against his will, or

(*xii*) confinement in jails and prisons under intolerable and inhuman conditions or degrading mental treatment or punishment.

No Justification for torture.

3. 1) No exceptional circumstances, whatsoever, whether 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.

(2) Secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out are prohibited.

Non-admissibility of evidence obtained as a result of torture.

4. Any confession. admission or statement obtained as a result of torture shall not be invoked as evidence in a proceeding. Except against a person accused of torture as evidence that the confession, admission or statement was made.

Right to complain.

5. (1) A person who has suffered or alleges that he has been subjected to torture shall have the right to complain to and to have his case promptly and impartially examined by a competent authority.

(2) The competent authority under subsection (I) shall take steps to ensure that the complainant is protected against all ill-treatment or intimidation as a consequence of his complaint or any given evidence.

Assistance in filing complaint.

6. A person who has suffered torture and other cruel. inhuman and degrading treatment or punishment, or any interested party on his behalf. may seek legal assistance in the proper handling and filing of the complaint from the Human Rights Commission. and non-governmental organisations and private persons.

Right to examination.

7. (I) A person arrested. detained or under custodial investigation shall have the right to be informed of his right to demand a physical and psychological examination by an independent and competent doctor of his own choice after interrogation. which shall be conducted outside the influence of the police or security forces.

(2) The medical report shall include in detail the history and the findings of the physical and psychological examination and shall be attached to the custodial investigation report; otherwise. such investigation report is deemed void.

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(3) The medical reports shall. among others, include the-

(a) name. age and address of the patient:

(b) name and address of the next of kin of the patient;

(c) name and address of the person who brought the patient for physical and psychological examination:

(d) nature and probable cause of the patient's injuries and trauma:

(e) approximate time and date when the injury or trauma was sustained;

(f) place where the injury or trauma was sustained;

(g) trine. date and nature of treatment necessary: and

(h) diagnosis, the prognosis or disposition of the patient.

(4) A person who does not wish to exercise the rights under this section may knowingly and voluntarily waive such rights in writing.

Liability.

8. (1) 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.

(2) A superior military police or law enforcement officer or senior government official who issues an order to lower ranking personnel to torture a victim for whatever purpose is equally liable as the principal.

(3) An order from a superior officer or from a superior in the office or public authority shall not be invoked as a justification for torture.

(4) The immediate commanding officer of the unit concerned of the security or 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.

Penalties.

9.-(I) A person who contravenes section 2 of this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding 25 years.

(2) Torture resulting in the loss of life of a person is considered as murder and shall be tried and punished under the relevant laws.

(3) The penalties specified under this section shall be without prejudice as to the prosecution of other crimes and other legal remedies available to the victim under other existing laws. including the right to claim for compensation.

Regulatory agency.

10. The Attorney-General of the Federation and other Jaw enforcement and investigative agencies shall ensure that the function of overseeing the implementation of this Act shall be specifically assigned to a particular office or unit of the agency concerned.

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11. The Attorney-General of the Federation and other concerned parties shall ensure that education and information regarding the prohibition against torture is fully included in the training of law-enforcement personnel, civil or military, medical personnel. public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. — Education campaign.

12. The Attorney-General of the Federation shall, with the approval of the President, make rules and regulations for the effective implementation of this Act. — Rules and regulations.

13. All laws, rules and regulations that are contrary to, or inconsistent with the provisions of this Act are repealed or modified accordingly. — Repeal.

14. This Act may be cited as the Anti-Torture Act, 201 7. — Citation.

I certify, in accordance with Section 2 (I) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the Bill passed by both Houses of the National Assembly.

MOHAMMED ATABA SANI-OMOLORI
Clerk to the National Assembly
14th Day of November. 2017

EXPLANATORY MEMORANDUM

This Act makes comprehensive provisions for penalising the acts of torture and other cruel, inhuman and degrading treatment or punishment. and prescribes penalties for the commission of such acts.

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SCHEDULE TO THE ANTI-TORTURE BILL, 2011

(I) *Short Title of the Bill*	(2) *Long Title of the Bill*	(3) *Summary of the Contents of the Bill*	(4) *Date Passed by* the Senate	(5) *Date Passed by the House of Representatives*
Anti-Torture Bill.2017:	An Act to penalise the acts of torture and other cruel. inhuman and degrading treatment and prescribe penalties for such acts: and for related matters.	Th is Bi 11 ma!-es comprehensive, e provisions for penalising the acts of torture and other cruel. inhuman and degrading treatment or punishment. and prescribes penalties for the commission of such acts.	13th July. 2017.	1st June, 2016.

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria. 2004.

I ASSENT

MOHAMMED ATABA SANI-OMOLORI
Clerk to the National Assembly
14th Day of November, 2017.

MUHAMMUDU BUHARI, GCTR
President of The Federal Republic of Nigeria
20th Day of December, 2017

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