The Nigerian Anti-Torture Act of 2017 and Its Compatibility with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the African Charter on Human and Peoples' Rights

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Abstract

Article 2 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) obligates states to take measures to prevent torture. While many states have provisions that prohibit torture, in most cases these do not align with the jurisprudential anti-torture framework required by UNCAT. Before the advent of the Anti-Torture Act, the Nigerian 1999 Constitution prohibited torture, but it was not a crime per se. Any act or omission that constituted torture usually fell under the heading of a civil claim and could also be prosecuted under the criminal or the penal code. However, most cases were prosecuted as grievous bodily harm, attempted murder, assault or murder. The 1999 Constitution failed to detail what constituted torture; in fact, the use of torture did not diminish under the Constitution. To fully apprehend the present situation in Nigeria, it is important to understand the legislative framework and its compatibility with international standards.

Keywords: torture; Anti-Torture Act; Nigeria; UNCAT; police; detentions

Background

Articles 1 to 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) set out the obligations required of state parties for domestic incorporation.[1] The state is obligated to incorporate the definition of torture into its national legislation, to take legislative, administrative and judicial measures to prohibit the practice, to prevent and criminalize it, to provide adequate penalties, to establish national jurisdiction, to set rules of interrogation, to investigate cases of alleged torture promptly and impartially, to allow victims to report torture, to exclude evidence obtained through torture, to provide redress, to allow refoulement and generally to prevent cruel, inhuman or degrading treatment.

The provisions set forth in article 5 of the African Charter on Human and Peoples' Rights (ACHPR) also prohibit torture, [2] while some of the obligations in the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (the RIG) are similar to articles 1 to 16 of UNCAT.[3] However, there are some additional obligations included in the RIG which require state parties to:

- criminalize and absolutely prohibit torture;
- define torture in accordance with article 1 of UNCAT;
- have jurisdiction over the offence;
- have the power to extradite;
- combat impunity by punishing those who perpetrate torture;
- allow victims to report torture and to provide prompt and impartial investigation;
- afford a basic procedure to safeguard those deprived of their liberty, including notification to relatives;
- give the right to medical examinations and legal assistance;
- give notification of the above rights in a language which the person deprived of their liberty understands;
- prohibit detention of the person deprived of their liberty in an authorized place of detention;
- prohibit the use of incommunicado detention;
- render inadmissible a statement extracted by torture;
- comply with conditions of detention aligned with international standards and provide adequate oversight mechanism;
- provide awareness and training for law enforcement officers, educate civil society and protect witnesses and families from intimidation and reprisal.

This article evaluates the common obligations of both treaties (UNCAT and the ACHPR) and how Nigeria has been able to meet these requirements.

Incorporation of the definition of torture in national legal systems

The Anti-Torture Act of 2017 (the Act) is an enactment of the Nigerian National Assembly that gives effect to the ratification and domestication of UNCAT in Nigeria. It is penal legislation that applies to the entire federation and to all agents of the federation and states. [4] The Act contains 13 sections with an explanatory note or long title which creates the offence of torture and punishment therefor. [5] Section 2(1) provides that:

a) " Torture is deemed committed when an act by which pain or suffering, whether physical or mental, is intentionally inflicted on a person to obtain information or a confession from him or a third person;
b) to punish him for an act he or a third person has committed or is suspected of having committed; or
c) to 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."[6]

There must be key elements before someone can allege torture in Nigeria, including the act, intent and severity of pain or suffering, which can either be mental or physical; however, the law goes further to include torture executed to extract confessional information or to punish, intimidate or discriminate at the hands of a public official or someone acting in an official

capacity, although there is an exclusion that excludes pain and suffering in compliance with lawful sanctions.

The Act gave a broader meaning to torture by a non-state actor or individual as allowed in article 1(2) of UNCAT, which permits wider application. Thus, section 2 of the Act includes a non-exhaustive list of what constitutes torture. [7] Anyone found guilty in respect of 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. [8] Furthermore, article 1 of UNCAT provides key elements that must be present before torture can be said to have taken place: torture means causing "severe pain or suffering", which can either be "physical or mental". In the *Greek case*, it was held that the Greek government's failure to provide prisoners with food, water, clothing and medical care amounted to torture. [9] Burgers and Danelius assert that the provisions of article 1 of UNCAT extend to omissions or failure to act, subject to the degree of suffering and pain. [10] *Selmouni v France* held that for an act to constitute torture, the duration of the treatment, the physical and mental effects, the sex, age and state of health of the victim, and the level of severity of the pain must be taken into consideration.[11] *Alexander Grasimov v Kazakhstan* held that a blow to the victim's kidney, sexual violence and suffocating the victim with a bag were examples of torture when severe pain and suffering are caused. [12]

While article 1 of UNCAT states that the "act of suffering and pain" is an important element, the problem is how to ascertain the severity level, as the intensity of the pain and suffering distinguishes torture from cruel and inhuman treatment. In *Ireland v United Kingdom*, to ascertain the level of severity, it was held that the threshold depends on the specific circumstance of the case, depending on the duration of treatment, the sex, age and health of the victim, and his / her mental health. [13] Ingelse asserts that it is only the victim who can determine the level of pain inflicted, as both pain and suffering are "fundamentally subjective". [14] Rodley and Pollard assert that the "intensity of pain and suffering necessary to constitute cruel and inhuman treatment must therefore be something substantially less than severe". [15] However, Manfred Nowak, the former Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, maintains that it is the powerlessness of the victim that determines what constitutes torture; although the victim is powerless, all other elements of torture, as raised in article 1, must be present.[16] In *Huri-Laws v Nigeria*, it was held that for a treatment to be regarded as torture, it must first attain some level of severity; however, determining the severity depended on several variables, such as the duration of the treatment, the effect of the physical and mental treatment on the victim, and the age, gender, and state of health of the victim. [17]

Article 1 of UNCAT's definition of torture includes the intentional infliction of pain. According to Nowak, torture is always committed with a specific purpose; it might be for extraction of a confession, information or money, punishment, preferential treatment for prisoners or the suppression of political dissent. [18] In *Josu Arkauz Arana (author) v France*, the brother and brother-in-law of the author were found to have been tortured by Spanish authorities to extract information about his whereabouts. [19] The same was held in *Hajrizi Dzemajl et al v*

Yugoslavia, where the complainants submitted that they were subjected to physical and mental suffering that could amount to torture as a punishment for an act committed by a third person. [20] However, Nowak asserts that negligent conduct is excluded from what can constitute torture; for example, when a detainee is forgotten and not given food, and in return suffers severe pain, this does not amount to torture, even though the detainee suffered a human rights abuse. If the detainee were denied food to extract a confession or information, that would amount to torture. [21] Rodley argues that in the *Greek case,* the European Commission of Human Rights held that torture had been perpetrated with an intention or purpose either to collect information and confessions or to serve as a punishment.[22]

Article 1 of UNCAT adds that the act of torture must be perpetrated by a public official acting in his / her official capacity, instigating the act or giving consent for the act to be perpetrated on the victim. [23] Nowak asserts that the definition includes torture inflicted on victims indirectly by state officials, which could include an act actively or passively agreed to. [24] However, there has been criticism of the definition of torture for it not encompassing the acts of a non-state actor. [25] In *Sadiq Shek Elmi v Australia*, the UN Committee against Torture held that in a circumstance where a state did not have a central government controlling most of its provinces, non-state actors would be considered liable for acts of torture if committed within the country's jurisdiction. [26] The African Commission on Human and Peoples' Rights, in one of its communications, held that in circumstances where a state knew the perpetration of torture was occurring in its state by non-state actors or failed to investigate the perpetration of torture by non-state actors, the state was liable. [27]

Moreover, in Nigeria, the element of "severe pain and suffering, purpose and official capacity" suffice, according to section 2(1) of the Anti-Torture Act. The provisions of the Act have not been interpreted in any Nigerian court; [28] however, other courts have interpreted the definition of torture in some of their decisions in a way that cuts across all the elements raised by article 1 of UNCAT, although most of these interpretations are based on the definition of torture in Black's Law Dictionary. [29] In *Nigeria Customs Service Board v Mohammed*, the court interpreted torture as including the infliction of intense pain on the body or mind with the purpose of punishment and to extract a confession or information.[30] The court in *Igweokolo v Akpoyibo* affirmed the same interpretation that torture was the "infliction of intense pain to the body or mind to punish, to extract a confession or information or obtain sadistic pleasure". [31] While the definition is laudable, it does not possess all the elements of torture as there is no reference to public officials participating in the act. In *Odiong v Asst IGP*, a more accurate definition was relied on by the court: "The 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."[32]

In *Ovuokeroye v State*, the appellant claimed that he had been tortured, alleging that he was hit by a gun in the mouth and stabbed in the chest and shoulder, but the court was not convinced by the evidence. [33] On appeal, the High Court set aside the judgment, and the appellant was acquitted. While the case deals with the proof beyond reasonable doubt by the

prosecution, it also deals with torture, which coerced the accused to make a confessional statement. While the law is clear on the prohibition of torture and the use of it by public officials, the police are often not prosecuted.

The absolute prohibition of torture

The prohibition of torture is absolute and non-derogable, implying that it has no limitation or exceptions. [34] Public emergencies, war, terrorism or states of emergency do not allow for the use of torture. This is affirmed in article 2(2) of UNCAT. [35] The Committee against Torture, in a General Comment, elaborates that torture cannot be justified even if it is caused by religion, political issues or the protection of the right to dignity, and is non-derogable in all territories of a state. [36] The Committee's emphasis on the phrase "no exception[al] circumstances whatsoever" emphasizes that the government of any state cannot 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 an unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violat[ing] the principle of non-derogability". [37] Articles 9 and 10 of the RIG prohibit torture even in war, the threat of war, internal political instability or public emergency, adding that "necessity, national emergency, [or] public order" may not be invoked by the government to justify torture.

The same was affirmed in section (3)(1) of the Anti-Torture Act with the phrase "no exceptional circumstances whatsoever", affirming the stipulation in UNCAT, later interpreted by the Committee against Torture, that the prohibition of torture is non-derogable. Section 3(1) of the Act added that a state of war, internal political instability (rampant in Africa) or any public emergency may not be invoked as a justification for torture. [38] In addition, section 3(2) adds that torture is not allowed even if the detention centre is secret or the detainee is in solitary confinement. This implies that no prison officer or anyone in charge of any detention centre is allowed to perpetrate torture on an offender or accused person. In particular, an order of a superior officer can never be invoked as a justification to carry out torture on a victim or defendant;[39] article 2(3) of UNCAT invalidates an order from a superior officer as an excuse to torture, while the same is affirmed in more detail in section 8 of the Act, which specifies in its subsection (1) 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 actor who committed the act of torture. Subsection (2) specifies that no superior law enforcement officer, either in the police, military or government, is allowed to give a torture order to a junior officer, and if that order is given, both the superior and the junior officer will be liable for the offence of torture. The Act adds in subsection (3) that an order from a superior cannot be invoked as a justification for torture and, in circumstances where it happens, subsection (4) provides that the immediate commanding officer of the unit will be liable as an "accessory to the crime for any act or omission or negligence on his part" that might have led to the commission of the act of torture by his / her subordinates.

The criminalization of torture and penalties for it

Article 4 of UNCAT obliges state parties to criminalize torture under their national laws, including attempts to commit torture and participation (complicity) in torture.[40] In article 4(2), state parties are obligated to ensure appropriate criminal punishment for the perpetrators of torture, consistent with the nature and gravity of the offence. Nowak asserts that where a superior officer perpetrates or instigates torture, the penalty should be commensurate with the actual offence and that mere demotion, delayed promotion or reduction in salary are not serious enough sanctions.[41] Article 4 of the RIG says that state parties to the ACHPR must ensure that torture, as specified in article 1 of UNCAT, is included and criminalized in their respective national laws, making it difficult for a court to rely on any other type of definition when interpreting torture. Article 4 of the RIG stipulates that the state must ensure that the offence of torture falls within the purview of article 1 of UNCAT, enabling court interpretation to be consonant with international standards.

Section 9(1) of the Anti-Torture Act provides that anyone who contravenes section 2 is liable to be imprisoned for a term not exceeding 25 years. This means that a person who intentionally inflicts, instigates, consents to, acquiesces in, participates in or attempts to commit torture will be liable for imprisonment. [42] Section 8 of the Act makes 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 the torture. According to section 8(3) and (4) of the Act, there can never be a justification for torture based on an order from a superior officer, and in such circumstances, the commanding officer of that unit might be liable as an accessory for failing to issue appropriate commands. However, there is no minimum term of punishment. The Act proceeds to state that torture resulting in loss of life will be considered murder and prosecuted under the relevant laws. The Act leaves the "relevant laws" open, but the Criminal Code and section 316 of the Penal Code define murder and stipulate that the penalty for murder is death. [43] The death of the victim must be the direct consequence of the act of torture without intervening factors; for example, where a victim suffers from an illness that is known by the perpetrator, that would not be an intervening factor. [44] The perpetrator would be liable, since the threshold of mens rea is purely subjective. [45]

Prior to the enactment of the Anti-Torture Act, victims relied on the provision of the Constitution and the Evidence Act 2011 to initiate prosecutions. Both of these prohibit torture and the use of involuntarily obtained statements as evidence in court; however, there were no prosecutions for officers who perpetrated torture resulting in the death of an accused person. In *Okinawa v State*, which concerned the effect of an involuntarily obtained confessional statement from an accused person, subject to a trial within a trial, the onus was on the prosecutor. [46] In this case, there were two accused persons who had been brought into police custody. The appellant, who was the accused, testified that he and the other youth (Emeka Okoloko) were tortured by the police and, as a result, Okoloko died. The appellant claimed he was first tortured by a vigilante group before they handed him and Okoloko to the police. The head of the vigilante group, during his testimony at the trial within a trial, said that:

> "We went and mount [sic] surveillance at Ebialin'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 front of Philco's house and he carried Rogers with his bikes to the town after torturing him more we now went to 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 [sic]."

The appellant alleged that when they were handed to the police, the police continued with the torture until Okoloko died as a result. It was held by the judge (aided by an autopsy report) that the boy died an unnatural death in police custody and the appellant's confessional statement was a result of torture. [47] However, after the advent of the Anti-Torture Act, the police and the vigilantes would have been prosecuted; the 1999 Constitution and the Evidence Act 2011 do not provide penalties for those who perpetrate torture. Section 9(3) of the Anti-Torture Act further states that the prosecution of torture perpetrators does not exclude torture victims from pursuing any civil claim for compensation or instigating prosecutions for other offences such as rape or extortion.

Jurisdictions of subregional courts

Article 4 of UNCAT obligates state parties to ensure that torture is criminalized, while article 5(1) goes further to provide that the national state must establish jurisdiction for the offence of torture. This implies that every province or state, including the Federal Capital Territory in Nigeria, must have administrative, judicial and legislative jurisdiction over the offence of torture. Nowak and McArthur assert that the provision of article 5 was to prevent perpetrators from moving to another province or state where torture is not criminalized. [48] Further, each state party must take legislative measures to establish jurisdiction on torture. [49] Thus, section 9 of the Act gives the court jurisdiction to penalize anyone who perpetrates torture, and section 13 gives the Act priority over all other acts in violation of the provision of the Act. Thus, by virtue of the Act being an enactment of the National Assembly, it applies all over Nigeria and establishes jurisdiction on all courts. [50]

Exclusion of evidence obtained through torture

Section 4 of the Evidence Act partly aligns with the provisions of article 15 of UNCAT (with different words that mean the same thing), stipulating that any confession, admission or statement obtained through torture may not be brought as evidence except against the perpetrators of torture. [51] Section 4 is a novel provision, displacing the provision of the Evidence Act that did not provide that evidence could be used to prosecute the perpetrators. Arguably, this will reduce the use of torture in police custody, as the police now know that they can be prosecuted for perpetrating torture.

Safeguards against torture

Article 11 of UNCAT obligates state parties to subject their interrogation rules, instructions, methods, practices and detention conditions in its territory to systematic review. With the promulgation of the Administration of Criminal Justice Act 2015 (the ACJA), the National Assembly has the power to review interrogation rules, forms of arrest and detention to change the criminal justice system and to stop torture in its jurisdiction. According to section 14 of the ACJA, an arrested person shall be taken to the police station immediately upon arrest, and section 15 requires a record showing all the details of the arrest and the accused person. According to sections 16 and 17, the police station is obligated to maintain a central criminal record registry, whose entries must be made in the presence of a chosen legal practitioner. [52] The Anti-Torture Act did not provide for the review of laws on interrogation, but arguably, the ACJA, as well as the Police Act 2020, part 7, provide necessary instructions, methods and practice, as well as arrangements for the custody and treatment of persons arrested and held in either detention centres or in prisons.

Section 35(2) of the 1999 Constitution provides for the right to remain silent and the right of an accused person to counsel. According to section 35(3), the accused person must be informed of the fact and the grounds for their arrest or detention, [53] and the police or the arresting officer must ensure that the arrested person is taken to the nearest police station within a reasonable time[54] and to court within 24 or 48 hours, depending on the closeness of the court to the police station (section 35(4) and (5)). Section 35(4)(a) and (b) stipulates that the accused person must be tried within a reasonable time, which is two months from the date of the arrest and three months in cases where the accused person is released on bail. The arrested person might also be released unconditionally or upon reasonable conditions if they are likely to avail him/herself at trial.

Under section 31 of the Police Act 2020, police officers must conduct investigations in accordance with the law and report findings to the Attorney General or the state for legal advice;[55] under section 37, any arrested person must be treated in a humane manner, with respect to his / her human dignity, and must not be subjected to any form of torture.[56] Under section 43, arrested persons must be taken to a police station immediately, and if there is no police station, s/he must be taken to the nearest reception facility for suspects. The arresting officer is obliged to inform the accused person of the allegation against him / her in the language s/he understands and to ensure that s/he is given access to legal advice from his / her counsel in the presence of the arresting officers. Section 44(1) and (2) obligates the arresting police officer to record the arrested person's details upon reaching the police station, where s/he may not be held for longer than 48 hours. These details in the report must include the alleged offence, date and circumstances of the arrest and the detainee's height, photographs and fingerprint impression. [57] If a suspect wishes to make a confessional statement, the statement must be written and, if possible, recorded on an electronic device. [58]

Complaints and investigation

One of the most effective ways of ensuring that torture is eradicated is by providing an avenue for victims to complain, leading to the conduct of an impartial and prompt investigation by competent authorities. This is detailed in both UNCAT, the ACHPR and the RIG. Article 13 of UNCAT obligates the state to ensure that victims or anyone who has been subject to torture have the right to complain, and the complaints must be examined promptly and impartially by a competent authority; article 12 gives the obligation to the state to ensure that when it is believed that torture has been perpetrated, an investigation is conducted impartially and promptly. Article 17 of the RIG obligates the state to have an accessible and independent venue for torture complaints, while article 18 provides that whenever a person who has been tortured brings a complaint, an investigation must be initiated in accordance with the Istanbul Protocol. [59] Section 5 of the Anti-Torture Act provides that the victims of torture have the right to complain to the appropriate authority, but does not specify the institution that serves as such. Section 6 later provides that legal assistance may be sought through the Human Rights Commission, non-governmental organizations and private persons. In *Onah v Okenwa*, it was held that any Nigerian who is abused has the right to make a complaint to the Nigeria Police Force (NPF).[60]

In its General Comment No 20, the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights (ICCPR) also obligates the state to conduct an investigation impartially, promptly and by competent authorities. [61] Rodley and Pollard assert that investigation can take place even in the absence of the complainant. [62] The independent and impartial investigator must not be connected to those who perpetrated the act of torture. [63] Nowak and McArthur assert that for an investigation to be prompt and effective, it must be conducted within a few hours, or at most within a few days, of the occurrence of torture. [64] In *Blanco Abad v Spain*, the Committee against Torture was of the opinion that promptness ensured that victims cannot continue to be subjected to the same act and that unless the injury is permanent, the visible signs of injury might disappear. [65] In *Mohammed Alzery v Sweden*, it was held by the HRC that an investigation conducted two years after the victim made a complaint was in breach of the ICCPR. [66] In *Zimbabwe Human Rights NGO Forum v Zimbabwe*, it was noted that the state would be in violation of the law if it had been aware of alleged torture and failed to conduct an investigation.[67] Section 5(2) of the Anti-Torture Act further provides that once a complaint has been lodged, the competent authority must examine the allegation promptly and impartially, ensuring that the complainant is protected against intimidation as a consequence of the complaint.

Article 13 of UNCAT further obligates state parties to ensure that the complainant and any witness must be protected against ill-treatment and intimidation as a consequence of the complaint or evidence given. The same applies in article 49 of the RIG, which obligates states to ensure that victims, witnesses, investigators and families are not intimidated. However, section 5 of the Anti-Torture Act fails to cover the subject of witness protection. Article 12 of the UN Basic Principles mandates that the witnesses must be protected before, during and after judicial, administrative or other proceedings that could affect the interest of the victims. [68] The protection of witnesses and victims is important in eradicating torture as it contributes

to and strengthens the institutions responsible for investigating. Thus, when witnesses are protected, they will be able to testify without fear. Although Nigeria has complied with the international standard, the Anti-Torture Act created a lacuna by not enacting legislation for the protection of witnesses. [69]

Moreover, medical reports are important for the investigation of torture, the absence of which renders the investigation nugatory.[70] Section 7 of the Anti-Torture Act affords victims of torture the right to physical and psychological examinations from a medical doctor of their choice and without any interference from the police or any member of the security force. According to subsection (2), the medical report must show the history and finding of the physical and psychological examinations, which must be attached to the custodial investigation report; however, the medical report can be waived by the victim in writing. [71]

Redress

The right to obtain redress and an enforceable right to fair and adequate compensation is enshrined in article 14 of UNCAT.[72] Rodley and Pollard assert that victims of torture must have access to a complaint mechanism under national law, which in turn must have the jurisdiction to grant compensation. [73] Nowak and McArthur assert that victims of torture must always be given access to facilities that provide them with the resources needed. [74] Article 1 of the General Comment No 4 of the African Commission on Human and Peoples' Rights declares that state parties must ensure that, both in practice and in law, the victims of torture are allowed access to redress.[75] This right is associated with 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. [76]

The UN Committee against Torture, in its General Comment No 3, stipulates that the term "redress" encompasses restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. [77] Restitution is an attempt to restore the victim to pre-torture status.[78] Compensation is intended to restore the victims economically to their status quo ante, [79] and rehabilitation encompasses medical and psychological care, which includes legal services to the victims of torture. [80] Satisfaction incorporates the notion that the perpetrator apologizes to the victims and discloses the truth, [81] while the guarantee of non-repetition ensures that there is no re-occurrence of torture to the victim. [82]

Section 9(3) of the Anti-Torture Act provides that victims of torture are entitled to redress under any existing law and have the right to be compensated. [83] The question that the Act gives rise to is: What are the existing laws that cover redress for victims of torture in Nigeria? Section 35(6) of the 1999 Constitution stipulates that in circumstances where any person has been unlawfully detained or arrested, that person is entitled to compensation and public apology; however, this section arguably does not specify whether victims of torture in particular are included. A defendant can be unlawfully detained without being tortured and others lawfully detained but subjected to torture. Section 46(1)–(4) of the 1999 Constitution ensures that in a case where any citizen in Nigeria complains that his / her rights have been infringed, s/he can apply to the Federal High Court or State High Court for redress. This

provision is reflected in part 32 of the ACJA 2015, section 319 of which provides that a judge can order a convicted person to pay compensation, medical expenses and restitutionary damages to an injured person. [84] One of the most important factors of redress is that the victim must have access to a complaint mechanism, as enshrined in the Fundamental Rights (Enforcement Procedure) Rule, which allows victims and any human rights groups to be able to address the court without the need to prove locus standi. [85]

The Anti-Torture Act addresses compensation because economic compensation is very important in Nigeria. Some compensation has been given in Nigeria to victims of torture through the UN fund for torture victims: Oguchi Kelechi Ihejirika, who was arrested in 2006 in his high school, shot, beaten with machetes during interrogation and later charged with armed robbery, was awarded NGN 2 million as compensation for illegal and unconstitutional violation of his human rights. [86]

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 s/he might be tortured. [87] Burgers and Danelius explain that the terms "expel, return, *refouler* or extradite" in article 3 of UNCAT mean that a person is "physically transferred to another state".[88] This was also affirmed by the ICCPR HRC, which said that a state could not return an accused person by way of extradition to a country where there was a possibility of being tortured. [89] The arresting state is further obliged to investigate and make inquiries about the country of destination to ascertain whether it has engaged in torture or mass violation of human rights. [90] The arresting country is obligated to take the accused person into custody, commence an inquiry, communicate with representatives of the accused person's country, report its finding and make it known whether it wishes to extradite or exercise jurisdiction. [91] However, in circumstances where the arresting state does not wish to extradite, then the case must be submitted to a competent authority for prosecution. [92] The accused, if deported, is entitled to a fair hearing, judicial assistance, fair treatment in all circumstances and, where the arresting country does not have an extradition treaty with the other country, UNCAT could be considered as the legal basis for extradition. [93]

According to Rodley and Pollard, while the burden of proof is on the accused person to prove the risk of torture on return to his / her country, the onus shifts to the arresting country to disprove such risk.[94] The UN HRC asserts 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".[95] Article 5 of the ACHPR, incorporated into the RIG, obligates state members to abstain from returning persons to a place or country where they could be tortured. [96] State parties which are obliged to extradite someone must comply with due process before extradition. [97] Thus, the arrested person must be accorded all rights, which include access to a lawyer, free legal aid, the right to be heard and judicial assistance. [98]

The Anti-Torture Act does not have an extradition section, arguably on the basis that the appropriate law that would be applied in this kind of case would be the National Commission for Refugees Act (NCRA) and the Ratification and Enforcement Act. [99] However, the NCRA

does not cover all contingencies, so a person fearing persecution or torture could be denied refugee status. On the contrary, in UNCAT the principle of non-refoulement is absolute and without exceptions. Thus, the enactment of the Anti-Torture Act failed to cover the principle of non-refoulement as obligated.

Education

Article 10(1) and (2) of UNCAT mandates states to train and educate staff about the prohibition on the use of torture. The HRC's General Comment No 20 identifies the need for states to train staff working at detention centres.[100] While the ACHPR does not provide for the training of personnel, the RIG specifies that the 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" [101]

Moreover, section 11 of the Anti-Torture Act 2017 bestows the power to educate and train on the Attorney General of the federation and other concerned parties. [102] The Act purports to ensure that all personnel in charge of detention centres in the federation must be well informed and trained about the prohibition of torture. Section 11 states that all training and education materials of the police or personnel in charge of detention centres must cover the prohibition of torture. While the obligation and UNCAT provisions include the phrase "fully included in the training of law enforcement personnel", it could be understood to include the requirement that personnel must be trained on how to prohibit torture in their respective jurisdiction or place of assignment.

The Network of Police Reform in Nigeria has reported that the use of torture in Nigeria was "informally institutionalised" in various police stations, with so-called "torture chambers" and an "officer in charge of torture".[103] In 2018 a presidential committee report stated that the Nigerian police grossly violated human rights standards, leading to widespread abuse. [104] Training does not entail physical exercises alone, but a member of the NPF must have basic education and an understanding of his / her powers and duties. However, due to the inadequate training and education received by the NPF, an average police officer probably does not understand the basics of human rights. [105] Prisoners Rehabilitation and Welfare Action (PRAWA), [106] the NPF and the Swiss embassy in Nigeria developed a manual on human rights training and torture prevention for the police in 2011. [107] The manual is divided into nine modules. [108] However, it is probably not being implemented; in 2016, Amnesty International reported that the "Special Anti-Robbery Squad" subjected arrested persons to torture, which included beating, shooting and mock executions. [109] Ladapo has asserted that most members of the NPF only have knowledge of physical drills acquired at the three-month training schools, but lack understanding of the "art of policing". [110] However, in an effort to promote adequate human rights education in the NPF, the government has partnered with PRAWA to assist 28 officers to graduate in human rights training. [111] While this is a laudable effort by the Nigerian government, what is important is the overall effect and impact of the training on the 28 officers. [112]

Additional obligations in the ACHPR and analysis of deficiencies in the Anti-Torture Act

The Anti-Torture Act is the major law prohibiting torture in Nigeria, and was promulgated with the aim of eradicating torture and to comply with the international standards prohibiting torture. It was assumed that it would prohibit torture absolutely and effect punishment of perpetrators. However, there are some circumstances where perpetrators go unpunished or where the abolition of torture would be undermined on account of certain situations not provided for in the Act. Provisions that should have been included in the act are dealt with below.

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 or to take appropriate prosecution measures resulting in the punishment of those responsible for perpetrating human rights violations, and to provide the victims with adequate redress to prevent the re-occurrence of the violations.[113] 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.[114] In its General Comment No 3, the Committee against Torture observes that the state is obligated to provide adequate redress; however, there are some impediments to this, such as inadequate national legislation, immunities, witness protection and amnesty.[115] Thus, granting immunity and amnesty to state or non-state actors is contrary to international law.[116]

While the Nigerian Anti-Torture Act does not contain a provision on immunity and amnesty, its section 3 prohibits torture, overlooking the possibility of both personal and functional immunities. The 1999 Constitution restricts both civil and criminal proceedings against the president, vice president, governors and deputy governors while they are in office. [117] Functional immunity, in section 239 of the Armed Forces Act, 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 a civil authority or in the execution of military rules."[118]

This implies that if a governor gives an order to the military to perpetrate torture, the Armed Forces Act excludes liability for 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. The Act occupies a higher place in the hierarchy than any other enactment of the National Assembly, apart from the Constitution. Thus, while personal immunity might prevent proceedings against the governor, section 8 of the Anti-Torture Act would make the person who perpetrated the act of torture – the police officer who carried out the act – liable.

Statutory limitations

Each state party to UNCAT is obligated to ensure that victims of torture receive adequate redress unaffected by statutory limitations. The key reason for lifting the bar on statutory limitation is to ensure 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".[119] Moreover, some serious crimes under international law cannot be taken away by time limits, irrespective of the time or date of their commission. [120] Orentlicher defines serious crime under international law as including torture. [121] Thus, torture as a crime cannot be time-barred. In observations on Turkey and Chile, the Committee advised Turkey to repeal all its laws on statutory limitations on torture, and similarly, that Chile should remove the period of statutory limitation on torture or extend it for longer than the current ten years. [122] There are no regulations or laws that govern statutory limitations in Nigeria. However, the Public Officers Protection Act affords protection to officers in respect of anything done when carrying out their duties, although the protection only comes into play after the expiration of three months from the date of the commission of the act that gives cause to the action. [123] In *Mining Cadastre Office v UIG Petroleum & Transport Investment Ltd*, it was held that action against a public officer must be commenced within three months of the accrual cause of action. [124] This means that the case would fall away if not brought within three months of the act.

Conclusion

UNCAT and the RIG prohibit torture and obligate state members to enact legislation to bring them into conformity with the torture provisions the treaties outline. The state is at liberty to provide for a wider definition of torture but must ensure that each of the elements in the definition is included. While the Nigerian definition is roughly in tandem with these two treaties, experience has exposed that its definition is wider than that of UNCAT; it includes private actors and extends the list of what could constitute torture.

While laws in Nigeria prohibit torture, none of these laws − the 1999 Constitution, the Administration of Criminal Justice Act 2015, the Police Act 2020 and the Evidence Act 2011 – provides for penalties for the perpetrators of torture. The Evidence Act prohibits and renders inadmissible the use in evidence of a confession obtained by "oppression", which includes torture. This Act also falls short by failing to provide that the confession may be used against perpetrators or to provide available penalties for perpetrators. However, the Anti-Torture Act provides that evidence obtained through torture is not admissible in any court of law, but remedies the lacunae created in other laws by stating that the evidence can only be used to convict the perpetrators of torture. Despite the provision of the law in the Anti-Torture Act that evidence obtained through torture is not admissible, judges continue to rely on evidence extracted by confession to prosecute and convict accused persons. Thus confessions from accused persons are a major incentive for the police and other law enforcement agencies to engage in torture.[125] The concluding observations of the Committee against Torture noted that while the legal framework against torture and all other laws prohibiting torture render

confessional evidence inadmissible, reports showed that evidence obtained through torture was still being accepted by some judges. [126]

While the Anti-Torture Act also falls short by omitting to deal with the issue of non-refoulement and redress, the NCRA has made non-refoulement optional, rather than absolute, for a potential victim of torture to be repatriated to his / her state of origin, depending on whether s/he meets specified criteria. Although the Anti-Torture Act prohibits torture absolutely, Nigerian law makes no provision for witness protection, amnesty, immunity or statutory limitation, raising the question of whether torture is absolutely prohibited in Nigeria in reality. Moreover, the Rule of Law and Accountability Advocacy Centre has asserted that the Anti-Torture Act is not well known among young police officers, resulting in a low level of awareness among them.[127]

Section 9(1) of the Anti-Torture Act specifies that offences that amount to torture carry a maximum sentence of 25 years' imprisonment. The offences listed in section 2 do not have a minimum sentence requirement, which means that the court is at liberty to decide on the length of the term of imprisonment. However, despite the wide jurisdictional reach of the courts to hear torture cases, there is no record of a prosecution on a charge of torture. Although torture victims have sought compensation in courts, the courts have based decisions not on the Anti-Torture Act but on the 1999 Constitution, the Ratification and Enforcement Act and the Fundamental Rights Rule. The Committee against Torture's concluding observations on the absence of an initial conclusive report about Nigeria noted a lack of information on the application of the Anti-Torture Act in domestic courts.

A joint alternative report on Nigeria submitted to the United Nations Committee against Torture asserted that although the Anti-Torture Act was in place to prevent torture, most torture complaints did not lead to investigation. Torture investigations that involve the police are conducted internally and in camera, encouraging the police to continue to practise torture in the absence of likely disciplinary action. [128] Amnesty International reports that torture of detainees occurs and persists in Nigeria's criminal justice system at the hands of the police. [129] Indeed, the Anti-Torture Act is a "word without deeds".

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Competing interests

None

Notes

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984. It entered into force on 26 June 1987 in accordance with art 27(1) UN Treaty Series, vol 1465 at 85. There are 173 states that are party to the Convention; Nigeria signed it on 28 July 1988 and ratified it on 28 June 2001.
2. Similarly to UNCAT art 2, art 1 of the African Charter on Human and Peoples' Rights (ACHPR) obligates states to adopt legislative or any other measures to give effect to the rights proclaimed in the Charter. It was adopted on 1 June 1981 and entered into force on 21 October 1986; 54 states are party to it. Nigeria signed the Charter on 31 August 1982 and ratified it domestically on 22 June 1983, depositing its instrument of ratification on 22 July 1983.
3. 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 (Robben Island Guidelines) 2008, available at: <https://www.apt.ch/sites/default/files/publications/RobbenIsland_ENG_0.pdf> (last accessed 7 February 2024).
4. United Nations Human Rights Office of the High Commissioner "In initial dialogue with Nigeria, experts of Committee against Torture questioned the fight against terrorism, and conditions of detention", available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27824&LangID=E> (last accessed 31 January 2022).
5. The Anti-Torture Act 2017 is available online and can be accessed through LawPavilion, a legal database in Nigeria, available at: <https://primsol.lawpavilion.com> (last accessed 14 February 2024). Also see a copy of the Act at: <https://archive.gazettes.africa/archive/ng/2018/ng-government-gazette-dated-2018-01-09-no-3.pdf> (last accessed 14 February 2024). There are several versions of the Act available online; they are mostly only the bill. Though the Act is not available on the National Assembly website at the time of writing, it contains the same content as the bill but differs in its section numbering. For example, the right to examination is found in sec 6 of the bill and sec 7 of the Act. Similarly, sec 8 of the bill corresponds to sec 9 of the Act, which outlines penalties for perpetrators of torture. Other laws in Nigeria, eg the 1999 Constitution of the Federal Republic of Nigeria (as amended), cap C23, LFN 2004 (1999 Constitution) and the Administration of Criminal Justice Act 2015, do not criminalize torture per se. Also see art 29(d) of Kenya's Constitution of 2010 and art 15(2)(a) of the 1992 Constitution of Ghana. All these laws prohibit torture; however, they do not provide for effective prevention or punishment. Also see CE Obiagwu "Understanding and applying the provisions of the Anti-Torture Act 2017", available at: <https://nji.gov.ng/wp-content/uploads/2020/11/Obiagwu-SAN-paper.pdf> (last accessed 12 June 2023). Obiagwu was a member of the National Committee against Torture, which provides that sec 9 of the Act outlines the penalties for perpetrators.
6. Anti-Torture Act 2017, sec 2(1).
7. For the purpose of this Act, torture includes physical torture, which refers to cruel, inhuman or degrading treatment which causes pain, exhaustion, disability or dysfunction of one or more parts of the body, such as systematic beatings, head-banging, punching, kicking, striking with rifle butts and jumping on the stomach; food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten; electric shocks, cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances 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; blindfolding; threatening a person or persons related or known to him with bodily harm, execution or other wrongful acts; confinement in solitary cells held in public places; confinement in solitary cells against their will or without prejudice to their security; prolonged interrogation to deny a normal length of sleep or rest; causing unscheduled transfer of a person from one place to another; or creating the belief that he shall be summarily executed, etc.
8. In *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.

9. European Commission of Human Rights *The Greek case*, application no 3321/67 – *Denmark v Greece*. Also see Opinion of the Commission of 5 November 1969 in *The Greek case* (1969), Yearbook 12 at 461.
10. J Burgers and 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, Martinus Nijhoff) at 118; NS Rodley and M Pollard *The Treatment of Prisoners under International Law* (3rd ed, 2009, Oxford University Press) at 91.
11. *Selmouni v France* [1999] 29 EHRR 403 101.
12. *Alexander Grasimov v Kazakhstan Communication* No 433/2010, UN doc CAT/C/48/D/433/2010 (10 July 2012), paras 2.2–2.3.
13. *Ireland v United Kingdom* [1979–80] 2 EHRR 25 at 162.
14. C Ingelse *The United Nation Committee against Torture: An Assessment* (2001, Kluwer Law International) at 209.
15. See Rodley and Pollard *The Treatment*, above at note 10 at 99.
16. UN HRC "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak", UN doc A/HRC/13/39/Add.5 (9 February 2010), para 37.
17. Communication 225/98, Fourteenth Activity Report [2000] AHRLR 273 (ACHPR 2000), para 41. Also see F Viljoen and C Odinkalu *The Prohibition of Torture and Ill-Treatment in the African Human Rights System: A Handbook for Victims and Their Advocates* (2006, World Organisation Against Torture) at 41.
18. See UN HRC "Report", above at note 16, paras 58–71.
19. *Josu Arkauz Arana (author) v France*, Communication No 63/1997, UN doc CAT/C/23/D/63/1997 (2000).
20. *Hajrizi Dzemajl et al v Yugoslavia* [2002] CAT/C/29/D/161/2000 (2 December 2002), para 18.3.
21. See UN HRC "Report", above at note 16, para 34.
22. NS Rodley, "The definition(s) of torture in international law" (2002) 55 *Current Legal Problems* 1 at 4.
23. UNCAT, art 1. Also see Rodley "The definition(s)", ibid.
24. See UN HRC "Report", above at note 16, para 39.
25. 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 at 34.
26. Sadiq Shek Elmi v Australia, Communication No 120/1998, UN doc CAT/C/22/D/12-/1998 (1999), para 6.5.
27. *Commission Nationale des Droits de l'Homme et des Libertés v Chad [*2000] 74/92.
28. The available online resources regarding Nigeria are from LawPavilion; no Nigeria Weekly Law Reports have reportedany case of torture where judges invoke the Act.
29. BA Garner and H Campbell Black *Black's Law Dictionary* (9th ed, 2009, West).
30. *Nigeria Customs Service Board v Mohammed* [2015] LPELR-25938(CA) at 37–40, paras B–D.
31. *Igweokolo v Akpoyibo* [2017] LPELR-41882(CA).
32. *Odiong v Asst IGP* [2013] LPELR-20698(CA).
33. *Ovuokeroye v State* [2020] LPELR-51247(CA).
34. International Covenant on Civil and Political Rights, adopted 16 December 1966 by General Assembly Resolution 2200A (XXI); entered into force 23 March 1976, in accordance with art 49 (ICCPR), art 4.
35. "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."
36. UN Committee against Torture General Comment No 2: Implementation of article 2 by states parties, CAT/C/GC/2 (24 January 2008), paras 5 and 7.
37. Id, para 5.
38. An example of internal political instability could be the many coups d'état that have happened in Nigeria, in 1966, 1975, 1976, 1983, 1990 and 1993.
39. UN HRC "Report", above at note 16, para 42.
40. UNCAT, art 4. See also UN Committee against Torture, General Comment No 2, above at note 36.
41. See UN HRC "Report", above at note 16 at 47–49.
42. Sec 8(1) of the Act provides that anyone who participates in the infliction of torture will be liable as the principal actor.

43. Criminal Code LN 112 of 1964, cap C38; Penal Code LN 47 of 1955.
44. Obiagwu "Understanding and applying", above at note 5 at 15.
45. Ibid.
46. *Okinawa v State* [2015] LPELR-24517 (CA).
47. Ibid; according to Philomena Mbua Ekpe, JCA, at 10–16.
48. M Nowak and E McArthur *The United Nations Convention against Torture: A Commentary* (2008, Oxford University Press) at 195.
49. Id at 196.
50. 1999 Constitution, sched 2, part 1, sec 31; also see United Nations Human Rights Office "Initial dialogue", above at note 4.
51. The terms "confession", "admission" and "statement" do not mean the same thing. The Evidence Act 2011, sec 20, 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 a confession is defined in sec 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".
52. ACJA, secs 16 and 17. Also see the Police Act 2020, sec 67.
53. Sec 35(2) and (3) of the Police Act obligates the arresting officer to inform the accused of his / her rights to remain silent and not say anything except in the presence of his / her legal practitioner; if s/he cannot get a legal practitioner, free legal aid can be provided from the Legal Aid Council of Nigeria. Also see ACJA, sec 6.
54. Nigeria Code of Criminal Procedure, sec 9.
55. The Police Act 2020, sec 31, and the ACJA, sec 3, provide that a suspect arrested shall be investigated according to the law.
56. Also see ACJA, sec 8.
57. Secs 44 and 89 provide that the arresting officer or officer in charge must keep updated details of the accused person daily if s/he remains in police custody, and where an accused person is shot, killed or wounded, the details and circumstance must be recorded by the commanding officer. Where the details are not recorded, the commanding officer risks disciplinary action.
58. Ibid, secs 44(4) and 60.
59. RIG, art 19. Also see United Nations Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0> (last accessed 14 February 2024).
60. *Onah v Okenwa* [2010] 7 NWLR (Pt 1194) 512; also see Ajayi v The State [2013] 9 NWLR (Pt 1360) 589. It is imperative to consider whether the NPF is the appropriate institution to handle complaints from tortured detainees.
61. UN HRC CCPR General Comment No 20: Article 7 (prohibition of torture or other cruel, inhuman or degrading treatment or punishment), UN doc A/44/40 (10 March 1992), para 14, available at: <https://www.refworld.org/docid/453883fb0.html> (last accessed 22 March 2022). Also see Nowak and McArthur *The United Nations Convention*, above at note 48 at 347, where they describe a "competent authority", apart from a court, as including the National Human Rights Commission, the ombudsman, detention-monitoring commissions, public prosecutors, police chiefs, prison directors and administrative agencies.
62. See Rodley and Pollard *The Treatment*, above at note 10 at 148.
63. UN HRC CCPR General Comment No 7: Article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment) (30 May 1982), para 1, available at: <https://www.refworld.org/legal/general/hrc/1982/en/38675> (last accessed 10 February 2024). Please note that General Comment No 7 has been replaced by General Comment No 20. Also see UN HRC General Comment No 20, above at note 61, para 14; Rodley and Pollard *The Treatment*, above at note 10 at 147.
64. Nowak and McArthur, *The United Nations Convention*, above at note 48 at 346.
65. *Blanco Abad v Spain* [1998] UN doc CAT/C/20/D/59/199, para 8.2. Also see *Rajapakse v Sri Lanka* [2006] UN doc CCPR/C/87/D/1250/2004, para 9.4.

66. *Mohammed Alzery v Sweden* UNHRC, UN doc CCPR/C/88/D/1416/2005 (10 November 2006), para 11.7. Also see *Boniface Ntikarahera v Burundi*, UN doc CAT/C/52/D/503/2012, where an investigation was not conducted for four years.
67. *Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication No 245/2002 [2006] ACHPR 73 (25 May 2006), para 58, available at: <https://media.africanlii.org/files/judgments/2006/73/2006-73.pdf> (last accessed 14 February 2024).
68. UN General Assembly Resolution 60/147, 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 (16 December 2005).
69. The Witness Protection Bill passed in a second reading in the Senate on Tuesday 25 January 2022; available at: <https://placng.org/Legist/witness-protection-bill-passes-second-reading-at-the-senate/> (last accessed 9 February 2022).
70. Anti-Torture Act 2017, sec 7(2).
71. Id, sec 7(4).
72. Also see RIG, art 50.
73. See Rodley and Pollard *The Treatment,* above at note 10 at 155. Also see 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 states parties, CAT/C/GC/3 (13 December 2012), arts 29–36.
74. See Nowak and McArthur, *The United Nations Convention*, above at note 48 at 468–69.
75. African Commission on Human and Peoples' Rights (African Commission) General Comment No 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 (article 5), art 21. This was adopted at the 21st Extraordinary Session of the African Commission on Human and Peoples' Rights in Gambia, and requires states to have both law and institutions that provide for redress. Also see UN Committee against Torture General Comment No 3, above at note 73, arts 5 and 19–22.
76. See Rodley and Pollard The Treatment, above at note 10 at 159; UN Committee against Torture General Comment No 3, above at note 73, art 4; African Commission General Comment No 4, ibid, para 21.
77. UN Committee against Torture General Comment No 3, above at note 73. Also see Rodley and Pollard *The Treatment*, above at note 10 at 155; UN Basic Principles, above at note 68, arts 15–23.
78. UN Committee against Torture General Comment No 3, above at note 73, art 8. Also see African Commission General Comment No 4, above at note 75, art 36.
79. In UN Committee against Torture General Comment No 3, above at note 73, arts 9–10, the Committee held that monetary compensation might not be enough; however, the compensation awarded to the victim must be sufficient. Also see *Keppa Urra Guridi v Spain*, Communication No 212/2002, UN doc CAT/C/34/D212/2002, para 6.8; African Commission General Comment No 4, above at note 75, arts 37–39; Rodley and Pollard *The Treatment*, above at note 10 at 156.
80. UN Committee against Torture General Comment No 3, above at note 73, arts 11–15, points out that rehabilitation must entail that the victim is self-sufficient and if possible acquires a new set of skills. Also see African Commission General Comment No 4, above at note 75, arts 40–43.
81. UN Committee against Torture General Comment No 3, above at note 73, arts 16–17, specifies that satisfaction entails that there is a stop to the continued violation of the victims' rights and that there must be a full disclosure of the truth to the public with an apology. Also see African Commission General Comment No 4, above at note 75 at 44.
82. UN Committee against Torture General Comment No 3, above at note 73, art 18. Also see African Commission General Comment No 4, above at note 75 at 45–49.
83. "[O]ther legal remedies [are] available to the victim under existing laws, including the right to claim compensation."
84. ACJA, secs 319(1) and 321.
85. Fundamental Rights (Enforcement Procedure) Rule 2009, preamble 3(e).
86. United Nations Human Rights Office of the High Commissioner "Justice for Nigerian complainants supported by the UN fund for torture victims" (30 October 2020), available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/JusticeForNigerian.aspx> (last accessed 10 February 2022).

87. *See Mutombo v Switzerland* [1994] UN doc CAT/C/12/D/13/1993. Also see UN Committee against Torture General Comment No 1: Implementation of article 3 of the Convention in the context of art 22 (refoulement and communications) (21 November 1997), A/53/44, annex IX.
88. Burgers and Danelius, *The United Nations Convention*, above at note 10 at 148.
89. UN HRC General Comment No 20, above at note 61, para 9. Also see UN HRC General Comment No 31 (80), The nature of the general legal obligation imposed on states parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (26 May 2004), para 12.
90. UNCAT, art 3(2).
91. Id, art 6(1)–(4).
92. Id, art 7(1).
93. Id, arts 7(3), 9 and 8.
94. See Rodley and Pollard *The Treatment*, above at note 10 at 173.
95. UN Committee against Torture General Comment No 1, above at note 87, para 6. Also see Rodley and Pollard, id at 173.
96. RIG, para 15.
97. Viljoen and Odinkalu *The Prohibition of Torture*, above at note 17 at 52.
98. ACHPR, art 7.
99. National Commission for Refugees Act LFN 2004, 29 December 1989, cap N21; Ratification and Enforcement Act LFN 1990, cap 10.
100. UN HRC General Comment No 20, above at note 61, para 10.
101. RIG, art 46.
102. "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."
103. Network of Police Reform in Nigeria "Criminal force: Torture, abuse and extrajudicial killings by the Nigeria Police Force 2010", available at: <https://www.justiceinitiative.org/publications/criminal-force-torture-abuse-and-extrajudicialkillings-nigeria-police-force> (last accessed 22 March 2022).
104. Human Rights Watch "'Everyone's in on the game': Corruption and human rights abuses by the Nigeria Police Force" (17 August 2018), available at: <https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force> (last accessed 14 February 2024).
105. MB BabanUmma, M Maiwada and 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 at 38.
106. PRAWA is a non-governmental organization that provides human rights support to people in prisons and helps those who have survived prison to integrate back into society; <https://www.prawa.org> (last accessed 28 March 2022).
107. U Agomoh et al *Manual on Human Rights Training and Torture Prevention for the Police* (2011) at 1, available at: <https://www.prawa.org/wp-content/uploads/2012/06/MANUAL-ON-HUMAN-RIGHTS-TRAINING-AND-TORTURE-PREVENTION-FOR-THE-POLICE.pdf> (last accessed 14 February 2024).
108. Module 1 is an introduction to the NPF, while Module 2 examines what training on human rights entails. Module 3 looks at the reasoning behind protecting the rights of detainees and prisoners. Module 4 provides an overview of human rights instruments. Module 5 focuses on the 1979 UN code of conduct for law enforcement officials, and modules 6, 7 and 8 focus on the instruments in relation to torture, cruel, inhuman and degrading treatment or punishment and the effect of non-observance of human rights principles, with exercises; Module 9 poses questions to the police officers attending or who might attend the training in future to recommend what could enhance the implementation of national or international legislation.
109. Amnesty International "Nigeria. Special Police Squad: Get rich torturing detainees", available at: <https://www.amnesty.org/en/latest/news/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/> (last accessed 22 March 2022).

110. OA Ladapo “Effective investigations, a pivot to efficient criminal justice administration: Challenges in Nigeria” (2011) 5 *African Journal of Criminology and Justice Studies* 79 at 82.
111. “I-G restates commitment of Nigeria Police Force to human rights protection” (13 November 2018) Vanguard, available at: https://www.vanguardngr.com/2018/11/i-g-restates-commitment-of-nigeria-police-force-to-human-rights-protection/(last accessed 11 February 2024).
112. The best solution to this type of training would be to involve all area commandants, who will then go back to their unit and empower each officer. Moreover, training of officers should be increased to one year, six months of which would be on human rights education.
113. UN Economic and Social Council Promotion and Protection of Human Rights: Impunity – Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher: Updated set of principles for the protection and promotion of human rights through action to combat impunity. Commission on Human Rights 61st sessionE/CN.4/2005/102/Add.1 (8 February 2005).
114. UN Basic Principles, above at note 68, art 3(c).
115. UN Committee against Torture General Comment No 3, above at note 73, paras 38–41. Also see UN Committee against Torture General Comment No 2, above at note 36, para 5.
116. UN Committee against Torture General Comment No 3, above at note 73, para 42. Also see RIG, art 16(b).
117. 1999 Constitution, sec 308.
118. Armed Forces Act LFN 1994, cap A20.
119. UN Committee against Torture General Comment No 3, above at note 73, para 40.
120. 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, art 1.
121. UN Economic and Social Council Promotion and Protection, above at note 113, para b.
122. UN Committee against Torture Conclusions and Recommendations of the Committee against Torture: Turkey, UN docCAT/C/CR/30/5 (27 May 2003), para 7(c); UN Committee against Torture Conclusion and Recommendations of theCommittee against Torture: Chile, UN doc CAT/C/CR/32/5 (14 May 2004), para 7(f).
123. Public Officers Protection Act 1916, sec 2. Also see *Egbe v Alhaji [*1990] 1 NWLR (part 128) at 546*; Bureau of Public Enterprises v Reinsurance Acquisition Group Ltd and Others* [2008] LPELR-8560(CA), according to Mary Ukaego Peter-Odili, JCA, at 41, paras B–D.
124. *Mining Cadastre Office v UIG Petroleum & Transport Investment Ltd [*2018] LPELR-46046(CA).
125. VV Tarhule and Y Omguga “Curbing incidences of torture through legislation: Focus on the Nigerian Anti-Torture Act” 2017 *Benue State University Law Journal* 30 at 40.
126. UN Committee against Torture Concluding observations in the absence of the initial report of Nigeria, UN doc CAT/C/NGA/COAR/1 (21 December 2021) at 15.
127. Sahara Reporters “Why torture remains prevalent in Nigeria – RULAAC” (26 June 2021) *Sahara Reporters*, available at: <https://saharareporters.com/2021/06/26/why-torture-remains-prevalent-nigeria-rulaac> (last accessed 27 April 2023). Also see 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)”, available at: <https://www.nigeriarights.gov.ng/files/publications/VOL%20I%20EXECUTIVE%20SUMMARY%20OF%20REPORT%20OF%20THE%20PRESIDENTIAL%20PANEL%20ON%20SARS%20REFORM.pdf> (last accessed 27 April 2023), which found 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”, which implies that most police officers lack awareness of the provisions of the Anti-Torture Act.
128. Joint Alternative Report submitted in application to 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 18.
129. Amnesty International “Nigeria 2021”, available at: <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/> (last accessed 31 July 2022).