

AN EXAMINATION OF THE LEGAL REGIME FOR THE PROHIBITION OF TORTURE IN NIGERIA*

By

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Abstract

Torture is the intentional act of inflicting physical or mental pain and suffering on a person either for the purposes of obtaining information from the victim; or unjustly punishing him for an act ; intimidating him for any reason provided that it is not in compliance with lawful sanction of a court of competent authority or any tribunal established by law. Thus, in Nigeria, the protection of human beings against torture is spelt out in numerous regimes because the rights to dignity of human persons cannot be derogated under whatever circumstances. Such legal regimes include the Constitution Federal Republic Nigeria [1999 as amended]; Evidence Act, 2011; the Administration of Criminal Justice Act, 2015; Anti-Torture Act, 2017; Police Act, 2020; and Violence Against Persons Prohibition Act, 2015. However, of worrisome is the fact that, despite the existence of these laws, torture of victims on daily basis is a tradition of government agencies in Nigeria. The sources of information relied upon for in this paper are relevant statutes on the subject matter, books, articles in journal publication, conference papers and judicial authorities. Importantly, the objective of the paper is to examine the adequacy or otherwise of the existing legal regimes on the prohibition of torture in Nigeria with a view to proffering measures that are necessary to prevent breaches of the regimes on the subject matter. This paper found among others that notwithstanding the revolutionary provisions ushered in by the Anti-Torture Act, 2017 to decisively terminate the long reign of torture especially those perpetuated by law enforcement officers in Nigeria, the practice still persists with arrant impunity largely due to lack of supervisory mechanism put in place within members of the different forces and security units by the government to checkmate the excesses of the perpetrators. Finally, this paper is concluded by recommending [among others] that, the Attorney General of the Federation by virtue of Sections 9 and 10 of the Anti-Torture Act, should embark on an intensive nationwide campaign and education retreats generally for members of the public, different forces and security units on the import and purpose of the regimes prohibiting torture in Nigeria.

Keywords: *Torture, Law enforcement agencies, Prohibition and legal Regime*

1.0 Introduction

Torture is the use of force with the aim of breaking the spirit of an individual; it is inhuman and affects the well-being of the victim as well as the society.¹ In Nigeria, the protection of

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human beings against torture is spelt out in numerous regimes because the rights to dignity of human persons cannot be derogated under whatever circumstances. Such legal regimes include the Constitution Federal Republic Nigeria [1999 as amended]; the Evidence Act 2011; the Administration of Criminal Justice Act 2015; Anti-Torture Act, 2017; Police Act and Violence Against Persons Prohibition Act 2015; all of which are discussed in this paper. However, even with this plethora of prohibitions, the acts of torture is very common within law enforcement agencies and institutions, either for the purposes of obtaining or intimidating and punishing suspects for any reason. Unfortunately, even at the international level governments of various countries are also in constant violation of international instruments prohibiting the use of torture, cruel, inhuman or degrading treatment or punishments having subscribed to the obligations created under such instruments.

Against the above backdrop therefore, the objective of this paper is to examine the adequacy or otherwise of the existing legal regime on the prohibition of torture in Nigeria with a view to providing measures for improving the prohibition of the subject matter. In an attempt to achieve this objective, the paper discusses issues such as meaning and nature of torture, legal regimes prohibiting torture in Nigeria, findings, recommendation and conclusion.

2.0 Meaning of Torture

Section 34 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is the principal provision prohibiting torture in Nigeria and it states that, “(a) *Every individual is entitled to respect for the dignity of his person, and accordingly – (b) No person shall be subjected to torture or to inhuman or degrading treatment*”.

Consequently, this provision received judicial justification in the case of *Rhodes and Anor. v. Inspector General of Police and Ors*² where the court had cause to interpret this provision bothering on right to dignity of person and it reiterated that, “What degrades or devalues a person’s exalted estimation of his societal status or standing amounts to an assault on the dignity of that person. But before the conclusion that such person’s dignity has been eroded is reached, it must be shown that the act complained of falls within the context of section 34(1) of the 1999 Constitution, as amended, indicating the act complained of, subjected the person to torture or to inhuman or degrading treatment.....”

Further still, various International Instruments have defined torture. Most of the Instruments are not solely dedicated for the protection of the rights against torture. However, due to the seriousness of the abuse, many international instruments on human rights protection have

¹B. Karumi ‘Protection of the Right Against Torture under International Human Rights Law: A critical Appraisal’ *Journal of Law, Policy and Globalization* [2015] Vol. 37, ISSN 2224 3240, p.3, <https://www.iiste.org>, accessed on 10th February, 2022, at 6:40pm.

²[2018] LPELR-CA/L/624/2015.

added weight to the fight against torture. The Convention against Torture is the only international instrument that is solely dedicated to the protection of the right against torture. Article 1 of the Convention against Torture defines the term “Torture”, thus:

The term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes such as obtaining from him or a third person information or a confession, punishing him for an act he or the third person has committed or is suspected of having committed, or intimidating or coercing him or 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.³

Under the above definition of torture, which, is widely accepted in international law, for an act or omission to qualify as torture, it has to be perpetrated by officials of the state or under the authority of a person in his official capacity. Torture has further been defined as “the infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure”.⁴

The editor of Black’s Law Dictionary also further cited the view of James Heath when he stated that: “torture means the infliction of physically founded suffering or the threat immediately to inflict it, where such infliction or threat is intended to elicit or such infliction is incidental to means adopted to elicit, matter of intelligence or forensic proof and the motive is one of military, civil or ecclesiastical interest.”⁵ It appears however, that this definition by Heath did not take into cognizance the use of torture in criminal investigations. This is understandable looking at the year when the definition was made.

Numerous treaties, conventions and domestic laws, explicitly prohibit torture without necessarily defining it. One of such is Article 5 of the Universal Declaration of Human Rights, 1948 that states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Furthermore, Article 7 of the International Covenant on Civil and Political Rights (ICCPR), 1966 provides that: “no one shall be subjected without his free consent to a medical or scientific experimentation.” Article 3 of the most important European

³ United Nations Convention Against Torture, Article 1 (1).

⁴ A. G. Bryan (1990) *Black’s Law Dictionary, Ninth Edition*, (St. Paul, MN. West Publishing Co., New York, USA 1990) p.1627.

⁵ James Heath, *Torture and English Law*, p.3, cited in Garner, B. (2004); *Black’s Law Dictionary* (8th edition), (MN, St. Paul, West Publishing Co., U.S.A.1982) p. 1528.

basic Rights document, The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, equally declares that: “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Looking closely at all the above provisions, it immediately stands out that these and many other treaties and declarations fail to provide a vivid definition of torture, even though all of them prohibit the practice of torture in the firmest of terms, going as far as making the prohibition of torture one of the core human rights. The prohibition on the use of torture and punishments is captured in all basic human rights conventions and Protocols,⁶ Moving forward however, the term torture have not been clearly defined. The Nigerian Anti-Torture Act, 2017 has provided a broader definition of Torture to *wit*; torture is deemed committed when an act by which pain and suffering whether physical or mental, is intentionally inflicted on a person to:

- (a) Obtain information or confession from him or a third person;
- (b) Punish him for an act he or third person has committed or suspected of having committed; and
- (c) Intimidate or coerce him or third person for any reason based on discrimination of any kind.⁷

The above definition clearly shows that a non-state actor or an individual can commit torture. It also goes further to say that torture does not include pain and suffering inflicted in compliance with lawful sanctions. In all the definitions provided this far, the most prominent and universally accepted definition of torture is embodied in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which was adopted on the 10th December, 1984, followed by the one provided by the Anti-Torture Act, 2017, under its section 2. This is because, even the Nigerian Courts have also adopted the definition of Torture as proffered by the UNCAT, in plethora of cases before them.

In *A.G Kebbi State v Alhaji Mustapha Jokolo and 2 Ors.*⁸ The Court of Appeal, Abuja Division was of the view that: “Torture” is the infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure.” The Court also adopted the definition of inhuman and degrading treatment as contained in Black’s Law Dictionary, when the Court held that: “Inhuman Treatment” equates to a “physical or mental cruelty so severe that it endangers life or health.” “While degrading treatment is to do unpleasant things to someone and to make him lose self-respect.” Thus, “degradation” is “a reduction in rank,

⁶ Geneva Convention No.1 Article 12 and 50-51, Geneva Convention III Article 17, 87, and 130.

⁷Section 2, Anti-Torture Act, 2017.

⁸LPELR, 22349 (CA) Court of Appeal Abuja 2013 CA/A/35/2010.

degree, or dignity.... a lessening of a person's or thing's character or quality...A wearing down of something, as by erosion.”⁹

These definitions therefore inform us that torture is not an isolated item that could be singularly defined but that its definition depends on the surrounding circumstances of the act sought to be classified as torture. It is also essential to state that Section 34 of the Constitution seek to protect the dignity of human person as stated therein. It therefore, appears that any act, which disrespects the dignity of the human person, may be equated to torture if it is coupled with the elements of torture. This position is widely accepted under international law, hence, in the case of *Raquel Martin de Mejia v Peru*¹⁰ whereby the Human Rights Commission was of the view that rape could constitute torture. It considers that sexual abuse, besides being a violation of the victim's physical and mental integrity implies a deliberate outrage to their dignity.

The definition provided under Article 1(1) of the United Nations Convention Against Torture(UNCAT), has been accepted in International law, and Nigeria as a State Party became bound by it by virtue of its ratification and going further on that, enacted its domestic Anti-Torture Act, in 2017. As stated earlier, under the Anti-Torture Act, 2017, torture has been given a broader meaning and can be committed by a non-state official or an individual. Section 2 of the Act defines torture as:

Torture is deemed committed when an act by which pain and suffering, whether physical or mental, is intentionally inflicted on a person to – (a) obtain information or confession from him or a third person; (b) punish him for an act he or a third person has committed or suspected of having committed; and (c) intimidate or coerce him or third person for any reason based on discrimination of any kind.¹¹

Even prior to the enactment of the Anti – Torture Act in 2017, Nigerian Courts perpetually frowns and condemns the use of torture in extracting confessional statements from accused persons in plethora of cases. In *Adewale Adedora v The State*¹² whereby the Court of Appeal Ilorin Division per Denton – West, condemned the torture of the appellant and his co-suspect at the police station, leading to the death of one of them, and called for drastic punishment of perpetrators of torture.

Under International law, as with Nigerian domestic laws, the spectrum of constitutionally prohibited ill-treatment is graded based on the severity of the infliction. The most severe is

⁹*A.G Kebbi State v Alh.Al-Mustapha Jokolo*(Op. cit.,) at p.18.

¹⁰[1996] I AComm HR, p. 19.

¹¹Anti-Torture Act, 2017, Article 2.

¹²*Adedora v The State* [2009] LPELR 8194 (CA).

torture, which is act or omission that causes pain or suffering. The definition of torture under the Anti-Torture Act, 2017 is all encompassing, as it detailed the actions or omissions that could give rise to torture.

3.0 Legal Regime Prohibiting Torture in Nigeria

Within the legal regime on the prohibition of torture in Nigeria, the Anti-Torture Act, 2017, is the latest and a fairly comprehensive piece of legislation on the subject matter. Its provisions are in tandem with various other local legislations that prohibit the acts of torture such as the Constitution Federal Republic Nigeria [1999 as amended]; the Evidence Act 2011; the Administration of Criminal Justice Act 2015; Police Act, 2020 and Violence against Persons Prohibition Act, 2015; all of which are discussed below. However, based on the currency of the Anti- Torture Act, 2017, it will be the first focus of study here.

3.1 The Prohibition of the Punishment of Torture under the Anti-Torture Act, 2017

Before the enactment of the Anti-Torture Act in 2017, there was no law in Nigeria which sole objective is the prohibition, criminalization and punishment of torture and other forms of cruel, inhuman or degrading treatment in Nigeria. Torture and other ill-treatment were routine practice in criminal investigations across Nigeria. According to Amnesty International, suspects in police and military custody across the country have been subjected to torture as punishment or used for the extraction of confessions or as a shortcut to solve cases, particularly armed robbery and murder cases.¹³ In 2017 the enactment of Anti-torture Act, serves as a companion to the existing provision of Section 34 (1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) on the prohibition of torture or inhuman or degrading treatment in country.

The Anti-torture Act of 2017 fills the legislative gaps by explicitly making the right to freedom from torture, cruel, inhuman and degrading treatment a non-derogated right, criminalizing torture and protecting victims and witnesses of torture. The Act makes comprehensive provisions for penalizing the acts of torture and other cruel, inhuman and degrading treatment or punishment, and it prescribes penalties for the commission of such acts in varying degrees identified below.

3.1.1 Prohibition of Torture under Section 2 of the Anti-Torture Act, 2017

Specifically, Section 2 (1) of the Act defines what constitutes torture. It states that torture is deemed committed when an act by which pain and suffering, whether physical or mental, is intentionally inflicted on a person to - (a) obtain information or confession from a third person; (b) punish him for an act he or a third person has committed or suspected of having committed;

¹³ Amnesty International, 'Welcome to Hellfire' Torture and ill-treatment in Nigeria' [2014] p.18, extracted from <https://www.amnesty.org/downloads/NHRC%202017%Annualreport.pdf> accessed 2nd February 2022 at 12:54 p.m.

or (c) intimidate or coerce him or third person for any reason based on discrimination of any kind.¹⁴ The provision however provides that torture does not include pain or suffering inflicted in compliance with lawful sanctions.

Section 2(2) of the Act provides that torture includes - (a) physical torture or such cruel, inhuman or degrading treatment which causes pain, exhaustion, disability or dysfunction of one or more parts of the body 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.¹⁵

Sub-section (2) further provides an exhaustive list of acts that constitute torture or cruel, inhuman or degrading treatment. Some examples of physical, mental and psychological torture are (i) systematic beatings, head banging, 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; (iii) electric shocks; (iv) cigarette burning, burning by electric heated rods, hot oil, acid, by the rubbing of pepper on the wounds, (v) the submersion of head in water or water polluted with excrement, urine, vomit or blood; (vi) blindfolding; (vii) threatening a person or such persons related or known to him with bodily harm, execution or other wrongful acts; (viii) confinement in solitary cells put up in public places against their will or without prejudice to their security; (ix) prolonged interrogation to deny normal length of sleep or rest and (x) causing unscheduled transfer of a person from one place to another, creating the belief that he shall be summarily executed.¹⁶

The punishment for the violation of the provisions of Section 2 of the Anti-Torture Act above, is a conviction to imprisonment for a term not exceeding 25 years. In addition, torture resulting in loss of life of a person is considered as murder and shall be tried and punished under the relevant laws.

3.1.2 Prohibition of Torture under Section 3 of the Anti-Torture Act, 2017

In tandem with various provisions of International Human Rights law and Instruments, Section 3 of the Act makes freedom from torture a non-derogated right. This Section particularly expands the provisions of Sections 28 and 29 of the Evidence Act,¹⁷ which provides that confessions obtained involuntarily through the use of undue pressure, such as torture or threat of torture, are not admissible as incriminating evidence against the defendant. In other words, such evidence obtained through torture or involuntarily can be used against any other person other than the defendant. This position has shifted from the old tradition under the Nigerian law of evidence that illegally obtained evidence is nevertheless admissible, though the court

¹⁴The Anti-Torture Act, 2017, Section 2 (1).

¹⁵Ibid. Section 2(2).

¹⁶ Section 2(2), Anti-Torture Act, 2017

¹⁷ Evidence Act, Laws of the Federation of Nigeria, Cap. E14, Laws of the Federation of Nigeria, 2011, Sections 28 and 29.

will consider such illegal circumstances in attaching weight to the evidence. The provision of Section 3 of the Anti-Torture Act, 2017 makes it clear that any evidence obtained under torture or threat of torture is inadmissible for all purposes. Sub-Section (1) thereof clearly states that no exceptional circumstances whatsoever, a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for torture.¹⁸ Section 3(2) prohibits secret detention facilities, solitary confinement, incommunicado or other similar forms of detention, where torture may likely be carried out.¹⁹ In furtherance to all the foregoing, Section 3 of the Act provides that evidence obtained through torture is inadmissible in any proceeding, except against a person accused of torture. This embargo makes any evidence obtained through torture meaningless and therefore impotent that cannot be admitted before any Court of law.

3.1.3 Prohibition of Torture under Section 8 of the Anti-Torture Act, 2017

Section 8 of the Act, to crown the prohibition of torture, provides for penalties for acts of torture. Sub-Section (1) prescribes for imprisonment for a term not exceeding twenty – five years on conviction for an offence of torture. Sub-section (2) further provides that in case of loss of life of a person because of torture, the offender or the perpetrator will be charged with murder. Sub-section (3) states that the penalty prescribed in sub-section (1) or (2) does not in any way take away the victim’s right to other remedies including the right to claim in court for damages or compensation for the torture.²⁰

In addition, Sections 9, 10 and 11 of the Anti-Torture Act makes it a duty upon the Attorney General of the Federation to embark on an intensive national wide campaign and education retreats for members of the public, different forces and security units on the import and purpose of the Anti-Torture Act 2017 and the rules of engagement in terms of arrest, detention and treatment of individuals by ensuring non-contravention of the Act. However, this obligation imposed upon the Attorney General (AGF) by these two provisions has not been effectively carried out. Consequently, this led to the institution of a current case against the Attorney General of the Federation by civil liberty organization in the Federal High Court in 2021²¹. Even though the case is still ongoing, the civil liberty organization prayed the court for a declaration that failure of the Attorney General to carry out the duties spell out by Sections 9, 10 and 11 is a breach of the law. Therefore, applicant prayed for an order of mandamus to be issued compelling the AGF to carry out his duty.

¹⁸Ibid., Section 3 (1).

¹⁹Ibid., Section 3 (2).

²⁰Ibid., Section 8 (1) (2) (3).

²¹Unreported FHC/CV/234/2021.

3.2 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria is the fundamental body of law, the *grundnorm* that guides policy formulation, legal and administrative affairs in the country. All other legislations derive their validity and force of law from the constitution.²² Its supremacy is unquestioned and any law which is not in tune with the letters of the Constitution shall to the degree of its contradiction be declared null, void and of no effect whatsoever.²³ Consequently, the provisions of the Constitution are to be observed and enforced strictly in all aspects of the legal complex and wherever it makes provision relating to sacrosanct areas such as the preservation of human rights which are universal, inherent, imprescriptible, inalienable, inviolable and immutable,²⁴ and which for all intent and purposes covers the prohibition against torture when it provides for freedom from torture, inhuman and degrading treatment under the right to the dignity of human person,²⁵ then there can be no departure from giving full effect to such sacred sanctions of the law.

As if to expound further on the aforesaid, the constitution expressly provides for the protection of citizens against the occasion of torture, hence, vesting onto itself the status of the primary legal framework and source of law that safeguards individuals against the infliction of pain and harm on their person. Section 34(1) (a) of the constitution provides thus:

(a) no person shall be subject to torture or to inhuman or degrading treatment

The combination of the words ‘torture, inhuman or degrading treatment’ as contemplated by the above provision, refers to the well-known practice of torturing human beings or doing things, which are offensive to the human body or sensitivity. This provision is specifically directed at the state security agents, who engage in the practice of torture, to extract alleged confession from either an accused person or person under detention.²⁶ In fact, the Supreme Court in the case of *Economic and Financial Crimes Commission (EFCC) v Wolfgang Reinl*²⁷ recently reiterated the extent of the unfettered role and powers of the court of law as enshrined in the Constitution²⁸ in enforcing and preserving the fundamental rights of citizens wherever and whenever it has been, it is being or will be likely infringed upon.²⁹ Thus, the constitution serves as an excellent foundational framework upon which the fundamental human rights of citizens in respect to the prevention of torture and other degrading human treatment are based.

²²L.A Ayinla, ‘Jurisprudential Perspectives on the Fountain of Nigeria Legal System’, *International Journal of Juridical Sciences* [2019] Vol. 1 (2), pp.15-24, available at <http://univagora.ro/jour/index.php/aijs> accessed 28 December 2021 at 8.14 am.

²³Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 1(1).

²⁴*Ransom Kuti v Attorney General of the Federation* [1985] 2 NWLR (Pt. 6) 211, 229-230.

²⁵Section 34, CFRN

²⁶*Ibid.*

²⁷[2020] LPELR-SC. 428/2018.

²⁸Section 41, Constitution Federal Republic of Nigeria, 1999 (as amended).

²⁹*Ibid.*

Furthermore, being the most fundamental *corpus juris* in the whole of the country,³⁰ the establishment of protection of every individual against torture or inhuman or degrading treatment underpins the recognition by the constitution of the need to uphold the dignity of persons as a natural right which should not be denied in whatever circumstance as recently reverberated in the case of *Nigerian Security and Civil Defense Corps and Ors v Oko*³¹ where the court elegantly held that: “Indubitably, these rights are rights attaching to man as a man because of his humanity. They fall within the perimeter of species of negative rights and stand atop in the pyramid of laws and other positive rights and constitute a primary condition for civilized existence”³²

3.3 The Evidence Act, 2011

The Evidence Act 2011 is an Act for the Federal Republic of Nigeria that regulates the admissibility, relevance and other processes relating to the use of evidences in legal proceeding before any court of law.³³ The Supreme Court has held per Okoro JSC, in the case of *Hamza vs State*³⁴ that:”..... Admissibility, one of the cornerstones of our law of evidence, is based on relevancy..... In that respect, it is correct to say that relevancy is a precursor to admissibility in our law of Evidence.”

The Act provides in section 29 that the court shall refuse a confession obtained by oppression (and accordingly it defined the word ‘oppression’ to include ‘*torture, inhuman or degrading treatment, and the use of threat of violence whether or not amounting to torture*’) unless the prosecution can show 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.³⁵

This provision was further expounded in the case of *State vs Ibrahim*³⁶ where the court held inter alia that confession is relevant and admissible in evidence if it is positive and direct and constitutes one of the elements of the offence charged. The court must also be satisfied that it is unequivocal and that it was voluntarily made.

The Evidence Act narrows down the inadmissibility of evidence obtained by oppression to confessions, and neglects to address other forms of evidence that may be gathered through the perpetuation of torture and equally fell short of emphasizing that where such evidence is so obtained by use of torture or degrading treatment, the perpetrators be prosecuted.

³⁰ Ibid.

³¹[2019] LPELR-CA/C/72/2018.

³²The case of *Kuti v A.G Federation* [1996] 41 LRCN 200.

³³ Nigerian Evidence Act 2011+Download PDF available at <https://lawglobalhub.com/nigerian-evidence-act-2011/> accessed 1 March 2022 at 10.31 am.

³⁴[2019] LPELR-SC.613/2016.

³⁵Evidence Act, 2011, Section 29.

³⁶[2019] LPELR-SC. 1097/2016.

3.4 The Administration of Criminal Justice Act, 2015

The Administration of Criminal Justice Act (ACJA) was signed into law in 2015 and it was enacted to harmonize and redefine the procedural facet of Nigeria's criminal justice system by providing for the administration of criminal justice and for related matters in the courts of the Federal Capital Territory and other Federal Courts in Nigeria.³⁷ The uniform law applies in these courts with respect to offences created under Federal Legislations.³⁸ The Act repealed the Criminal Procedure Act (CPA)³⁹ and the Criminal Procedure Code (CPC)⁴⁰ that were in operation in the Southern and Northern States respectively, as well as the Administration of Justice Commission Act,⁴¹ which applied in the North. To buttress this, the Court, for instance, held in the case of *Uboh v Federal Republic of Nigeria*⁴² that from the 13-5-2015, the CPC had ceased to exist and the Administration of Criminal Justice Act (ACJA) had become operative as the law governing the procedure of trial of offences under the Penal Code.

One of the remarkable changes effected by the Act was the introduction of specific and strict procedures relating to the treatment of suspects and offenders with a deliberate view to preventing torture and preserving human dignity. Section 8 of the Act particularly serves as a legal shield from inhumane treatment and helps to preserve human dignity, to the effect that, a suspect shall⁴³: (a) *be accorded humane treatment, having regard to his right to the dignity of his person; and (b) not be subjected to any form of torture, cruel, inhumane or degrading treatment.*

Under the Administration of Criminal Justice Act, 2015, there is a concerted effort by the lawmakers to transmogrify the criminal justice structure from its former mode of retributive justice to a system which is both rehabilitative and restorative in nature and which will effectively accord preference to attending to the needs of victims of crime, vulnerable persons, criminal suspects and ensure the preservation of human dignity and the well-being of the society as a whole.⁴⁴ This point was reaffirmed in the case of *Federal Republic of Nigeria v Lawan*⁴⁵ that,

³⁷R.O. Ugbe, A.U Agi, . *et al*, 'Nigeria's Administration of Criminal Justice Act (ACJA) 2015: Innovation Relating to Women and Children'[2019] available at https://www.researchgate.net/publication/342503751_NIGERIA'S_ADMINISTRATION_OF_CRIMINAL_JUSTICE_ACT_2015_INNOVATIONS_RELATING_TO_WOMEN_AND_CHILDREN/ accessed 1 January 2022 at 8.30 am.

³⁸Administration of Criminal Justice Act, 2015, Section 2 (1).

³⁹ Cap. C41, LFN 2004.

⁴⁰ Cap. C42, LFN 2004.

⁴¹ Cap. A3, LFN 2004.

⁴²(2019) LPELR-CA/A/490C/2016.

⁴³ Section 8(1), *The Administration of Criminal Justice Act (ACJA) 2015*.

⁴⁴Tariere Egbegi (2020), '*The Administration of Criminal Justice Act (ACJA) 2015: Overview and Tools for Protection of the Rights of Women and Children*', available at <https://fida.org.ng/wp-content/uploads/2020/11/The-Administartion-of-Criminal-Justice-Act-ACJA-2015.pdf&sa=U&ved=/> accessed 1 January 2022 at 10.33 am.

⁴⁵[2018] LPELR-CA/A/717C/2017.

“the essence of the Administration of Criminal Justice Act, 2015 (ACJA) was to ensure amongst others, speedy trial and quick disposal of criminal cases in the interest and as of right of a suspect, the defendant, the victim and in fact the society at large.....”

The delay in the administration of justice prior to the establishment of the Act posed serious issue of concern to legal stakeholders, thus, a major purpose of the Act is to enhance a swifter dispensation of justice in Nigeria.⁴⁶ The Administration of Criminal Justice Act, 2015, as expected, made certain reforms in the Nigerian criminal justice system as soon as it came into force, prominent amongst which were the key provisions to promote quicker dispensation of justice, enhanced human rights protection, and a robust criminal justice process.⁴⁷

3.5 The Nigeria Police Force (Establishment) Act, 2020

The Nigeria Police (Establishment) Act, 2020, was enacted on the 17th September, 2020, repealing the Police Act, 2004.⁴⁸ The Act was enacted to provide a better police system on the trite principles of accountability, transparency and protection of human rights and the dignity of citizens.⁴⁹ The Act introduced new provisions, some of which are in line with the constitutional stipulations on conserving the rights of citizens against torture and ill-treatment. Together with other laws enacted by the National Assembly, the ratified international treaties, and the Nigerian Constitution, the Act also provides a formidable framework for the protection of individuals against torture by security agencies, particularly the police force. In keeping them within the bounds of their powers, the court in the case of *Inspector General of Police v Agbinone and Ors*⁵⁰ reemphasized that the police have power to investigate criminal complaints made to it and to prevent and detect crimes pursuant to the provisions of the force’s enabling statute, but that power has to be exercised reasonably.

Furthermore, there are other provisions within the pages of the Act that have strengthened the position of the law against all modes of torture and other acts of affront to the sanctity of human rights in Nigeria. One of such provisions is Section 32(2) of the Nigeria Police Act, 2020, which particularly prohibits police officers from arresting a person merely on a civil wrong or breach of contract,⁵¹ as this is not within the bounds of their statutory powers as held quite recently in the case of *Kure v C. O. P*⁵² wherein the court declared that:

“The police are not a debt recovery agency and have no business to dabble into contractual disputes between parties arising from purely civil transactions.”

⁴⁶Chief Justice Walter Onnoghen, Former Chief Justice of Nigeria, *Vanguard Newspaper* on the 24th of July 2017.

⁴⁷*Ibid.*

⁴⁸ Cap. P19, LFN 2004.

⁴⁹ The Explanatory Memorandum to the Nigeria Police Act, 2020.

⁵⁰[2019] LPELR-CA/B/220/2016.

⁵¹Section 32 (2) Nigerian Police Force (Establishment) Act, 2020, .

⁵²[2020] 9 NWLR (Pt. 1729) 296.

More crucially, and in accordance with the provision of section 34 (1) of the Constitution, which guarantees the right to dignity of the human person, the Act also clearly emphasizes that no person should be subjected to any form of torture, cruel, inhumane, or degrading treatment.⁵³Section 37 of the Act contains this provision to the effect that, “*a suspect shall (a) be accorded humane treatment, having regard to his right to the dignity of his person; and (b) not be subjected to any form of torture, cruel, inhumane or degrading treatment*”⁵⁴.The Act through its provisions particularly in section 37 has successfully added itself to the list of the legal frameworks for the protection of citizens against torture and inhumane treatment.

3.6 Violence against Persons Prohibition Act, 2015

The Violence Against Persons Prohibition (VAPP) Act came into force in order to address all kinds of violence carried out against persons in both private and public aspects of life, and to put in place a specific provision that guarantees maximum protection of, and effective reliefs to victims of such crimes and provide stiff and commensurate punishment for offenders, while also serving as deterrence to would-be criminals.⁵⁵

The Act was assented to by President Goodluck Jonathan in 2015 and has since provided a much encompassing legal framework for the protection of citizens against acts of violence inflicted on their person.⁵⁶Most of the provisions enshrined in the VAPP Act center on protecting the rights of women against discrimination and abuses and frowns at gender cum sexual-based violence. It has been variously asserted by proponents of the Act, that the provisions of the Act further support recent jurisprudence on the equality of women right as held in cases like *Ukeje v Ukeje*⁵⁷ in which the Supreme Court clarified that the customary law that allowed females to be disinherited in favor of males violated the Constitution on the ground of discrimination and therefore void.

The VAPP Act is the first statutory instrument to prohibit and punish female genital mutilation, forced eviction by a person of his/her spouse and children, verbal, emotional and psychological abuses, harmful widowhood practices, political violence, redefine and broaden the scope of rape and lay down a provision for the payment of compensation to victims among others.⁵⁸With respect to rape for instance, the provisions of the Act have further amplified court decisions reached in cases like that of *Upahar and Anor v The State*⁵⁹ where the Court of Appeal held that to prove a charge of rape, the prosecution must establish that the accused had sexual

⁵³(n. 51) Section 37.

⁵⁴ *ibid*

⁵⁵A. N. Nwazuoke ‘A Critical Appraisal of the Violence Against Persons (Prohibition) Act, 2015’ *Journal of Law, Policy and Globalization* Vol. 47 [2016], available at <https://www.iiste.org/Journals/index.php/JLPG/article/view/29658/30451> accessed 1 January 2022 at 8.43 am.

⁵⁶*Ibid*.

⁵⁷[2014] LPELR 22724 1, 43 (SC).

⁵⁸*Ibid*.

⁵⁹[2011] 6 NWLR (pt. 816) 230 at 250.

intercourse with the woman in question; that the act of sexual intercourse was done in circumstances falling under any one of the five paragraphs in section 282(1) of the Penal Code.

Contextually however, the VAPP Act also inhibits public officers from carrying out violent acts like torture and other inhumane practices. Thus, Section 24 of the Act provides that,

*“(1) A State actor who commits political violence commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N1,000,000 or both(1) A person who attempts to commit the act of violence provided for in subsection (1) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding N700,000 or both”.*⁶⁰

The Act in Section 10 also renders criminally liable, anyone who willfully deprives another person of their liberty and imposes a penalty upon conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000 or to both such fine and imprisonment.⁶¹ The Act also serves as a limb of the legal framework that protects citizens against violence, which is a process of committing torture, and has been presently domesticated as applicable law in 27 of the 36 states of the Federation.⁶²

4.0 Findings

In view of the issues discussed in this paper, the following findings are made:

- i. There is general lack of implementation of the Anti-Torture Act and other related legal regimes discussed in this paper due to lack of awareness, which could be traced to the fact that the entire prohibition of ill-treatment is a new regime in Nigeria.
- ii. Notwithstanding the revolutionary provisions ushered in by the Anti-Torture Act, 2017, to decisively terminate the long reign of torture especially those perpetuated by law enforcement officers in Nigeria, the practice still persists with arrant impunity largely due to lack of supervisory mechanism put in place within members of the different forces and security units by the government to checkmate the excesses of the perpetrators.
- iii. Most victims of torture lack the wherewithal and necessary accesses to the relevant institutions to seek legal reparation for the heinous acts meted on them and are often left on their own to struggle with the long psychological effect of their ordeal suffered in the hands of their torturers.

⁶⁰ Violence Against Persons Prohibition Act, Section 24.

⁶¹ Ibid, Section 10.

⁶² VAPP Tracker available at <https://www.partnersnigeria.org/vapp-tracker/> accessed 2 January 2022 at 10.44 am.

5.0 Recommendations

In view of the above findings, the following recommendations are made:

- i. Government should intensify efforts towards ensuring that the implementations are absolutely adhered to, by ensuring that, the National Human Rights Commission to be pro-active on breaches of human rights particularly within the jurisdiction of the Nigeria Police Force, which is mostly complained of.
- ii. The Attorney General of the Federation by virtue of Sections 9 and 10 of the Anti-Torture Act, should embark on an intensive nationwide campaign and education retreats generally for members of the public, different forces and security units on the import and purpose of the regimes prohibiting torture in Nigeria.
- iii. Finally, since the Act has allowed anyone or organization to aid the victims of torture in making complaints, it then behooves a duty on the multiple human rights activists and agencies, legal aid institution, legal practitioners, civil society organizations and civil rights advocacies, the National Human Rights Commission, the Ministries of justice both Federal and at States level to rally together and take charge of the causes of torture victims particularly where such victims are financially incapacitated to engage legal services or are of the vulnerable class.

6.0 Conclusion

The coming into force of the Anti-Torture Act into the Nigerian Criminal Justice landscape has been accompanied by a myriad of overarching implications on the overall police structure and operations as well as general scope of law enforcement in the country. Prior to its passage, the acts of torture were more or less considered purely civil infringements and only treated as homicide where death is the resulting consequence of the force applied in administering torture. It was formerly the case that these public officers had the liberty to simply go scot-free even after having conducted themselves in an unconstitutional, unprofessional and unconventional manner in the course of their investigatory or custodial duties. Importantly, this paper has unearthed the fact that the plethora of existing laws in Nigeria show that torture is a crime which is punishable in the Nigeria.