

# Protection of the Right against Torture under International Human Rights Law: A Critical Appraisal

Babagana Karumi\*

Ph.D Candidate, AIKOL, IIUM Malaysia and Lecturer Faculty of Law Yobe State University, Damaturu, Yobe State, Nigeria,

\*karumib@gmail.com

## Abstract

Torture as a form of violence against the person of another that takes different forms which could be in the form of beating, rape, electrocution and other inhuman treatments of human beings. Torture is a grave violation of human rights and is rigidly prohibited, the use of torture strikes at the centre of civil and political freedoms. Torture was one of the first issues addressed by the United Nations (UN) in its development of human rights standards. Other regional Instruments have equally condemned torture and have called on nation States to take practical steps towards the prohibition of torture. In short torture and other forms of inhuman and degrading treatment are prohibited under international law and cannot be allowed under any circumstances. The local legislation in Nigeria especially the Nigeria Constitution has prohibited torture and has asserted the right of every citizen against torture, inhumane and degrading treatment. This paper intends to examine the right against torture under International law with a view of seeing how it could be effectively utilised for the protection of the individuals against torture in Nigeria.

**KEY WORDS:** Torture, Treaties, Human Rights, Nigeria

## 1. Introduction

Torture is the use of force with the aim of breaking the will of an individual; it is inhuman and affects the well-being of a victim as well as the society. The right not to be subjected to torture or ill treatment is spelt out in many human rights instruments, as these rights cannot be derogated even in emergency situations. It is a fact that the act of torture is carried out by agents of the state like the police and other security agencies mostly with the aim of obtaining information from their victims. There are International and regional instruments that prohibit torture; to begin with the Universal Declaration of Human Rights 1948, it provides that, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5 of Universal Declaration of Human Rights, 1948). Similarly, the African Charter on Human and Peoples' Rights also prohibits all forms of exploitation and degradation of man, such as torture, cruel, inhuman degrading punishment and treatment (Article 5, African Charter on Human and Peoples' Rights). The Charter is the first instrument of Human Rights protection in Africa, and it does not make any provision for the derogation of the rights enshrined therein. The prohibition on torture requires states to take necessary measures to prevent and punish those found guilty of torturing. There are also obligations to respect human dignity under the Geneva Conventions and Convention against Torture, which mandates states to prosecute or extradite those responsible for torture. As such authorities should put in place measures that will safe guard the right of the citizen according to the provision of the applicable laws.

Most nations of the world are signatories to UN and Regional instruments. In the fulfillment of their international obligation, as requested by the International instruments, most signatories to international instruments against torture have domesticated the international instruments. In Nigeria, the 1999 Constitution which is the prime law of the law has guaranteed the right against torture. Other local legislations like the Penal Code and the Criminal Code have criminalized all acts of torture and have prescribed punishment for such perpetrators of this inhumane act of violence.

## 2. Meaning of Torture

Torture is defined by various international Instruments. Most of the instruments are not solely dedicated for the protection of the right against torture. However due to the seriousness of the abuse many international instruments on human right protection have 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 as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination

of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

The distinction between torture and other forms of cruel, inhuman or degrading treatment or punishment are mostly difficult and may depend on the particular circumstances of the case and the disposition of a particular victim. Both terms relates to mental and physical ill-treatment that has been intentionally inflicted by, or with the consent or acquiescence of, the state authorities. The following features could be found in the definition in Article 1 of the Convention against Torture;

(a) The infliction of severe mental or physical pain or suffering: with respect to the mental aspect of the torture, a torture needs not be physical done to the victim. A person can be mentally tortured to an extent that it will cause serious psychological effect on the victim. A person can be psychologically tortured by physically torturing another person in his presence and threatening to do the same to the individual if he fails to give the information needed from him. Physical torture takes the form of beating, electrocution, rape etc. any form of physical contact that has satisfied the threshold of injury or harm is well within the meaning of physical torture. Denying a person food, subjection him to harsh condition such as heat or cold will all constitute suffering within the meaning of torture (Costanzo 2009).

(b) By or with the consent or acquiescence of the state authorities: under ideal situation the state is expected to be the one to fight torture and ensure that no human being is subjected to torture and any form of degrading and inhumane treatment. Unfortunately, torture is often carried out with the explicit consent of the state or by agents of the state who work for the state. If a state refuses to do the needful by preventing torture it will be said to have allowed torture to be done through its refusal to act (Costanzo 2009).

(c). For the purpose of obtaining information, punishment or intimidation: A glaring feature of torture is the fact that the perpetrators often have a motive for their action. Mostly, the intention of obtaining information from the victim is a factor. Where the state agents believe that the victim is hiding some information and is not ready to cooperate with the state agents in giving such information, torture is used for the purpose of taping the information. In criminal cases, the prosecution sometimes tortures the accused in order to get more facts or confession (Costanzo 2009).

All these features constitute the definition of torture under article 1 of the convention, which is the effect that in torture there is the infliction of pain either physical or mental. It could also be done with the consent or acquiescence of a state agent or authority, for the purpose of obtaining information, punishment or intimidation. Similarly torture is also defined as any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person or a third party to obtain information or a confession (Arcel 1998). It could also be defined as an intentional stigma of deliberate inhuman infliction of serious and cruel suffering (Aisling 2002). Torture has also been defined to as an intentional infliction of severe pain or suffering, whether physical or mental, on a detainee by or with the acquiescence of state officials, for the purpose of intimidation, humiliation, degradation, coercion, punishment, or the extraction of a confession or information (Ukweli 2000). These definitions are having one feature in common i.e. the infliction of pain to obtain information or confession, in the definitions it appears that force is used.

In defining torture, it is important to take into account the moral act structure of the intention, circumstance, the object of torture (Jeffreys 2009), motivation and emotions of the torturer and that of the victim (Planje and Campbell 2013). It should be noted however, that it is not in all situations that a victim suffers ill treatment that will be regarded as torture. There other factors that will be taken into account, such as the circumstances and the purpose of the torture. Although, torture lacks a firm definition, as the concept is dynamic and depends on how one look at it (Posner 2006).

Torture has been described as barbaric, corruptive and incompatible with basic norms of respect for human dignity. Even when it is done in the interest of the public (for instance, for fighting a terror, solving crime, etc.) it is still immoral and it amounts to dehumanisation of the victim, as such it is barred in all circumstance (Shany 2007).

### **3 Forms of Torture**

The form and method of torture is so wide that its ranges from mere hand slap to the infliction of pain that might result to death. The act of torture has been in practice for quite a long time, although it has been prohibited by a number of instruments. The infliction of pain on victims for various purpose and interest has been on the practice, thus, humans have been torturing one another for quite a long time and most common form of it is beating (White 2009).

The act of torture normally starts with the arrest and detention, in which torturers explore the weak spots of the victim in order to break him down with a view to obtain information or as a punishment. Torture is therefore, unlawful evil act that must be discouraged and stopped because of the harmful and inhuman danger attached to it (Arcel 1998). Torture affects the physical and psychological integrity of persons, which sometimes results to death (Aniedi 2011). The death of a torture victim is an indication of weakness or failure from the side of the torturer. Because mostly the ultimate goal of a torturer is to obtain information or confession from the victim, as torture is not like a war which the ultimate goal is to kill (Perl 2012). Therefore, when a torturer could not achieve his goal and the consequences of his act leads to the death of his victim he is seen as a failure in the discharge of his duties.

Interrogators used various forms of torture in places of detention, according to Amnesty International, detainees have complained that their heads were covered with plastic bags and put under water for long period of time to simulate suffocation. Others also state that they were exposed to electric shocks including shocks to the genitals, cigarette burns, stabbing with a knife, tying up with rope and whipping with chains and leather belts (Amnesty International 2008). Other methods used by torturers includes, beatings accompanied by demands for confession or other information. An inmate told Amnesty International that State CID Officers used hand cuffs on him and tied rope on his wrist and forearms; he is quoted to have said "They put me up very high, when I came down, I could not feel anything. There was no blood in my veins, I was like ice" (Amnesty International 2008).

Some torture methods threaten destruction of the body and its functions, which results in the death of the victim. Torture provokes maximum degree of fear and horror, and therefore is the most traumatic experience that a victim will be exposed to (Jacobsen and Knuds 1997). The methods used in torture are to make detainees confess to crimes they were alleged to have committed, and in most cases the incriminating statements are already prepared for the detainee to sign. And the signed statements will be used against them when they are charged to court (Amnesty International 2010).

The key features of torture are the inflictions of severe physical or mental pain or suffering which are inflicted for prohibited purposes. The pain or suffering could still be torture if it arises from or inherent in or incidental to lawful sanctions if done during pre-conviction interrogations (Sual and Flanagan nd). Most of the modern techniques of interrogation used now cause pain on victims that leaves no marks that can be hardly traced. As more sophisticated methods are used, which are called 'clean techniques' different with those that leaves physical marks on the victims (Rejali 2007).

Another form of torture investigated by Amnesty International in Malaysian prison is that victims in prison were routinely left uninformed about the date of their caning when their caning day suddenly arrived, they were forced to line-up and caned, and some victims will be thinking of the physical assault that awaits them (Amnesty International 2010). As a principle applicable to all persons under any form of detention or imprisonment, it is prohibited for states to take undue benefit of the situation of a detained or imprisoned person for the purpose of compelling him to confess to incriminate himself or implicate another person (Amnesty International 2010).

Other forms of torture includes use of electric shocks, sleeping deprivation, prolonged isolation and stress positions in which suspects are subjected to for months. Rape and threat of rape has also been used as torture on suspects (Amnesty International 2014). Torture may also be committed by infliction of mental suffering through the creation of a state of anguish and stress by means other than bodily assault. Torture can be practiced by using subtle techniques developed in multi-disciplinary laboratories, which are scientific (El-Dakkak 2000). Forms of torture also includes incommunicado detention (Detention without access to the outside world) facilitates torture, ill-treatment and disappearances. Prolonged incommunicado detention can itself form cruel, inhuman or degrading treatment (Amnesty International 1998).

The prohibition against torture and ill-treatment of persons during interrogation is based on respect for human dignity and the protection of human body and mind. To force someone through the administration of drugs to talk is a denial of human dignity. Obtaining testimony through unwilling administration of drugs would also violate the right against self-incrimination. Drugging is prohibited because of its inhuman and degrading nature.

The administration of drugs having the capability of causing a person to talk is carried out through medical procedure by administering the drug through the vein for a period of time. The International Principles of Medical Ethics Relevant to the Role of Health Personnel provide that the participation of doctors or other medical practitioners in the administration of such drugs for interrogation violate medical ethics (Human Rights Watch 2003).

The use of drugs by interrogators is an inefficient means of investigation, drugs reduces person's self control and it is not an automatically guarantee that the person will tell the truth. When a person is under the influence of drugs he is likely to take whatever clue that is suggested by interrogators with a view to agreeing on statements implicating him for a suggested crime.

According to a study by legal and medical expert (Dession et al 1953), on the use of drugs on suspects during interrogation, thus:

“Experimental and clinical findings indicate that only individuals who have conscious and unconscious reasons for doing so are inclined to confess and yield to interrogation under drug influence. On the other hand, some are able to withhold information and some, especially character neurotics, are able to lie. Others are so suggestible they will describe, in response to suggestive questioning, behavior which never in fact occurred...But drugs are not 'truth sera.' They lessen inhibitions to verbalization and stimulate unrepressed expression not only of fact but of fancy and suggestions as well. Thus the material produced is not 'truth' in the sense that it conforms to empirical fact”

#### **4. Prohibition of Torture Under International Instruments**

Torture is prohibited in all situations and cannot be justified under any circumstances. The United Nations has denounced the act of torture as negating the purposes of its Charter and as a violation of the rights proclaimed in the Universal Declaration of Human Rights. Torture is also prohibited by some domestic legal systems across the globe. Nonetheless, acts of torture and ill-treatment remain widespread across the world. The prohibition on torture requires government to take measures to prevent it and to punish those found guilty of committing it. The Geneva Convention and Convention against Torture requires states to prosecute or extradite those responsible for torture. Despite all these treaties the violation of human rights as well as torture is on the increase particularly during states of emergency. The increase in the violation of the rights against torture can be attributed to lack of criminalisation of torture in national laws, the non-prosecution and punishment of those found guilty committing the act of torture.

The prohibition on torture is contained in a number of international human rights and humanitarian treaties and is also considered as a principle of general international law. The prohibition of torture is also assumed to carry a special status in general international law, that of *jus cogens*, which is a 'peremptory norm' of general international law (Human Rights Watch 2003). General international law is binding on all states, even if the states have not ratified a particular treaty. And these rules of *jus cogens* cannot be contradicted by treaty law or by other rules of international law. Criminal acts under international law that are *jus cogens* are subject to universal jurisdiction, meaning that any state can exercise its jurisdiction, regardless of where the crime took place, the nationality of the perpetrator or the nationality of the victim.

There were unprecedented human right abuses during the World War II, hence the world felt the need to come up with an international regulation on human right protection that will prohibit all forms of human right abuses including torture. That saw the coming of the Universal Declaration of Human Rights of 1948. The Declaration states with respect to torture "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5). This prohibition on torture and other ill-treatment has subsequently been incorporated into other international and regional human rights treaties. International Covenant on Civil and Political Rights (ICCPR) (Article 7), and in the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) (Ratified by 136 countries.), the African Charter on Human and Peoples' Rights (Human Rights Watch 2003).

The prohibition against torture is also contained in humanitarian law (also known as the laws of war), which governs the conduct of belligerents during armed conflict. International humanitarian law protect the life, health and safety of civilians and those that are no longer taking part in the hostilities, including soldiers who are captured or who have laid down their arms. Torture of such protected persons is absolutely prohibited. Common Article 3 to the Geneva Conventions prohibits "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment." Also use of force to obtain information is specifically prohibited in Article 31 of the Fourth Geneva Convention: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties." All parties to a conflict are prohibited from perpetrating acts of torture and acts of indecent assault (which includes rape and other forms of sexual assault against women, men or children) (Ukweli 2001).

The absolute prohibition of torture and ill-treatment is emphasized under human rights as a non-derogable right. Which cannot be suspended, limited or its violation could be justified at anytime including during emergency situations (Article 4 of the ICCPR). States are also prohibited from creating avenue where persons will be vulnerable to abuses, for example, denying detainees access to families and lawyers, prolong detention without charging them to court. This prohibition subsists even if the person is suspected of committing a criminal offence (Article 2, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

State agents and officers are prohibited from carrying out the act of torture or other inhuman treatment, and that act cannot be a justification even if it's an order from his superior or authority (Article 2, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). States are mandated under the convention to make all acts of torture a criminal offence under its laws and also to investigate all allegations of torture and punish those found to be responsible for committing the act (Article 4, 5, 7, 12 and 13, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Major international human rights instruments and Humanitarian Law Conventions prohibit torture, and these prohibitions are absolute and non-derogable and it is part of customary international law (Gross 2004).

## **5. Prohibition of Torture under Regional Instruments**

In addition to the prohibition of torture under several UN instruments, several other regional human rights instruments have equally condemned torture and have guaranteed the right of every human being against torture and other forms of inhuman and degrading treatment. Under the African Charter there are guidelines for the protection of the rights against torture, these are, States are to prohibit torture by making it a crime in their domestic laws and legal system. Provision of accessible and effective system for investigating allegations of torture, and if the allegations are substantiated prosecution must commence forthwith, and lastly upon conviction those found guilty must be seen to have been punished (Viljoen 2006).

Torture is often used to make detainees confess to alleged crimes or as a punishment. Sometimes the confession or statements are already prepared by interrogators, and detainees are tortured and blindfolded to sign the incriminating statements. These confessional statements obtained through torture are often used against the victims in court when they are charged (Amnesty International 2010).

African Charter on Human and Peoples' Rights, is the main African human rights instrument, and it provides that "every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." (Article 5, African Charter on Human and Peoples' Rights 1981).

Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights (ECHR), provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment." (Article 3, Convention for the Protection of Human Rights and Fundamental Freedoms 1949). This is a non-derogable right, which means that states cannot use torture even in times of emergency.

American Convention on Human Rights (1978) The American Convention states that "no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." (Article 5, American Convention on Human Rights (1978)). Inter-American Convention to Prevent and Punish Torture (1985), This treaty entered into force in February 1987, elaborates the obligations of states regarding torture and details provisions similar to those contained in UN Convention against Torture.

## **6.1 Prohibition of Torture under National Laws**

Most international human rights instruments require States Parties to domesticate the laws into their local legislation. Absolute prohibition of torture and inhuman treatment under international law should be reflected in the National Laws for effective fight against torture. Many national constitutions have provisions stating that no one should be subjected to torture, cruel, inhuman or degrading treatment or punishment, depending on the constitutional system. The function of such provisions in the constitutions is to enable the courts to test whether existing laws prohibit the violations (Amnesty International 2013).

Nigeria being a signatory to most international human rights instruments and has reflected the prohibition into its local legislations. The Nigerian constitution provides that, every individual is entitled to respect for the dignity of his person, and accordingly, states that no person shall be subject to torture or to inhuman or degrading treatment (Section 34(1)(a), of the 1999 Constitution as amended). Though Nigeria has signed several international human rights instruments that prohibit torture, the Nigeria Constitution demands that before any international instrument has the effect of law in Nigeria, it must have been domesticated into our local legislation (Section 12 1999 Constitution).

According to Camille, the greatest risk of torture and other forms of ill-treatment occurs to individuals during the time of arrest and detention, before they have access to a lawyer or court. This risk persists as long as the investigation lasts, irrespective of where a suspect is being held he is likely to be tortured. As long as

investigation subsists the risk of torture is high. It suggests a proactive preventive measures rather than addressing them after their occurrence (Camille 2000).

## **6.2 Violation by Security agents in Nigeria**

There are many allegations of abuse of rights by security agents in Nigeria, more especially on persons whose right of liberty were deprived. Persons arrested and detained are denied access to their families or lawyers, and were never charged to court. Sometimes when families made effort to contact their relatives in detention they end up been threaten by the security operatives. According to a report by Human Rights Watch, family members of those held in police custody complained that they are being coerced by the Police officers and threatened to torture or kill the person detention (Human Rights Watch 2010).

Nigeria Police are described as lacking in capacity to conduct evidence based investigation, but instead they rely on confessions that are often obtained through torture (Open Society Institute 2010). This exposes inefficiency of law enforcement agents in discharging their role of investigation on suspects in their custody, instead of obtaining voluntary statements of suspects they resort to tortured induced statements. Under the new Evidence Act, any confession obtained from an accused person by torture, inhuman or degrading treatment, the use or threat of violence, is considered involuntary hence would be classified as unreliable and inadmissible in evidence against the accused person (Section 29 (2) and (5) the new Evidence Act 2011). If the courts will always go extra mile to ensure that a confession is made voluntary before admitting it against an accused person, it will greatly minimize the push for getting confessional statements through torture by the agents of the state especially the Police.

Similarly, there are many cases of extra-judicial executions, torture and other ill-treatment by the police and security forces in Nigeria were matters of deep concern, about the safety of the missing detainees whose where about could not be explained by agencies (Amnesty International nd). It has been reported that over 1,000 suspected members of Boko Haram were arrested and detained at Giwa Barracks in Maiduguri, Borno State (Amnesty International 2014), and as a result of this there was an increased of various forms of torture and other ill treatments by the Nigerian security forces (Amnesty International 2014). A former detainee alleged that torture and ill treatment led to the death of those there were detained together by the security forces in Borno State (United States Department of State 2013). Amnesty International also reports that according to a senior Army officer more than 950 persons died in military custody in Borno State (United States Department of State 2013). That on the average nearly 5 persons were tortured to death in the military detention centres every day on suspicion of being members of Boko Haram (United States Department of State 2013). The cases of abuses of human rights by security operatives in Borno State has been decried as a crime against humanity (Okoli and Lortyer 2014), they arrest and torture the members of the community, mostly this happens as an aftermath of an attack by Boko Haram. Similarly the violation of rights by the Joint Task Force (JTF) was credibility attested to on the allegations of summary execution, torture, and rape (National Human Rights Commission 2013). Also during the emergency rule in Borno State there have been evidences that detainees die in custody, more particularly in Giwa Barracks (military barracks in Borno State), where it was reported that between January and March 2014 about 150 dead bodies were brought to the specialist hospital in Borno State and none of the dead bodies had a gun shot (Amnesty International 2014). This is a conclusive evidence for one to conclude that these corpses were tortured to death. The violation of the rights against torture is increasing since the declaration of state of emergency in Borno State, the security operatives arrest and detained those suspected of Boko haram or having linkage with them. To prevent human rights violations in police custody, suspect should be brought promptly before a court and have the opportunity to challenge the lawfulness of their detention.

## **6.3 Safeguards**

Persons deprived of their liberties are vulnerable to abuses, and as such they need to be protected and safeguards have to be put in place to prevent such abuses. And there should be redresses available for such violated rights. Thus, Article 9 (1) International Covenant on Civil and Political Rights and Article 6 African Charter of Human and People's Rights provides that, everyone has the right to liberty and security to his person including the right to be free from arbitrary arrest or detention. The state has a duty to maintain the safety of a person whose right of liberty is deprived. And as such, Persons detained are not to be subjected to torture or inhuman treatment as a result of the detention (Article 7 and 10(1) of the International Covenant on Civil and Political Rights (ICCPR)). The prohibition on torture and ill-treatment apply to all persons at all times. Certain rights in the treaties, such as the right not to be subject to arbitrary detention, may under certain circumstances be restricted in a public emergency, but safeguards necessary for the prohibition of torture, such as limiting periods in which people can be held in incommunicado detention, must not be compromised (Foley 2014).

Individuals may be at risk of torture or ill-treatment before they are subject to legal formalities after their arrest and subsequent charge to court. The period immediately following deprivation of liberty, suspects are at the risk of torture and ill-treatment. Therefore, international standards of protecting suspects should apply from the moment that someone is deprived of his or her liberty.

Therefore it is the absolute responsibility of the government to ensure that the rights of all persons are preserved and safe guarded. The government has a duty to prevent human rights violation. It has a legal duty to take positive steps to prevent it, and to use all the mechanism at its disposal to investigate the violations that happened within its jurisdiction (Article 12, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). Those found guilty of torture should be punished and victims of it should also be compensated adequately. Where death occurs as a result of torture the dependants of the victim shall be entitled to the compensation (Ramcharan 2011). States have the obligation to prevent the abuses, by putting in place protective measures that will safeguard persons in custody from the abuses of states officials and bodies. Also states shall make the offences of torture punishable under its criminal laws as a minimum requirement in the prevention of torture (General Comment No. 2 (2007) the Committee Against Torture). The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) requires state parties to the convention to take effective legislative, administrative and judicial measures to prevent the act of torture. And no exceptional circumstance will be allowed or justify the use of torture, be it in state of war or threat of war, internal political instability or any public emergency. Torture cannot be justified in any situation, circumstance or order (Article 2 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Similarly, as a safeguard by states in preventing torture CAT, requires states to ensure that all acts of torture are made offences under the national criminal laws of states. So also, attempt to commit torture should form part of the laws. And the law should make these offences punishable with appropriate penalties according to their nature and severity (Article 4 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). In order to safeguards suspects from the violations, arrests should only be done by authorised agencies, and on reasonable grounds of suspicion. Those arrested should be informed of their rights and the reasons for their arrest. Furthermore, those arrested should be allowed to have access to their families, and the authorities should have records of those arrested, and ensure that detainees are treated humanely (Amnesty International 2014).

The mandate under the African Charter of receiving individual complaints vests with the African Commission. Over the years, the Commission has received and treated over 30 complaints to the commission in form of communication on allegations of torture and ill treatment (*Abdelhadi Ali Radi and Others v the Republic of The Sudan*, Communication 368/09 and *Gabriel Shumba v the Republic of Zimbabwe*, Communication 288/04). In the Communications, the Respondent States were found in violation of Article 5 of the African Charter and requested to pay adequate compensation to the victims, to carry out inquiries and investigations to bring perpetrators to justice, and where appropriate, to amend legislation incompatible with the African Charter, as well as to train security officers on relevant standards concerning adherence to custodial safeguards and the prohibition of torture (Mute 2014).

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, has made provisions against torture in the European Convention on Human Rights which is strengthened by this treaty, and came into force in February 1989. The Convention created a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to carry out unrestricted state visits to places of detention. It allows for private conversations with detainees and public disclosure if there is no cooperation from the state party. The CPT monitors the European Convention for the Prevention of Torture, and it states in its mission statement, thus, "The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment" (European Convention for the Prevention of Torture, mission statement). The CPT visits are done by delegations of two or more members to places of detention, such as prisons, detention centres, Police stations and mental health and elderly care institutions, where they monitor treatment of those being held. The Committee conducts an unscheduled visit to an institution of detention.

Victim of torture can sue for damages in court, but there are some difficulties in instituting suits for damages or compensation. This includes the cost of engaging the services of a legal practitioner, and compiling enough evidence to prove torture in court. However, even when damages are awarded at the end of the case, the financial compensation does not undo the harm done.

## 7. Conclusion

Torture involves the infliction of physical or mental suffering in a person by officials of the state in order to get information or for the purpose of punishment. During the World War II there were serious acts of violation of human rights which informed the world of the need to come out with an international instrument for the protection of the right of man. The Universal Declaration of Human Right 1948 is the first international treaty that expressly prohibits torture and all forms of cruel and inhumane treatment. Several other international treaties have equally prohibited torture. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the only UN Instrument that is solely dedicated to the protection of the right against torture. Due to its *jus cogens* status, torture is prohibited even under customary international law. Torture is equally prohibited under regional instruments and local laws in Nigeria. The Nigerian Constitution is very explicit on its guarantee of the right of the individual against torture and other forms of cruel and inhumane or degrading treatment. The prohibition against torture is exceedingly important due to the cruelty involved and it's far reaching long consequences on the victim. Officials who engage in torture and those who give the orders are supposed to face the full wrath of the law.

A major factor responsible for the violations of the rights against torture is the failure of the governments to domesticate the various treaties dealing with torture. This affects the implementation of the international and regional instruments on torture, for example in Nigeria a treaty has to be domesticated before it can have force of law in line with the provisions of Section 12 of the Constitution of Federal Republic of Nigeria. This makes the application of international treaties protecting the rights of those deprived of their liberty difficult to realise. Also there are also problems of lack of implementation mechanism that protects the right against torture and prevent its violation even within the national frame work which needs to be addressed. Similarly, law enforcement officials in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened. Government agents found to abuse the right of others against torture need to be punished according to the law of the land and such punitive measure should be made public so that it will serve as deterrence to others.

## References

- Aisling R. (2002), *A guide to the Implementation of Article 3 of European Convention on Human Rights*, Human Rights Handbook No. 6.
- Amnesty International, (1998), *Fair Trials Manual* UK: Amnesty International Publication.
- Amnesty International, (2010) *A blow to Humanity, Torture by Judicial Caning in Malaysia*. UK: Amnesty International Publication, 2010.
- Amnesty International. (2003), *Combating Torture: A Manual for Action*, UK: Amnesty International Publication
- Amnesty International. (2008), *Nigeria, Prisoner's Rights Systematically Flouted*, UK: Amnesty International Publication.
- Amnesty International. (2008), *Gambia Fear Rules*, UK: Amnesty International Publication.
- Amnesty International. (2010), *New Order, some Abuses, Unlawful, Detentions and Torture in Iraq*, UK: Amnesty International Publication.
- Amnesty International. (2010), *New Order, some Abuses, Unlawful, Detentions and Torture in Iraq*, UK: Amnesty International Publication.
- Amnesty International. (2010), *Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention*, UK: Amnesty International Publication.
- Amnesty International. (2014) Written Statement to 25<sup>th</sup> Session of the UN Human Rights Council .
- Amnesty International. (2014), *More than 1,500 Killed in Armed Conflict in North-Eastern Nigeria in Early 2014*, Amnesty International Publication, London , United Kingdom.
- Amnesty International. (2014), *Stop Torture Media Briefing, Torture in 2014, 30 Years of Broken Promises*.
- Amnesty International. (nd), *Nigeria, Loss of Life, Insecurity and Impurity in the Run-up to Nigeria's Elections*, UK: Amnesty International Publications.
- Aniedi I. J. (2011) "Criminalisation of Torture in Nigeria; A Desideratum" *Sacha Journal of Human Rights* Vol.1 No. 1.
- Arcel, L.T, (1998), *War Violence, Trauma and Coping Process: Armed Conflict in Europe and Survivor Response*, Rehabilitation and Research Centre for Torture Victims, Copenhagen , Denmark.
- Camille G. (2000), *The Torture Reporting Handbook*, UK: Human Rights Centre, University of Essex.
- Costanzo, M.A. and Gerrity, E. (2009), "The Effects and Effectiveness of Using Torture as an Interrogation Device: Using Research to Inform the Policy Debate", *Social Issues and Policy Review*, Vol. 3, No. 1, at 180.

- Dession, Freedman, Donnelly, and Redlich. (1953), "Drug Induced Revelation and Criminal Investigation," 62 Yale L.J. 315.
- El-Dakkak, M. Shokry. (2000), *States Crime against Humanity; Genocide, Deportation and Torture from the Islamic Perspectives of International and Islamic Law*, Kuala Lumpur: A. S. Noordeen.
- Foley, C., Combating Torture; A Manual For Judges and Prosecutors, [https://www.essex.ac.uk/combatingtorturehandbook/manual/2\\_content.htm](https://www.essex.ac.uk/combatingtorturehandbook/manual/2_content.htm) Accessed on December 2014.
- Gross O. (2004), The prohibition on Torture and Limits of the Law, Sanford Levinson in *Torture, US*: Oxford University Press, Inc 2004.
- Human Rights Watch. (2010), *Nigeria, Every One's in on the Game Corruption and Human Rights Abuses by the Nigerian Police Force*, USA: Human Rights Watch Publication.
- Human Rights Watch. (2013), The legal Prohibition Against Torture <http://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture> 3rd January 2015-01-04
- Jacobsen, L. and Knuds. (1997), *Torture Survivor – Trauma and rehabilitation*, Copenhagen, Denmark: International Rehabilitation Council for torture victims.
- Jeffreys D.S., (2009), *Spirituality and the Ethics of Torture*, Palgrave New York: Macmillan.
- National Human Rights Commission. (2013), "The Baga Incidence and Situation in North East Nigeria an Interim Assessment and Report, NHRC Abuja .
- Okoli, A. and Lortyer, P. (2014), "Terrorism and Humanitarian Crises in Nigeria: Insight from Boko Haram Insurgency" *Global Journal of Human Social Sciences:(F)* Vol. XIV, Version 1, Global Journals Inc. USA.
- Open Society Institute. (2010), *Criminal Force Torture, Abuses and Extra Judicial Killings by the Nigeria Police Force*, USA: Open Society Institute.
- Perl, L., (2012), *Controversy! Torture*, New York: Marshall Cavendish Bench Mark.
- Planje E. and Campbell T., (2013), Coding and variable Formation for Definitions of War , Torture , and Terrorism Edited by Malley-Morrison K., McCarthy S. , and Hines D., in *International Handbook of War , Torture and Terrorism* , London: Springer Science Business Media.
- Posner R., (2006), "Torture ,Terrorism, and Interrogation" in *Torture: A Collection* , edited by Levinson S., USA: Oxford University Press.
- Ramcharan, B. G. (2011). *The fundamentals of International Human Rights Treaty Law*, Boston: Martinus Nijhoff Publishers.
- Rejali D. (2007), *Torture and Democracy*, New Jersey: Priceton University Press.
- Shany Y, (2007), "The prohibition against Torture and Cruel , Inhuman , and Degrading Treatment and Punishment: Can the absolute be Relativized under the Existing International Law?" *Catholic Law Review* Vol. 56.
- Sual B., and Flanagan M. (nd), ' Torture and counter-Terrorism ' in *Research handbook on International Law and Terrorism* , Edited by Sual B.
- Ukweli, (2000), *Monitoring and Documenting Human Rights Violation in Africa. A Handbook*, Amnesty International and CODESRIA, Dutch Section, Netherlands.
- United States Department of State. (2013) Country Report on Human Rights Practices, Bureau of Democracy, Human Rights and Labor.
- Viljoen F. and Odinkalu C. (2006), *The prohibition of Torture and Ill- treatment in African Human Rights System , A Handbook for Victims and their Advocates*, Switzerland: World Organisation Against Torture OMCT), 2006.
- White J. E. (2009), *Contemporary Moral Problems, War, Terrorism , and Torture*, 3<sup>rd</sup> Edition Australia: Wadsworth Cengage Learning.

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:

<http://www.iiste.org>

### CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

**Prospective authors of journals can find the submission instruction on the following page:** <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

### MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

Academic conference: <http://www.iiste.org/conference/upcoming-conferences-call-for-paper/>

### IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library , NewJour, Google Scholar

