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*Maria Chigozie Onuegbulam and Frank Ifeanyi Asogwah*

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## THE EPIDEMIC OF TORTURE AND THE MENDACITY OF THE NIGERIAN TORTURE ACT, 2017

Maria Chigozie Onuegbulam\* Frank Ifeanyi Asogwah\*\*

### Abstract

*The prevalence of torture, cruel, and other inhuman and degrading treatment on crime suspects in Nigeria and around the globe is alarming and gradually returning humanity to a barbaric state. It is an affront to the dignity of the human person, truncating several international and domestic laws against torture. Nigeria ratified and domesticated the United Nations Treaty against Torture in 2001. Recently, the Nigerian government enacted the Anti-Torture Act 2017, prohibiting torture as a means of extracting information from suspects. It is petrifying that notwithstanding international and domestic laws against torture, the Nigerian government, its security operatives, and other security outfits are brazenly basking in the ugly culture of perpetrating various acts of torture on citizens. This article aims to showcase the government and its security agents as central and major actors in the effective prohibition and prevention of torture in Nigeria. The objective is to bring to the limelight the futility of international conventions on torture and the Act 2017 without implementation and government cooperation. The research adopts doctrinal designs using an analytical approach. This article opines that there is a need for government and security agents' collaboration in the effort to curb the reign of torture in Nigeria. Our finding is that without a committed resolve by government and security actors to stop the use of torture as a crime-solving tool in Nigeria, the Anti Torture Act 2017 will remain a façade and there may be no end to torture and violation of the rights of suspects in Nigeria.*

**Key Words:** United Nations Treaty against Torture, Implementation, Government and Security Agents, Anti-Torture Act, Nigeria

### 1. Introduction

United Nations Convention against Torture and other cruel, inhuman or degrading treatment 1984<sup>1</sup> aims at preventing torture on persons among other things. It requires that States take effective measures to prevent torture in any territory within their jurisdiction. The treaty equally forbids States from transporting persons to any country where there is a reason to believe that they

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\* Senior Lecturer, Faculty of Law, Enugu State University of Science and Technology, Enugu.

\*\* Professor and Dean of Law, Enugu State University of Science and Technology, Enugu.

<sup>1</sup> The 'Torture Convention' was adopted by the United Nations General Assembly on 10 December 1984 in Resolution 39/46, but the Convention entered into force on 26 June 1987 after ratification by 20 States.

will be tortured.<sup>2</sup> For some time now, there has been a widespread culture of torture across the globe and Nigeria is not an exception. Human rights, especially those of suspects, detainees and prisoners are often trampled upon by government, law enforcement agents and other security outfits. Instances abound where persons placed under investigation or held in custody of security agents or by persons in authority are subjected to physical harm, torture, threat or intimidation and acts that impair their free will. Many of the interrogators and law enforcement agents adopt torture mechanism as a ‘necessary’ tool for extracting information from suspects contrary to existing laws.<sup>3</sup> They often view torture, cruel and degrading treatments as a punishment or as a way to gain life-saving information in spite of the provision of the Evidence Act.<sup>4</sup> Aside its psychological effect on its victims and the society at large, torture is prohibited by various international Conventions<sup>5</sup> as a form of punishment so that its perpetrators are liable to criminal sanctions.

Interestingly, Nigeria is a party to the United Nations (UN) Convention against Torture and other cruel, inhuman or degrading treatment 1984. Additionally, the Nigerian government in 2017 enacted the Anti Torture Act, prohibiting acts of torture of any kind. It is rather worrisome that between 2017 and the present time 2024, the prevalence of torture in the country by government and its security operatives is unimaginable. This article is in five parts. Part I introduced the article and gave the meaning and judicial interpretation of torture. Part II examined domestic and international legislations on torture. Part III discussed the epidemic of torture in Nigeria and the mendacity of the Anti-Torture Act 2017. Part IV discussed the Causes of Torture in Nigeria. Part V is on recommendation and conclusion.

## 2. The Legal Meaning and Judicial Interpretation of Torture

Torture has been defined as the infliction of intense pain on the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure.<sup>6</sup> Under International Humanitarian Law (IHL) and International Human Rights Law (IHRL), torture comprises: any act by which severe pain or suffering,

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<sup>2</sup> Nigeria ratified and domesticated the United Nations Convention against Torture in 2001. See International Rehabilitation Council for Torture, <https://irct.org> Nigeria, accessed 25 March 2023.

<sup>3</sup> The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment; the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration); Administration of Criminal Justice Act 2015; the Nigerian Torture Act 2017 etc.

<sup>4</sup> See also s 29 of the Evidence Act 2011.

<sup>5</sup> Under the Rome Statute of the International Criminal Court 1998, torture is an international crime under article 7(1) (f). it is a crimes against humanity as well as a war crime.

<sup>6</sup> B A Garner, *Black's Law Dictionary*, (9<sup>th</sup> edn West Group St Paul Minn, 1999) 1498.

whether physical or mental, is inflicted on a person; the act must be intentionally inflicted; and the act must be instrumental for such purposes as obtaining from the individual or a third person information or a confession, or punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating him/her or a third person, or coercing him/her or a third person, or for any reason based on discrimination of any kind<sup>7</sup>. Inhuman, cruel treatment on the other hand is the infliction of severe physical or mental pain or suffering, which goes beyond mere degradation or humiliation.<sup>8</sup> What actually distinguishes torture from other forms of ill-treatment is the outrages upon personal dignity. These are acts that humiliate, degrade or otherwise violate the dignity of the person to such a degree as to be generally recognized as an outrage upon personal dignity. Unlike torture, there is no requirement that these acts be inflicted for a specific purpose.

Article 1.1 of the United Nations Convention against Torture 1984 defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, 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.

It is deemed that the terms ‘inherent in or incidental to lawful sanctions’ refer to sanctions authorized by international law. The International Criminal Tribunal for Rwanda in a landmark judgment in *Prosecutor v Jean-Paul Akayesu*<sup>9</sup> defined torture thus:

The word ‘torture’, as set forth in Article 3(f) of its Statute, in accordance with the definition of torture set forth in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that is “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.

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Case No. ICTR-96-4-T, Judgment ( 2 September 1998). Akayesu was involved in several episodes of torture in violation of Art. 4 of the Statute.

According to the Tribunal, acts of torture could also be addressed under the crime of genocide, which makes punishable the causing of serious bodily or mental harm to members of a national, ethnic, racial or religious group. In *Attorney Gen. of Israel v Eichmann*,<sup>10</sup> Israeli courts held that serious bodily or mental harm could be caused by the enslavement, starvation, deportation and persecution and by detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings, and to suppress them and cause them inhumane suffering and torture. Thus, any intentional infliction of unlawful pain on a suspect amounting to violation of his right and degradation of his person amounts to torture and it is prohibited by law.

Under the Rome Statute 1998, the crime of torture is a crime against humanity according to Article 7 (1) (f) of the Statute. Thus, Article 7(2) (e) defines 'Torture' as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

In Nigeria, the Constitution of the Federal Republic of Nigeria 1999(Fourth Alteration) did not define torture but it provides *inter alia*:

Every individual is entitled to respect for the dignity of his person and accordingly (a) No person shall be subjected to torture, cruel, inhuman and degrading treatment, (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour.<sup>11</sup>

The Administration of Criminal Justice Act (ACJA) 2015<sup>12</sup> also provides for humane treatment of arrested suspects. It states among other things 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, inhuman or degrading treatment'. Thus, the ACJA strikes a balance between the duties of law enforcement agents in carrying out their function of arrest and protection of the rights of the arrested suspect in their custody.

Furthermore, in 2017 the Nigerian government enacted the Anti-Torture Act prohibiting torture. Section 2 (1) of that Act, defines torture and provides thus:

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<sup>10</sup> (1961) Isr DC 45, at 3; Crim App, Attorney Gen. of *Isr. v Eichmann*, (1962) Isr SC 16, at 2033).

<sup>11</sup> Constitution of the Federal Republic of Nigeria 1999(Fourth Alteration) s 34 (1) (a), (b) & (c).

<sup>12</sup>The Administration of Criminal Act 2015 (ACJA) was enacted to ensure that system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy administration of justice, protection of the society from crime and protection of the rights and interests of suspects, the defendant and the victim. See also *Federal Republic of Nigeria v Honourable Farouk M Lawan* (2018)LPELR-43973(CA).

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; or (c) intimidate or coerce him or a third person for any reason based on discrimination of any kind. When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity provided that it does not include pain or -suffering in compliance with lawful sanctions.

Section 2 (2) of The Anti-Torture Act 2017 listed out acts that constitute Torture as follows:

(a) Physical torture, such as -

- (i) systematic beatings, head-hangings, 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 electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wounds,
- (v) the submersion of the head in water or water polluted with excrement, urine, vomit or blood,
- (vi) being tied or forced to assume fixed and stressful bodily positions,
- (vii) rape and sexual abuse, including the insertion of foreign bodies into the sex organs or rectum or electrical torture of the genitals,
- (viii) other forms of sexual abuse,
- (ix) mutilation,
- (x) dental torture or the forced extraction of the teeth,
- (xi) harmful exposure to the elements such as sunlight and extreme cold,
- (xii) the use of plastic bags and other materials placed over the head to the point of asphyxiation,
- (xiii) the use of psychoactive drugs to change the perception, memory; alertness or will of a person, such as administration of drugs to induce confession or reduce mental competency, or the use of drugs to induce pain or certain symptoms of disease, or

(b) Mental or psychological torture, such as- (i) Blindfolding,

Under section 3 of the Act, no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture. It prohibits secret detention facilities, solitary confinement, incommunicado detentions where

torture may be carried out. Section 3 categorically states that evidence obtained from torture is inadmissible in any court except for use against a person accused of torture. This is in line with section 29 of the Evidence Act 2011 which does not in any proceeding in court admit in evidence any confessional statement obtained by oppression of the person who made it. The prosecution must ensure that the statement which he intends to tender in evidence was not extracted from the defendant by any means of oppression<sup>13</sup>. In sub section (5) of the section 29, the Act clearly stated that ‘oppression’ includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture.

If evidence obtained through torture is not admissible in any court, why then do law enforcement agents freely trade in torture? In all the definitions above, one statement has been remarkably consistent that ‘Torture’ does not include pain or -suffering in compliance with lawful sanctions. The question then is what is a ‘lawful sanction’? According to the Concise Oxford Dictionary,<sup>14</sup> the word ‘lawful’ means conforming to, permitted by, or recognised by law or rules. For the English Thesaurus<sup>15</sup> what is lawful is constitutional, legal, and legalised. ‘Sanction’ on the other hand is a threatened penalty for disobeying a law or rule.<sup>16</sup> From the analysed definitions of ‘lawful’ and ‘sanction’, it is therefore right to say that ‘lawful sanction’ is a constitutional and legally recognised threatened penalty for disobeying a law or rule. Legally speaking, it is the statute which established and defined a crime that states the sanction for perpetrators of such crimes. The lawful sanction for any crime is the penalty legally permitted and recognised by the law that defined that crime and not the one invented by any law enforcement agent, security outfits or individual. It does not include any punishment meted out through jungle justice or outside the ambit of the law.

Statutorily, section 34 of the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration) provides that every individual is entitled to respect for the dignity of his person and accordingly (a) No person shall be subjected to torture, cruel, inhuman and degrading treatment. However, the constitution does not explicitly state that the freedom from torture, cruel and inhuman treatment is absolute. The constitutional provision does not seem strong and elegant enough to address the reckless acts of torture by security operatives. Perhaps that has been the reason for the continuous reliance on the use of torture and degrading treatment by security actors as an operative tool. Prior to the Anti-Torture Act 2017, there was no law in Nigeria with the sole objective to prohibit and punish

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<sup>13</sup> S 29 (2)(a) and (5).

<sup>14</sup> C Soanes, and A Stevenson, *Concise Oxford Dictionary*, 11<sup>th</sup> edn (Oxford University Press 2007) 807.

<sup>15</sup> Geddes and Grosset, *English Thesaurus* (Scotland: David Dale House New Lanark ML II 9D 2006) 145

<sup>16</sup> C Soanes, and A Stevenson, *supra* 1272.

torture and other forms of cruel, inhuman and degrading treatment. Thus, the Anti-Torture Act is a welcome development if it is diligently enforced.

### 3. Torture and International Treaties on Torture

Torture and other forms of degrading treatment are grave breaches of the Geneva Conventions 1949 and their additional Protocols. It is a war crime in both international and non-international armed conflicts and a serious violation of international humanitarian law. In fact, from The Hague Regulations to the Rome Statute, torture is prohibited. The Hague Regulations, in its effort to protect the interest of detainees, state that prisoners of war are in the power of the hostile government, but not of the individuals or corps who capture them. They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property.<sup>17</sup>

The prohibitions on torture is enshrined in international and regional human rights instruments, such as the Universal Declaration of Human Rights 1948,<sup>18</sup> the International Covenant on Civil and Political Rights 1966,<sup>19</sup> the United Nations Convention against Torture 1984,<sup>20</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms 1950,<sup>21</sup> American Convention on Human Rights 1969,<sup>22</sup> African Charter on Human and Peoples' Rights 1981,<sup>23</sup> the Inter-American Convention to Prevent and Punish Torture 1985, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987; the Arab Charter on Human Rights 2004,<sup>24</sup> and the Human Rights Declaration by the Association of Southeast Asian Nations 2012<sup>25</sup> etc.

The Universal Declaration of Human Rights 1948 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>26</sup> The four Geneva Conventions of 1949 and their Additional Protocols I and II of 1977 extensively provide against torture. According to article 12 of the First Geneva Conventions of 1949, members of the armed forces and other persons mentioned in the following Article who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by

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<sup>17</sup> Art 4

<sup>18</sup> Art 5.

<sup>19</sup> Art 7.

<sup>20</sup> Art 37(a).

<sup>21</sup> Art 3.

<sup>22</sup> Art 5.2.

<sup>23</sup> Art 5.

<sup>24</sup> Art 8.

<sup>25</sup> Art 14.

<sup>26</sup> Art 5.



the party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

The Second Geneva Convention 1949 on the Wounded, Sick and Shipwrecked almost repeated Article 12 of the First Geneva Convention and provided *inter alia* that members of the armed forces and other persons mentioned in the Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances.<sup>27</sup> The Third Geneva Convention 1949 in Articles 13, 17 and 87 respectively made very serious provisions on humane treatment of prisoners, including questioning of prisoners, all to protect the rights and interest of prisoners of war.

Article 13 of the Third Geneva Convention 1949 in its wisdom states that prisoners of war must at all time be humanely treated. It prohibits any unlawful act or omission by the detaining power that would cause death or seriously endanger their health while in custody and such will be regarded as a serious breach of the present Convention. It particularly prohibits the subjection of any prisoner of way to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. They must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.

In Article 17, the Convention reiterated specifically that no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatsoever. Those who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind, and those who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service.

Article 17 is quite inspiring and protective. Without ambiguity it says that prisoners of war, who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. It is instructive that the article did not say that such prisoners of war should be regarded as invalid and therefore exterminated but the article rather made a befitting alternative provision that will take care of their health first. This serves as a lesson for all security actors and law

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<sup>27</sup> Art 12

enforcement agents. It emphasises the sacredness of life and the need to respect the rights of suspects at all material time.

Furthermore, Article 87 of the Third Geneva Convention protects prisoners of war from being sentenced by the military authorities and courts of the detaining power to any penalties except those provided for in respect of members of the armed forces of the said power who have committed the same acts. Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden. The detaining power is prohibited from depriving any of them of his rank, or prevent any from wearing his badges.

Also, in Article 27, the Fourth Geneva Convention prohibited torture of any kind and extensively provided for the rights of 'protected' persons. Hence, they are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. In article 32, it prohibited corporal punishment, torture, and prohibited the high contracting parties from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. The two Additional Protocols to the four Geneva Conventions of 1977<sup>28</sup> also condemned torture and inhuman treatment.

Interestingly, the UN Code of Conduct for Law Enforcement Officers 1979<sup>29</sup>, in a tone of finality prohibited torture and provided that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor invoke superior orders or exceptional circumstances such as state of war, a threat of war, a threat to national security, internal instability or any public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment<sup>30</sup>. This is in line with article 3 of the Anti-Torture Act 2017. Even at international level, the force is not taken for granted. Hence, the international community under the umbrella of the UN produced a code of conduct for the force and specifically prohibited them from hiding under 'superior orders' or exceptional circumstances to inflict torture on protected persons. Similarly, in international criminal law, the defence of superior order is a conditional defence, only available in war times and there

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<sup>28</sup> Additional Protocol I of 1977 Arts 75(2)(a)(ii); Additional Protocol II of 1977 Arts 4(2)(a).

<sup>29</sup> It was adopted by the General Assembly resolution 34/169 of 17 December 1979.

<sup>30</sup> Art 5

must be superior-subordinate relationship.<sup>31</sup> In *Prosecutor v Einsatzgruppen*,<sup>32</sup> the military tribunal held *inter alia* that:

the obedience of a soldier is not the obedience of automation. A soldier is a reasoning agent. He does not respond, and is not expected to respond, like a piece of machinery... And what the superior officer may not militarily demand of his subordinate, the subordinate is not required to do. Even if the order refers to a military subject it must be one which the superior is authorised under the circumstances to give. The subordinate is bound only to obey the lawful orders of his superior and if he accepts a criminal order and executes with malice of his own, he may not plead superior orders in mitigation of his offence. If the nature of the ordered act is manifestly beyond the scope of the superior's authority, the subordinate may not plead ignorance of the criminality of the order.

In Nigeria, superior order is only a defence where the order comes from a competent authority, whose order the other is bound by law to obey, and which order is not manifestly unlawful.<sup>33</sup> Most Nigerian law enforcement agents rely on 'superior order' to inflict torture on suspects and even to indulge in extrajudicial killing of suspects forgetting that any order that command the killing of another or infliction of torture outside the due process of law is manifestly unlawful and therefore should not be obeyed.

The United Nations Security Council in adopting the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) 1993 also listed 'torture or inhuman treatment, including biological experiments' as a grave breach of the Geneva Conventions.<sup>34</sup> A year later, the Security Council included torture as a crime against humanity in the modified definition found in the Statute of the International Criminal Tribunal for Rwanda (ICTR) 1994.<sup>35</sup> Progressively, in 1998 the Rome Statute of the International Criminal Court (ICC) included torture and other inhuman treatment to be war crimes in both international and

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<sup>31</sup> Art 33 of the ICC Statute. And (a) the person was under a legal obligation to obey orders of the government or the superior in question, (b) the person did not know that the order was unlawful, (c) and the order was not manifestly unlawful. See also *R v Smith* (1900) 17 Supreme Ct. (Cape of Good Hope) 561 per Solomon J.

<sup>32</sup> See K Kittichaisaree, *International Criminal Law* (U S A: Oxford University Press, 2001) 26.

<sup>33</sup>The Criminal Code S 32 (2). *State v Nwaoga* (1972) 1 All NLR (Pt 1) 149.

<sup>34</sup> The Secretary-General, *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, 47 and Art 5 U N Doc S/25704 (May 3, 1993) 47 and Art 5, UN Doc S/25704.

<sup>35</sup> William A Schabas, *The Crime of Torture and the International Criminal Tribunals*, 37 Case W Res J Int'l L (2006) 349. Available at <https://scholarlycommons.law.case.edu/jil/vol37/iss2/11> accessed 22 February 2023.

non-international armed conflicts and specifically categorized torture as a crime against humanity<sup>36</sup>. The Statute came into force in 2002.

The central characteristic of torture is that it is an intrinsic part of official behavior and the practice is wrongly perceived as a powerful institutional expression of state power, craft, and social control. The official use of torture functionally shows that the state uses these powers as critical components of security to intimidate or sometimes even eliminate its enemies, or suspected enemies. It is submitted that when torture becomes a routine practice in governance, the state does not represent the moral order of the community, but instead becomes the repository of authorised violence and impermissible coercion. This of course does not give credit to any government. In such situations, power is often achieved through brute forces which unusually claim lives and always end in blood shed. Winston would say that when power is maintained by practices of torture and ill treatment, the claim to state legitimacy is illusory, or weakened if not impossible.<sup>37</sup> It is trite that any functional government with well-trained law enforcement agents in their areas of specialty knows very well when to apply skill and expertise to elicit relevant information from suspects and the general public without using violence or resort to torture. Torture is the exception rather than the rule.

#### 4. The Prevalence of Torture in Nigeria

According to the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration), every individual is entitled to respect for the dignity of his person, and no person shall be subjected to torture or to inhuman or degrading treatment.<sup>38</sup> Though the constitutional provision against torture is not comprehensive, obviously, the section does not contemplate that torture should be used as a tool for solving crime issues in Nigerian. Thus, the Anti-Torture Act 2017 in the effort to fill existing legislative gaps and protect the rights of suspects and victims of torture, strongly and explicitly criminalised acts of torture, cruel, inhuman and degrading treatment.<sup>39</sup> Notwithstanding that Nigeria is signatory to the United Nations Treaty against Torture, Nigeria's security forces have continued to violate the human rights and fundamental freedom proclaimed in the declaration, including the 1999 Constitutional provision against torture and the Anti-Torture Act 2017 with impunity. It is most painful that Nigeria's security forces allow bandits, culprits and criminals to

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<sup>36</sup> Art 8(2)(a)(ii) and 8(2)(c)(i) and (ii); (Art 7(1)(f) and (k).

<sup>37</sup> Winston P Nagan and Lucie Atkins, *The International Law of Torture: From Universal Proscription to Effective Application and Enforcement*, 14 Harvard Human Rights Journal 87 (2001), available at <http://scholarship.law.ufl.edu/facultypub/615> accessed 22 April 2024.

<sup>38</sup> Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration) S 34(1) (a).

<sup>39</sup> See S 3 of the Act.

move around the streets of Nigeria unfettered, while they arbitrarily arrest, detain, wrongly accuse and torture innocent citizens to death.

Before the advent of the Anti-Torture Act 2017, on 5 July 2011, the family of one Mr. Nwakamma of Umuocho village in Osisioma Ngwa Local Government Area, cried that policemen tortured their father to death for an offence he did not commit.<sup>40</sup> The police, acting on the instruction of Assistant Commissioner of Police, arrested Nwakamma and his three sons and the wife for alleged kidnap of one Adaugo, who was later released by the kidnappers at a ransom. After conducting an identification parade of these suspects before Adaugo. Adaugo clearly exonerated the suspects and told the police that those who kidnapped her were Ugochukwu and Nnanyereugo. The police would not listen because they were thirsty of blood. The officer in charge of anti-robbery invited the old man, asked another police officer to bring cutlass and rope and told the children to come and bid their father farewell and see how their father would die. Just as was said, not long after that comment, the children heard their father crying like a child until he could no longer speak. The police later invited the youngest son to come and see his father. He went in and saw Mr Nwakamma naked on the ground at the brink of death with faeces scattered all over his body. He called his two other brothers to come and help him wash their father at the command of the police. While they were washing him, they saw several deep cuts all over his body but he managed to tell them that from what the police did to him, he might not survive, thereafter he looked into space and died. Imagine such brutality and the agony of the family watching their father die in such a gruesome manner for an offence he did not commit. Nigeria Police celebrate torture of suspects as if they are celebrating life even when it is uncalled for. Through this means they have sent so many to untimely death without qualms of conscience. Few suspects who survive the torture remain vegetable for life.<sup>41</sup>

A year before the coming into force of the Anti-Torture Act 2017, Saheed Eytayo, aged 34, was tortured to death by Nigeria's secret police known as SSS on 4 April 2016. Painfully, the security operatives paid a paltry sum of N15 million compensation to the victim's family to keep them. The victim's friend Jamiu was accused of cloning the phone number of ex-Lagos State Governor, Akinwunmi Ambode. Since they could not get the original suspect, they arrested the deceased and tortured him to death with bruises all over his body<sup>42</sup>. Nigerian

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<sup>40</sup> C Onuoha, 'Inhuman Policemen Tortured Our Dad to Death for Offence he did not Commit' (*Daily Sun*, Tuesday 5 July 2011) 16.

<sup>41</sup> F Asogwah and others, *Climate of Impunity: A Report on the use of Torture by the Nigeria Police* (Lagos: Civil Liberty Organisation 2005) 38-57.

<sup>42</sup> [Adejumo Kabir: 'Reign of Impunity: Nigeria's Security Forces Torturing Suspects to Death'](https://humanglemedia.com/reign-of-impunity-1-nigerias-security-forces-tortu/org/en) <[https:// https://humanglemedia.com/reign-of-impunity-1-nigerias-security-forces-tortu/org/en](https://humanglemedia.com/reign-of-impunity-1-nigerias-security-forces-tortu/org/en)> accessed 22/4/24.

law enforcement agents have devised various methods of inflicting torture on citizens including tying of arms and legs tightly behind the body, suspension by hands and legs from the ceiling or a pole, repeated and severe beatings with metal or wooden objects.

In the northern part of Nigeria such act of torture is called 'tabay'.<sup>43</sup> In the South East, the Okuzu SARS Headquarters then, was just a torture house of all sorts and in the West, the Lagos Kirikiri Prison is a nightmare and others. The challenge is that the masses are beginning to embrace this rascality and cruelty, and if nothing is done timeously, the rest will become history in the near future. Instances abound where mobs had lynched suspects alleged to have stolen either perfume in a cosmetic shop or cell phone in phone shops.<sup>44</sup> Yet, the penalty for stealing is not death penalty. Section 390 of the Criminal Code<sup>45</sup> prescribes three years imprisonment for the offence of stealing if no higher punishment is provided. The Supreme Court in *Agala v Egwere*,<sup>46</sup> has held that generally, by section 6(1) and (5) of both the Constitution of the Federal Republic of Nigeria, 1979 and 1999 respectively, it is in the court and not to non-judicial bodies that judicial powers of the Federal Republic of Nigeria is vested.

From the year 2000 in Anambra State to about 2009, the activities of members of the Anambra State Vigilante Services known as the scorpion squad/the Bakaassi boys cannot be easily forgotten. They were formerly brought in, by former governor Mbadinuju and also used by former governor Chris Ngige. In Anambra then, it could be described as the axis of death, a point of no return of sorts. The Bakassi boys carried out their barbaric, cruel and brutal acts and killed indiscriminately<sup>47</sup>.

On 20 September 2016,<sup>48</sup> an alleged notorious armed robber who was alleged to have held some communities in Imo State to ransom with his activities met his gruesome end when he was nabbed by an angry mob who lynched him. He sustained various degrees of injury from the angry mob and could not be saved

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<sup>43</sup> [Yuexin Li](https://theowp.org), 'Torture In Nigeria: Life In The Hellfire' <https://theowp.org>, accessed 20 October 2023. According to the investigations of BBC Africa Eye, dozens of images and videos work as clear evidence to show the illegal torture in Nigeria.

<sup>44</sup> The Guardian Newspaper of Saturday 19 March 2020 reported how a man who stole phone was lynched in Jos, Plateau State.

<sup>45</sup> The Criminal Code Schedule to the Criminal Code Act Cap C38 *Laws of the Federation of Nigeria (LFN)*

2004, applicable to Southern Nigeria, (to be herein referred to as the C C)

<sup>46</sup> All FWLR (Pt 532) 1609.

<sup>47</sup> The boys paraded Awka and environs with axes and pump action guns. See [www.nairaland.com/nigeria/topic.314](http://www.nairaland.com/nigeria/topic.314). Retrieved 20 February 2023.

<sup>48</sup> [www.pulse.ng/gist-end-of-the-road-deadly-killed-by-mob-in-imo/bwempbe](http://www.pulse.ng/gist-end-of-the-road-deadly-killed-by-mob-in-imo/bwempbe), accessed 22 March 2023.

by the police who rushed him to a hospital in Owerri, the state capital, where he was confirmed dead.

Despite various complaints by the citizens and human rights activist, government seemed reluctant to do anything towards stopping or cautioning the police or military in their indiscriminate use of torture. From history, it could be argued that government is sometimes behind these acts of torture and killings. For instance, in 1999, in Odi Bayelsa State, soldiers on a reprisal attack, tortured and killed over 250 people. Similar event had allegedly happened in Zakibam Benue State, before the Odi incident in retaliation for the killing of 19 soldiers.<sup>49</sup> Then the Niger-Delta Joint Task Force (JTF) expedition was launched in full force in an effort to arrest the action of the Movement for the Emancipation of the Niger Delta (MEND). In 2013, it was the Baga incident in Bornu State. The outcome of these incidents is better not imagined, shocking yet without apologies even over the Odi massacre.<sup>50</sup> For the Zakibiam incident government blamed the governor who requested for military action to arrest the situation then.<sup>51</sup> Later, it was the Jos-Plateau torture and massacre, then the python dance in the South-East<sup>52</sup> to torture and exterminate members of the Indigenous People of Biafra (IPOB) who are agitating for self determination and recently, the Lekki toll gate incident.

Amnesty International has raised alarm on the use of torture in the fight against insurgency by the Nigerian armed forces. In one of their February 2014 reports on cases of torture in Nigeria, Amnesty International's lamented on how the police and the military routinely use torture and other forms of ill-treatment as means of extracting information from suspects thereby breaking the spirit of these suspects or detainees. The body decried the admissibility and use in court of such information or "confessions" extracted from detainees through torture as evidence against the detainee. Amnesty International warned that the torture the Nigerian armed forces were exerting on detained to extract confessional statements from them and the admissibility of such evidence by the court is contrary to national and international law.<sup>53</sup> The executive summary of Amnesty

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<sup>49</sup> I Isiguzo, 'The Police and Extrajudicial Killings: Police as your F(r)riend' (*Sunday Vanguard* 9 August 2009) 10.

<sup>50</sup> I Isiguzo, (note 50) 10.

<sup>51</sup> R Ejemba, 'Zakibiam Invasion-blame Akume not me' (*Daily sun* Tuesday 18 January 2011) 11.

<sup>52</sup> This was a torture without comparison where human beings were forced to defecate and eat their faeces and swallow it with dirty water from the gutter and all sorts of similar inhuman acts.

<sup>53</sup> Amnesty International, *Nigeria: Torture, cruel inhuman and degrading treatment of detainees by Nigerian security forces: Amnesty International's written statement to the 25<sup>th</sup> session of the UN Human Rights Council*,

International report posits that Nigerian military forces have among other things committed countless acts of torture against innocent citizens to the detriment of individual suspects and national psyche. Hundreds have become victims of enforced disappearance, and thousands have died in military and police detention<sup>54</sup> as a result of starvation, torture and denial of medical assistance.

However, in 2017, Nigerian government feigned capacity to handle torture and so, the Anti-Torture Act 2017 was enacted<sup>55</sup>. Nonetheless, it appears the Anti-Torture Act is more like a mirage because in spite of the Act, torture is still escalating in Nigeria, yet no police or army officer has been charged under the Anti-Torture Act. The Nigerian authorities have failed to prosecute a single officer from the notorious Special Anti-Robbery Squad (SARS), despite strong evidence that its members have continued to use torture and other ill-treatment to inflict, punish and extract information from suspects. The perpetrators of the python dance, the Benue killings, Lekki shoot-out etc seem to have escaped justice notwithstanding Amnesty International's report of about 82 cases of torture, ill treatment and extra-judicial execution by SARS between January 2017 and May 2020.<sup>56</sup> Across the country, SARS officers turned their duty to protect Nigerians into an opportunity for extortion and stealing money, property and other valuables belonging to suspects and their families. Since 2016, Amnesty International has documented<sup>57</sup> about 15 cases where SARS officers arbitrarily confiscated suspects' property.

Soldiers in Operation Python Dance II, on 15 September 2017, invaded the Family house of Nnamdi Kanu, at Afaraukwu, Umuahia in search of the said Nnamdi Kanu, for reasons best known to them. According to Daily Sun Newspaper,<sup>58</sup> about 18 people lost their lives during the invasion<sup>59</sup> and the trauma and shock of the experience allegedly led to the untimely death of both parents of Nnamdi Kanu.

Two years after the Anti-Torture Act 2017 had come into force, in September 2019, nearly 500 men and boys were rescued from one Kaduna school

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<https://www.amnesty.org/download/Documents/.../afr4400120> 14en.pdf, 2014. accessed on 20 March 2023.

<sup>54</sup> Amnesty International "Stars on their shoulders Blood on their Hands, War Crimes committed by the Nigerian Military" *Amnesty International Report* (2015) <http://www.amnesty.org/download/Document/AFR4416612015> ENGLISHpdf. accessed on 20/3/2023

<sup>55</sup> The Anti-Torture Act 2017 was passed by the 8th National Assembly and signed into law by President Mohammedu Buhari on 29 December 2017.

<sup>56</sup> Osai Ojigbo Nigeria, 'Horrific reign of impunity by SARS makes mockery of anti-torture law', <https://www.Amnestyorg/en/latest> accessed 5 May 2021.

<sup>57</sup> Ibid.

<sup>58</sup> <https://www.sunnewsonline.com/breaking.soldiers-invade-nnamdi-kanu's-family-house-many-feard-killed>. Retrieved on 4 March 2023 4:50pm.

<sup>59</sup> Ibid



erroneously believed to be Koranic school but wherein the detainees,<sup>60</sup> were tortured, sexually abused, starved and prevented from leaving with chains on their legs. In Nigeria, inexperienced, poorly trained and ineptly led soldiers manifest their lack of professionalism and indiscipline by torturing and killing innocent citizens and a failure to effectively execute infantry tactics.<sup>61</sup> Reported cases abound of police torture and brutality notwithstanding the Anti-Torture Act 2017.

Police in Port-Harcourt, Rivers State arrested one Chima over alleged armed robbery and tortured him to death on 23 December, 2019.<sup>62</sup> They, broke his legs, hung him in the air and left for their normal patrol. He later died. Law enforcement agents who are supposed to enforce the Anti-Torture Act 2017 are the very ones abusing and violating the same law. Who then will bell the cat?

A Civil Defence Officer was allegedly tortured to death by police at Nyanya Police Station in Abuja on 20 March 2019. He had an encounter with a traffic warden because there was traffic gridlock on the road. The police officer started beating him and dragged the man on the ground and later took them to Nyanya Police Station where the District Police Officer (DPO) used the needle and choked the man to death.<sup>63</sup> The question is if citizens are manhandled in the city where the Anti Torture Act 2017 should be maximally implemented, what happens in the rural areas of Nigeria where the eyes of the law may be very far from these law enforcement agents. The fight against torture in Nigeria is a clarion call for government to take action before it becomes too late.

Similarly, on 29 September 2019, three alleged robbery suspects were severely beaten and set ablaze for allegedly robbing a young lady in the Dutse Alhaji area of the Federal Capital Territory (FCT), Abuja.<sup>64</sup> On the next day September 30 2019, some suspected kidnappers were burnt to death at the same Dutse areas of Abuja.<sup>65</sup> In May 2021, one ‘school boy’ employed some girls for prostitution and to make returns for him. One of them in one occasion failed to make the required return, ‘school boy’ stripped her naked, and with the assistance of three of his boys, bound her hand and feet and gave her the torture of her life with several strokes of the cane on her buttocks while pouring water on her until she fainted.

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<sup>60</sup> [Yuexin Li](#), (note 48).

<sup>61</sup> Stafford Micheal. of ‘U S Marine Corps’ Stafford Study, 2018.

<sup>62</sup> BBC Pigin News: <https://www.bbc.com/pidgin/tori-54493376> 17/10/2021 2:26pm. accessed 22 February 2023.

<sup>63</sup> Pidgin news; <https://www.bbc.com/pidgin/tori-54493376> 17/04/2021 2:26pm. accessed 22 February 2023

<sup>64</sup> Adelani Adepegba, ‘Mob sets three suspected ‘one chance’ robbers ablaze in Abuja’ <https://thenationalineng.net/threerobbers-lynched-inabuja>. accessed 22 February 2023.

<sup>65</sup> Ripples Nigeria, ‘3 suspected kidnappers lynched in Abuja’ <https://www.ripploesnigeria.com/3-suspected-kidnappers-lynchede-in-abuja/> accessed 22 February 2023

He videoed this insolence and the video clip went viral but up until date nothing has been heard about arresting the school boy or prosecuting him. Man's inhumanity to man.

Three years after the Anti-Torture Act 2017 had come into force; law enforcement agents still indulge in gruesome acts of torture as usual. Below are reported cases of torture involving law enforcement agents.

Sometime in October 2020 the prevalence of police torture was unbearable for the masses and the citizens embarked on a Nation-Wide peaceful protest. They called on Federal Government to address and put an end to SARS brutality, torture and inhuman treatment on fellow citizens. Unfortunately, the Federal government, the Lagos State government and law enforcement agents turned it into a bloodbath for protesters at Lekki toll gate. The military and police opened fire on unarmed End SARS protesters at the Lekki toll gate, killed several peaceful protesters with Nigerian flags in their hands and left many others injured. It was one of the most disheartening brutal bloody killings that have ever happened in the country.<sup>66</sup> The Nigerian flag was stained and soaked with the blood of her innocent citizens (not foreign invaders) holding Nigerian flags in their hands and killed by Nigeria law enforcement agents whose primary duty is to protect her citizens. It has never been heard before. Immediately after the End-Sars killing, at Lekki, there was a video clip where a US soldier reprimanded Nigerian soldiers for shooting unarmed civilians. He further said that no US soldier dares to shoot at unarmed soldier let alone shooting a civilian that does not have a gun. The Nigerian Army and other law enforcement agents constitute a major potential threat to security in Nigeria.<sup>67</sup> They subject civilians to inhuman and degrading treatment. There have been viral video clips where Nigerian soldiers forced IPOB members to drink mud water.

Recently, about late November 2022 the Nigeria Police Force, Ebonyi State Command, allegedly tortured some students<sup>68</sup> who just returned from Cyprus and Norway Universities to celebrate Christmas and New Year with their families and loved ones, and coerced them to confess to a crime they never committed. Police allegedly framed them to have hacked into the Facebook account and phone number of the Vice Chancellor of Alex Ekwueme University, Abakaliki, Ebonyi State and extorted the sum of N5.5million from the students by forcing them to withdraw the money from their bank accounts. One of them got the

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<sup>66</sup> Daily Post Nigeria, 'End SARS: Police in Lagos Relax Security at Lekki toll Gate', <https://www.daily.post.ng> accessed 22 March 23.

<sup>67</sup> Nairaland Forum, 'See-what IPOB-members did After Soldiers Forced Them To Drink Mud Water' [https:// www.nairaland.com/4055516/video-](https://www.nairaland.com/4055516/video-) Politics Accessed 7 October 2023.

<sup>68</sup> Nnaji Samuel Chidiebere, Obiedelu Chigozie, Ezeah Izuchukwu and their in-laws Omagba Solomon.

beating of his life for daring to demand for the arrest warrant and identity of the police officers.<sup>69</sup>

Aside statutory provisions and International Treaties against torture which Nigeria is signatory to, courts in Nigeria have variously condemned police torture, and degrading treatments on suspects, although, for Nigeria law enforcement agents, efficiency and proficiency mean subjecting suspects to torture and brutality. The Supreme Court vehemently condemned torture, cruel treatment and extrajudicial killing in *Shella v State*<sup>70</sup> where the appellant and five others were charged for torturing and slaughtering the deceased Umaru for allegedly making insulting remarks about Prophet Mohammed. The trial court found them guilty of the offence of culpable homicide and sentenced them to death. The Court of Appeal dismissed their appeal. The Supreme Court in dismissing the appeal held that although under Islamic law any sane adult who insults prophet Mohammed must be punished accordingly but Islamic Law has not left the killing/punishment open in the hands of private individuals. The offence alleged has to be established with evidence before a court of law. According to Ogundare JSC:

In any case, even on the assumption (although without any proof) that the deceased had in some way done anything or uttered any word which was considered insulting to the Holy Prophet should the appellant and others with him constitute themselves into a court of law and pronounce the death sentence on another citizen? Plainly, this was jungle justice at its most primitive and callous level... I am greatly pained.<sup>71</sup>

The Supreme Court also condemned such act of jungle justice in the case of *Kaza v The State*<sup>72</sup> where the deceased was alleged to have insulted Prophet Muhammad and the appellants tortured and killed him. The trial court found the appellant and his co-accused guilty as charged and sentenced them to death by hanging. The decision of the trial court was affirmed by both the Court of Appeal, and the Supreme Court and the appeal was unanimously dismissed. It is pertinent to state that the Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration) is very clear in strictly prohibiting the Government of the Federation or of State from adopting any religion as State religion.<sup>73</sup> In providing for the right to freedom of thought, conscience and religion, the Constitution made it clear that

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<sup>69</sup> Sahara News Reporter, EXCLUSIVE: 'Nigerian Police Personnel Torture Students Returning From Cyprus, Norway, Forcefully Withdraw Over N5.5million From Bank Accounts After Nine-Day Detention', <https://saharareporters> 7 February, 2023 Accessed 28 March 2023.

<sup>70</sup> [2007] 18 NWLR (Pt. 1066) 240.

<sup>71</sup> At 269-269.

<sup>72</sup> [2008] 7 NWLR (Pt 1085) 125.

<sup>73</sup> Constitution of the Federal Republic of Nigeria 1999(Fourth Alteration) S 10

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.<sup>74</sup>

The Constitution in its section 38 already stated resoundingly re-echoed the wisdom of the Universal Declaration of Human Right 1948.<sup>75</sup> Flowing from the constitutional provisions above and the Universal Declaration of Human Rights 1948, it is therefore wrong to impose one's personal religious adherence on others, or for such personal or sectional opinion to be accorded legal status binding on others in a circular State as Nigerian. Such imposition infringes on the Universal Declaration of Human Right and the Constitution. It offends the right to freedom of thought, conscience and religion.

In *R v Jegede*<sup>76</sup>, members of a night guard killed a notorious thief whom they believed was carrying stolen goods and was armed. In convicting for manslaughter, the court held that no law authorizes the killing of a person merely because he is notorious criminal. Also in *R v Aliechem*,<sup>77</sup> where the accused found his neighbour in his yam barn at night and believing him to be a thief, stabbed him in the stomach, the court in convicting the accused for murder held that no law authorised the killing of a person merely because he was caught stealing.

Notwithstanding the Anti-Torture Act 2017, and other statutory provisions, the Nigerian government and law enforcement agents have remained unrepentant in the use and application of torture, to extract information from both suspects and other citizens including electoral results.<sup>78</sup> Due to ugly experiences and the high level of corruption that is going on in the police force, the masses do not have confidence in law enforcement agents again. Most of the time, people resort to self help and jungle justice; lynching crime suspects instead of handing them over to police as required by law. Their belief is that police would collect bribe from the relatives of the accused and release the accused from their custody. It gives wrong signal to the society and creates bad feelings among the people when they observe that somebody who was caught red handed committing a crime and sent to the police for action to be taken, has freely come back to the society to torment and terrorise them. Thus, in

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<sup>74</sup> Ibid s 38 (1).

<sup>75</sup> Art 18

<sup>76</sup> (1955)WNLR 33

<sup>77</sup> (1956)1 FSC 64

<sup>78</sup> The just concluded 2023 election speaks for itself especially in Rivers State and Lagos State

July 2021 an alleged homosexual was beaten to death in the South West Ondo State and nine people were burnt alive in Zamfara in the North West for insulting Prophet Muhammad.<sup>79</sup>

The question is, of what relevance then is the Anti-Torture Act 2017 if it cannot be enforced but continuously be abused by the very government that enacted the Act, its law enforcement agents and citizens? This is where the mendacity of the Anti-Torture Act 2017 lies.

Ordinarily, one would say that the Anti-Torture Act, 2017 is very relevant in a country like Nigeria especially at this present time when torture is prevalent in the country. According to Mac Cardie, J, in *Prager v Blastspiel Stamp and Heacock Ltd*,<sup>80</sup> the common law grows with the development of the nation, so that an expanding society demands an expanding common law or an expanding law. The Anti-Torture Act 2017 is typical of an expanding law for an expanding society like Nigeria. Therefore, there is no doubt that the Anti-Torture Act 2017 is very much relevant. Nonetheless, enforcement will give credence to its relevance. The provisions of the Anti-Torture Act<sup>81</sup>, if diligently and sincerely enforced, will certainly go a long way to check the escalating rate of torture and extrajudicial killing in the country.

## 5. Causes of Torture in Nigeria

It is indeed ironical to enact an Anti-Torture Act 2017 while there are legislative enactments that seem to encourage torture and extrajudicial killings. They should be reviewed to avoid the mischief of using these laws to justify acts of torture and arbitrary killing by security agents. The law allows the use of lawful force by a peace or police officer or even a

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<sup>79</sup> The Conversation, Exclusive: ‘Nigeria set to pass a law against mob lynching. Will it make a difference?’

<https://theconversation.com/nigeria-set-to-pass-law-against-mob-lynching-will-it-make-a-difference-8789022>. Accessed on 21 April 2024.

<sup>80</sup> (1924) 1KB 566 at 570.

<sup>81</sup> Especially sections 1, 3, 4, 7 where both perpetrator and the person present watching the act are liable and superior order is no excuse for torture. For example Section 1 of the Act imposes an obligation on government to ensure that all persons, including suspects, detainees and prisoners are respected at all times and that no person under investigation or held in custody is subjected to any form of physical/mental torture. It admonishes government to adhere to domestic and international standards on absolute condemnation and prohibition of torture. Thus, complementing sections 7 and 32 of the Criminal Code.

private person, who is lawfully acting to suppress a riot.<sup>67</sup> The force must bear in mind that the aim of such allowance is to place the force a step ahead of ordinary civilians for security purpose and not for mischief.

Furthermore, the construction of section 33 (2) (b) of the Constitution is not elegant enough to protect the life of suspects to the extent of arrest and prevention of escape from custody and can give room for torture. The same inelegance extends to section 271 of the Criminal Code, which contains similar powers of forceful arrest which is more barbaric and brutal than the absurdity in section 33 (2) (b) of the Constitution.

Similarly, the Force Order, Order 237,<sup>82</sup> which allows police officers to shoot suspects and detainees who attempt to escape or avoid arrest whether or not they pose a threat to life, is not an elegant drafting and can give room for torture. Again, section 73 of the Criminal Code which provides that a police officer is not criminally responsible for death occurring after a proclamation has been made for dispersion of rioters seems hash. Although section 298 of the Criminal Code serves as a check since the section provides that any person authorised by law to use force is criminally responsible for any excess, according to the nature and quantity of the act which constitutes the excess. Yet, when a suspect or a detainee does not pose any danger to the arrester, there is no need applying violence except for self defence. Of course *Omoregie v the State*,<sup>83</sup> says that self defence has no limit where it applies.

Another possible cause is disregard for the rule of law. Where the rule of law is respected and observed, the law is supreme and authority is legitimately exercised in accordance with written, publicly disclosed and enforced method, in line with established procedure as opposed to the influence of arbitrary power.<sup>84</sup> There is equal subjection of all classes of persons to the ordinary laws of the land administered by the ordinary courts. However, the situation in Nigeria seems more like there is absolute supremacy or predominance of the influence of arbitrary power as

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<sup>67</sup> Ss 72, 73, 276 – 280 CC. It is lawful to use reasonable force to suppress a riot provided that the danger to be apprehended from the continuance of the riot warrants such force. See also C O Okonkwo, *Criminal Law in Nigeria*, 2<sup>nd</sup> edn ( Ibadan: Spectrum Law Publishing 2000) 229.

<sup>82</sup> This order provides that the use of lethal force is only allowed when strictly unavoidable to protect life.

<sup>83</sup> (2008) 35 NRN 181, (2008) 18 NWLR ( Pt 1119 ) 464.

<sup>84</sup> A V Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn London: Macmillian & Co. Ltd., 1961) 202- 205.

opposed to the regular laws, different classes of the population are subjected to different laws, administered not by the ordinary courts but by a few powerful individuals. Consequently, there is a subjugation of the rights of individuals to the whims of certain persons or bodies who attempt to take the place of the courts in the enforcement and interpretation of laws.<sup>85</sup>

At present, suspects can easily finance their criminal ways out of punishment provided they have the means or on the alternative makes themselves a willing tool for destruction, and criminality in the hands of some influential and powerful persons who are connected with the crime. In the 2023 general election citizens were harassed, tortured, stabbed and killed by government thugs and agents<sup>86</sup> and till date no one is apprehended or prosecuted for such cruelty and arbitrariness. It appears that a good number of the members of the force and law enforcement agents are masochists and so they derive pleasure in inflicting pain and torture on others which under normal circumstance are abhorrent and unpleasant to sane minds.

## 6. Recommendations and Conclusion

Torture is one of the most serious crimes of concern to both international and the Nigerian communities and therefore must not go unpunished. Effective prosecution of perpetrators must be ensured by taking measures at the national level which enhances international cooperation where necessary. This is “if” government is determined to put an end to torture and impunity. In the light of the above findings, it is recommended that government refrains from encouraging torture. Government is to ensure that all persons, including suspects, detainees and prisoners are respected and that no person under investigation or held in custody is subjected to any form of physical/mental torture. Government is to adhere to domestic and international standards on absolute condemnation and prohibition of torture. Otherwise, the Anti-Torture Act 2017 will remain a mediocre statute if not moribund. It is the duty of every government to exercise responsibly its criminal jurisdiction over those responsible for crimes and in accordance with national laws and international treaties. The barbaric practice of

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<sup>85</sup> M C Onuegbulam, ‘Extra judicial killings and its Challenges under the Nigerian Criminal Justice System’. (Unpublished LLM Dissertation UNEC 2013) 101

<sup>86</sup> Fortune Eromosele, ‘137 killed, 57 abducted during 2023 elections’, <https://www.vanguardngr.com/2023/05/137-killed-57-abducted-during-2023-elections-report>, accessed 22 April 2024. Five days before the gubernatorial and State House of Assembly elections, Chukwudi Ogbonna, the Accord Party candidate for Ogba/Egbema/Ndoni L.G.A Constituency 2 in the Rivers State House of Assembly was abducted at Rumuigbo, near Port Harcourt, Rivers State. One person identified as Muhammad Abdullahi was killed while 15 other people were injured during a violent clash between supporters of PDP and APC at a gubernatorial campaign rally in Duguri, Alkaleri L.G.A Bauchi State.

beating, hanging or inflicting various types of torture on persons suspected to have access to important secrets, so as to force them to divulge same, does not show expertise in criminal investigation. It is rather a violation of the right to the dignity of the human person, an affront to justice, an abuse of the laws against torture and therefore must be checked. With experts, confessions are often more likely when interrogators adopt a respectful and friendly stance toward suspects, they build rapport, instead of torture and tension.

In conclusion, while this research acknowledges the relevance of the Anti-Torture Act 2017 and the goodwill of government in enacting the Anti-Torture Act 2017, prohibiting various acts of torture and leaving no circumstance for justification, the fact remains that prevention or eradication of acts of torture and extrajudicial killing can hardly occur outside government. In fact government can greatly hinder the effective enforcement and implementation of the Anti-Torture Act 2017 directly or indirectly by remaining complacent in implementation of sanctions in the Act. This is because though government is creating the domestic norms to check crimes of torture, the same government also determines the process of the implementation or non-implementation of these norms according to its executive will. A lot of responsibility is placed on government in the eradication of torture and enforcement of the Anti-Torture Act 2017 and other international laws against torture.