



# **Technical Commentary on the Anti-Torture Framework in Nigeria**

**February 2017**

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# I. Introduction

The absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment (ill-treatment) is non-derogable under international law. Under no circumstances can States set aside this obligation – even in times of war or other emergency threatening the life of the nation.<sup>1</sup> The absolute nature of the prohibition of torture and ill-treatment is enshrined in universal and regional human rights treaties ratified by Nigeria as well as in customary international law. Specifically within the African context, the African Charter on Human and Peoples’ Rights (the African Charter) provides that torture and ill-treatment shall be absolutely prohibited.<sup>2</sup>

The absolute prohibition imposes a range of obligations on States to take measures to prohibit and prevent torture and other ill-treatment, to punish those responsible and to provide redress to victims where it occurs. States are obliged to put in place an anti-torture legislative and institutional framework to give effect to these obligations. The term “anti-torture legislative framework” therefore refers not only to constitutional prohibitions and criminal law, but to the entire corpus of domestic laws and procedures relating to the prohibition, prevention, investigation and prosecution of torture and ill-treatment as well as victims’ right to reparation. The existence of an adequate anti-torture legislative framework is central to the effective prohibition and prevention of torture. There is a considerable risk that States not having such a framework in place fall short of their international obligations.

In recent years, a number of African States such as South Africa and Uganda have, beyond constitutional provisions, enacted specific torture legislation. Others, like Kenya, Namibia and Nigeria, are in the process of adopting such legislation.

This Commentary focuses on efforts undertaken in Nigeria to adopt specific anti-torture legislation. It briefly outlines the practice of torture and other ill-treatment in Nigeria and examines the existing legal framework, identifying shortcomings and gaps that specific anti-torture legislation should address for Nigeria to comply with its international obligations. The paper considers opportunities and challenges that exist in the adoption of the bill and proffers recommendations for its adoption.

The Commentary is based on several consultative meetings held in Nigeria<sup>3</sup> and draws upon interviews with experts working on the prevention of torture in Nigeria, as well as a desk review of literature and relevant legal frameworks on prevention of torture in Nigeria. Relevant United Nations (UN) Special Mandate Holders, such as for instance the Special Rapporteur on Torture and

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<sup>1</sup> International Covenant on Civil and Political Rights, 16 December 1966, Article 4.

<sup>2</sup> African Charter on Human and Peoples’ Rights, 27 June 1981, CAB/LEG/67/3 rev. 5, Article 5.

<sup>3</sup> Consultative meetings at which key stakeholders participated were organised to examine the progress of the bill in February, August and November 2016. See for instance REDRESS and Human Rights Implementation Centre of the University of Bristol, ‘Report of roundtable discussion on the draft-anti-torture Bill,’ Abuja, 26 February 2016, (February 2016 Roundtable Report) at <http://www.redress.org/downloads/publications/1603-nigeria-reportand-revised-bill.pdf>.

the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have not been able to visit Nigeria in recent years despite repeated requests.<sup>4</sup> As a result, relatively little information on the current practice of torture and ill-treatment exist from the UN. However, as will be shown below, this gap is partly filled by the African Commission on Human and Peoples' Rights (African Commission) and extensive reporting from civil society.

This technical commentary is the culmination of collaboration between REDRESS and Barbara Maigari (JI Fellow) Partners West Africa- Nigeria and Legal Resources Consortium.

## **II. The practice of torture and ill-treatment in Nigeria: an overview**

Regional and international human rights mechanisms have examined the extent of the practice of torture and ill-treatment in Nigeria over the past decade. In November 2016, the African Commission, after undertaking a promotional mission to Nigeria, expressed concern about allegations of violations of human rights and humanitarian law norms including excessive use of force by security forces and civilian militia groups and the lack of independent investigations into these allegations. The African Commission recommended that Nigeria expedite the adoption of the Bill on Torture and urged it to open independent investigations into violations of human rights and humanitarian law committed in the North East region in the context of the fight against Boko Haram.<sup>5</sup> The US State Department found in 2015 that in fighting Boko Haram - and crime and insecurity in general -, "security services perpetrated extrajudicial killings, and engaged in torture, rape, arbitrary detention, mistreatment of detainees, and destruction of property."<sup>6</sup>

Civil society organisations have similarly documented how security and law enforcement agencies, including the police, military, state security services and prison staff of the Nigerian Security and Defence Corps, are allegedly responsible for widespread torture and ill-treatment.<sup>7</sup> These allegations are not new. In 2007, the UN Special Rapporteur on Torture concluded "that torture and ill-treatment are widespread in police custody and particularly systematic at CIDs [Criminal

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<sup>4</sup> The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has requested a visit to Nigeria which was rejected in 2010, 2011, 2012, 2013 and 2014; the last time a UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment was allowed to visit Nigeria was in March 2007, see Mission report, A/HRC/7/3/Add.4, 22 November 2007 (2007 Mission Report).

<sup>5</sup> African Commission, 'Press Statement at the Conclusion of the Promotion Mission of the African Commission on Human and Peoples' Rights to the Federal Republic of Nigeria,' 2 December 2016 at <http://www.achpr.org/press/2016/12/d335/>.

<sup>6</sup> United States of America State Department, 'Nigeria 2015 Human Rights Report,' p.1, at <https://www.state.gov/documents/organization/252927.pdf>.

<sup>7</sup> International Rehabilitation Council for Torture Victims, 'Torture and ill-treatment in Nigeria,' p. 5, November 2016, at [https://issuu.com/irct/docs/nigeria\\_report](https://issuu.com/irct/docs/nigeria_report).

Investigation Departments].”<sup>8</sup> The Special Rapporteur concluded that “[T]orture is an intrinsic part of how the police operation within the country.”<sup>9</sup>

## II.1. Torture in the context of counter –terrorism measures

Nigerian authorities, including security forces, have long been engaged in a fight against terrorist groups operating in Nigeria, in particular against Boko Haram. The African Commission expressed its concern about Boko Haram’s “reign of terror” characterised by bomb attacks, widespread killings of thousands of people in schools, mosques and other public places, as well as the abduction of hundreds of women and children.<sup>10</sup> The UN High Commissioner for Human Rights found in 2015 that “[C]ivilians living in Boko Haram controlled areas and villages and abductees have been subjected to various forms of torture and other ill-treatment.”<sup>11</sup> While the atrocities committed by members belonging to Boko Haram have been universally condemned, the security forces have also come under criticism for their disproportionate use of force employed during counter-insurgency operations. The allegations of human rights violations committed by security forces increased in particular following a state of emergency declared by former President Goodluck Jonathan in 2012, which was subsequently extended several times until November 2014. The state of emergency gave overly broad powers to security forces<sup>12</sup> that are reportedly responsible for widespread serious human rights violations, including extrajudicial and summary executions, torture and enforced disappearance and rape.<sup>13</sup>

The Office of the Prosecutor (OTP) of the International Criminal Court (ICC) opened a preliminary examination of the situation in Nigeria on 18 November 2010, focussing on alleged crimes committed by Boko Haram as well as the counter-insurgency operations conducted by the Nigerian Security Forces.<sup>14</sup> In addition to examining crimes committed by Boko Haram, the OTP analysed information pertaining to systematic mass arrests and torture by security forces of men suspected of being Boko Haram members or supporters. It noted that it is examining one case where “ more than 7,000 people reportedly died in military detention since March 2011 due to illness, poor conditions and overcrowding of detention facilities, torture, ill-treatment and extrajudicial executions.”<sup>15</sup> In its 2016 Report, the OTP stated that it continues its analysis of new allegations and assessment of admissibility of the eight cases identified to date [six cases involving Boko

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<sup>8</sup> UN Special Rapporteur on Torture, 2007 Mission Report, para.40.

<sup>9</sup> Ibid.

<sup>10</sup> See for instance African Commission, ‘Resolution on the human rights situation of the abducted Chibok girls and other abducted victims in Nigeria,’ ACHPR/Res.341 (LVIII) 2016, at <http://www.achpr.org/sessions/58th/resolutions/341/>

<sup>11</sup> UN High Commissioner for Human Rights, ‘Report on violations and abuses committed by Boko Haram and the impact on human rights in the affected countries,’ (UN OHCHR 2015 Report), para. 35.

<sup>12</sup> See further, Amnesty International, ‘Stars on their Shoulders. Blood on their Hands: War Crimes Committed by the Nigerian Military,’ June 2015, (Amnesty International, Stars on their Shoulders), pp.4-9, at <http://www.amnestyusa.org/research/reports/stars-on-their-shoulders-blood-on-their-hands-war-crimes-committed-by-the-nigerian-military>.

<sup>13</sup> UN OHCHR 2015 Report para. 56.

<sup>14</sup> International Criminal Court, Office of the Prosecutor, ‘Report on Preliminary Examination Activities 2015,’ paras.187, 190, at <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>.

<sup>15</sup> Ibid, paras. 210-216.

Haram, two cases involving security forces] so as to reach a decision on whether an investigation should be opened.<sup>16</sup> Amnesty International reported that security forces tortured detained terrorist suspects, including through suspension on metal poles and electric shocks.<sup>17</sup> Local vigilante groups - established to combat terrorism in collaboration with the security forces - have been accused of recruiting child soldiers, ill-treat and unlawfully kill Boko Haram suspects.<sup>18</sup> Human Rights Watch stated in its 2015 World Report that security forces are responsible for frequent torture and incommunicado detention in abusive conditions of terror suspects in the North-Eastern part of Nigeria.<sup>19</sup>

## II.2. Torture and ill-treatment within the criminal justice system

Torture and ill-treatment in Nigeria are not, however, confined to the security forces' fight against terrorism. It is also a significant problem in the context of general policing and detention. Former detainees reported to Amnesty International in 2016 that officers from the 'Special Anti-Robbery Squad' (SARS) subjected them to horrific methods of torture, including hanging, starvation, beatings, shootings and mock executions.<sup>20</sup> SARS – set up to combat violent crime- has reportedly used these methods of torture as a means of extracting confessions and lucrative bribes.<sup>21</sup> Torture and ill-treatment by the police force has also been reported and is not a new phenomenon in Nigeria. A 2010 study by the Network of Police Reform in Nigeria (NOPRIN) reported that the practice of torture is informally institutionalised in police detention centres with torture facilities referred to as "torture chambers" and officers designated to torture suspects referred to as "O/C Torture" (office in charge of torture).<sup>22</sup> According to NOPRIN's research, notable forms of torture in police detention centres have included clubbing of soles of the feet & ankles, banging of victims head against the wall, burning of victims with cigarettes, hot irons or flames, squeezing or crushing of fingers and ripping out of fingers or toe nails.<sup>23</sup> The UN Special Rapporteur on Torture had similarly found following his mission to Nigeria in 2007 that "detainees in Nigerian cells were frequently tortured to extract confessions."<sup>24</sup> The Nigerian human rights organisation 'Access to Justice' reported in 2005 that the Nigerian police force was using torture as an "institutionalized and routine practice in its criminal investigation process."<sup>25</sup>

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<sup>16</sup> International Criminal Court, Office of the Prosecutor, Report on Preliminary Examination Activities 2016, at [https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf).

<sup>17</sup> Amnesty International, Stars on Shoulders, above note 12, p. 93.

<sup>18</sup> Human Rights Watch, 'World Report 2015,' 2015, at [https://www.hrw.org/sites/default/files/wr2015\\_web.pdf](https://www.hrw.org/sites/default/files/wr2015_web.pdf), p. 402.

<sup>19</sup> Ibid.

<sup>20</sup> Amnesty International, 'Nigeria: Special police squad 'get rich' torturing detainees and demanding bribes in exchange for freedom,' (Amnesty International, SARS Report), 21 September 2016, at <https://www.amnesty.org/en/latest/news/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/>

<sup>21</sup> Ibid.

<sup>22</sup> Network of Police Reform in Nigeria, 'NOPRIN: Criminal Force: Torture, Abuse and Extrajudicial killings by the Nigeria Police Force,' 2010, at <http://www.noprin.org/criminal-force-20100519.pdf>, p. 68.

<sup>23</sup> Ibid, p. 69.

<sup>24</sup> UN Special Rapporteur on Torture, 2007 Mission Report, para.37.

<sup>25</sup> Access to Justice, 'Breaking Point: How torture and police cell system violate justice in the criminal investigation process in Nigeria,' 2005, p.5.

## II.3. Corporal Punishment

In Nigeria, caning is authorised as a criminal penalty<sup>26</sup> and other severe forms of corporal punishment such as lashing, amputation, and stoning to death are authorised by the Shari'a penal codes in the Northern states.<sup>27</sup> A number of UN human rights bodies have raised concerns in relation to the maintenance of corporal punishment in Nigeria as being incompatible with international human rights law, both in relation to provisions of the criminal code and the Shari'a penal codes.<sup>28</sup>

## III. The legal framework to combat torture in Nigeria

This section examines Nigeria's obligations under international law, and identifies key shortcomings in the existing legal framework.

### III.1. Nigeria's obligations under international law<sup>29</sup>

Nigeria is a State party to a range of international and regional human rights instruments expressly prohibiting torture and ill-treatment such as the International Covenant on Civil and Political Rights (ICCPR),<sup>30</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or UNCAT)<sup>31</sup> and its Optional Protocol<sup>32</sup> and the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>33</sup>

Additionally, Nigeria ratified regional instruments proscribing torture such as the African Charter<sup>34</sup> and the African Charter on the Rights and Welfare of the Child.<sup>35</sup>

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<sup>26</sup> Nigeria, Criminal Procedure Act, Article 385-7.

<sup>27</sup> Section 93 of the Centre for Islamic Legal Studies' Draft Harmonised Sharia Penal Code Annotated, [http://www.sharia-inafrica.net/media/publications/sharia-implementation-in-northern-nigeria/vol\\_4\\_4\\_chapter\\_4\\_part\\_III.pdf](http://www.sharia-inafrica.net/media/publications/sharia-implementation-in-northern-nigeria/vol_4_4_chapter_4_part_III.pdf) (note this does not reflect the actual law of any one State; rather it represents a summary of the Shari'a Penal Codes of ten of the Northern states, with annotations explaining the differences among the States).

<sup>28</sup> See for example, UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum: Follow up to the recommendations made by the Special Rapporteur visits to China, Denmark, Equatorial Guinea, Georgia, Greece, Indonesia, Jamaica, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, Papua New Guinea, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan, A/HRC/19/61/Add.3, 1 March 2012, para 85-92; UN Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, 'Concluding observations: Nigeria,' CRC/C/NGA/CO/3-4, 21 June 2010, paras 40-41.

<sup>29</sup> See further, UN Committee Against Torture, General Comment No.2, Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2 (UN Committee Against Torture, General Comment No.2); REDRESS, Legal Frameworks to Prevent Torture in Africa: Best Practices, Shortcomings and Options going Forward,' (REDRESS Anti-Torture Legislative Frameworks), March 2017, at <http://www.redress.org/downloads/publications/1603anti-torture-legislative-frameworks-in-africa.pdf>.

<sup>30</sup> ICCPR, Article 7.

<sup>31</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984.

<sup>32</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199.

<sup>33</sup> International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006.

<sup>34</sup> African Charter, Article 5.

<sup>35</sup> African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990), Article 16.

UNCAT is the most detailed treaty setting out a number of obligations relating to the prohibition, prevention and punishment of torture and redress for victims. These obligations are reflected also at the regional level in the African Commission's Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines). Adopted by the African Commission as the authoritative instrument regarding Article 5, the Guidelines provide State parties to the African Charter with detailed guidance on their obligations under Article 5 of the African Charter.<sup>36</sup>

These obligations will be examined in turn and in the context of the assessment of Nigeria's existing legal framework.

### **III.2. The National Legal Framework<sup>37</sup>**

As Nigeria has dualist legal system in relation to treaty-based international law, specific implementing legislation is required to enable the application of these treaties before national courts. While specific implementing legislation exists for the African Charter, no corresponding act exists yet for UNCAT.

#### **III.2.1. The absolute prohibition of torture**

The prohibition of torture is absolute and non-derogable.<sup>38</sup> This means that there can be no exceptions or limitations to the prohibition such as in times of public emergencies, war or in the fight against terrorism or organised crime. Nor can the prohibition be subjected to balancing against other considerations such as national security interests. The absolute nature of the prohibition is not limited to those instances in which public officials carry out ill-treatment resulting in severe pain or suffering. It also extends to those instances in which States remove persons to places where they face a real risk of torture. The State is prevented from such removals, transfers or deportations even when the persons concerned are convicted criminals, suspected terrorists or others judged by the State to be undesirable or some kind of threat.

The UN Human Rights Committee has confirmed the absolute nature of the prohibition, stating that

even in situations of public emergency ..., no derogation ... is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating

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<sup>36</sup> African Commission, 'Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)', February 2002, at <http://www.achpr.org/instruments/robben-island-guidelines-2008/>.

<sup>37</sup> See further, REDRESS, 'Anti-Torture Legislative Frameworks, March 2016.

<sup>38</sup> ICCPR, Article 4.



circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.<sup>39</sup>

Chapter four of Nigeria's Constitution of 1999 (as amended) provides for the protection and enjoyment of fundamental human rights. Section 34(1) (2) provides that "no person shall be subject to torture or to inhuman or to degrading treatment."<sup>40</sup>

The Constitution does not, however, include freedom from torture and ill-treatment among the non-derogable rights.<sup>41</sup> This is problematic, as the absence of a non-derogable right to freedom from torture and ill-treatment in the Constitution might have served as a basis for the justification of certain violations committed by security forces during the state of emergency between 2012-2015.<sup>42</sup>

### III.2.2. Criminalisation of Torture<sup>43</sup>

The criminalisation of torture is one of the key obligations under UNCAT, and States should ensure that torture is designated and defined as a specific and separate crime of the utmost gravity in national legislation.<sup>44</sup> To subsume torture within a broader, more generic offence (for instance assault causing grievous bodily harm; abuse of power) fails to recognise the particularly odious nature of the crime and makes it more difficult for States to track, report upon and respond effectively to the prevalence of torture. It also prevents the procedural aspects of the Convention from applying to acts that would otherwise amount to torture.

The most effective way to ensure compliance with the Convention is to ensure that all acts of torture are criminalised and to insert a definition of torture in conformity with Article 1 of the Convention Against Torture.<sup>45</sup> While the African Charter does not provide for a definition of torture, the Robben Island Guidelines stipulate that "States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems."<sup>46</sup> Inserting a clear definition of torture into the relevant national law that incorporates the definition under Article 1 (1) UNCAT minimises the possibility that courts will fail to interpret the crime in line with international requirements.

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<sup>39</sup> Human Rights Committee, General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11.

<sup>40</sup> Constitution of the Federal Republic of Nigeria,(1999) (as amended), Section 34 (1) (2).

<sup>41</sup> Ibid, Section 45.

<sup>42</sup> See above, Section II.1 and OHCHR 2015 Report, pp. 11-14.

<sup>43</sup> See further, REDRESS, 'Anti-Torture Legislative Frameworks', March 2016, pp 10-19.

<sup>44</sup> Article 4 of the Convention Against Torture provides that "[E]ach State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

<sup>45</sup> Some States have extended the definition in Article 1 of UNCAT by expressly including acts of torture committed by non-State actors, see for instance section 3 of the Ugandan Prevention and Prohibition of Torture Act of 2012.

<sup>46</sup> African Commission, Robben Island Guidelines, para.4.

As torture has yet to be criminalised in Nigeria, acts in the Penal Code, applicable in the Southern States which fall within the scope of UNCAT include assault, homicide, offences endangering life, assaults on females and the excessive use of force.<sup>47</sup> Penalties potentially range from: imprisonment for one year for ordinary assault to fourteen years for assault with intent to have unlawful carnal knowledge; seven years to life for grievous bodily harm; life imprisonment for manslaughter; death penalty for murder; and life imprisonment, with or without caning, for rape.<sup>48</sup>

Under the Penal Code applicable in the northern States, acts amounting to torture constitute offences such as infliction of injury, homicide and rape. Under sharia, the perpetrator of homicide and injury can only be punished if the victim or relatives of a victim seek punishment. For acts committed intentionally, the punishment is retaliation: punishment mirroring the injury inflicted. Blood money can be paid to the victim or the relatives of a victim in lieu of retaliation.<sup>49</sup>

The absence of the crime of torture in Nigeria's Criminal and Penal Codes is problematic for several reasons: crimes such as assault or infliction of injury do not carry the same stigma or weight as torture. As torture is not criminalised in Nigeria, authorities might be more likely to consider it as a legitimate tool to combat crime and terrorism. In the absence of a separate crime of torture, it is difficult to raise awareness about and train authorities in the absolute prohibition. It is furthermore difficult to track instances of torture and to ensure that those responsible are adequately held to account and punished, therefore contributing to its deterrence. It also prevents victims of torture from obtaining adequate redress for the harm suffered.

As a State party, Nigeria should ensure that torture is designated and defined as a specific and separate crime of the utmost gravity. The most effective way to ensure compliance with its obligations, Nigeria should ensure that all acts of torture are criminalised and insert a definition of torture in conformity with Article 1 of UNCAT.<sup>50</sup>

### **III.2.3. Safeguards against torture and ill-treatment in custody**

There are a range of legal safeguards that can serve to minimise the risks of violations and/or limit the circumstances under which torture and ill-treatment take place. These safeguards are enshrined in international and regional instruments and include:

- the prohibition of arbitrary arrest and detention;
- the right to inform family members or others of the arrest;

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<sup>47</sup> UN Special Rapporteur on Torture, 2007 Mission Report, para 19.

<sup>48</sup> Ibid, para 20.

<sup>49</sup> Ibid, para 21.

<sup>50</sup> This is also provided for in the Robben Island Guidelines, which in para.4 stipulate that "[S]tates should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems;" see further, REDRESS, 'Anti-Torture Legislative Frameworks,' pp. 10-17.

- the right to be promptly brought before a court after arrest;
- the right to challenge the legality of one's detention;
- access to a lawyer of one's choice; and the right to regular medical examination and health care.<sup>51</sup>

It is important to note, however, that torture and ill-treatment will not only occur in detention settings. It is also important for States to establish adequate and effective safeguards to eradicate these practices which occur outside of detention.

### ***Procedural safeguards in the context of arrest and detention***

Nigeria's Constitution of 1999 (as amended) and other laws provide for several safeguards, including the right to remain silent<sup>52</sup> and the right to counsel;<sup>53</sup> the right to be informed about the facts and grounds of the arrest or detention;<sup>54</sup> the obligation to take an arrested person within a reasonable time to a police station;<sup>55</sup> the right to be brought before a court within a reasonable time, stipulated as either 24 or 48 hours depending on the proximity of the court.<sup>56</sup> Further, if a person is not tried within a reasonable time [two months from the date of arrest of a person in custody; three months in the case of a person who has been released on bail] he shall be released either unconditionally or upon such conditions as are necessary to ensure that he appears at trial at a later stage.<sup>57</sup>

### ***Medical examinations***

A compulsory and independent medical examination upon arrest and again after detention is an important safeguard against custodial torture and other forms of prohibited ill-treatment.<sup>58</sup> The Prisons Standing Order of 2001 in Nigeria provides that new prisoners received into prison either from the courts, or upon transfer from another prison, must be seen by the Superintendent in charge and the medical officers within 24 hours of reception.<sup>59</sup> The Superintendent, on the recommendation of the medical officer, may decline to admit a prisoner with grievous bodily injuries.<sup>60</sup> Where the medical officer believes imprisonment will endanger the life of the prisoner, or

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<sup>51</sup> Detailed safeguards for detainees are provided in a range of instruments including the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016; the UN Code of Conduct for Law Enforcement Officials, A/RES/34/169, 17 December 1979; and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988. UNCAT additionally requires States Parties to train law enforcement agents and other relevant officials on the prohibition of torture. Custodial safeguards should be complemented by the monitoring of detention, as envisaged in the OPCAT. The Robben Island Guidelines set out in para. 20, the "[B]asic procedural safeguards for those deprived of their liberty."

<sup>52</sup> Nigeria Constitution, Section 35 (2).

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, 35 (3).

<sup>55</sup> Nigerian Code of Criminal Procedure, Section 9.

<sup>56</sup> Nigeria Constitution, Section 35 (4) and 35 (5).

<sup>57</sup> *Ibid.*, 35 (4) (a-b).

<sup>58</sup> See for instance Robben Island Guidelines, which provide that upon arrest, individuals have a right to an independent medical examination, para.20 (b).

<sup>59</sup> Nigeria Prisons Service Standing Orders (Revised Edition), 2011, s.1, at <http://www.prawa.org/wp-content/uploads/2013/01/NIGERIAN-PRISONS-STANDING-ORDER.pdf>.

<sup>60</sup> *Ibid.*, s.6 (b).

that the prisoner should be released on medical grounds, he or she should report this to the Superintendent who is then obliged to forward the report to the Controller of Prisons in the relevant State.<sup>61</sup>

The constitutional and statutory law provisions outlined above are important contributions to safeguarding individuals' right to freedom from torture and ill-treatment. This is particularly true in light of the serious concerns regarding the treatment of detainees and prisoners in Nigeria as outlined above. However, reporting by regional and international human rights mechanisms and civil society suggests that these existing safeguards are rarely implemented in practice. According to Amnesty International, former detainees have stated that military and police have arrested them without warrants and that they had been interrogated in incommunicado detention without having access to their families or lawyers.<sup>62</sup> The non-compliance with those safeguards frequently results in the torture and ill-treatment of detainees.<sup>63</sup>

### ***Monitoring and oversight mechanisms***

Regular monitoring of detention centres by independent organisations is another important safeguard against torture. It can foster a dialogue between detention and prison staff and monitors on detention conditions which can lead to practical and realistic recommendations and real improvements in policies or practices of the benefit of detainees. Where detention or prison staff are aware that their facility can be visited any time, monitoring can also provide concrete protection to detainees as it can have a deterrent effect and reduce the incidence of torture and ill-treatment. An independent oversight mechanism can furthermore contribute to raising awareness about, and providing training on the compliance with, the safeguards outlined above.

As a State Party to the Optional Protocol, in 2009, Nigeria put in place a National Preventive Mechanism known as the National Committee against Torture (the National Committee).<sup>64</sup> The mandate of the National Committee goes beyond visiting and monitoring places of detention and includes the examination and investigation of allegations of torture, receipt of communications of torture from individuals and civil society organisations.<sup>65</sup> It is also empowered to systematically review interrogation rules, methods and practices and arrangement for custody; propose an Anti-Torture legislation and develop a National Anti-Torture Policy.<sup>66</sup>

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<sup>61</sup> Ibid, s.502.

<sup>62</sup> Amnesty International, 'Welcome to hell fire: Torture and other ill-treatment in Nigeria,' 2014, (Welcome to hell fire), p.7, at [https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKewjSq6SeiqHSAhUMDMAKHf\\_rBToQFggiMAE&url=https%3A%2F%2Fwww.amnesty.org%2Fdownload%2FDocuments%2F4000%2Faf440112014en.pdf&usg=AFQjCNHjDWgEvukzQZeV3xlPnNGmU9koKw&sig2=NI4OOqCx0A5R15THxZROLw](https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKewjSq6SeiqHSAhUMDMAKHf_rBToQFggiMAE&url=https%3A%2F%2Fwww.amnesty.org%2Fdownload%2FDocuments%2F4000%2Faf440112014en.pdf&usg=AFQjCNHjDWgEvukzQZeV3xlPnNGmU9koKw&sig2=NI4OOqCx0A5R15THxZROLw).

<sup>63</sup> Ibid, pp.26-29.

<sup>64</sup> Federal Ministry of Justice, 'National Report of Nigeria to the Committee Against Torture,' September 2012, at: [http://www.apt.ch/content/files/npm/africa/Nigeria\\_NPM%20Report%20to%20CAT\\_2012.pdf](http://www.apt.ch/content/files/npm/africa/Nigeria_NPM%20Report%20to%20CAT_2012.pdf), para. 5.

<sup>65</sup> Ibid.

<sup>66</sup> Federal Ministry of Justice, *Mandate of the National Committee on Torture*, March 2010, available at: [http://www.apt.ch/content/files/npm/africa/Nigeria\\_NPM\\_ToR.pdf](http://www.apt.ch/content/files/npm/africa/Nigeria_NPM_ToR.pdf).

However, the broad mandate of the National Committee notwithstanding, its impact has been minimal, as also underlined by the continued reports of torture and ill-treatment by law enforcement, detention and prison officials since its creation in 2009. The Committee has yet to publish a report on its activities, including on visits to detention centres. Civil society and other experts voiced concerns regarding the lack of financial and logistical resources provided to the Committee, preventing it from playing a meaningful role in monitoring places of detention and in the prevention of torture.<sup>67</sup> The Committee did, however, play a positive role in spearheading consultative meetings with civil society organisations to ensure the passage of the Anti-torture Bill into law.<sup>68</sup>

#### **III.2.4. Exclusion of evidence obtained under torture and ill-treatment**

Article 15 UNCAT provides that confessions and other evidence obtained by torture are inadmissible in legal proceedings except against a person accused of such treatment as evidence that the statement was made. The exclusion of such evidence is an important aspect of States' obligations to prevent torture. It counteracts one of the main enumerated purposes of torture: to elicit a confession. The rationale for the exclusionary rule stems from a combination of factors: i) the unreliability of evidence obtained as a result of the treatment; ii) the outrage to civilised values caused and represented by torture; iii) the public policy objective of removing any incentive to undertake torture anywhere in the world; (iv) the need to ensure protection of the fundamental rights of the party against whose interested the evidence is tendered (and in particular those rights relating to due process and fairness) and v) the need to preserve the integrity of the judicial process.

The exclusionary rule is also reflected in the African Commission's Fair Trial Principles which call on prosecutors to refuse any evidence they know or believe to have been obtained through unlawful means, including torture and ill-treatment. The burden of proof should be on the prosecution to "prove beyond reasonable doubt that a confession was not obtained under any kind of duress."

In Nigeria, the Evidence Act of 2011 states in Section 29 that the court shall refuse a confession obtained by oppression [which is defined to include "torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture"] unless the prosecution can prove "to the court beyond reasonable doubt that the confession [notwithstanding that it may be true] was not obtained in a manner contrary to the provisions of this section."<sup>69</sup> The Evidence Act limits the inadmissibility of evidence obtained by oppression to confessions, and does not include

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<sup>67</sup> Association for the Prevention of Torture, NPM database, Nigeria, at [http://www.apr.org.uk/en/opcat\\_pages/npm-workingmethods-21/?pdf=info\\_country/](http://www.apr.org.uk/en/opcat_pages/npm-workingmethods-21/?pdf=info_country/). These concerns were re-iterated by experts participating in a workshop organised by the Human Rights Implementation Centre of the University in Bristol, on 13 November 2015, in Abuja, Nigeria.

<sup>68</sup> Meeting with Stakeholders on Anti-Torture law in Nigeria, held from 29-30 December 2016.

<sup>69</sup> Nigeria, Evidence Act of 2011, 3 June 2011, Chapter 112, Section 29.

other evidence derived from torture. A ban of such evidence would be in line with the objective to deter the use of torture to obtain evidence in the first place.<sup>70</sup> It also does not highlight that where evidence was obtained by torture or ill-treatment, there is an obligation to prosecute the alleged perpetrator/s.

The provision in Section 29 of the 2011 Evidence Act on confessions notwithstanding, it appears that in most cases, police, as well as prosecutors and judges, continue to rely on “confessions” to prosecute and try criminal cases, with confessions as the primary form of evidence used in proceedings.<sup>71</sup> Indeed, eliciting confessions from suspects appears to be a major incentive for police and other investigatory authorities to commit torture and ill-treatment. According to research conducted by Amnesty International in 2014, “many people are being convicted largely based on their ‘confession’ made to the police under torture.”<sup>72</sup> Where individuals report about incidents of torture and ill-treatment to a magistrate or a judge after being transferred to prison, such claims are reportedly almost never investigated.<sup>73</sup>

### III.2.5. The Prohibition of refoulement

Article 3 UNCAT obliges State Parties both to protect individuals from being subjected to torture within their territory and requires that they do not deport, extradite, expel or otherwise transfer persons to countries where there is a real risk that they may be exposed to torture. This prohibition is absolute and not subject to any exception. No one can be deported, transferred, expelled or otherwise removed out of the territory for any reason whatsoever (including, for instance, reasons of national security) where to do so would put the person at a real risk of torture. The UN Committee against Torture considered that the initial burden of proof rests on the individual to show that there are substantial grounds for believing that the individual would be in danger of being subjected to torture where he / she to be expelled, returned or extradited.<sup>74</sup> Where the individual has provided sufficient credible detail, the burden shifts to the State.<sup>75</sup>

In Nigeria, the prohibition of refoulement is incorporated in the National Commission for Refugees Act, incorporating the 1951 UN Convention relating to the Status of Refugees (Refugee Convention). This is problematic as the Refugee Convention which concerns the prohibition on returning someone when there is a legitimate fear of persecution, has an exception. A person fearing persecution might be denied refugee status under Article 1F of the Refugee Convention (for instance if the individual is suspected of having committed war crimes). In contrast, as outlined

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<sup>70</sup> See for instance, Inter-American Court of Human Rights, *Teodoro Cabrera Garcia and Rodolfo Montiel Flores v Mexico*, Judgment of 26 November 2010 (Preliminary Objection, Merits, Reparations and Costs), para.167.

<sup>71</sup> See for instance REDRESS and Human Rights Implementation Centre of the University of Bristol, February 2016 Roundtable Report, pp.9-10.

<sup>72</sup> Amnesty International, Welcome to hell fire, pp.30

<sup>73</sup> Amnesty International, ‘Stop Torture: Country Profile- Nigeria,’ AFR 44/005/2014, May 2014, p.6.

<sup>74</sup> UN Committee against Torture, *A.S. v Sweden*, Communication No.149/1999, 15 February 2001, para.8.6.

<sup>75</sup> *Ibid.*

above, the non-refoulement prohibition under UNCAT is absolute, allowing for no exceptions. As such the Refugee Convention prohibition does not go far enough in all cases in comparison to the UNCAT prohibition. As a result, the current provision in the National Commission for Refugees Act is insufficient in light of Nigeria's obligations under UNCAT.

### **III.2.6. Criminal accountability for torture and ill-treatment**

Under UNCAT, Nigeria is obliged to initiate prompt, impartial and thorough investigations wherever there are reasons to believe that acts of torture or ill-treatment have been committed, and to prosecute where there is sufficient evidence.<sup>76</sup> These obligations are reflected in the jurisprudence of the African Commission in regards to Article 5 of the Charter, as well as in the *Robben Island Guidelines*.<sup>77</sup> The African Commission has furthermore underlined that the obligations to investigate and prosecute, form part of the obligation to provide victims of torture and ill-treatment with an effective remedy.

The full realisation of States' obligations with respect to accountability requires accessible and effective complaints procedures as well as oversight mechanisms that are mandated to look into the conduct of police officers and security forces. States are also obliged to provide protection to victims and witnesses to ensure that instances of torture are adequately reported, investigated and prosecuted. Moreover, States are bound to remove impediments to prosecution including amnesties and immunities and overly short statutes of limitation, which, according to the Committee Against Torture, "violate the principle of non-derogability" of the prohibition of torture<sup>78</sup> and prevent the exercise of the right to effective redress under Article 14 of the UNCAT.<sup>79</sup>

The absence of statistical evidence of the number of complaints filed, investigations and prosecutions initiated and convictions for acts amounting to torture and ill-treatment makes it difficult to assess Nigeria's compliance with UNCAT and Article 5 of the African Charter. However, the recurrent and frequent reports about torture and ill-treatment committed by a wide range of State authorities as well as non-State actors, and the very limited number of prosecutions, suggest a lack of compliance. Indeed, the common thread that connects the systematic incidents of torture and ill-treatment found by the UN Special Rapporteur on Torture following his visit to Nigeria in 2007, and torture and ill-treatment committed almost ten years later, is the impunity enjoyed by the perpetrators.

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<sup>76</sup> UNCAT, Article 12.

<sup>77</sup> See for instance, the African Commission's admissibility decision in the case of *Hawa Abdallah (represented by the African Centre for Justice and Peace Studies) v Sudan*, Communication 401/11, 1 August 2015, para. 57.

<sup>78</sup> Committee Against Torture, General Comment No 2, paras. 1 and 5.

<sup>79</sup> Committee Against Torture, 'General Comment No. 3(2012): Implementation of Article 14 by States Parties,' CAT/C/GC/3, 13 December 2012, paras. 38 and 41.

In 2007, the UN Special Rapporteur stated that “[T]here was no question about accountability of perpetrators because there are no functioning complaint mechanisms in place to receive allegations...the Special Rapporteur notes with concern the climate of fear and mistrust of police prevalent in many of the places visited.”<sup>80</sup> The Special Rapporteur concluded that his findings “illustrate the breakdown of a credible system of accountability of law enforcement in Nigeria.”<sup>81</sup> The US State Department found in 2015 that “the government took few steps to investigate or prosecute officials who committed violations, whether in the security forces or elsewhere in the government, and impunity remained widespread at all levels of government.”<sup>82</sup> This is also reflected in research by human rights organisations, including for instance Amnesty International, which stated in 2016 that police (the SARS) is “torturing its victims with complete impunity.”<sup>83</sup>

### III.2.7. Complaints and investigation mechanisms

The Committee Against Torture has underlined the importance of independent complaint and investigation mechanisms for States to abide by their obligation to investigate torture promptly, impartially and effectively. This is particularly true in regard to allegations of torture by the police, the institution that ordinarily would be tasked with investigating torture.<sup>84</sup> The Robben Island Guidelines call on States Parties to the Charter to “[E]nsure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.”<sup>85</sup>

As outlined above, while mandated to investigate allegations of torture, Nigeria’s National Committee against Torture has not carried out investigations, arguably due to a lack of resources and support. Similarly, the National Human Rights Commission is also mandated to investigate complaints but similarly constrained to fully and effectively investigate all complaints. In the absence of effective independent complaint mechanisms, victims of torture and ill-treatment can only turn to the police to file a complaint. In 2003, a Police Complaints Bureau was established to investigate complaints of crimes committed by police officers. However, the Bureau was dismissed as ineffective by the UN Special Rapporteur on Torture in 2007. The absence of effective investigations and prosecutions for torture and ill-treatment committed by police officers suggests that little has changed since.

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<sup>80</sup> UN Special Rapporteur, 2007 Mission Report, paras.41-42.

<sup>81</sup> Ibid, para.49.

<sup>82</sup> United States of America State Department, ‘Nigeria 2015 Human Rights Report,’ p.2.

<sup>83</sup> Amnesty International, SARS Report.

<sup>84</sup> See for instance, Concluding Observations of the Committee Against Torture, Cambodia, UN Doc. CAT/C/CR/31/7, February 2004; Concluding Observations of the Committee Against Torture, Latvia, UN Doc. CAT/C/CR/31/3, 5 February 2004, para.6(b); see also Istanbul Protocol, paras.85-87.

<sup>85</sup> Robben Island Guidelines, para.17.



### III.2.8. Victim and Witness protection

Under Article 13 of UNCAT State parties are obliged “to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.” The obligation to protect victims and witnesses is also enshrined in the Robben Island Guidelines which provide that States should “[E]nsure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.”<sup>86</sup> The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide that States should ensure that “a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”<sup>87</sup> Principle 12 mandates States to “ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims.”<sup>88</sup>

Protecting victims and witnesses is a crucial part of any strategy to combat torture. Effective protection contributes to strengthen institutions and governance and provides citizens with the security needed to break the cycle of violence. If protected, victims and other witnesses will be able to lodge complaints and give testimony freely which would be one of the factors enhancing the prospect of perpetrators being held accountable and for victims to obtain redress.

An effective protection system should include legislation providing for procedural and non-procedural protective measures, the criminalisation of threats, harassment and intimidation of victims and witnesses. It should include the establishment of relevant mechanisms to proactively ensure the safety and security of all victims and witnesses and promptly respond to any threats or risks of reprisal and implement interim or provisional measures requested by human rights bodies such as the African Commission and the UN Committee Against Torture. An effective protection system also includes the establishment of a protection programme to which all victims and witnesses at risk have unhindered access, including those involved in human rights claims against the State. Most protection programmes are activated on the initiative of the police or prosecution services, and usually when high profile witnesses are involved. This can be limiting in cases lodged by victims of human rights abuses who may not have access to protection services if their claims are not supported by the prosecution services. Furthermore, it is rare for protection systems to operate

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<sup>86</sup> Robben Island Guidelines, para. 49.

<sup>87</sup> Principle 10 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<sup>88</sup> Ibid. Principle 12.

with sufficient independence in regards to threats emanating from public officials, a common problem in torture cases.

In Nigeria, witness protection laws or policies are yet to be legislated. The absence of an effective protection system led the UN Special Rapporteur on Torture conclude that the system was unable to protect victims of serious human rights violations from reprisals. Similarly, in 2014, research by Amnesty International found that “victims of human rights violations by the police and military said they were reluctant to report the case to the authorities for fear of reprisals.”<sup>89</sup> Recent efforts to introduce ‘witness support units’ within the judiciary at the State levels are a first step yet are limited in scope as they are solely designed to ensure the safety and performance of witnesses in court and to provide a conducive atmosphere for witnesses to testify in court.<sup>90</sup> The unit does not cater for the protection and well-being of victims, and does not ensure support and protection for witnesses prior to, and after, testifying in court.

In October 2016, the Nigeria Senate passed a second reading of the Witness Protection Bill.<sup>91</sup> The bill seeks to specifically protect individuals who provide information that assists law enforcement officials. A witness may qualify for protection if they provide direct or indirect information that would assist law enforcement officials. In addition to witnesses, the bill seeks to provide protection to prosecutors, investigators, members of the judiciary while enhancing the incentives for persons with information to testify. The Witness Protection Bill focuses on those individuals who may have information to assist the police. This appears to provide the police with discretion as to whether to provide protection, based on their assessment of the usefulness of the information to be provided. The bill furthermore does not include victims and others who may require protection due to their involvement in a complaint or association with the victim. This is problematic in particular in cases involving human rights violations, including torture, where protection risks not only arise in relation to a witness, but also regularly extend to family members, legal representatives and human rights defenders.<sup>92</sup>

### **III.2.9. Procedural barriers to accountability**

The UN Human Rights Committee has criticised States that have sought to impose amnesties or allow immunities for serious violations of human rights.<sup>93</sup> In its General Comment No. 31, it stressed

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<sup>89</sup> See Amnesty International, *Welcome to Hell Fire*, p.48.

<sup>90</sup> Federal Capital Territory, Commissioning of the Witness Support, 9 November 2016, Unit, <http://www.fcthighcourt.gov.ng/?news=the-commissioning-of-the-witness-support-unit-wsu>.

<sup>91</sup> Policy and Legal Advocacy Centre, *Whistle Blowers Protection Bill and Witness Protection Programme Bill Scale Second Reading in the Senate*, <http://placng.org/wp/2016/10/whistle-blowers-protection-bill-and-witness-protection-programme-bill-scale-second-reading-in-the-senate/>.

<sup>92</sup> See for instance *Robben Island Guidelines*, para.149.

<sup>93</sup> For example: Comments on Uruguay, CCPR/C/79/Add.19 (1993); Concluding Observations on El Salvador, CCPR/C/79/Add.34 (1994); Nineteenth Annual report of the Human Rights Committee A/50/40 (1995); Preliminary Observations of the Human Rights Committee: Peru CCPR/C/79/Add.67 (1996); Concluding Observations on France, CCPR/C/79/Add.80 (1997); Concluding Observations on Lebanon,

that States have obligations to investigate and bring to justice perpetrators of violations including “torture and similar cruel, inhuman and degrading treatment..., summary and arbitrary killing... and enforced disappearance.” The Committee recognised that “the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations”, and that States “may not relieve” public officials or State agents who have committed criminal violations “from personal responsibility, as has occurred with certain amnesties and prior legal immunities and indemnities”.<sup>94</sup>

Amnesties and immunities are also contrary to specific duties under international law to investigate and prosecute and punish perpetrators and provide a remedy.<sup>95</sup>

### **Immunities**

Immunities are legal grants to individuals or entities to prevent them from being held liable for a violation of the law. Such legal immunity may be from criminal prosecution or civil liability or both. There are a variety of forms of immunity that are granted to government officials in order to enable them to carry out their functions without fear of being sued or charged with a crime for so doing. Subject matter immunity covers the official acts of all State officials and is determined by reference to the nature of the acts in question rather than the particular office of the official who performed them. Other types of immunities attach to the person (personal immunity, or, with regard to diplomatic agents, diplomatic immunity), which, while that person is in office, cover any act that some classes of State officials perform. This includes acts in a private capacity, and it is based on the idea that this category of officials must be immune so as to allow those officials to exercise their official functions while in office. Once the individual has left office, he or she ceases to be entitled to such immunity.

It is widely recognised that functional immunities are not available in relation to certain categories of crimes under international law, including genocide, war crimes, crimes against humanity and torture.<sup>96</sup> According to the Committee Against Torture, granting immunity for acts of torture is incompatible with the State’s obligation to prosecute and the obligation to provide redress for victims. It has indicated that “when impunity is allowed by law or exists de facto, it bars victims

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CCPR/C/79/Add.78 (1997) and Concluding Observations on Chile, CCPR/C/79/Add.104 (1999); Concluding observations on Argentina, CCPR/CO/70/ARG (2000); Concluding Observations on Congo, CCPR/C/79/Add.118 (2000).

<sup>94</sup> Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States parties to the Covenant (2004), CCPR/C/21/Rev.1/Add.13, 29 March 2004, para.18.

<sup>95</sup> According to the Committee Against Torture, amnesties which result in the impunity of torturers are incompatible with the spirit and purpose of the Convention: *O.R., M.M. and M.S. v. Argentina*, nos. 1/1988, 2/1988, and 3/1988, A/45/44, Annex V, p.108, at p. 112, para. 9 (1990); see also Committee against Torture, General Comment No. 2, para. 5; see also, in relation to amnesties for enforced disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/2006/56, p. 17, para.1 (2005).

<sup>96</sup> Cassese, Antonio, ‘When May Senior State Officials Be tried for International Crimes? Some comments on the *Congo v Belgium Case*’, *European Journal of International Law*, 2002, pp.864-865; see also ECtHR, *Al Adsani v United Kingdom*, Judgment (Grand Chamber) of 21 November 2001, application no.35763/97, para.61; see also judgments of Lord Millett and Lord Phillips of Worth Matravers in the Pinochet case: *R v Bow Street Metropolitan Stipendiary Magistrate & Others*, ex parte Pinochet Ugarte (Amnesty International and others intervening) (No.3) [1992] 2 All ER 97 at pp.171-9 (Lord Millett) and pp.186-90 (Lord Phillips of Worth Matravers).

from seeking full redress as it allows the violators to go unpunished and denies victims full assurance of their rights.”<sup>97</sup>

Regarding personal immunities, the Constitution of Nigeria restricts prosecutions of the President, the Vice-President, the Governor and the Deputy-Governor during their “period of office.”<sup>98</sup> Specifically in respect of functional immunities, Section 392 of the Armed Forces Act provides an indemnity for actions in aid to civil authority and military duty, stipulating that “[N]o action, prosecution or other proceeding shall lie against a person subject to service law under this Act for an act done in pursuance of execution of intended execution of the Act or any regulation, service duty or authority or in respect of an alleged neglect or default in the execution of this Act, regulation, duty or authority, if its done in aid to civil authority or in execution of military rules.”<sup>99</sup> There is no jurisprudence suggesting how courts will interpret this provision and how it will be applied in regards to crimes, including human rights violations, committed by members of the armed forces, including for instance in regard to crimes committed in the fight against Boko Haram.<sup>100</sup>

### ***Statutes of limitation***

It is usual for common crimes in domestic jurisdictions to be accompanied by prescription regimes. This is intended to promote legal certainty. In contrast, there is wide recognition of the inapplicability of statutes of limitation to certain crimes under international law. The reasons are because international crimes pose particular investigatory and prosecutorial challenges that can result in often extensive delays and because imprescriptibility underscores the seriousness of the crimes, and that neither space nor time will provide escape from responsibility. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity provides that the relevant crimes are imprescriptible “irrespective of the date of their commission.”<sup>101</sup>

As has been recognised by the United Nations Independent Expert who updated the Set of principles for the protection and promotion of human rights through action to combat impunity, “the general trend in international jurisprudence has been towards increasing recognition of the relevance of this doctrine not only for such international crimes as crimes against humanity and war crimes, but also for gross violations of human rights such as torture.”<sup>102</sup> Statutes of limitation are inconsistent with States’ absolute duty to prosecute or extradite suspects of torture, as such laws introduce qualifications to that duty.<sup>103</sup>

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<sup>97</sup> UN Committee Against Torture, General Comment No.3, paras.38, 42.

<sup>98</sup> Constitution of Nigeria, Section 308 (3).

<sup>99</sup> Armed Forces Act of 1994, section 392, at [https://www.icrc.org/ihl-nat.nsf/0/049ea0330082bc31c12576ea005be4a3/\\$FILE/ARMED%20FORCES%20ACT.pdf](https://www.icrc.org/ihl-nat.nsf/0/049ea0330082bc31c12576ea005be4a3/$FILE/ARMED%20FORCES%20ACT.pdf).

<sup>100</sup> See above, Section II.1.

<sup>101</sup> Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968.

<sup>102</sup> Report of Diane Orentlicher to update the Set of principles to combat impunity, E/CN.4/2005/102, 8 February 2005, para. 47.

<sup>103</sup> The Committee Against Torture has repeatedly stated that there should be no statutory limitations for torture, e.g. Turkey, UN Doc. CAT/C/CR/30/5, para.7 (c). See also the Inter-American Court of Human Rights in the *Case of Barrios Altos v Peru*, Judgment of 14 March 2001.

In Nigeria, no statutes of limitation for criminal offences exist. However, acts falling within the Public Officers Protection Act are subject to a three month limitation period after the “act”. This applies to “any action, prosecution...against any person for any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act, Law, duty or authority.”<sup>104</sup> This can be a significant obstacle to a successful prosecution of torture or ill-treatment committed by public officers and is not in line with international standards.

### III.2.10. Comprehensive reparation for victims of torture

The right to redress for victims of torture and ill-treatment is enshrined in a number of international and regional human rights instruments, including the UNCAT, ACHPR, ICCPR, the African Fair Trial Standards, the Robben Island Guidelines and the UN Basic Principles on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“UN Basic Principles and Guidelines”).<sup>105</sup> Accordingly, States need to ensure that their legal and institutional frameworks enable victims of torture and ill-treatment to access and obtain reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

In 2012, the UN Committee Against Torture issued a General Comment on Article 14 of the Convention, which concerns the right to redress.<sup>106</sup> In addition, the African Commission’s Committee for the Prevention of Torture in Africa has embarked on the process of developing a General Comment on the right to redress for victims of torture.<sup>107</sup> In the Committee Against Torture’s General Comment, the Committee makes clear that States should have the necessary legislation in place to implement their obligations to afford victims an effective remedy and the right to obtain adequate and appropriate redress, and highlights the importance of States ensuring that victims are able to pursue redress through transparent and accessible procedures that enable and foster victim participation.<sup>108</sup>

In Nigeria, the legislative framework does not fully reflect the right to redress for acts of torture and ill-treatment. Victims of torture and ill-treatment can rely on Section 46 of the Constitution to

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(Merits), para. 41: “provisions on prescription ... are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture”, and the International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija*, IT-95-17/1-T, 10 December 1998, para.157: one of the “consequences” of the jus cogens nature of the prohibition on torture is that “torture may not be covered by a statute of limitations.”

<sup>104</sup> See Section 2 of the Public Officers Protection Act [CAP.379], 1916.

<sup>105</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, General Assembly resolution 60/147 of 16 December 2005.

<sup>106</sup> UN Committee Against Torture, General Comment No.3.

<sup>107</sup> See for instance, African Commission, Report on Technical Meeting on Drafting a General Comment On The Right To Redress For Victims Of Torture And Ill-Treatment Under Article 5 Of The African Charter On Human And Peoples’ Rights, July 2015, at <http://www.achpr.org/news/2015/09/d191>.

<sup>108</sup> UN Committee Against Torture, General Comment No.3, paras. 29-30.

institute proceedings before the Federal or State High Court. The Fundamental Rights (Enforcement Procedure) Rules of 2009 specify that no human rights case should be dismissed because of a lack of *locus standi*, and that human rights groups, non-governmental organisations, or anyone acting on behalf of another person or in the interest of a group of persons can institute actions on behalf of an applicant. Victims of torture and ill-treatment may also initiate a claim for reparation before the National Human Rights Commission, which has the mandate to, amongst other things, determine damages or compensation payable where a violation has occurred. However, its mandate notwithstanding, the Commission has not yet decided on a claim for compensation for torture or ill-treatment. Overall, no statistics exist as to how many victims of crimes amounting to torture or ill-treatment have actually claimed reparation, yet there hardly any cases involving other human rights violations in which victims have succeeded in their claims.<sup>109</sup>

#### **IV. Conclusion on Nigeria's current anti-torture framework**

The above assessment of Nigeria's existing anti-torture framework showed significant shortcomings in law and in practice. These shortcomings are borne out by the recurrent and frequent reporting of torture by a wide range of authorities. A comprehensive anti-torture law can play an important role in addressing some of those shortcomings, thereby directly contributing to the prevention of torture in Nigeria. An anti-torture law can fill existing legislative gaps, for instance regarding the criminalisation of torture, the absolute prohibition of torture and ill-treatment, witness and victim protection and victims' access to full redress. It can also overcome the current piece-meal approach and ensure that all of Nigeria's obligations regarding the absolute prohibition of torture and ill-treatment are comprehensively included in one piece of legislation. An anti-torture legislation would also send an important signal that Nigeria takes its obligations seriously and is committed to fighting torture and ill-treatment.

However, this brief assessment of the anti-torture framework in Nigeria has also shown that legislation is but the first step in an effort to eradicate torture and ill-treatment. Even where they exist, legislative provisions such as safeguards against torture enshrined in constitutional and statutory law, are frequently ignored or breached, without serious, if any, consequences for those responsible. The impunity for perpetrators fosters violations and perpetuates the use of torture and ill-treatment to the extent that it is considered as a legitimate tool for law enforcement and others to fight crime and combat terrorism.

It is therefore fundamentally important that the further development of the Anti-Torture Bill includes consultations with law enforcement, prison and detention officials as well as security

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<sup>109</sup> See for instance REDRESS, Country Reports, Nigeria, 2003, pp.15-19, at <http://www.redress.org/downloads/country-reports/Nigeria.pdf>.

forces, including army personnel. Once the bill is adopted, the government, relevant mechanisms such as the National Committee and the National Commission on Human Rights as well as civil society should ensure to raise awareness about and train officials in the implementation of the anti-torture law.

## V. The Nigeria Anti-Torture Bill

### V.1. Background

The first initiative on anti-legislation in Nigeria dates back to 2008, when an Anti-Torture Bill was submitted to the National Assembly, shortly after the UN Special Rapporteur on Torture's visit to Nigeria in March 2007.<sup>110</sup> It was awaiting consideration by the relevant Committee when the tenure of the Assembly expired. It was subsequently resubmitted for debate in 2012.<sup>111</sup> It took almost three years for this Bill to be debated and it passed its final reading in June 2015 after having been approved by the Nigerian Senate as part of 45 bills passed on a single day. However, it did not receive presidential assent as the outgoing President did not sign it. As a result, the legislative process had to start anew.<sup>112</sup>

In the second half of 2015, the Nigerian Law Reform Commission embarked on preparing a Draft Anti-Torture Bill for submission to the Attorney-General. Since then, the Law Reform Commission has collaborated with the National Human Rights Commission, the Committee against Torture, the United Nations Office on Drugs and Crime (UNODC) and civil society actors to further develop the Bill.

Several meetings at which the text of the Law Reform Commission's Anti-Torture Bill was considered were held throughout the second half of 2015 and 2016. In February 2016, a range of governmental and non-governmental stakeholders held a meeting to further strengthen the draft bill and to identify areas the bill could address to bring its provisions in conformity with Nigeria's regional and international human rights obligations.<sup>113</sup> As the Nigerian Law Reform Commission prepared to submit the Bill to the Attorney General in accordance with its mandate, a coalition of civil society organisations was formed to explore the possibility of submitting an anti-torture bill to the National Assembly in an effort to speed up the development and adoption of the bill.

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<sup>110</sup> Amnesty International, *Welcome to Hell Fire*, p.46.

<sup>111</sup> Nigerian Bar Association, 'The Campaign for the Anti-Torture Bill in Nigeria,' <http://www.nigeriabar.com/2016/08/the-campaign-for-the-anti-torture-bill-in-nigeria#.WKbubW-LSig>.

<sup>112</sup> *Ibid.*

<sup>113</sup> See for instance REDRESS and Human Rights Implementation Centre of the University of Bristol, February 2016 Roundtable Report.

Despite the Nigerian Law Reform Commission’s leadership of the drafting process, six versions of an anti-torture bill, which varied in content and depth, were prepared by various stakeholders. At an expert meeting in Abuja in November 2016, which brought together a range of actors including the Law Reform Commission, National Human Rights Commission and civil society, these versions were reviewed and harmonised into a consolidated version. Participants of the November 2016 meeting then met with the Chairman of the House of Representatives Committee on Rules and Business – and handed him a copy of the consolidated bill entitled ‘Torture (Prevention and Prohibition) Bill, 2016’ – with a request that he forward it to the Speaker and Members of the House for deliberation.

## **V.2. The most recent version of the Anti-Torture Bill: the Torture (Prevention and Prohibition) Bill 2016<sup>114</sup>**

The latest version of the consolidated Bill is divided into six parts with specific provisions. Part I of the Bill focuses on provisions related to the prohibition and criminalisation of torture, part II has provisions on the inadmissibility of evidence obtained by torture and part III has a section prohibiting the transfer of persons where the likelihood of torture exists. Provisions on the jurisdiction over the offence of torture are considered in part IV while part V focuses on general provisions and part VI centres on miscellaneous provisions. The Bill includes a first schedule detailing examples of physical and mental torture and a second schedule detailing reparation for victims of torture.

Once adopted, the Bill will undoubtedly present an important step forward in Nigeria’s fight against torture and ill-treatment. It defines and criminalises torture and ill-treatment, emphasises the non-derogatory nature of the absolute prohibition of torture, provides for an express right to complain about torture and for victims’ right to reparation. This important progress notwithstanding, the current Bill raises a number of concerns as various provisions fall short of Nigeria’s obligations under international law, including:

- Section 1 of the Bill for instance provides a definition of torture that does not expressly state that the list of enumerated purposes is non-exhaustive.
- The wording in Section 4 on the penalties for torture provides for a fine (of ten million naira for State and five million naira for non-State actors) as a possible alternative sentence to imprisonment for torture. This does not reflect the gravity of the crime of torture, and is

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<sup>114</sup> See Annex 1 for the Torture (Prevention and Prohibition) Bill 2016.



contrary to international standards which provide that a “significant custodial sentence” is generally appropriate.<sup>115</sup>

- The Bill in Section 4 lists forms of criminal responsibility yet does not criminalise attempt to commit torture as required by CAT.<sup>116</sup>
- The Bill’s provisions do not include provisions barring amnesties,<sup>117</sup> immunity for the crime of torture<sup>118</sup>, statute of limitations<sup>119</sup> and other impediments to prosecution and punishment of torture.<sup>120</sup>
- The Bill currently also does not highlight that it is an obligation for the authorities with investigatory powers such as police to investigate wherever there are reasonable grounds to believe that an offence under the Bill has been committed, even if there has been no complaint.
- The Bill’s provisions on protection as enshrined in Section 17 fall short of international standards as also enshrined in the African Commission’s Robben Island Guidelines in that it does include families, investigators and human rights defenders. It also does not highlight that any form of threat, intimidation or reprisal should be considered an offence punishable with imprisonment.

This is but a snapshot of the main shortcomings of the current Torture (Prevention and Prohibition) Bill 2016 and further consultation is needed to strengthen the Bill as it goes through the next stages in the adoption process.

### **V.3. Conclusion**

A wide range of stakeholders have undertaken significant efforts to see an anti-torture act adopted in Nigeria. In fact, these efforts have now spanned over a period of almost ten years. It remains to be seen whether the current efforts are successful, yet the signs are promising, if only because of the determination of those involved to collaborate and work together towards the adoption of the bill. Continued reporting on torture and ill-treatment in Nigeria generated public debate on the practice torture and ill-treatment in Nigeria, and there appears to be a consensus that a comprehensive anti-torture law is urgently needed in Nigeria. The support of the current Chairman

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<sup>115</sup> See for instance Chris Inglese, ‘The UN Committee against Torture: An Assessment’, The Hague/ London/ Boston: Kluwer Law International, 2001, p.342.

<sup>116</sup> UNCAT, Article 4.

<sup>117</sup> Committee Against Torture, General Comment No. 2, para 11.

<sup>118</sup> Ibid, para 5.

<sup>119</sup> Committee Against Torture, General Comment No. 3, para. 38.

<sup>120</sup> Committee Against Torture, General Comment No.2, para 5.

of the House of Representative Committee on Rules and Business is a valuable asset in efforts to crystallise the Bill's passage into law. The support of the Committee should be galvanised so that the current momentum is sustained and the Bill is enacted before the end of the of the current Assembly's tenure (in 2019). National efforts can build on support at regional level through the Committee for the Prevention of Torture in Africa of the African Commission on Human and Peoples' Rights. At international level, the UNODC plays an important supportive role.

The various meetings held by stake holders outlined a range of activities designed to ensure the passage of a comprehensive anti-torture bill during this tenure of the National Assembly. These include:

- In the first half of 2017, convening a public hearing in the Assembly on the Torture (Prevention and Prohibition) Bill 2016
- Increase engagement with the Advocacy Committee of the Nigeria Bar Association, media houses, Nigeria Police, Nigeria Prisons and the general public
- Continue engaging the African Commission's Committee for the Prevention of Torture in Africa to advocate with the Nigerian government for the adoption of an anti-torture law
- Increase public awareness about the absolute prohibition of torture
- Build capacity of law enforcement and justice actors to combat crime without resorting to torture and ill-treatment.

Nigeria should in compliance with its regional and international human rights obligations adopt a comprehensive Anti-Torture Bill. The political will of the authorities and the efforts of the various stakeholders are now more important than ever to ensure that deliberations on the Bill concretise into torture legislation. In the meantime, torture violations should be investigated and perpetrators sanctioned to deter recurrence. Law enforcement and security forces in Nigeria must accept human rights as part of security governance in a democratic dispensation and appreciate that respect of human rights is central to fighting torture within the criminal justice system and during counter-terrorism operations. As a regional power committed to tackling impunity, it is high time for Nigeria to honour its regional and international human rights commitments by passing the Anti-Torture Bill.

## **VI. Recommendations for the adoption of the Anti-Torture Bill**

### **To the National Assembly**

- Convene a public hearing on the Torture (Prevention and Prohibition) Bill 2016 in the first half of 2017
- Prioritise the Bill's passage to pave way for Presidential Assent

### **To the National Human Rights Commission and Law Reform Commission**

- Participate in and contribute to the public hearings before the House of Representatives
- Raise public awareness of the role of anti-torture legislation in combating torture
- Continue supporting civil society advocacy for the adoption of a comprehensive anti-torture law

### **To the Ministry of Justice**

- Support the swift passage of the Bill through the National Assembly
- Participate in and contribute to the public hearings before the House of Representatives
- Support civil society advocacy for the adoption of a comprehensive anti-torture law

### **To the National Committee Against Torture**

- Participate in and contribute to the public hearings before the House of Representatives
- Periodically publish activity reports as a means of informing the public on activities of the committee

### **To Civil Society**

- Continue advocating for the adoption of a comprehensive anti-torture act
- Participate in and contribute to the public hearings before the House of Representatives
- Engage with national authorities, including police, prison and detention officials and members of relevant security forces to explore capacity building initiatives of stakeholders responsible for the implementation Anti-Torture Legislation.
- Engage with members of relevant committees in the House of Representatives and Senate to impress upon them the urgent need for Anti-Torture Legislation.

- Share materials detailing Nigeria's obligations to pass anti-torture legislation with all relevant stakeholders including members of the House, Senate, law enforcement agencies, Ministry of Justice and the Attorney General's Office.

**A Bill  
For An Act for the  
Prevention and Prohibition of Torture and other Cruel, inhuman and degrading treatment or  
punishment Bill 2016**

## **EXPLANATORY MEMORANDUM**

(This memorandum does not form part of the Bill but is intended to explain its purport)

This Bill gives effect, in accordance with section 34 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), to provide for the crime of torture, ensure the respect of human dignity and protection from inhuman treatment by prohibiting and preventing any form of torture or cruel, inhuman or degrading treatment or punishment, give effect to the obligations of Nigeria as a state party to the United Nation’s Convention Against Torture and other cruel, inhuman or degrading treatment or punishment and other related matters.

**A Bill  
For An Act for the  
Prevention and Prohibition of Torture and other Cruel, inhuman and degrading treatment of  
punishment Bill 2016**

ARRANGEMENT OF SECTIONS

**Section:**

**PART I - PROHIBITION AND CRIMINALISATION OF TORTURE**

1. Acts or Omissions Constituting Torture
2. Circumstances aggravating torture.
3. Cruel, inhuman or degrading treatment or punishment
4. Offences and Penalties
5. Responsibility of a superior over action of a subordinate.
6. Right to complain
7. Institution of criminal proceedings
8. The right to reparation
9. Control over private prosecutions.

**PART II - USE OF EVIDENCE OBTAINED BY TORTURE**

10. Inadmissibility of evidence obtained by torture
11. Prohibition of use of information obtained by torture

**PART III - TRANSFER OF DETAINEES**

12. No transfer, expulsion or return of persons where likelihood of torture exist

**PART IV - JURISDICTION OVER THE OFFENCE OF TORTURE**

13. Jurisdiction of courts in relation to the offence of torture
14. Bail

**PART V - GENERAL PROVISIONS**

15. Consent of the Attorney General required for prosecution of non citizen.
16. Duty to report torture.
17. Protection of victim, witnesses and persons reporting torture
18. Restriction on extradition or deportation where person is likely to be tortured.

**PART VI - MISCELLANEOUS**

19. Annual Publication of Reported Cases
20. Regulations
21. Interpretation
22. Short title.

**A BILL  
FOR  
AN ACT TO PREVENT, PROHIBIT AND PENALIZE ACTS OF TORTURE CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT AND FOR OTHER RELATED MATTERS.**

Whereas Section 34 of the constitution provides that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment;

AND WHEREAS it is necessary to give effect to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the United Nation’s Convention against Torture (OPCAT) as ratified by Nigerian government in July 2009

[.....] Commencement

**Short title:** This Bill may be cited as the Torture (Prevention and Prohibition) Bill, 2016

**ENACTED** by the National Assembly of the Federal Republic of Nigeria as follows –

**PART I  
PROHIBITION AND CRIMINALISATION OF TORTURE**

**1. Acts or Omissions Constituting Torture**

- (1) For the purposes of this Act “torture” means any act or omission, by which severe pain or suffering whether physical, mental, psychological or pharmacological is intentionally inflicted on a person by or at the instigation of, or with the consent or acquiescence of any person whether a public official or any other person acting in an official or private capacity for the purpose of—
  - (a) obtaining information or a confession from the person or any other person;
  - (b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or planning to commit;
  - (c) intimidating or coercing the person or any other person to do, or to refrain from doing any act, or
  - (d) for any reason based on discrimination of any kind.
- (2) The definition of torture set out in subsection (1) of this section does not include pain or suffering arising from, inherent in or incidental to a lawful sanction.
- (3) Without limiting the effect of subsection (1) of this section, the acts or omissions constituting torture shall include the acts set out in the First Schedule to this Act.
- (4) For purpose of this Act, “severe pain or suffering” means harm caused by or resulting from the –
  - (a) intentional infliction or threatened infliction of physical pain or suffering;



- (b) administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality;
- (c) threat of imminent death; or
- (d) threat that another person will imminently be subjected or death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

**2. Circumstances aggravating torture.**

Notwithstanding the provisions of section 4 of this Act, where it is proved that the time of or immediately before, or immediately after the commission of torture the –

- (a) offender used or threatens to use or used a deadly weapon;
- (b) offender uses or used sex as a means of torture;
- (c) victim was a person with a disability;
- (d) victim was pregnant or becomes pregnant;
- (e) offender causes death;
- (f) victim was subjected to medical experiments;
- (g) victim acquires HIV/AIDS;
- (h) victim was under the age of 18 years;
- (i) victim is incapacitated;
- (j) act of torture is recurring; or
- (k) offender commits any other act which court considers aggravating

**3. Cruel, inhuman or degrading treatment or punishment**

- (1) Cruel inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official or private capacity, which does not amount to torture as defined in section 1 of this Act, is a criminal offence and shall be liable on conviction to imprisonment not exceeding seven years or a fine not exceeding two hundred thousand naira or both.
- (2) For the purposes of determining what amounts to cruel, inhuman or degrading treatment or punishment, the court or any other body considering the matter shall have regard to the definition of torture as set out in section 1 of this Act and the circumstances of the case.
- (3) In a trial of a person for the offence of torture, the court may, in its discretion, convict the person for cruel, inhuman or degrading treatment or punishment, where the court is of the opinion that the act complained of does not amount to torture.

#### **4. Offences and Penalties**

- (1) Any person who -
  - (a) commits torture; or
  - (b) aids, abets, counsels or procures any person to commit torture;is guilty of the offence of torture and is liable on conviction to imprisonment for fifteen years or to a fine of ten million naira or both for state actors and to imprisonment for ten years or to a fine of five million naira or both for non - state actors.
- (2) Any person who conspires with a public official or private person to commit, aid or procure the commission of torture, is guilty of the offence of torture and on conviction is liable to imprisonment for ten years or to a fine of five million naira or both for state actors and to imprisonment for five years or to a fine of three million naira or both for - non state actors.
- (3) No exceptional circumstances may be invoked as a defence or justification for torture including -
  - (a) a state of war or a threat of war;
  - (b) internal political instability;
  - (c) national security ;
  - (d) any state of emergency; or
  - (e) an order from a superior officer, a public authority or an individual.
- (4) No one shall be punished for disobeying an order, directive, instruction or advice to commit torture, cruel, inhuman or degrading treatment or punishment.

#### **5. Responsibility of a superior over action of a subordinate.**

A superior officer is liable for any act of torture committed by a subordinate under his or her authority and control where the –

- (a) superior knew, or consciously disregarded information which clearly indicate that the subordinate was committing or about to commit an act of torture;
- (b) acts committed by the subordinate concerned activities that were within the responsibility and control of the superior; and
- (c) superior failed to promptly investigate, diligently pursue administrative and disciplinary measures to prevent re-occurrence and cooperate with judicial authorities to prosecute the offence.

#### **6. Right to complain**

- (1) A person alleging that an offence under this Act has been committed, whether the person is the victim of the offence or not, has a right to complain to the police,

National Human Rights Commission or any other relevant institution or body having jurisdiction over the offence.

- (2) Where a complaint is made in accordance with subsection (1) of this section, the authorities shall promptly, thoroughly and impartially investigate the complaint and where there are substantial grounds to support the complaint -
  - (a) where it is investigated by the police, the police shall arrest and charge the person with the offence he or she is alleged to have committed;
  - (b) where it is investigated by the National Human Rights Commission, the Commission shall prosecute the person in accordance with their establishment Act; and
  - (c) where it is investigated by any other appropriate authority, the appropriate authority shall submit its report to the Attorney- General for prosecution.
- (3) Where a complaint is made in accordance with subsection (1) of this section, the authorities shall promptly, thoroughly and impartially investigate the complaint and where there are substantial grounds to support the complaint -
  - (a) where it is investigated by the police, the police shall arrest and charge the person with the offence he or she is alleged to have committed;
  - (b) where it is investigated by the National Human Rights Commission, the Commission shall prosecute the person in accordance with their establishment Act; and
  - (c) where it is investigated by any other appropriate authority, the appropriate authority shall submit its report to the Attorney- General for prosecution.

## **7. Institution of criminal proceedings**

- (1) Criminal proceedings under this Act may be instituted in any one of the following ways-
  - (a) by a police officer bringing a person arrested with or without a warrant before a magistrate upon a charge
  - (b) by a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant or a summons; or
  - (c) by any person, other than a public prosecutor or a police officer, or a person making a complaint.
- (2) The validity of any proceedings instituted or purported to be instituted under subsection (1) of this section shall not be affected by any defect in the charge or complaint or by the fact that a summons or warrant was issued without any complaint or charge or in the case of a warrant, without a complaint on oath.
- (3) Any person other than a public prosecutor or a police officer who has reasonable and probable cause to believe that an offence has been committed by any person

under this Act, may make a complaint of the alleged offence to the court or authority who has jurisdiction to try or inquire into the alleged offence.

- (4) A complaint made under subsection (3) of this section may be made orally or in writing signed by the complaint, but if made orally shall be reduced into writing by the authority or organization and when so reduced shall be signed by the complaint or any person acting on behalf of the victim.
- (5) Upon receiving a complaint under subsection (3) of this section, the court or the authority shall hear the complaint and make requisite decision or judgment.
- (6) After satisfying himself or herself that prima facie the commission of an offence has been disclosed and a formal complaint signed and dated along with a formal charge containing a statement of the offence or offences alleged to have been committed by the accused.
- (7) Where a charge has been-
  - (a) laid under the provision of subsection (1)(b); or
  - (b) drawn up under the provisions of subsection (9) the court or authority shall issue either a summons or a warrant as he or she shall deem fit, to compel the attendance of the accused person before the court over which he or she presides, or if the offence alleged appears to be one which the court or the authority is not empowered to try or inquire into before a competent court having jurisdiction; except that a warrant shall not be issued is the first instance unless the charge is supported by evidence on oath, either oral or by affidavit.
- (8) Notwithstanding subsection (7) of this section a court or authority receiving any charge or complaint may, if he or she thinks fit for reason to be recorded in writing, postpone the issuing of a summons or warrant and may direct an investigation or further investigation to be made by the police into the charge or complaint; and a police officer receiving such a direction shall investigate or further investigate the charge or complaint and report to the court issuing the direction.
- (9) Without prejudice, nothing in subsection (7) shall authorize a police officer to make an arrested without a warrant for an offence other than the offence committed in his or her presence.
- (10) A summons or warrant may be issued on a Sunday or public holiday under this Act by the court or authority.
- (11) Nothing in this section shall be so construed as to affect the powers conferred upon the National Human Rights Commission.

## **8. The right to reparation**

- (1) Victims of torture and other cruel, inhuman or degrading treatment or punishment as set out in this Act have a right to reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- (2) The court may, make an order for reparation in addition to any other penalty under this Act as set out in the Second Schedule to this Act.
- (3) Restitution, compensation, rehabilitation or any payment ordered by the court under subsection (2) of this section may be satisfied by or with the property or assets of the person convicted of torture, or if the award determines that the convicted person and the State are jointly and severally liable, by or with the property or assets of either or both debtors.
- (4) Satisfaction and guarantees of non-repetition, may be ordered against the State in addition to restitution, compensation and/or rehabilitation.
- (5) A Victim may institute civil proceedings to claim reparation irrespective of whether criminal proceedings were commenced and if so, how they concluded.

## **9. Control over private prosecutions.**

- (1) Where criminal proceedings under this Act have been instituted, the Attorney - General may-
  - (a) take over and continue the conduct of those proceeding at any stage before the conclusion of the proceeding;
  - (b) discontinue the prosecution of the proceeding at any stage; and
  - (c) require the victim or the reporting the offence to -
    - (i) to give him or her all reasonable information and assistance; and
    - (ii) to furnish him or her with any documents or other matters.
- (2) For the avoidance of doubt, any person other than a public prosecutor or a police officer, National Human Rights Commission may institute criminal proceeding for any offender committed under this Act.
- (3) This section shall not prejudice the mandate of the National Human Right Commission to entertain matters under this Act as cases of human rights abuse and in such cases the commission shall deal with the cases as it ordinarily deals with human rights cases

**PART II**  
**USE OF EVIDENCE OBTAINED BY TORTURE**

**10. Inadmissibility of evidence obtained by torture**

- (1) Any information, confession or admission obtained from a person by means of torture is inadmissible in evidence against that person in any proceeding.
- (2) Notwithstanding subsection (1) such information confession or admission may be admitted against a person accused of torture as evidence that the information, confession or admission was obtained by torture

**11. Prohibition of use of information obtained by torture**

A person who uses information which he or she knows or ought to have reasonable known to have been obtained by means of torture in the prosecution of the person tortured, commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding five hundred thousand naira.

**PART III**  
**TRANSFER OF DETAINEES**

**12. No transfer, expulsion or return of persons where likelihood of torture exist**

- (1) A person shall not where there are reasonable grounds to believe that a prisoner or detainee is likely to be torture -
  - (a) release, transfer or order the release or transfer of a prisoner or detainee into the custody or control of another person or group of persons or government entity;
  - (b) intentionally or recklessly abandon a prisoner or detention of a prisoner or detainee to a non – gazetted place of detention; or
  - (c) intentionally or recklessly abandon a prisoner or detainee in any place where there are reasonable grounds to believe that the prisoner or detainee is likely to be tortured.
- (2) Subsection (1) applies to any prisoner or detainee in the custody of any public official irrespective of the –
  - (a) citizenship of the prisoner or detainee;
  - (b) location in which the prisoner of detainee is being held in custody or control; or
  - (c) location in which or to which the transfer or release is to take place or has taken place.

**PART IV**  
**JURISDICTION OVER THE OFFENCE OF TORTURE**

**13. Jurisdiction of courts in relation to the offence of torture**

- (1) The court or the authority shall have jurisdiction to try the offences prescribed by this Bill, wherever committed, if the offence is committed-
  - (a) in Nigeria
  - (b) outside Nigeria-
    - (i) in any territory under the control or jurisdiction of Nigeria;
    - (ii) on board a vessel flying the Nigerian flag or an aircraft which is registered under the laws of Nigeria at the time the offence is committed;
    - (iii) on board an aircraft, which is operated by the Government of Nigeria, or by a body in which the government of Nigeria holds a controlling interest, or which is owned by a company incorporated in Nigeria.
  - (c) by a citizen of Nigeria;
  - (d) against a citizen of Nigeria;
  - (e) by a stateless person who has his or her habitual residence in Nigeria; or
  - (f) by any person who is for the time being present in Nigeria or in any territory under the control or jurisdiction of Nigeria.
- (2) Any court with criminal jurisdiction shall have the power to try cases of torture, cruel, inhuman or degrading treatment or punishment.
- (3). A court of the Federal Republic of Nigeria has jurisdiction in respect of an act committed outside Nigeria which would have constituted an offence under section 1 of this Act had it been committed in Nigeria, regardless of whether or not the act constitutes an offence at the place of its commission, if the suspect –
  - (a) is a citizen of Nigeria;
  - (b) is ordinarily resident in Nigeria;
  - (c) is, after the commission of the offence, present in the territory of Nigeria, or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in Nigeria and that person is not transferred pursuant to [section 12](#) of this Act; or
  - (d) has committed the offence against a Nigerian citizen or against a person who is ordinarily resident in Nigeria.

**14. Bail**

All offences under this Bill shall be bailable.

**PART V  
GENERAL PROVISIONS**

**15. Consent of the Attorney General required for prosecution of non citizen.**

A person who is not a citizen of Nigeria shall not be prosecuted for an offence under this bill except with the consent of the Attorney General.

**16. Duty to report torture.**

A person who suspects or has reasonable ground to suspect that torture is being committed by a public official, person acting in official capacity or private capacity has a duty to report to the police, the commission, of his or her suspicion of torture.

**17. Protection of victim, witnesses and persons reporting torture**

It shall be the responsibility of the State to ensure that any person including the-

- (a) complainant;
  - (b) witnesses; or
  - (c) person making a complaint, whether the victim or not;
- is protected against all manner of ill-treatment or intimidation as a consequence of his or her complaint or any evidence given.

**18. Restriction on extradition or deportation where person is likely to be tortured.**

- (1) Torture is an extraditable offence.
- (2) Notwithstanding subsection (1) and the provisions of the Extradition Act, a person shall not be extradited or deported from Nigeria to another state if there are substantial grounds to believe that that person is likely to be in danger of being subjected to torture.
- (3) For the purpose of subsection (2), it shall be the responsibility of the person alleging the likelihood of being tortured to prove to the court the jurisdiction of that belief.
- (4) In determining whether there are substantial grounds for believing that a person is likely to be tortured or in danger of being subjected to torture under subsection (2), the court shall take into account all factors including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the state seeking extradition or deportation of the person.
- (5) Where a person is not extradited or deported as a consequence of the provisions of this section, that person shall be tried in Nigeria.



**PART VI**  
**MISCELLANEOUS**

**19. Annual Publication of Reported Cases**

- (1) The Minister shall publish a report annually on reported cases on torture and other cruel, inhuman or degrading treatment or punishment, and shall be made available on the Ministry of Justice’s website.
- (2) This report shall include –
- (a) Information on the number of reported cases of torture and other cruel, inhuman or degrading treatment or punishment disaggregated by age, gender, and nationality of the victims;
  - (b) Information on the number of prosecutions for any offences under this Act, and outcome of the prosecution; and
  - (c) Information on reparation measures provided to victims of offences under this Act;

**20. Regulations**

- (1) The Minister may make regulations for implementation of the provisions of this Act
- (2) Without prejudice to subsection (1) of this section, the Minister may make regulations in respect of –
- (i) right to counsel for the victim;
  - (ii) right to medical and other examinations of the victim;
  - (iii) protection of victim, witnesses and persons reporting torture cruel, inhuman or degrading treatment or punishment.
- (3) Without prejudice to subsection (1) and (2) of this section, the Committee against Torture shall be responsible for the implementation of all preventive mechanisms in line with Optional Protocol to the United Nation’s Convention against Torture (OPCAT) to prevention torture

**21. Interpretation**

In this Act unless the context otherwise requires –

“Appropriate Authority” means any other agency with investigative powers such as the National Security and Civil Defence Corp, National Human Rights Commission, duly recognized NGO’s that are involved in human rights activities.

“Attorney-General” means Attorney-General of the Federation and Minister of Justice or Attorney –General of a State and Commissioner for Justice.

“Commission” means National Human Rights Commission;

“Convention” means the United Nation’s Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

“Court” means Federal High Court, State High Court or Magistrate Court;

“Deadly Weapon” means -

- (a) an instrument made or adapted for shooting, stabbing or cutting, and any imitation of such an instrument;
- (b) any substance, which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person that it is likely to cause death or grievous bodily harm; and
- (c) any substance intended to render the victim of the offence unconscious.”

“Minister” means the Attorney - General of the Federation and Minister of Justice;

“Non- State Actor” means a person acting in an unofficial capacity

“Offender”, means a person who commits an offence under this Act.

“Public Official” means a person whether a public officer or not, employed by the government or local government or any government agency or any other person paid out of public funds;

“Severe pain or suffering” means the prolonged harm caused by or resulting from acts such as -

- (a) the intentional infliction or threatened infliction of physical pain or suffering;
- (b) the administration or application or threatened administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (c) the threat of imminent death; or
- (d) the threat that another person will imminently be subjected to death, severe physical or mental pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

“Superior Officer” means a person in a higher position of authority than the officer alleged to have committed the torture.

“State” means Federal, State or Local Government;

“State Actor” means any public official acting in official capacity;

“Superior Officer” means a person in a higher position of authority than the offender; and

“Victim” or “Victims” mean/s persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations under this Bill. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization

## **22. Short title.**

This Act may be cited as the Torture (Prevention and Prohibition) Act, 2016

### **FIRST SCHEDULE**

#### **1. Physical torture including -**

- (a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;
- (b) food deprivation or forcible feeding with spoiled food, animal or human excreta;
- (c) electric shocks;
- (d) 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;
- (e) the submersion of the victim’s head in water or water polluted with excrement, urine, vomit or blood;
- (f) being tied or forced to assume a fixed and stressful body position;
- (g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;
- (h) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue;
- (i) dental torture of the forced extraction of the teeth;
- (j) harmful exposure to the elements such as sunlight and extreme cold; or
- (k) the use of plastic bags and other materials placed over the victim’s head with the intention to asphyxiate.

#### **2. Mental or psychological torture including-**

- (a) blindfolding;
- (b) threatening the victim or his or her family with bodily harm, execution or other wrongful acts;
- (c) confining a victim incommunicado, in a secret detention place or other form of detention;
- (d) confining the victim in a solitary cell or in a cell put up in a public place

- (e) confining the victim in a solitary cell against his or her will or without prejudice to his or her security;
- (f) prolonged interrogation of the victim so as to deny him or her normal length of sleep or rest;
- (g) maltreating a member of the victim's family;
- (h) witnessing the torture sessions by the victim's family or relatives;
- (i) denial of sleep or rest;
- (j) shame infliction such as stripping the victim naked, parading the victim in a public place, shaving the head of the victim, or putting a mark on the body of the victim against his or her will.

**3. Pharmacological torture including-**

- (a) administration of drug to induce confession or reduce mental competence;
- (b) the use of drug to induce extreme pain or certain symptoms of diseases; and
- (c) other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.

## **SECOND SCHEDULE**

### **REPARATION FOR VICTIMS OF TORTURE AND OTHER FORMS OF PROHIBITED ILL-TREATMENT**

The following are the different forms of reparation a court and other actors engaged in the reparation process may take into account.

**1. Restitution**

Restitution is a form of redress to re-establish the victim's situation before the violation of the Act was committed, taking into consideration the specificities of each case. The Victim shall not be placed in a position where he or she is at risk of repetition of torture or other prohibited ill-treatment. For restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination

**2. Compensation**

Compensation should be prompt, fair and adequate and sufficient to compensate for any economically assessable damage resulting from torture or other prohibited ill-treatment, whether pecuniary or non-pecuniary. Compensation may include:

- reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible;
- pecuniary and non-pecuniary damage resulting from the physical and mental harm caused;
- payment of damages for loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment;
- payment of damages for lost opportunities such as employment and education;
- payment of damages for legal or specialist assistance, and other costs associated with bringing a claim for redress.

### **3. Rehabilitation**

Rehabilitation, for the purposes of this Act, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or other prohibited ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society. Rehabilitation provided to a victim under this Act should be based on the assessment and evaluation of the victim's therapeutic and other needs as identified in reference to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol). It should be holistic and include:

- medical, physical and psychological care;
- legal and social services;
- community and family orientated assistance and services;
- vocational training and education;
- ensuring the availability of temporary services for individuals or groups of individuals, such as shelters for victims of gender-related or other torture or ill-treatment.

### **4. Satisfaction**

Satisfaction should include, in addition to the obligations of investigation and criminal prosecution, the following:

- effective measures aimed at the cessation of continuing violations;
- verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
- the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families;
- an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- judicial and administrative sanctions against persons liable for the violations;
- public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.

### **5. Guarantees of non-repetition**

Guarantees of non-repetition shall include:

- issuing effective, clear instructions to public officials on the provisions of this Act;
- strengthening the independence of the judiciary;
- providing, on a priority and continued basis, training for law enforcement officials as well as military and security forces on human rights law that includes the specific needs of marginalized and vulnerable populations and specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials;

- promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel;
- ensuring compliance with the prohibition of refoulement.



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