Sacha Journal of Human Rights

SJHR Volume 5 Number 1 (2015) pp. 21-32
ISSN 2045-8398 (Print)
ISSN 2045-8517 (Online)
Publishers: Sacha & Diamond, England
www.sachajournals.com
Current Cumulative Impact Factor: 30.7

THE ROLE AND EFFECT OF KEY INSTITUTIONS IN MANAGING TORTURE IN NIGERIA: APPRAISING NEW DEVELOPMENTS

IGWE, O. W.[1] and INOMA-ABBEY, Rita[2]

[1]Faculty of Law, Rivers State University of Science and Technology, Nigeria
[2]Nigeria Police Force

ABSTRACT

The issue of torture resonates. Criminal acts and criminality have been part of human nature. Institutions of governments have equally confronted the issue of torture variously. The international community in very strong terms has condemned the use of torture. Criminal acts are assuming a frightening dimension domestically and globally with rise of terrorism. Nigeria is not an exception as she daily battles with the insurgency of boko haram. The challenge really is in managing the security challenges within the limits of the rule of law.

Keyword: Torture, Boko Haram, Terrorism, Human Rights, National Security.

1. INTRODUCTION

In every civil society, there are bound to be dissidents and it behooves on the appropriate institution(s) of government to curb such dissident acts which may necessarily require some form/extent of coercion or physical application of force. This effort is usually in the ultimate interest of society but same is not without some attendant abuse which calls for some level of restraint or check. In this bid, the object of this act has usually suffered great abuse such that the observance of same has come to be synonymous with arbitrariness resulting in *torture* thereby causing a general abhorrence, regardless of how germane the object may be. This restraint on the act of torture is largely consistent with the chief function of government wherein it is required by law as well as by policy, to the protection of the individual's life, liberty and physical integrity.

1.2 Meaning Of Torture

The word 'torture' comes from the French *torture,* originating in the Latin *tortura* and ultimately derives from *torquere*, meaning – 'to twist.' The word is also used loosely to describe more ordinary discomforts that would be accurately described as tedious rather than painful.[1] It is used as a method of interrogation, punishment and coercion. The term "torture" has come to bear a functional definition of international application. In this respect therefore, the term torture will be considered in different context such as:

[1] http//en/wikipedia.org/wik/torture, retrieved on 11/09/2013

Literal and legal (juristic and statutory) meaning. The statutory meaning of torture is contained in Article 1 of the Convention against Torture as any act that causes severe pain or suffering that may be in the form of physical, mental or even psychological in nature. This clearly does not include pain or suffering arising only from, inherent in or incidental to, lawful sanction. This definition was restricted to apply only to nations and governments sponsored torture and manifestly limited same to that perpetuated, directly or indirectly by those acting in an official capacity. It implies that it excludes the following: torture carried out by gangs, rebels or terrorist who ignore national or international mandates; random violence during war; and punishment allowed by national laws; even if the punishment uses techniques similar to those used by tortures such as mutilation or whipping when practiced as lawful punishment.

James Jaranson[4] is of the view that this definition is too restrictive and the definition of politically motivated torture should be broadened to include all acts of organized violence. The World Health Organization working group in 1986 introduced the concept of organized violence, which introduces the conceptions of avoidable pain and suffering and goes further to itemize such conducts to include imprisonment without trial, mock executions, hostage taking or any other form of violent deprivation of liberty.[1] A generous definition was offered by the 1975 Declaration of Tokyo relating to the involvement of medical professions in acts of torture. In its preamble it declared that: The crime of torture remains a brutal fact of life the world over, from democracies to dictatorships in peace-time and in war, in rich countries and in poor. Civilians as well as political activists, prisoners of war, militants, terrorists and insurgents, continue to fall into the hands of torturers. The right to a private and family life guarantees the sanctity of home and it is transgressed when for instance, the police undertake unauthorized searches and raid in which they burn, main and toot. The Nigerian Oko Oba seven,[2] were killed in the living room of the houses after some policemen had ransacked the place apparently looking for property to loot.

The act of torture in law applies to many measures e.g. beating on the soles of the feet; electric shock applied to genitals and nipples; rape; near drowning through submersion in water, near suffocation by plastic gas tied around the head; burning, whipping, needles inserted under fingernails, mutilation; hanging by feet or hands for prolonged periods, use of mind-altering drugs. Several historical penalties include breaking wheel, boiling to death, flaying, slow slicing, disembowelment, crucifixion, emplacement, crushing, storing, execution by burning, dismemberment, sawing, decapitation, scaphison, or necklacing.[7]

2. THE LAW ON TORTURE

2.1 International Law Perspectives

With the outbreak of the World War II in 1984 and its concomitant abuses of human rights, the General Assembly of the United Nations reflected the protection against the abuse

---

[4] James Jaranson, "The Science and Politics of Rehabilitating Torture Survivors" in *Caring for Victims of Torture*, Amer Psychiatric Pub. Inc. 1998.

[1] World Health Organization (WHO) "The Health Hazards of Organized \violence," Report on a WHO Meeting, Veldhoven, 22 – 25 April 1986; A generous definitions is offered in the preamble to the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), General Assembly resolution 45/110 of 14 December 1988.

[2] See, *Liberty*, Vol. 2, No. 1, March, 1991, p. 7.

[7] During the Middle Ages, torture was a very common way to punish offenders. The following were the most common torture devices: Judas cradle, coffin torture, the brazen bull, the rack torture, the water torture, exposure, the chair of torture, the pear of anguish, the rat torture, the breast ripper, the head crusher, saw torture, the virgin of Nuremberg (the maiden), the Spanish Tickler, Garrote torture, Flagellation (whipping), the wheel torture (break wheel), toe wedging, the pendulum, the street sweeper's daughter, the piquet, crocodile shears, crocodile tube, the Spanish Spider, etc.

of human rights such as acts of torture in the all important Universal Declaration of Human Rights which provides *thus:* "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

This prohibition on torture and other ill-treatment has subsequently been incorporated into other international regional human rights instruments. It is contained in the International Covenant on Civil and Political Rights (ICCPR), and in the Convention against Torture or Other Cruel, inhuman or Degrading Treatment or punishment (the Convention against Torture). The same is also replicated in the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and European Convention for the protection of Human Rights and Fundamental Freedoms. The Code of Conduct for Law Enforcement Officials[8] in Article 5 provides that:

> No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

This provision derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The term "Cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly. It should in the context of the law, be interpreted so as to extend it to the widest possible protection against abuses, whether physical or mental. Principle 5(a) of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[9] provides that:

> Whenever the lawful use of force and firearms is un-available, law enforcement officials shall: (a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved.

The emphasis here is on when lawful use of force and firearms is un-available. But the challenge is: are there occasions when they are un-available but unlawful? Can legitimate objects be achieved using inappropriate force in un-avoidable circumstances? The Body of Principles for the Protection of All Forms under Any Form of Detention or Imprisonment,[10] provides in Principle 6 that: "No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

This provision seeks to protect persons under any form of detention, apparently including those who have determinable explosives wrapped around their bodies, even when such explosives may cause incalculable human destruction upon detonation. Is the law in the present realities inflexible, and therefore defeatist of the purpose it intends to serve?

---

[8] Annexed to General Assembly resolution 34/169 of 17 December, 1979

[9] Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havanna, 27 August - 7 September, 1990.

[10] General Assembly Resolution 43/173 of 9 December 1988.

Principle 4 of the Declaration of Basic Principles for Victims of Crime and Abuse of Power,[11] provides that: "Victims should be treated with compassion and respect for their dignity", Principle 18 defines victim to mean "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment or of their fundamental rights …" The infraction caused by torture is extended to include economic loss or depravity. And Article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance[12] en acts that: "Any act of enforced disappearance is an offence to human dignity" and Article 7 permits of no exceptions whatsoever.

Principle 1 of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions,[13] deserves mention. It provides "Government shall prohibit by law all extralegal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal law and are punishable by appropriate penalties which take into account the seriousness of such offenses." With respect to juveniles, Rule 10.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")[14] provides that:

> Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

This Rule deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be interpreted broadly, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or un due harm. This is especially, important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the state and society. Moreso, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are very crucial in these situations.

Articles 1 and 2 of the WMA Declaration of Tokyo-Guidelines for Physicians Concerning Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment,[15] provides:

> The physician shall not countenance, condone or participate in the practice of torture, or other forms of cruel, inhuman or degrading procedures whatever the offense of which the victim of such procedure is suspected, accused or guilty, and whatever the victims beliefs or motives, and in all situations, including armed conflict and civil strife (Article 1).

---

[11] Adopted by General Assembly resolution 40/30 of 29 November, 1985.
[12] Adopted by General Assembly resolution 47/133 of 18 December 1992.
[13] Recommended by Economic and Social Council resolution 1989/65 of 24 May, 1989
[14] Adopted by General Assembly resolution 40/33 of 29 November 1985.
[15] World Health Organization (WHO), 1986, "The Health Hazards of Organized Violence" Report on a WHO Meeting, Valdhoven, 22-25 April, 1986.

> The physician shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment (Article 2).

3. REGIONAL PERSPECTIVES

The basic instrument under consideration here is the African charter on Human and Peoples' Rights. The charter was adopted in the Nairobi Conference of Heads of State and Government in 1986. It was incorporated into Nigeria law as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 of 1990. The charter affirms the right to human dignity and to the recognition of one's legal status and prohibits all forms of degradation including torture, cruel, inhuman or degrading. Specifically, Article 5 provides that: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of legal status. All forms of exploitation and degradation of non particularly slavery, slave trade, torture, cruel inhuman or degrading punishment and treatment shall be prohibited".

3.1 The Nigerian National Law

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 provides that: "Every individual is entitled to respect for the dignity of his person, and accordingly- (a) No person shall be subjected to torture or to inhuman or degrading treatment; (b) No person shall be held in slavery or servitude; and (c) No person shall be required to perform forced or compulsory labour."[16] It is important to emphasize that Section 34(2) CFRN 1999 has for the avoidance of doubt, clearly defined the limitations/exceptions to the right under S.34 (1), as such needful to mention that it is not an absolute right or put otherwise some acts which may seemingly be considered as act of torture may not necessarily suffice as such with regard to Section 34(2) CFRN 1999.

But as it is related to torture specifically; that is, when acts culminate into torture, the convention prohibits it in very strong and unambiguous terms, and requires parties to take effective measures to prevent it in any territory under there jurisdiction. This prohibition is absolute and non-degradable. No exceptional circumstances whatsoever may be invoked to justify torture, including war, threat of war internal political instability, public emergency, terrorist acts, violent crime, or any form of armed conflict. Torture cannot be justified as a means to protect public safety or prevent emergencies.

Torture cannot be justified by orders from superior officers or public officials. Raising the abolition of torture in all its ramifications including in exceptional circumstances, to the status of absolute and non-degradable nature is increasingly attracting great concern both at state and international level. The issue here is whether then is the state of torture is a step behind in the current realities in international law?

The prohibition on torture applies to all territories under a party's effective jurisdiction, and protects all people under its effective control, regardless of citizenship or how that control is exercised. Since the convention's entry into force, this absolute prohibition has become accepted as a principle of Customary International Law. The prohibition against torture as well as cruel, inhuman or degrading treatment is not limited to acts causing physical pain or injury. It includes acts that cause mental suffering e.g. through threats against family or

[16] Section 34(1), Constitution of the Federal Republic of Nigeria (CFRN) 1999.

loved ones. As the U.S. Supreme Court has recognized, "coercion can be mental as well as physical…"[17]

4. TORTURE IN CONTRAST WITH OTHER USE OF FORCE

The law also generally prohibits mistreatment that does not meet the definition of torture, either because less severe physical or mental pain is inflicted, or because the necessary purpose of the ill-treatment is not present. It affirms the right of every person not to be subjected to cruel, inhuman or degrading treatment. Examples of such prohibited mistreatment include being forced to stand spread eagled against the wall; being subjected to right lights or blindfolding; being subjected to continuous loud noise; being deprived of sleep, food or drink; being subjected to forced constant standing or crouching; or violent shaking. In essence, any form of physical treatment used to intimidate, coerce or "break" a person during an interrogation constitutes prohibited ill-treatment. If these practices are intense enough, prolonged in duration, or combined with other measures that result in severe pain or suffering, they qualify as torture.

But this does not expressly preclude other permissible use of force such as are indicated under S. 34(2) CFRN 1999 and other domestic statues such as the Criminal Procedure Act[18] which permits the application of reasonable force to effect arrest on a resilient person or in the exercise of a right of ingress and egress in effecting a search on a person or place; the use of fire arm in accordance with the *Force Order*[19]*, etc*.

5. THE ROLE OF INSTITUTIONS IN COMBATING TORTURE

The role/effort of key institutions in combating torture shall be considered across the three organs of governments-the legislature, the executive and the judiciary in the light of their respective institutions/agencies. There is no doubt that the legislative organ has done great in its bid by enacting statutes and timely domesticating several of the above listed international instrument such as the African Charter and the Convention against Torture by means of ratifying same. This goes to put the country in legislative parity with its foreign counterparts. Similarly, the judiciary has also not relented in holding sacrosanct and inalienable the right to dignity which necessarily abhors subjecting one to acts of torture. The courts have been so gallant in this bid and our case law is so rich and replete with authorities in this regard ranging from both domestic to foreign authorities. Reference to a few is as follows: *Amakiri v. Iwowari*:[20] a brief fact of this case is that Minere Amakiri, the plaintiff was the chief correspondent of the *Nigerian Observer* in Port Harcourt. The plaintiff reported on the ultimatum issued by the Rivers State chapter of the Nigerian Union of Teachers to the State Government and the attitude of the State Ministry of Education, which was said to be nonchalant. The story was alleged to have embarrassed the government. The plaintiff averred that the defendant who was a police officer and aide de camp (ADC) to the military governor of Rivers State invited him to the State House, where the plaintiff was allegedly queried on the said publication. The plaintiff stated that on the said day he was imprisoned at the Government House, after the whole hair on his head was shaved off and he was beaten by soldiers. He averred that he was detained from 4p.m on July 30, 1973 until 7p.m on July 31, a period of 27 hours during which detention he alleged he was not given any food or refreshment.

---

[17] *Miranda v. Arizona,* 384 U.S. 436, (1966), citing *Blackburn v. State of Alabama*, 361 U.S. 199 (1960)

[18] See Sections 3, 6, 7 and 8 of the Criminal Procedure Act.

[19] Force Order 237

[20] (1974) 1 RSLR 5.

The plaintiff brought an action for assault and false imprisonment. The court held in favour of the plaintiff, and awarded the sum of #10,000.00 to the plaintiff as compensation wherein the court said:

> The courts are the watchdogs of these rights and the sanctuary of the oppressed and will spare no pains in tracking down the arbitrary use of power, where such cases are brought before the court … Persons in authority and government functionaries should by their good example command and not demand respect."[21]

Similarly, over the years in the English jurisdiction, the judiciary has been most intolerant with acts of torture. In this regard therefore, court decisions have ruled acts of torture such as abusive interrogation practices unconstitutional, and the case law is clear that any intentional infliction of pain for interrogation purposes is unacceptable and is duly sanctioned. The following cases may readily affirm this fact. In *United States v. Lee*[22], the Reagan Justice Department prosecuted and a Texas jury convicted several law enforcement officers on charges of violating and conspiring to violate the civil rights of prisoners in their custody. The Sheriff and Deputy Sheriff of San Jacinto County, Texas, had subjected prisoners to "water torture" in order to prompt confessions of various crimes. The jury rejected an officer's defence – that he only participate in committing torture because he was ordered to do so by his superiors. The jury also rejected his defence that he did not think that water boarding was illegal. When affirming the convictions on appeal, the Court of Appeals repeatedly referred to the officers' conduct as "torture."

In *Chavez v. Martinez,*[23] the Supreme Court reaffirmed the longstanding principle that *any* intentional infliction of pain for interrogation would shock the conscience. In *Chavez,* police officers interrogated a man while he was suffering from gunshot wounds in a hospital. The justices disagreed about the specific conclusions to be drawn from the facts in the case; all the justices who addressed the issue agreed that any deliberate infliction of pain on an individual in order to compel him to talk would shock the conscience and violate the Constitution.[24]

---

21 See also, *Musa v. State* (1993) 12 NWLR (pt. 277) p. 550

22 455 U.S. 252 (1982)

23 538 U.S. 760 (2003)

24 But in *Schneckloth v. Bustamonte*, 412 U.S. 218, 224 (1973), the Court felt that in determining whether a defendant's will was overborne in a particular case, the totality of the surrounding circumstances, both the characteristics of the accused and the details of the interrogation must be examined. The American jurisdiction employs what is termed the joint venture analysis as a key exception to the admissibility of voluntary statements made to foreign agents if the confessions resulted from an interrogation that was run as "joint venture" between the U.S. and Foreign law enforcement: Wadie E. said, "Coercing voluntariness," Indiana Law Journal, vol. 85, No. 1. 2010, 1, 10. Further, the cases of *United States v. Abu Ali*: 528 F. 3d 210 (4th Cir. 2008), and *United States v. Abu Marzook,* 435 F. Supp. 2d 708 (N.D III, 2006), provide insight into how courts assess the admissibility of confessions in extreme circumstances when faced with allegations of coercive interrogations. These opinions came in the context of terrorism prosecutions in which the defendants, Arab Muslims where alleged to have been active on behalf of a specially designated Foreign Terrorist Organization. The first of the opinions involve Ahmed Omar Abu Ali, a U.S. citizen and Virgina resident. While a student at Saudi University, Abu Ali was arrested in June 2003, by Saudi Authorities in the wake of the May 2003 Riyadh suicide bomb attacks that left nine Americans dead, on suspicion of being with an al-Qaeda cell. While in Saudi custody, during which time he was afforded neither the right to Counsel nor the opportunity to hire any, he was

Interestingly, the bane of this discusses lies on the side of the executive and its institutions, since it is the organ saddled with the responsibility of implementation/enforcement of laws and policies. Specific mention in this respect should be made of the police, the prisons, the army etc. Of greater interest in the subject is the institution of the Nigerian Police which from all intent and purposes is close to the people in routine dealings that may readily relate to torture. It is a fact that at the first mention of the word "torture" the police is the first and foremost institution looked upon and accused of same. This may not be totally wrong in that, given the function and duty of the police; it is more pre-disposed than any other institution in being accused of torture. For purpose of clarity, we shall replicate a few statutory provisions in the extant police laws which go to confirm same. These include Section 4, Police Act which states:

> The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by; or under the authority of this or any other Act.

---

interrogated and gave a series of incriminating statements of his role in the cell's activities, which include its plotting to commit attacks within the United States. Over a year into his detention in Saudi Arabia, Abu Ali's parents filed a petition on his behalf for a writ of *habeas corpus* in the US District Court for District of Columbia, essentially on the theory that their son was being detained by the Saudi authorities at the request of U.S. government, although they also included allegations of his being tortured by the Saudi authorities. Abu Ali alleged that he was beaten, whipped, psychologically tortured, and held without counsel during the period of interrogation in June, 2003. After hearing testimony form Abu Ali, American and Saudi Security officials, American Consular Officer, and Medical experts for the government, Federal District Judge Gerald Bruce Lee denied the motion to suppress the statements Abu Ali made to Saudi officials in early June, 2003, and ruled that these statements were admissible at trial. The case of *U.S. v. Marzook, Marsxook*, iv 435 F. Supp. 2d at 712, presents the second recent instance of a federal prosecution involving the introduction of a confession made in extreme circumstances. Muhammed Salah, one of the defendants in the Marzook prosecution, was arrested by Israeli military authorities upon trying to enter the Gaza strip in January 1993. Salah, a naturalized American citizen of Palestinian origin, gave a series of statements to the Israeli authorities that incriminated him as a high level operative in the Islamic Resistance Movement, Hamas. As a result of this confession, Salah eventually pled guilty to being an active member of, holding office in, and performing services for an illicit organization (Hamas), engaging in activities against the public order and undermining regional security, and providing shelter to terrorists. The Israeli Security Agency (ISA) did not deny that they used the coercive practices described in Salah's allegations in the normal course of interrogating Palestinian detainees. Ultimately, the court ruled that all of the statements but one Salah had made while in custody were not the product of torture, and could be introduced in evidence at his criminal trial. Salah made statements regarding the body of an Israeli who had presumably been killed by Hamas and buried in an undisclosed location. Salah and his interrogators wrote out an agreement whereby he and a number of female Palestinian Prisoners would be released, along with the return of $96,000 which was seized from Salah at the time of his arrest, if he led them to the soldiers burial site. The court allowed evidence of the statements, and a map drawn by Salah of the supposed location of the body. The evidence did not accurately reflect where the body was buried. The court credited the ISA agent's testimony as demonstrating Salah's knowledge of the burial location, and as a result, the motion to suppress this evidence was denied.

Also, Section 24, Police Act states: "(1) In addition to the powers of arrest without warrant conferred upon a police officer by section 10 of the Criminal Procedure Act, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in the following cases- (a) Any person whom he finds committing any felony, misdemeanor or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony; misdemeanor or breach of the peace; (b) Any person whom any other person charged with having committed a felony or misdemeanor; (c) Any person whom any other person- (i) Suspects of having committed a felony or misdemeanor (ii) Charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and to enter into a recognizance to prosecute such charge." Similarly, Section 29, Police Act explicitly provides that: "A police officer may detain and search any person whom he reasonably suspects of having in his possession or conveying in any manner anything which he has reason to believe to have been stolen or otherwise unlawfully obtained."

A critical analysis of these provisions will go to show that the functions/duties of the police is one that could rarely be discharged without conditions or circumstances which may raise speculations of wrong doing. Though admittedly, lofty provisions have been subject to deliberate abuse by some over-bearing police officers in the discharge of their duties with the sure hope of taking cover under the said enabling laws. Howbeit, the situation is not a hopeless one in that the same police have standard rules as provided under *Regulation 369* and has further stipulated severe punishments under Regulation 371 which provides thus: "A junior officer who is guilty of an offence against discipline shall be liable to any of the following punishments, that is to say –

(a) dismissal;
(b) reduction in rank
(c) withholding or deferment of increment
(d) reprimand
(e) fine not exceeding N 10
(f) confinement to barracks for any number of days not exceeding fourteen days;
(g) fatigues or other duties or punishment drill not exceeding a total of ten separate hours."

On the whole therefore, it is important to emphasize that the nature of the function/duty of the police readily predisposes it to acts which may seem to be torture. Worst still, some unscrupulous men/officers of the police have capitalized on this fact to actually engage in acts of torture. But the one important fact is this, the police as an institution does not allow for or encourage the act of torture as a policy and as such have made spirited effort in combating acts of torture by relentlessly embarking on:

- Improvement of the police training curriculum
- Regular briefing and lecture of its men/officers
- Stipulation of guideline for the discharge of duties
- Enforcement of extant police laws
- Prosecution of its men/officers (Query/Orderly Room Trial)
- Uncompromising sanction of dissident men/officers
- Compensating of tortured persons

6. REMEDIES TO TORTURE

In some jurisdictions such as under U.S. law, victims of torture can sue in state or federal court for damages. But there are numerous practical obstacles to such lawsuits - including the difficulty of securing evidence of torture and the financial costs of legal

representation - as well as legal and procedural impediments to a successful conclusion. Moreover, even if a case is successful and damages are awarded, the financial compensation does not undo the harm done - the experience of torture and its often ongoing physical, psychological, and emotional consequences.

In Nigeria, by the provisions of section 46 of the 1999 Constitution (the equivalence of section 42 of the 1979 Constitution of Nigeria): " (1) – Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state, in relation to him may apply to a High Court in the State for redress." The Chapter under reference here is Chapter 4 dealing with the protection of fundamental rights. These rights protected include the rights to life, to dignity of human person, and to personal liberty. In pursuance to section 42(3) of the 1979 Constitution, that the then Chief Justice of Nigeria, Justice Fatayi Williams, on the 5th of December, 1979 in a supplement to official Gazette No. 64, volume 66 made the Fundamental Rights (Enforcement Procedure) Rules. In its nature, the Rules will qualify as existing law under section 315 of the 1999 Constitution. Idris Legbo Kutigi, the former Chief Justice of Nigeria on the 11th of November, 2009, in a Supplement to Official Gazette No. 74 volume 96 made the Fundamental Rights (Enforcement Procedure) Rules, 2009.

This instrument is the most potent for victims of torture as it is a simple, cheaper and the fastest legal process to secure some relief's (including financial)[25] for any victim of torture. *Agbai v. Okogbue*.[26] The applicant need not wait until the act of torture is inflicted upon him but may find succor in the Rules even where there is an impending threat of inflicting the acts.[27] The proceedings are civil and proof is by affidavit evidence. It may be instituted by the relative of the prisoner or victim while still under detention: *Minister of Internal Affairs v. Shugaba.*[28] Officials who engage in torture - including those who give the orders as well as those who carry them out - can and should be prosecuted criminally as well as disciplinarily sanctioned. Nevertheless, history counsels that the decision to prosecute public officials, the actual charges brought, and the penalties sought are often influenced by such extra-legal considerations as public sympathy for the victim or support for the officials and the political context in which the crime took place. The best "remedy" for torture is, thus, prevention.

7. EVIDENTIAL CONSIDERATION

Kidnapping and abduction (in its current dimensions), may be traced to the Niger Delta militants. Initially, their targets were foreigners working in international oil companies. Even, then, the phenomenon was used as a means to protest the political imbalance, particularly with respect to the appropriation of oil revenues in Nigeria. But now, it has been hijacked by criminals as a money-making venture. This may be because it has become less risky (some take it as business), and more financially rewarding. The monster took most Nigerians by surprise in terms of the frequency, severity, sophistication and impact on the social-economic life of Nigerians. Within us, there are various forms of kidnapping including criminal, political, emotional or pathological kidnapping. With the terrorist attacks by the *boko haram* criminal set which have assumed a consistent, systematic and massive pattern, one conclusion is certain: that terrorism is now firmly entrenched in our shores. According to

---

[25] *Odogwu v. A. G. & 6 Ors* (1982) 3 NCLR; *Minister of Internal Affairs & Ors v. Shugaba* (1982) 3 NCLR 915

[26] (1991) 7 NWLR 391; See also, *Cletus Madu v. Neboh & Anor* (2002) 2 CHR, 67

[27] *Tukur v. Government of Gongola STATE* (1989) 4 NWLR (pt. 1177) 517; See also *State v. C. O. P & Anor, In re Appolos Udo* (1987) 4 NWLR (Pt. 63) 120

[28] Supra; See also *Direction of State Security Services & Anor v. Olisa Agbakoba* (1999) 3 NWLR (Pt. 599) 314

Umah Faronk Abdulmutallab, the Nigerian Christmas day bomber whose suicide mission, to blow up a U.S. plane over Detroit was botched; "there are many terrorist like me around" (Nigeria).

Motivating the debate over the issue of coercive interrogation techniques is the hypothetical of the "ticking bomb", which poses the particular dilemma of how public officials should deal with prospect of saving a number of lives by torturing one individual believed to have information necessary to stop deadly attack. The concerns involving the ticking-bomb hypothetical also apply to the criminal prosecution context.[29]

In the light of this concern, there have been arguments for an extension of the public safety exceptions to the *Miranda*[30] warnings. When the U.S. law enforcement agents engage in interrogations of suspects abroad so as to allow for subsequent criminal prosecution without the need for an extraordinary tribunal.[31] In *New York v. Quarles*,[32] police asked an arrestee about the location of his discarded gun in a public supermarked without first Mirandizing him. The Supreme Court noted "that this case presents a situation where concern for public safety must be paramount to adherence to the literal language of the prophylactic rules enunciated in Miranda."

The foregoing shows that there is a paradigm shift. The criminality that informed the drafting of the provisions of the Criminal Code, Penal Code, and the Evidence Act, is not enough response to the current level of criminality that we are now confronted with. Thus, for emphasize, the provisions in the Criminal Code, Penal Code, Evidence Act, etc, specifically dealing with kidnapping, abduction, ethnic and religious crisis and terrorism are now inadequate for tackling these deadly acts of criminality. These laws would not have anticipated the sophistication associated these crimes that now have international networking and devastating effects if not checked. The penal laws could not have contemplated the criminal status of *boko haram* and the consequent suicide bombings that are associated with it. It could not have envisioned that hundreds of Nigerians can be killed in one senseless attack. But the law can be quickly adjusted to provide the legal framework to confront this level of criminality.

Overwhelming challenges are now confronting law enforcement agencies with respect to the detection and investigation of such high and often complex criminal activities. Our law has to shift to these new intimidating challenges. More so, we are now saddled with complex crimes that do not respect national borders.

8. CONCLUSION

Criminal behaviour is as old as mankind. One of the major responsibilities of government is to provide security to enable governance to manifest meaningfully. As society and its activities are becoming sophisticated, so also are acts of criminality. It is essential that in dealing with criminality and criminal elements that some form of coercive acts must be employed in fighting crimes and extracting evidence. The tendency is that legal bounds set by both domestic, regional and international instruments may be exceeded.

---

[29] See, e.g., David Luban, "Liberalism, Torture, and the Ticking Bomb" 91 *VA.L.REV*. 142 5, 1440 (2005), noting that the ticking-bomb hypothetical "has become the alpha and omega of our thinking about torture"; see also, Eric A. Posner, Adrain Vermenle, *Security, Liberty and the Courts (2007).*

[30] *Miranda v. Arizona*, 384 U.S. 436 (1966), which directs a trial court to ensure that the statement sought to be admitted were not coerced.

[31] See,.K.B. Darmer, "Lessons from the Lindh Case: Public Safety and the Fifth Amendment", 68 brook, *L. Rev*. 241, 271-87 (2002).

[32] 467, U.S. 649, 633 (1984)

The pertinent question raised is whether law indeed matches reality, particularly with respect to the tenacity and sophistication of contemporary act of criminality. Nigeria is presently confronting the devastating effects of the criminal acts of *book haram.* Are the laws as presently conceived sufficient to real with this menace? How do we arrive at that delicate balance between respect for the rule of law and the challenge of providing the desirable environment where citizens will be free and safe to undertake their lawful activities. Is their need for a new regime of law on torture?