

PROTECTION AND REDRESSES FOR VICTIMS AND WITNESSES OF TORTURE BY THE NIGERIA POLICE FORCE

Afam Christian Ezeigwe*

Abstract

Nigeria is a country where cases of serious human rights abuses by security agencies especially the Police are the order of the day, and without any form of protection and redress to the victims and witnesses of human rights infringement recognized by the law. Regrettably, there have been consistent denials by the leadership of the Nigeria Police on the use of torture-based interrogation to elicit information from victims and intimidation of the witnesses of human rights abuse. In reality, people are usually subjected to physical and mental torture by the Police as principal means of investigation. Virtually all the countries in the world are signatories to the United Nations Universal Declaration of Human Rights (UDHR) on prohibition of torture. However, some countries are yet to criminalize the act of torture. In Africa for instance, out of the fifty-four (54) African countries, only nine (9) have criminalized torture in their local legislations. While the Nigerian State has criminalized torture, however, it has failed to provide adequate protections and remedies for the victims and witnesses of torture within legal system.

Keywords: Victims; Witnesses; Torture; Human Right Abuses; Nigeria Police Force.

1. Introduction

Torture is a calculated assault on the body and/or the mind by persons with the responsibility to protect. It is done to instill fear, to dehumanize and degrade, to assert power and control. In the case of *Uzoukwu v. Ezeonu*,¹ the court held thus: ‘‘Torture includes mental harassment as well as physical brutalization. Any barbarous act or acting without feeling for the suffering of the others amounts to inhuman treatment.’’ In addition, in the recent Court of Appeal decision, the Attorney General of *Kebbi State v. J. Kolo*,² where the word dignity was clearly defined thus: ‘‘Dignity means the state of being noble, dignified and in an elevated position. It is also a right to hold a title or nobility, which may be hereditary for life.’’ Torture is deemed committed when an act by which pain and suffering, whether physical or mental, is intentionally inflicted on a person to obtain information or confession from him or a third person, punish him for an act he or a

* LL.B, B.L, LL.M (England), Doctoral Researcher University of Portsmouth, England, Email: up2046536@myport.ac.uk; christianezeigwe27@gmail.com. Postal Address: E5 0SG, London, England, Phone No: 09052295585.

¹ 6 Nigeria Weekly Law Report (NWLR) (Part 200) 6 – 708. 1991.

² (2020) 4 NWL (1715) 566 (CA).

third person has committed or suspected of having committed.³ Nigeria, the key to Africa's prosperity and stability has failed to lay a good foundation on enforcement of laws, protection and compensation of victims of torture for other African countries to follow suit. Dating rights back to the colonial era, the human rights records of the Nigeria nation has been regularly poor and unimpressive.⁴ At present, the situation has not significantly improved.⁵

The Nigeria Police Force (NPF) is one of the organs of the Federal Republic of Nigeria tasked with the responsibility of law enforcement.⁶ It is saddled with primary responsibility for the prevention and detection of crime in Nigeria.⁷ In order to carry out these functions, the NPF is vested with the power to arrest, interrogate and, where necessary, detain suspected criminals.⁸ NPF is structured as a federal police centrally administered by the Inspector General of Police who is appointed by the President of the Federal Republic of Nigeria.⁹

The NPF was set up by the British Colonial Government to deal with "unruly natives", some of whom dared to question the right of the British occupier to issue commands and make laws for the owners of the colonized territory.¹⁰ Although the colonial power has left, Nigerians still does not have a cordial relationship and understanding with the police specifically in the area of human rights protections,¹¹ and the people's business is to do their utmost to avoid contact with the police that are supposed to protect them.

Research conducted by Amnesty International in 2014, 15 years after the end of military rule in Nigeria, revealed that police brutality remains a regular occurrence in the operations of Nigeria police Force.¹² Joint research conducted by the Nigerian Human Rights Commission and the Centre for Law Enforcement Education (CLEEN) revealed that about 80 percent of inmates in

³ Section 2(1) (a) (b) (c) Anti – Torture Act 2017, Law of the Federation of Nigeria (LFN) 2017

⁴ Juhari Alka, "Colonial and Post – Colonial Human Rights Violation in Nigeria", International Journal of Humanities and Social Science (2011) 1.5, 53-57

⁵ Ifeanyi I. Onuazombe, "Human Rights Abuse and Violation in Nigeria: A Case Study of the Oil – Producing Communities in the Niger Delta Region". (2017) Vol. 22

⁶ Section 214, Constitution of Federal Republic of Nigeria (CFRN) 1999 as amended

⁷ Section 4, Nigeria Police Act 2020

⁸ Part VII, Nigeria Police Act 2020

⁹ Section 215 Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended

¹⁰ Chinua Asuzu, "Police and Torture in Nigeria", (SSRN Electronic Journal) 2011,

(<https://www.researchgate.net/profile/ChinuaAsuzu>) < accessed 6th December, 2020.

¹¹ Ibid

¹² Amnesty International, "Welcome to Hell Fire: Torture and other ill – treatment in Nigeria", < accessed 16 January. 2021.

police detention had either been beaten or threatened with weapons.¹³ This abuse is so common place and widespread that police interrogation rooms have been nicknamed “torture rooms”¹⁴ and the officer in Charge (O.C.) are called “O.C. Torture.”¹⁵

The United Nations Special Rapporteur on Torture, after a visit to several Criminal Investigation Department detention facilities in Nigeria, noted that it is difficult to find a police detainee in Nigeria who had not been tortured.¹⁶ Extrajudicial executions, killing of suspected criminals,¹⁷ excessive and arbitrary use of force and deaths in custody are all too common in the operation of the NPF.¹⁸ This brutality is inflicted by NPF at all levels of police work ranging from “crowd control, arrest, investigation and to detention.¹⁹

As earlier mentioned, countries in the world are signatories to the United Nations Universal Declaration of Human Rights (UDHR) on prohibition of torture; some countries are yet to criminalize the act of torture. In Africa for example, out of the fifty-four (54) African Countries, only nine (9) have criminalized torture in their local legislations.²⁰ While the Nigerian state has criminalized torture, it however failed to provide adequate protections and remedies for the victims within the ambit of the law.²¹

In December 2017, Nigeria signed into law the Anti – Torture Act of 2017.²² This was done in acknowledgment of her obligation under the United Nations Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment and its Optimal Protocol.²³ In consideration of those existing laws that defines the term –torture and prescribing adequate punishment for the offenders. However, the issue in contention is, whether the Anti-Torture Act of 2017 has presently done justice to ameliorate the challenges of inhuman treatment by the police and most

¹³ Alemika and Chukwuma, “Police – Community Violence in Nigeria, 51

¹⁴ Amnesty International, “Welcome to Hellfire, 6

¹⁵ Maja – Perce A., “Changing Nigeria’s Cruel Police Culture”, The New York Time, < accessed 12/02/2021

¹⁶ Report of the UN Special Rapporteur on Torture and other Cruel, inhuman and Degrading Treatment in his mission trip to Nigeria, Juan Mendez, UN DOC A.HRC/3 para 12

¹⁷ UNDP Common Country Assessment in Nigeria, March 26, 2001, www.undp.org/archive_docs/1741-Nigeria_CCA - Nigeria-zip

¹⁸ Christopher Heyns, “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution”, UN Doc A/HRC/8/3/2008,para68

¹⁹ Alemika and Chukwuma, “Police – Community Violence in Nigeria, 21

²⁰ L. Umar, “Enhancing Torture Prevention in Africa”, www.achpr.org/files/news/2012/08/.../drumae_lydiasPresentation.doc <accessed 04/02/2021

²¹ Section 8 (1) Administration of Criminal Justice Act, 2015

²² [Anti-Torture-Act-2017.pdf \(policehumanrightsresources.org\)](http://policehumanrightsresources.org/Anti-Torture-Act-2017.pdf) <accesse 12/02/2022

²³ [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR](http://www.ohchr.org/EN/Issues/Torture/Pages/OptionalProtocol.aspx) accessed 20/02/2022

importantly whether the Act has accorded much protection and remedies for victims of torture by the Nigeria Police Force.

The scope of this article is mainly on Civil Rights (otherwise referred as First-Generation Rights) that mostly bother on Fundamental Rights with special focus on torture, in area of Dignity to human person and Right to Life respectively.²⁴ These rights are fundamental because they are basic to the dignified enjoyment of other rights and further guaranteed by the Nigerian Constitution as amended.²⁵

Mainly, the cases of violation of human rights being carried out by security agencies in Nigeria, such as the Special Anti- Robbery Squad (SARS) a police unit in the Nigerian Police Force, and Nigerian Police Force in general, the Economic and Financial Crimes Commission (EFCC), and the Nigerian Army abound. These security agencies often resort to torture in the process of investigation and getting confessional statement from suspects, thereby engaging in extra judicial killings, brutalization of innocent citizens, corrupt practices, which has continued to be among the characteristics of Nigeria Security Agencies in our democratic governance.²⁶ For the purpose of writing, the article will focus on the Nigeria Police Force.

Human rights have been classified into two main categories namely, the Civil and Political Rights, and the Economic and Social Rights, otherwise referred to as the right to life, right to the dignity of human person, right to fair hearing, right to freedom of association, right to private and family life, right to freedom of thought, conscience and religion and freedom of movement.²⁷

The Economic and Social Rights on the other hand comprise of such rights as the right to Education, the right to Medical Care, right to Food and Shelter, right to Employment, right to Security in the event of Unemployment.²⁸

The article will deal with four basic distinct, but also clearly related issues concerning chapter four (4) of the Constitution of Federal Republic of Nigeria (CFRN) 1999 as amended, Administration of Criminal Justice Act (ACJA) 2015, Anti – Torture Act 2017, and Violence

²⁴Section 33 and 34 CFRN 1999 as amended

²⁵ Chapter Four (4) CFRN 1999 as amended

²⁶ Etannibis E.O. Alemika, Innocent C. Chukwuma, "Police Community Violence in Nigeria", (1st edn, Center for Law Enforcement Education (CLEEN), National Human Rights Commission, (2000) Chapter 1, page 21 and 22

²⁷ Chapter four (4) CFRN 1999 as amended

²⁸ Article 25 of the United Nation Declaration of Human Rights, (1948) <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2025&text=Motherhood%20and%20childhood%20are%20entitled,enjoy%20the%20same%> accessed 08/12/2021

against Persons Prohibition Act (VAPPA) 2015, to ascertain whether it has offered the much needed protection on right to life and dignity of human person, on the other hand, with special concentration to examine the extent of legislative protection and remedies for victims of torture. Furthermore, it will analyse the high rate of torture by the NPF without any form of redress to the victims; and the legality and illegality of their actions. While a clear approach will be drawn on the best possible measure legally feasible within the ambit of the law to solve the impending problem, and finally, conclusion premise will be unsheathe under recommendation. Doctrinal method was adopted in data collection and analytical approach used in reviewing the extant laws, and judicial decision and opinion of experts in human rights abuses in text books, articles and internet sources.

2. Legal Position of Nigeria's Constitution on the Right to Life and Dignity of Human Person: Death Occurrence as a result of Torture

The Nigerian Constitution seem to have encouraged the inhuman torture and degrading treatment perpetrated by the Nigeria Police and with total neglect to rights to life and compensation of victims of police brutality. A careful reading of section 33 (2) CFRN 1999 as amended generally would reveal that the right to life is not sacrosanct and the death that occurs from it as a result of torture from the police may be inadmissible in court, as framers of the Constitution seem to have little or no regard for human life protections. For a better understanding of the provision of the law, it is important to state the position of the section 33 (2) CFRN 1999 as amended with special concentration to paragraph (b) infra:

A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary:

- (a) For the defence of any person from unlawful violence or for the defence of property.
- (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained, or
- (c) For the purpose of suppressing a riot, insurrection or mutiny.

In addition, it is important to note that section 33 (2) (a) of the CFRN as amended observed killing in self- defense as a result of death that occurred from it through torture of a suspect

legally detained and also in defense of a property. In the light of the above, the question becomes, why should the law permit to kill in defense of a mere property, or is a property much valuable than human life?

Furthermore, seemingly the provision of section 33 (2) (b) CFRN 1999, clearly exonerates the person that causes the death of an accused person/ victims lawfully detained while exercising his duty from preventing the escape of the accused person/ victims. The question is, if the Nigerian state is one that cherishes the dignity of human person and right to life, would it not be honourable to apply every effort to prevent the escape of a suspect on detention without the loss of life or better still allow the escape of the suspect knowing fully well that the suspect can be rearrested through intelligence gathering and with the use of 21st Century technology. Moreover, the Constitution failed to give a clear definition on what amount to a reasonable force and when force is deemed to be reasonable in the eyes of the law, when applied.

In strict legal sense, section 34 CFRN 1999 as amended emphasized on the dignity of the human person and makes its position as follows: “(1) 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.”

This provision of the Constitution expressly outlaws torture or any inhuman or degrading treatment in Nigeria, but failed to provide remedies to the victims of such breach of law.

Against this purview, having a close perusal of the aforementioned sections of the constitution, it is right to state that language in which section 33 (2) and section 34 of CFRN 1999 as amended are couched legally permit torture. On the other hand, it has offered no remedies or redress to the dignity of human life in the circumstances of breach by the perpetrators. On that note, it is important to emphasise that the constitution offered little or no regard to the right to life and dignity of human person talk less of adequate compensation of the victims of such rights on the issues of breach by the Nigeria Police Force.

3. Inhuman Treatment Perpetrated by the Nigerian Police Force and Its Prohibition by the National Laws and International Treaties

Detainee in police custody have been subjected to a variety of methods of torture including hanging, mock execution, beating, punching and killing with plastic bags, forcing detainees to assume stressful bodily position and sexual violence.²⁹ A new report by Amnesty International

²⁹ <https://www.amnesty.org/download/Documents/AFR4495052020ENGLISH.PDF> <accessed March 8, 2021

has revealed of torture by the Special Anti – Robbery Squad (SARS), a unit of the Nigerian Police Force (NPF) tasked with the responsibility of fighting violent crimes such as robbery and kidnapping.³⁰

On the 8th day of October, 2020, Nigerians in their thousands marched across major cities in the country, calling on the government to end police brutality and to disband SARS,³¹ due to its implication in widespread human rights abuses, including extra – judicial killing, torture, arbitrary arrests, unlawful detention and extortion.³² Lekki tollgate was the major point of gathering of peaceful protesters in Lagos state, the Nigeria President ordered for immediate intervention of Nigerian Army on 20th day of October, 2020. The Nigerian Army subsequently opened fire on the protesters and many people died as a result. An –on- the- ground investigation by Amnesty International and evidence gathered from eye witnesses, video footage and hospital reports confirmed that between 6:45pm and 9pm on Tuesday 20th day of October, 2020, the Nigerian military opened fire on thousands of people who were peacefully calling for an end to police brutality, and twelve (12) people died as a result.³³

Nigeria is a state party to several regional and international human rights treaties that prohibits the use of torture and other ill- treatment. These include the International Covenant on Civil and Political Rights (ICCPR),³⁴ the United Nation Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)³⁵ and its Optional Protocol (OPCAT), the International Convention for the Protection of All Persons from Enforced Disappearance,³⁶ and the African Charter on Human and People's Rights (ACHPR).³⁷ Under

³⁰ <https://www.amnesty.org/en/latest/news/2020/06/nigeria-horrific-reign-of-impunity-by-sars-makers-mockery-of-anti-torture-law/> <accessed March 8, 2021

³¹ <https://www.aljazeera.com/news/2020/10/22/timeline-on-nigeria-unrest> <accessed 29th November, 2020

³² <https://www.hrw.org/news/2020/10/killing-of-endars-protesters-by-the-military-must-be-investigated/> <accessed 27 November, 2020

³³ <https://www.amnesty.org/en/latest/news/2020/10/killing-of-endsars-protesters-by-the-military-must-be-investigated/> <accessed 27 November, 2020

³⁴ International Covenant on Civil and Political Rights, 16th day of December, 1943. 1966, 999 UNTS 171, this treaty was ratified by Nigeria on 29th day of July, 1993.

³⁵ United Nations Convention against Torture, 10 December 1984, 1465 UNTS 85, this treaty was ratified by Nigeria on 28th day of June, 2001.

³⁶ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4 , this treaty was ratified by the Nigerian State on the 27/07/2009, accessed 13/ 02/ 2022

³⁷ African Charter on Human and Peoples Rights, 28th day of June 1981, 1520 UNTS 217. This treaty was ratified by Nigeria on 22nd day of June, 1983.

International law, torture and other cruel, inhuman or degrading treatment are prohibited absolutely, in all circumstances without exception.³⁸

Coming nearer home, torture is one of the most extreme forms of human violence in Nigeria, resulting to both physical and psychological consequence. The Constitution³⁹ and Administration of Criminal Justice Act (ACJA) 2015,⁴⁰ prohibits torture and other cruel, inhuman, or degrading treatment of suspect, but, it failed to prescribe penalties for violators. However, the Anti – Torture Act of 2017 prescribes a maximum term of 25 years in imprisonment for any person that contravenes the section of the law.⁴¹ Moreover, the Anti- Torture Act has been found deficient for lack of provision for adequate protections and compensation for the victims of torture, and witnesses.

In addition, Vienna Convention on the Law of Treaties (VCLT) ratified by Nigeria government on the 23rd May 1969,⁴² requires each state party to ensures in its domestic legal system that any victim of an act of torture, regardless of where it occurred, obtains redress and has an enforceable right to fair hearing and adequate compensation, including the means for a full rehabilitation as possible.⁴³ The same is the position of United Nation Convention Against Torture, where it emphasized that each state party shall ensure in its legal system that the victims of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for a full rehabilitation as possible.⁴⁴ However, treaties between Nigeria and other subjects of international law do not transform into domestic laws unless they are specifically domesticated, that is, enacted into laws by the National Assembly.⁴⁵

The Constitution and ACJA gave the Nigerian Police Force power to detain a suspect for twenty four (24) hours and not exceeding forty eight (48) hours depending on the proximity of the court.⁴⁶ If the investigation of the alleged crime committed by the suspect is not yet concluded, the Investigating Police Officer (IPO) shall seek a remand order from the court to further detain

³⁸ Juhari Alka, "Constitutional and Post – Colonial Human Rights Violations in Nigeria", International Journal of Humanities and Social Science (2011) 1.5, 53 -57

³⁹ Section 34 (1) (a) CFRN as amended

⁴⁰ Section 8(1) Administration of Criminal Justice Act, 2015

⁴¹ Section 9 (1) Anti- Torture Act of 2017

⁴² https://en.wikipedia.org/wiki/List_of_parties_to_the_Vienna_Convention_on_the_Law_of_Treaties < accessed 30th March, 2021

⁴³ Article 14, Vienna Convention on the Law of Treaties (VCLT) 1969

⁴⁴ Article 14, United Nation Convention Against Torture (UNCT) 1984

⁴⁵ Section 12 (1) CFRN 1999 as amended

⁴⁶ Section 35 (5) CFRN 1999 as amended

the suspect pending the outcome of the investigation.⁴⁷ The law makes a provision that any interrogation or confessional statement made by a suspect must be in the presence of his lawyer,⁴⁸ however, in the situation where he has no legal representation, his confessional statement whether written or oral must be made willingly and video recorded in the presence of a Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace, and such oral confession of suspect shall be admissible in evidence.⁴⁹

Despite the laid down rules and procedures for investigation of suspect, the Nigerian Police Force prefers to resort to torture and degrading treatments in their quest to extract confessional statement from the suspect.⁵⁰ The Nigeria Police Service Commission, the independent body in charge of police misconduct has constantly failed to hold any police officer responsible for infringement of fundamental rights of Nigerian citizens and contravention of court orders,⁵¹ and most surprisingly without any form of consideration for protection and compensation of victims of torture.

Recently, during the judicial panel of inquiry of Police brutality in Lagos State, Mrs. Nzube Obiechina, victim of police brutality gave an open testimony on how she was tortured in lieu of her husband with her two months pregnancy by the members of NPF and subsequently had a miscarriage, without any form of compensation from police after Federal High Court awarded her two million naira as damages against police.⁵² In addition, Mr. Ndukwe Ekekwe was thrown down from two storeys building in Lagos State by members of a now disbanded police unit called SARS, and as a result he lost two of his legs and presently on a wheelchair and without compensation from the Nigeria Police Force.⁵³ Furthermore, Mr. Okoliagu Abunike, an alleged victim of the disbanded police unit of Special Anti- Robbery Squad (SARS), appeared before the

⁴⁷ Section 35 CFRN 1999 as amended

⁴⁸ Section 17 (2) Administration of Criminal Justice Act (ACJA) Law of the Federation of Nigeria (LFN) (2015)

⁴⁹ Section 15 (4) ACJA 2015

⁵⁰ Nigeria “uses torture officers to extract confession”, British Broadcasting Corporation Investigation Journalism, <https://www.bbc.com/news/world-africa> < accessed 28/03/2021

⁵¹ Nigerian Police Force v. Mr. Kolawole Adeleye (2018) 2 NWLR PT. 12

⁵² Ifeoluwa Adediran, “Lagos #Endsars Panel: How I lost My Pregnancy During SARS Torture – School Teacher”, <https://www.premiumtimesng.com/news/top-news/426579-how-nigeria-police-tortured-me-while-pregnant-woman-tells-panel.html> <accessed 24/03/2021

⁵³ <https://www.youtube.com/watch?v=OduXOM1IBGs&list=PLI6IvhbhEqwx-0h7Tz4cyNaD3RXdJwdgi&index=30> >accessed 03/04/2021

Lagos Judicial Panel of Inquiry for restitution for himself and victims of SARS related abuses to seek redress after court has awarded damages to him without compliance from the SARS.⁵⁴

An important issue for determination is, why do the members of NPF constantly flout the Judgment of the court on Compensation/ restitution of victims of police brutality? The obvious answer remain, they rely on the lacuna created by the Anti- Torture Act,⁵⁵ Administration of Criminal Justice Act,⁵⁶ and Police Act,⁵⁷ on issues regarding remedies for the victims of torture and their adequate protection by the law. Compensation to the victims of torture is unknown to Nigeria legal system.

United Nations (U.N) and United States (U.S) have welcomed the report submitted on the 15th day of November, 2021, by the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and other Matters (Lagos EndSARS Panel), urging the government to implement the stated recommendations.⁵⁸ In a statement signed by the U.N Resident and Humanitarian Coordinator for Nigeria, Mr. Edward Kallon, made available to journalists, U.N said it has welcomed the report submitted by the Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses; and they await the government stringent actions on the recommendation made.⁵⁹

United State on its own part, stated, “We look forward to the Lagos State Government’s response as part of process that represents an important mechanism of accountability regarding the #EndSARS Protests and the events that took place near the Lekki Toll Gate on October 20, 2020.”⁶⁰

The three hundred and nine (309) pages report also recommended that all those involved in the attack on the youth be made to face disciplinary measure, Lekki toll plaza be renamed EndSARS tollgate, October 20 every year be made toll-free day at Lekki tollgate and declared national day for remembrance. The report also asked the Federal Government to publicly apologize to the

⁵⁴ <https://www.pulse.ng/news/local/victims-recount-sars-horror-to-lagos-judicial-panel/hh18ns4> >accessed 03/04/2021

⁵⁵ Anti – Torture Act, 2017

⁵⁶ ACJA 2015

⁵⁷ Nigeria Police Act, 2020

⁵⁸ <https://www.vanguardngr.com/2021/11/endsars-un-us-welcome-report-of-lagos-judicial-panel-of-inquiry/> accessed 08/01/2022

⁵⁹ [Nigeria: #EndSARS - UN, U.S. Welcome Report of Lagos Judicial Panel of Inquiry - allAfrica.com](https://www.allafrica.com/stories/202110280011) accessed 28/10/2021

⁶⁰ Ibid

youths for abruptly undermining the protest with their state actors.⁶¹ It is important to note that as of the time of writing, none of these recommendations has been done or seemingly seen to be done.

4. Protection of Victims and Witnesses of Police Brutality

Where human rights are violated, victims have a right to effective remedy and reparation.⁶² In providing effective remedy and reparation to victims, there is an obligation on states to investigate, prosecute and punish perpetrators of human rights violations.⁶³ In doing so, it is also very much important to consider the adequate protection of the victims and witnesses of human rights breach. However, it has been established that investigating these acts of violence by the police is difficult considering that gathering evidence to identify the perpetrator is often met with difficulties.⁶⁴ A specific difficulty experienced is the unwillingness of victims to testify against the perpetrators because of fear of reprisal, retaliation or actual attack against their families by the perpetrators or their associates. In some cases, the perpetrators are the police authorities who in one way or the other discourage the victims and witnesses from appearing before the court to testify against them through the use of intimidation, death threat and harassment.

A witness is any person who sees, knows, or vouches for something, one who gives testimony under oath, or affirmation in person, by oral or written deposition or by affidavit.⁶⁵ Witnesses could be either simple observer of a crime or the victims of the crime.⁶⁶ Their role as victims⁶⁷ is particularly essential in court proceedings involving human rights violations and inquires about

⁶¹ <https://tribuneonineng.com/us-to-lagos-fg-act-on-endsars-panel-report/> accessed 08/01/022

⁶² Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No. 13, UN Doc A/810 (1948) 71 at Article 8, ICCPR, *supra* note 60 at Article 2 (3) (b), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violation of International Humanitarian Law, GA Res 60/147 (2005) at para 3 (d) online:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

⁶³ *Ibid*

⁶⁴ Suzzie Onyeka Oyakhire, "Protection of Victims – Witnesses of Human Rights Violations in Criminal Prosecution in Nigeria, (Vol. 8, Article 3, The Transnational Human Rights, OSGOODE Hall Law School Journal) 14/10/2021

⁶⁵ Black's Law Dictionary, 9th ed, sub verbo "witness".

⁶⁶ United Nations Office on Drugs and Crime, "Tool 5:17-Law Enforcement and Protection" in Toolkit to Combat Trafficking in Persons (New York: United Nations, 2008) 245 at 247, online (pdf)

http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_5-17.pdf

⁶⁷ A victim is defined as any person who individually or collectively suffered harm including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights. See United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res 40/34, 96th plenary meeting, (November 1985) at article 1, online

<https://www.ohchr.org/en/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx> (hereafter "the Declaration of Basic Principles")

killings, torture and other forms of violence whether committed by private individuals or state officials.⁶⁸ Most cases, victims are the primary witnesses to the wrongdoing in question.⁶⁹

For emphasis, there is no universal international instrument for protecting witnesses of conventional crimes or human rights violations, for testifying in criminal prosecutions. In addition, there is no established framework for protection of victims of human rights abuses in Nigeria. To ameliorate the lacuna created by the law, the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power⁷⁰ requires State parties to take measures to ensure the safety of victims, as well as that of their families from intimidation and harassment. This declaration provides a persuasive soft law code recognizing a duty to protect victims of human rights abuse and a right to such protection.⁷¹ Human rights institutions such as the United Nations Human Rights Council (UNHRC)⁷² rely on general international human rights instruments to infer a framework for protecting victims of human rights violations. This has been acknowledged in the practice of judicial institutions within the international law system, which recognizes and supports the need to create witness protection systems to provide a wide range of physical and psychological protection to victims of torture.⁷³

In Nigeria, the reports provided by victims and witnesses about crime are the main source of information for the police and are the basis for subsequent actions of the criminal justice system.⁷⁴ Victims and witnesses are, however, at times reluctant to report crimes or testify in criminal prosecutions because they fear possible attack from the perpetrators. Often times,

⁶⁸ Office of the High Commissioner for Human Rights and The International Bar Association, "Chapter 15-Protection and Redress for Victims of Crime and Human Rights Violation" in Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers 749 at 799, online (pdf) <https://www.un.org/ruleoflaw/files/training9chapter15en.pdf>

⁶⁹ Onyeka Oyakhire, "Developing a Legal and Institutional Framework for Witness Protection in Nigeria: Reflections from International Perspectives" (2020) University of Cape Town Dissertation online (pdf): https://open.uct.ac.za/bitstream/handle/11427/32319/thesis_law_2020_oyakhire%20suzie%20onyeka.pdf?sequence=1&isAllowed=y

⁷⁰ On the 29th day of November, 1985, the General Assembly of the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/30, annex)

⁷¹ Ibid

⁷² See OHCHR Conference Compilation, *supra* note 35

⁷³ Onyeka Oyakhire, "Developing a Legal and Institutional Framework for Witness Protection in Nigeria: Reflections from International Perspectives" (2020) University of Cape Town Dissertation online (pdf): https://open.uct.ac.za/bitstream/handle/11427/32319/thesis_law_2020_oyakhire%20suzie%20onyeka.pdf?sequence=1&isAllowed=y

⁷⁴ Victor Eze, Michael Chika Dikoye & Innocent Idoko, "Investigating the Impact of Crime Reporting on Crime Control in Gwagwalada Area Council Abuja, North Central Nigeria" (2019) 1:3 Int'l J of Academic Research in Business, Arts & Science 36 at 38, online

<https://digitalcommons.unl.edu/cgi/viecontent.cgi?article=6487&context=libphilprac>

victims and witnesses, especially those whose identities are known, become exposed and vulnerable to intimidation, threats of reprisals or actual harm, to stop them from cooperating with law enforcement agencies.⁷⁵ Like in other jurisdictions, the adverse impacts of witness intimidation on effective criminal justice administration has necessitated the need to establish protective measures⁷⁶ to guarantee the safety of witnesses in Nigeria, and to minimize the possibility of harm or risks to them for their cooperation with law enforcement.⁷⁷

Consequently, victims and witness protection has become a necessary tool to combat impunity arising from the inability to hold offenders accountable for their actions because of the effects of intimidation, on victims and witnesses.⁷⁸ To that effect, it is the responsibility of the Nigeria government through the legislatures to make enabling laws that will be enforced by the executive' arm of governments for the sole benefits of the victims and witnesses that will serve as an adequate protection to them against all ill- treatment or intimidation, especially among state actors.

Witness protection is understood as a right available to any person cooperating with law enforcement authorities during investigation and criminal proceeding, or rights enjoyed by an individual making a testimony in court against any person or members of any law enforcement authorities during investigation of a crime and trial in court. The absence of protection is regarded as a violation of the victim's right to an effective remedy.

Furthermore, there are two international human rights instruments that clearly provide for the protection of victims and witnesses of human rights violation in certain circumstance, when the need arises. According to Article 18 (2) of the International Convention for the Protection of all Persons from Enforced Disappearance,⁷⁹ it is stated infra:

⁷⁵ Peter Finn & Kerry Murphy Healey, "Preventing Gang and Drug Related Witness Intimidation" U.S Department of Justice- Office of Justice Programmes National Institute of Justice: Issues and Practices (November 1996) at 1 online (pdf): <https://www.ncjrs.gov/pdffiles/163067.pdf>

⁷⁶ United Nations Office on Drugs and Crime, Good practices for the protection of witnesses in criminal proceedings involving organized crime (New York: United Nations, 2008), online (pdf) <http://www.undoc.org/documents/organized-crime/Witness-protection-manuel-Feb08.pdf>

⁷⁷ Peter Finn & Kerry Murphy Healey, *supra* note 67

⁷⁸ United Nations Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary –General, 12th sess, UN Doc A/HRC/12/19, August 2009 at para 67, online: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-19.pdf>

⁷⁹ International Convention for the Protection of All Persons from Enforced Disappearance, GA Res A/61/177 (2006), online:<https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill- treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.⁸⁰

In addition, Article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment, emphasized:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill- treatment or intimidation because of his complaint, or any evidence given.⁸¹

It is important to note that the above mentioned articles are applied simultaneously and specifically to persons intimidated in prosecutions involving torture or enforced disappearances where the perpetrators are typically state actors or anyone acting with the support or authorization of the state,⁸² for instance, police officers.

5. Components of Justice System on the issue of Human Rights Abuse in Nigeria

Generally, the Police, the Courts, and the Correctional Service constitute the major components or agencies of Human Rights justice. To understand how the justice system works on the issue of human rights abuses, it is necessary to grasp the working relationship of all its agencies: the use, functions and decisions making process of the police, the structure of the court system and how the court reach to a decision, and the intricacies of penal institutions.⁸³

Justice agencies are the main actors in the fight against human rights abuses and crime, the police are responsible for detecting, apprehending and prosecuting of the offenders who violate the law of human rights abuses as to the crime committed in connection thereto, the court decides guilt or innocence, and sentence those who are convicted or those who plead guilty,

⁸⁰ *Ibid*, article 18 (2).

⁸¹ Convention Against Torture, Cruel, Inhumane and Degrading Treatment, GA Res 39/46. 39th Sess, 1465 UNTS 85, 113 (entry into force 26 June 1987)

⁸² Article 1 of the Torture Convention and Article 2 of the Enforcement Disappearance Convention respectively

⁸³ Dambazau, A.B. (1999) Criminology and Criminal Justice Kaduna: Nigeria Defense Academy

while the correctional centre carry out the sentence of the courts and rehabilitate the convicted ones.⁸⁴

6. Victims of Human Rights Abuse and Administration of Justice

The vitality of the victims of human rights abuse in the operation of justice system is not in doubt, and one will consider the system, and all the jobs and working of the professionals within it as being built upon the actions of two people – the offender and the victims.⁸⁵ The numbers and types of cases entering the system and thereby providing the workload for the courts, correctional centre and other conventional agencies, appears to be largely determined by the reporting behaviour of victims and witnesses, not action initiated by the police.⁸⁶

Victims of human rights abuses are significant to the administration of justice in the area of detection of torture and reporting. In a study of victims of torture, it was found that victims were vital in the reporting and investigation of cases and were also essential as providers of evidence for the courts.⁸⁷ In the said study, between 31% and 41% of cases were found to be reported by the victims themselves, while another 50% were reported by other civilians, such as passers-by, neighbours, friends or those in charge of places where the offences of torture happened. This high percentage of the involvement of others is probably due to the violent nature of the offences and the consequent inability of the injured or unconscious victims to report the offence himself because of the direct involvement of the Nigerian police officers. Only 3% and 4% of cases were found discovered by the police themselves.⁸⁸

In addition, Igbo⁸⁹ in his explanation tried to explain the role of the victims of human rights abuses and the administration of justice. He thus emphasized:

The functions which victims perform are three –fold, to report the offence, to assist the police in carrying out their investigation by providing vital information about the crime and the offender, and to assist the courts in prosecuting offender by providing witness testimony against accused persons.

⁸⁴ Ibid

⁸⁵ Shapland, J. "Victims Assistance and the Criminal Justice System: The Victim's Perspective" in Fattah, E.A (ed) From Crime Policy to Victim Policy: Reorientation System, London, Macmillan Press.

⁸⁶ Siegel L.R., "Criminology: The Core U.S.A: Thomson Wadsworth, 2005

⁸⁷ Shapland J., "Victims Assistance and the Criminal Justice System: The Victim's Perspective" in Fattah E.A (ed) From Crime Policy to Victims Policy: Reorienting the Justice System London: Macmillan Press.

⁸⁸ Ibid 84

⁸⁹ Igbo E.M, "Criminology: A Basic Introduction, Enugu: Jock –Ken Publishers.

These contributions are fundamental inputs into justice administration process, and they go a long way to determine the degree of success achieved by the justice administration system in its efforts to protection and redress for victims and witnesses of torture .However, the involvement of the police on the offence of torture and the inability of the victims of torture to make a case against the police has been a major task in need of control and preventions.

Victims are the most fragile class of individual catered for by the Administration of Criminal Justice Act (ACJA). A plethora of rights and privileges new to the Nigerian Criminal Justice system were accorded to victims of torture by the ACJA. Obiora⁹⁰ in ‘’Re- Victimization of Crimes under the Nigerian Criminal Justice System’’ also mentioned that:

The essence of Criminal Justice Administration is to reduce the offence of torture and inhuman treatment or incidence of crime in the society to barest minimum and to restore the balance following the disruption of social order by the criminal act. Justice in this sense is not just for the accused person, it is also for the victims as well as the society. The actualization of this form of justice is a complex and intriguing process.⁹¹

It is the clamour of writers and jurist like these that formed a big part of the push for the furtherance of the rights of and remedies for victims of torture. They are the generic class of individuals who suffer adversely from a force, agent or circumstance.⁹²

With regards to this, Paragraph 4 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power says:

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.⁹³

In addition, paragraph 12 says that:

⁹⁰ Nwora Ike Obiora , “Re –Victimization of Victims of Crimes under the Nigerian Criminal Justice System”, University of Nigeria Law Student Journal (UNSJ) Vol.2 (2015) pp.54 -66

⁹¹ Ibid, 87

⁹² Merriam – Webster, “Victims” Merriam- Webster.com Dictionary, accessed (online) at <https://www.merriamwebster.com/dictionary/victim>. Accessed on 18/11/2021

⁹³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power U.N. Department of Public Information DP 1/895- August 1986, General Assembly Resolution 40/34 of 29 November, 1985 at Para 4, accessed https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf. Accessed on 12/11/2021

When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- a. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes, and
- b. The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.⁹⁴

Finally, paragraph 14 says that “victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community – based and indigenous means.”

Having a close perusal of the aforementioned paragraphs, it is clear that UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power has so much interest for the welfare and compensation of the victims of crime and human rights abuses, however, the issue still remain the adequate enactments of those laws into Nigeria local legislation. Most civil law systems of administration of justice including Austria, Belgium, Denmark, France, Portugal, Spain and Germany, find it easy to resolve this and in their jurisdictions, victims are allowed to initiate criminal proceedings for cases such as assault, battery and defamation.⁹⁵ However, due to their unique adversarial nature, common law jurisdictions have more of a problem indoctrinating these rights into their criminal justice administration system. This is mainly because the state, rather than the victims are the ones who initiate and prosecute crimes.

Additionally, there is no mechanism for victims of torture to be included in the decision – making process.⁹⁶ However, states like the U.S with their jury system which allows ordinary citizens to pass judgment alongside judges are more easily able to domesticate the provisions of the above declaration and resolution.

⁹⁴ “Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime” UNODC, January 2008, accessed (online) at <https://www.undoc.org/documents/organized-crime/Witness-protection-manualFeb08.pdf> accessed 12/10/2021

⁹⁵ S.Haruna –Soba, “An Analysis of the Concept of Crimes in Nigeria” in School of Postgraduate Studies, Ahmadu Bello University, Zaria (December 2014) at p.44

⁹⁶ A.C Chinyere, “Extending the Frontiers of Remedies For Crime Victims in Nigeria” in LegalPedia (Online) accessed 11/10/2021 at: <https://legalpediaonline.com/extendig-the-frontiers-of-remedies-for-crime-victins-in-nigeria/>

The third world countries, such as Nigeria, that inherited their laws from colonial masters, have taken a longer time than the developed first world countries to incorporate the practice of compensation of victims of torture and many other such global best practices into their laws.⁹⁷

7. The Efforts of Violence against Persons Prohibition Act (VAPPA) 2015 on the Prohibition and Protection of Victims of Human Rights Abuses

The Violence against Persons Prohibition Act was enacted to “eliminate violence in public life, to prohibit all forms of violence against persons, to provide maximum protection and for the victims of torture and the punishment of offenders.”⁹⁸ It penalizes acts of violence broadly defined in section 46 to include physical, sexual, psychological, verbal, or economic harm which occurs in private or public life, in peace time and in conflict situations. These acts generally reflect the type of violence that could be interpreted as human rights violations which typically include physical and sexual violence.⁹⁹

Furthermore, the Act specifically prohibits intimidation, defined to mean the uttering or conveying of a threat or causing any person to receive a threat, which induces fear, anxiety or discomfort.¹⁰⁰ Intimidation also includes acts which frustrate the investigation and prosecution of the offenders under the Act which prescribes a term of imprisonment and payment of fines for such behaviour.¹⁰¹ The types of protection prescribes under this Act include protection orders,¹⁰² access to medical, psychological, social and legal assistance, including providing for a safe place or shelter to the victims, rehabilitation and reintegration programs and other forms of assistance provided to the victims through government agencies,¹⁰³ arresting the suspect who has committed acts of violence against the victims of inhuman treatment¹⁰⁴ and prohibiting the publication of information which reveals the identity of the parties during trial.¹⁰⁵

⁹⁷ A.A Adeyemi, “Towards Victims Remedy in Criminal Justice Administration in Nigeria” note 26, at p.305, Cap 89 Laws of Northern Nigeria 1963

⁹⁸ See the aims and objectives of the Acts as specified in the long title of the law, “The Violence Against Persons Prohibition Act (2015)

⁹⁹ Suzzie Onyeka Oyakhire, “Protection of Victims – Witnesses of Human Rights Violations in Criminal Prosecutions in Nigeria”, (Vol.8, Article 3) 14/10/2021.

¹⁰⁰ Section 18 (1) & 46 VAPPA

¹⁰¹ Section 7 VAPPA

¹⁰² Section 28 VAPPA

¹⁰³ Section 32 (1) (a-d), 38 (1) (a-c)

¹⁰⁴ Section 32(2) VAPPA

¹⁰⁵ Section 39 (1) VAPPA

8. Challenges within the Existing Framework of the Violence against Persons Prohibition Act (VAPPA) 2015

The most drastic, worst and challenging decision of VAPPA is to vest onto the Nigerian Police with the duty of providing protection for victims of violence.¹⁰⁶ This strikes at the confidentiality, autonomy and independence required as integral to facilitating witness protection objectives,¹⁰⁷ since the same police officers who are the perpetrators of the violent have the role of protecting the victims. As Human Rights Watch reports, current internal police mechanisms for filing complaints against police misconduct and ensuring accountability are ineffective¹⁰⁸ as they are biased against victims. An international best practice on witness protection suggests that an agency independent of the police should be responsible for witness protection.¹⁰⁹ This is because, since they have a stake in the investigations, their objectivity and obtainment of justice is flawed at.

9. Redress/Compensation to Victims of Police Brutality in Nigeria

To be eligible for state redress or compensation in Nigeria, lessons will be drawn from foreign compensation schemes with a view to adopting the same for Nigeria.¹¹⁰ Some jurisdictions rights abuses; however, there is the possibility of including the injuries connected with crimes of violence.¹¹¹ It is submitted, however, that there are compensation schemes that do not compensate based on kind or type of nature of the offence, but rather pay compensation only on death or serious injuries suffered by the victims.¹¹²

It is important to note that, under the schemes examined above, the commission of wilful breach of human rights basically in the area of torture plays a major role in awarding compensation.

¹⁰⁶ Section 31 (1) VAPPA

¹⁰⁷ OHCHR Conference Compilation, *supra*

¹⁰⁸ There are several reports in Nigeria highlighting different incidents of human rights abuses by the Police in Nigeria over the years. See "Nigeria: Crackdown on Police Brutality Protests", Human Rights Watch (16 October, 2020) online<<https://www.refworld.org/pdfid/3f15241e41e4.pdf>> See also Owolola Adebola, "1000 Nigerians killed recklessly by Police in 10 years-, The Point (12/11/2021) online: <https: Everyone's in on the Game" – Corruption and Human Rights Abuses by the Nigeria Police Force", Human Rights Watch (13/11/2021) online: <https://www.hrw.org/report/2010/08/17/everyone-game/corruption-and-human-rights-abuses-nigeria-police-force>

¹⁰⁹ United Nations Human Rights Office of the High Commissioner, The Protection of Victims and Witnesses: A Compilation of Conference Reports and Consultations in Uganda (2010) at 30 online (pdf):

<http://www.uganda.ohchr.org/Content/publications/WitnessAndVictimProtectionInUganda.pdf> accessed 24/11/2021

¹¹⁰ Section 1 of the Administration of Criminal Justice Act, 2015

¹¹¹ Chapter Six New Zealand No Fault- Accident Compensation, Section 8.1

¹¹² *Ibid*, 99

This is a kind of limitation in those schemes because, in the Nigeria Compensation Scheme when finally established, the requirement of proving the intent of the offender will not be a factor for compensation. It would be a miscarriage of justice to reject a claim on the basis of the fact that the injury sustained as a result of torture was carelessly committed by the offender(s) without offender's real intention to murder or injure the intended victims, and furthermore, without any due consideration of the breach of his human rights were necessary. The result of the negligence act of the offenders must have been foreseeable to make the victims eligible for compensation claim. It is argued, therefore, that it is not necessary for the victims to have been the target of the act of the criminal offenders or human rights breaches to qualify for compensation.

Some compensatory programs provide that the human rights breach and injury take place within the state¹¹³ and that citizens, permanent residents, lawful visitors and people from countries with a similar scheme can make claims.¹¹⁴ Finland allows claims to be made by permanent residents or citizens of Finland even when the offence of torture has occurred abroad.¹¹⁵ Nigerian Scheme, if come into existences, should as well recommended to cover all persons, whether citizens or not, irrespective of your status and *locus in quo* of the human rights abuse or crime as the case may be.

In some country compensatory program, only the direct victims or their dependents are eligible to claim compensation. The categories of dependents are spouses, direct children and other bona fide dependents of the victims.¹¹⁶

Redress or compensation of the victims of human rights violations is unique and never in uniform, has each jurisdiction had their *modus operandi*. In other words, the degree and categories of human rights violations that qualify for state redress vary from country to country; however, the majority of the schemes include a basic core of offences. New Zealand,¹¹⁷ Great

¹¹³ State Compensation to Victims of Crime (Consolidation) Act No. 688 of 28 June 2008 sec 1 (1) The State award compensation and damages for personal injury inflicted by violation of the Criminal Code where any such violation is committed within Danish territory.

¹¹⁴ German Act on Compensation to Victims of Violent Crime (Crime Victims Compensation Act as amended 2011) sec 4 "Foreign nationals shall be entitled to compensation."

¹¹⁵ A Soderholm "Finland" in DF Greer (ed) Compensating crime victims: European survey (1996) 170

¹¹⁶ In the United Kingdom and Northern Ireland, common law spouses are deemed to be a man and a woman who has lived together as man and wife for at least two years in Ireland the requirement is three years.

¹¹⁷ Schedule to the New Zealand Criminal Injuries Compensation Act No. 134 of 1963

Britain,¹¹⁸ California¹¹⁹ and Saskatchewan¹²⁰ restrict redress or compensable breach of human rights to crimes of violence, that is to say, inclusion of torture.

10. Compensation Benefits under the Nigerian Victims Compensation Scheme (NVCS)

The majority of compensation programs examined earlier cover many areas where victims may have suffered loss. Accordingly, compensation programs cover primary compensable costs such as medication, counselling, loss of earnings for victims of torture who are incapacitated owing to a related injury, support for indirect victims of homicide as a result of torture, and burial costs where applicable.¹²¹ It is of the view by the writer that under the Nigerian Victims Compensation Scheme (NVCS) proposed for; a similar procedure is kindly advice to be followed.

In addition, it will be a welcome development if the monies realized from a number of convicted offenders of human rights violation specifically in the area of torture can also serve as a source of funds for the NVCS. This money could be used to pay compensation to victims, thereby reducing the financial burden of the scheme if created. This is the approach in jurisdiction with such schemes, for instance, in the state of California and Iowa, the compensation scheme authority uses private individual to recover compensation from offenders who are directed to pay compensation to victims of torture but have not complied with such an order.¹²²

In general, a substantial amount of money for compensation schemes in jurisdictions where such schemes exist come from the national budgetary allocations at national, state/provincial or local level.¹²³ The US created a statute by which monies realized through the payment of fines or forfeited bails are used to compensate victims and assist them.¹²⁴ The funds from the above sources are utilized to compensate victims and provide other forms of victims' assistance involving counselling, create public information about the program, and victims' compensation advocacy.

¹¹⁸ Home Office Compensation for Victims of crimes of violence CMND No. 2323 1964

¹¹⁹ California Penal Code sec 13600- 03 and California Welfare & institutions code sec 11211.

¹²⁰ The Criminal Injuries Compensation Act Saskatchewan Status 1967 c.84

¹²¹ D Eddy "New Directions in Financial Recovery Crime Victims Compensation

https://www.ncjrs.gov/ovc_archives/directions/pdftxt/chap14.pdf accessed 10/11/2021

¹²² D Eddy "New Directions in Financial Recovery Crime Victims Compensation'

https://www.ncjrs.gov/ovc_archives/directions/pdftxt/chap14.pdf. Accessed 11/11/2021

¹²³ Directory of international Crime Victim Compensation program 2004 -2005, "Victim Compensation programs: New Zealand", the program is funded from premiums paid by the government, motorists, employers and earners, https://www.ncjrs.gov/ovc_archives/reports/intdir2005/newzealand.html accessed 11/11/2021

¹²⁴ The Victims of Crime Act of 1984 (VOCA) is United State federal government legislation aimed at helping the victims of crime through means other than punishment of the criminal it established the Crime Victims Funds a scheme to compensate victims of crime.

In the light of the above, it will be a welcome development if the Nigeria state can humbly adopt the same methods of the victims' compensation schemes used by New Zealand and United State of America. That is to say, it is my humble opinion that estimated amount of money equivalent to a reasonable sum is allocated each year to NVSC on the yearly budgets of Nigerian state. Furthermore, as previously stated, monies generated from the convicted criminals or defaulters of human rights abuses in each state of the federation, can also serve as a source of funds for the NVCS. This money could be used to pay compensation to victims, thereby reducing the financial burdens of the NVCS if proposed and adopted into law.

11. Recommendation/Conclusion

Irrespective of the fact that there is no substantial fact to prove or pin- point under all reasonable doubt, that the Constitution of the Federal Republic of Nigeria, 1999 as amended, Administration of Justice Act,¹²⁵ Anti – Torture Act,¹²⁶ Nigeria Police Act,¹²⁷ and Violence against Person's Prohibition Act,¹²⁸ have solved the issue in connection to Protection and Redress for the victims and witnesses of torture by the Nigeria Police. It is very necessary for the National Assembly to reconsider the clear provision of section 33 (2) and section 34 CFRN 1999 and ACJA 2015 for a possible amendment. Presently, the position of section 33 (2) and section 32 CFRN 1999, it is at best misguided and at its worst positively misleading, obsolete, obscure, inadequate and barbaric. That is to say, it has no regards to the dignity of human persons.

The Constitution and the Administration of Criminal Justice Act (ACJA) 2015 prohibits torture and other cruel, inhuman, or degrading treatment of suspect, but, it failed to prescribe penalties for violators. While the Violence against Persons Prohibition Act¹²⁹ gave power to the Nigeria police to investigate matters in connection to inadequate treatment and breach of human rights on issue of victims of torture and witness protection. Unfortunately, in most cases the police are the perpetrators of the aforementioned human rights breaches and other state actors. Legally speaking, the Constitution, ACJA, Anti- Torture Act and VAPPA are all in need for urgent amendment within the ambit of the law.

In addition, the Anti-Torture Act of 2017 prescribes a maximum term of 25 years imprisonment for any person that contravenes the section of law. However, the Anti- Torture Act is deficient

¹²⁵ 2015

¹²⁶ 2017

¹²⁷ 2020

¹²⁸ 2015

¹²⁹ ibid

for lack of provision for adequate protection of witnesses and compensation for the victims of torture.

Furthermore, it will be a welcome development if the proposed Nigerian victims' compensation scheme suggested, is adopted and enacted into our enabling laws. These will serve as a relief and create a sense of belonging to the victims of human rights abuses and on the other hands, it shows the willingness of the country for the absolute protection of her citizens on issue of human right abuses, and also at her best to ameliorate the inhuman treatments perpetrated by the Nigerian Police.

Recently, the Witness Protection Bill 2021 passed second reading in the Senate on Tuesday, 25th day of January 2022.¹³⁰ The Bill is sponsored by Senator Suleiman Abdu Kwai. The passage of the bill is important to strengthen Nigeria's global profile, and in the light of some resolution adopted at the Conference of States Parties United Nations Convention against Corruption held in Egypt, in December 2021.¹³¹ The passage of the bill for the second reading is an act of a good spirit and the legislative development for the betterment of Nigeria democracy, however, the hand of fellowship should be extended to the legislative enactment for protection and redress to the victims of torture by the Nigerian police.

Witnesses of human rights abuses are accorded no protections by the law, most cases the police who are meant to protect these witnesses seem to be their biggest threat on any issues that involves the breach of human rights by the police against the victims whom intend to testify against them in court of law. The passage of the aforementioned bill into law will serve as a guide to witnesses not only in human rights protection, but also in fight against corruptions.

¹³⁰ <https://www.thisdaylive.com/index.php/2022/03/30/senate-passes-witness-protection-bill-to-boost-war-against-corruption/> accessed 12/02/2022

¹³¹ <https://placng.org/legist/witness-protection-bill-passes-second-readding-at-the-senate/> accessed 05/02/2022