

The Position of Torture in the Investigation of Terrorism related Crimes in Nigeria

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Abstract

The issue of Terrorism is on the front burner globally and Nigeria is no exception. Since Terrorist activities are violent in nature and most terrorists believe that a positive life awaits them hereafter, it is often very difficult for investigators to obtain information from them. As a result, it has often been argued that torture may be adopted to help matters. This research work therefore looks at the position of torture in the investigation of such matters. The work queries the status of torture in Nigeria and its usefulness in such investigations. It concludes with a finding that torture generally is illegal no matter by what name it is called and it will make nonsense of the fight against terrorism if an illegal tool is adopted in the fight against illegality.

Keywords: *Torture, Nigeria, Human Rights, Terrorism, Investigation.*

1. Introduction

Terrorism as an evolving crime has led to the evolution of various methods for its investigations. One of such evolved method of its investigation is the use of torture to garner information in relation to terrorism. The use of torture has been widely condemned in the course of any investigation. Nigeria is not left out in this discourse. The position of torture in Nigeria is actually not so clear since it appears that there is no other enactment outside the Constitution that outlaws Torture. It might not be an isolated case were one to see incidents of torture in the course of investigating other crimes talk more of in the investigation of torture.

2. Definition of Torture

Torture has been defined as the infliction of intense pain to the body or mind to punish or to extract a confession or information or to a sadistic pleasure.(Garner, 2004) The Editor of Black's Law Dictionary also cited the view of James Heath when he stated that,

By torture I mean the infliction of physically founded suffering or the threat immediately to inflict it, where such infliction or threat is intended to elicit or such infliction is incidental to means adopted to elicit, matter of intelligence or forensic proof and the motive is one of military, civil or ecclesiastical interest.(Heath, 1982)

It appears that this definition by Heath did not take into cognizance the use of torture in criminal investigations. This is understandable looking at the year when the definition was made. It has been argued that one of the most common definition of Torture is the one contained in Article 1 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) which defined Torture as:

... 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

From this UNCAT definition two elements of torture are observable. One is the intentional infliction of pain while the other is the purpose of the intentional infliction of pain. These two elements seem to underscore the acts of torture. However one can argue that torture is not only an act that comes from public official hence torture exceeds the act of public officials only. For the Association for Prevention of Torture, this definition contains three cumulative elements, that is:

- a. the intentional infliction of severe mental or physical suffering,
- b. by a public official, who is directly or indirectly involved
- c. for a specific purpose(APT).

It is clear also here that the Association did not avert their mind to acts of tortures inflicted by private persons who are not public officials. This definition notwithstanding, we are still of the opinion that torture may be from public officials or even from a private person.

In *Attorney General and Commissioner of Justice, Kebbi State v HRH Alhaji Al Mustapha Jokolo and 2 ors.*, (Court of Appeal, Abuja Division) the Court of Appeal sitting in Abuja was of the view that "torture" is the infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure. The Court also adopted the definition of inhuman and degrading treatment as contained in Black's Law Dictionary when the Court held that "Inhuman treatment" equates to a "Physical or mental cruelty so severe that it endangers life or health, "while a degrading treatment is to do unpleasant things to someone and to make him lose self-respect. Thus "degradation" is " a reduction in rank, degree, or dignity... a lessening of a person's or thing's character or quality... A wearing down of something, as by erosion." (Jokolo's case).

It is also to be noted that Article 7 ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. The prohibition of torture as contained in the ICCPR is almost the same as contained in Section 34(a) of the 1999 Constitution which states that

34. (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...

These definitions therefore inform us that torture is not an isolated item that could be singularly defined but that its definition depends on the circumstances of the act sought to be classified and defined as torture. It is also essential to state that this particular section seeks to protect the dignity of the human person as stated in the constitution. It therefore appears that any act which disrespects the dignity of the human person may be equated to torture if it is coupled with the elements as stated above and the accompanying circumstance hence in *Martí de Mejía v Peru* (IACommHR, 1996), the Court was of the view that Rape could constitute torture.

It therefore seems that the issue of torture involves inhuman and degrading treatment. The Nigerian Anti Torture Bill passed by the 7th National Assembly in the twilight of their term even though not yet assented to by the President stated that

- '2.(1) Torture shall be deemed committed when an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third party has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or within the consent or acquiescence of a public official or other person acting in an official capacity provided that it does not include pain or suffering arising only from inherent or incidental to lawful sanctions.
(2) For the purposes of this Act, torture shall include, but not limited to, the following: (a) physical torture, which shall be understood as referring to such cruel, inhuman or degrading treatment which causes pain, exhaustion, disability or dysfunction of one or parts of the body, such as: (1) systematic beatings, head - bangings, punching, kicking, striking with rifle butts and jumping on the stomach; (2) food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten; (3) electric shocks; (4) cigarette burning, burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wounds; (5) the submersion of the head in water or water polluted with excrement, urine, vomit and/or until the brink of suffocation; Commencement Policy. Torture when committed. (6) being tied or forced to assume fixed and stressful bodily positions;(7) rape and sexual abuse, including the insertion of foreign bodies into the sex organs or rectum or electrical torture of the genitals; (8) other forms of sexual abuse; (9) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue, etc; (10) dental torture or the forced extraction of the teeth; (11) harmful exposure to the elements such as sunlight and extreme cold; (12) the use of plastic bags and other materials placed over the head to the point of asphyxiation; (13) the use of psychoactive drugs to change the perception, memory alertness or will of a person, such as: (I) administration of drugs to induce confession and/or reduce mental competency; or (ii) the use of drugs to induce extreme pain or certain symptoms of disease; or (14) other forms of aggravated and deliberate cruel, inhuman or degrading physical and/or pharmacological treatment or punishment; and (b) mental/psychological torture, which shall be understood as referring to such cruel, inhuman or degrading treatment calculated to affect or confuse the

mind and/or undermine a person's dignity and morale, such as: (1) blindfolding; (2) threatening a person or such persons related or known to him/her with bodily harm, execution or other wrongful acts; (3) confinement in solitary cells (except for public health reason or security of co-inmates) put up in public places; (4) confinement in solitary cells against their will or without prejudice to their security; (5) prolonged interrogation so as to deny normal length of sleep and/or rest; (6) causing unscheduled transfer/s of a person from one place to another, creating the belief that he/she shall be summarily executed; (7) maltreating a member of the person or person/s' family; (8) causing the torture sessions to be witnessed by the person/s' family, relatives or any third party; (9) inculcating generalized fear among certain sections of the population; (10) denial of sleep/rest; (11) shame infliction such as stripping the person/s naked, parading them in public places, shaving their heads or putting marks on their bodies against their will; or (12) other forms of deliberate and aggravated cruel, inhuman or degrading treatment or punishment.

This definition of torture is all encompassing as it detailed the actions or omissions that could give rise to torture. It is imperative that we state at this onset that this Anti Torture Bill is the first attempt at domesticating any torture bill in Nigeria. Hence it has always been stated that Torture is not the official policy of any security agency in Nigeria yet as part of the unofficial policy some security agencies engage in it. Prior to now the only enactment against Torture was Section 34 of the 1999 Constitution as amended which made provisions for Torture, degrading and inhuman treatment. It is understandable that the Constitutional provision is all encompassing as it seeks to safeguard the rights of all persons within the Constitutional authority. It is submitted that if this Act scales through the hurdle of a presidential assent, it will go a long way into checking the evil of torture in our *modus operandi* vis a viz the methods of investigation by our security operatives.

3. Arguments in favour of Torture

The practice of torture was sometimes likened to the technical procedures performed by a surgeon; sometimes to the actions of a priest seeking to convert; sometimes to the blows struck by a caring father to punish an unruly child for its own good; and sometimes to the concern shown by teachers adopting the language of their pupils in order to make themselves understood. (Pe'rie's, 1997) The justification for the use of torture was based on the fact that in every war, information is a weapon. In a "war against terrorism", where the adversary wears no uniform and hides among the civilian population, information can matter even more. (The Economist, 2007) It all stemmed from the implicit idea that the person being tortured had something to say (confess) and was therefore guilty. Torture was thus a kind of anticipatory punishment – in that it eliminated recourse to legal proceedings which, the military complained, were in any case too slow and too lenient. (Branche, 2007) The disappearance of legal proceedings and the summary procedure offered in their place were not unproblematic. Consequently, justification was based primarily on clear-cut cases in which the person tortured was undeniably guilty – a confessed killer belonging to a "gang" or the acknowledged witness of a crime or attack, even though his role was a passive one, in other words a terrorist who knew where the next bomb was. (Branche, 2007) Two major reasons have been proffered for the justification of the use of torture – urgency and intelligence gathering. (Branche, 2007) The latter, it is argued, is based on the need to retrieve information from a terrorist who is in custody. There is need to gather intelligence about the enemy. This will enable combatants pre-empt its next action so as to be able to counter same. As Raphaëlle Branche puts it "every soldier" involved in counter-terrorism "had to be alert and endeavour to supply information about the enemy". For the former, the argument is that there is an emergency which requires expeditious reactionary measures. The time frame within which the combatants are required to turn in results are usually too short. In some instances, a bomb may well be ticking away somewhere and as such the application of torture may become explicable. But does that mean that torture can sometimes be justified for whatever reason? The answer in both domestic and international laws is categorical: no. As laid down in treaties such as the Geneva Conventions, the UN Convention against Torture and the International Covenant on Civil and Political Rights, the ban on torture or any cruel, inhuman or degrading treatment is absolute, even in times of war. (The Economist, 2007)

4. Instances of Torture in Nigeria

There have been several instances of acts of torture in custody by the Nigerian Security agencies. According to Human Rights Watch (Rest in Pieces, 2007) the following was an account of torture and death in custody of two detainees at the Kano State police command which was given to Human Rights Watch by a thirty-six-year-old trader. It stated thus,

“He was arrested along with twenty-one-year-old Ahmadu, thirty year-old Ishaq and twenty-seven-year-old Abubakar in November 2003 at a police checkpoint in Kano: At State CID they didn’t take our names but took us immediately to one dark room, about ten-by-ten-meters in size. There were about seven policemen. [Sergeant A], [Sergeant B] and [Corporal C] were carrying sticks. Four others were sitting down. Our arms were tied with handcuffs. One at a time we were hung by a chain from the ceiling fan hook. I was the first. They started beating me with a yam pounder, saying I should confess for the robbery. I didn’t know what they were talking about. I was beaten, beaten, beaten. They beat my knees, the soles of my feet, my back and my joints. This went on for twenty-five minutes. I was beaten too much. I shit and piss while I was hanging. Then I became unconscious. They brought me down and poured water over my head. I woke up and saw Ishaq hanging. He was shouting. They beat him the same as me, so that he shit and he piss. They beat him so he accepted what he didn’t do. He accepted he was a robber. Then they did the same to Abubakar. They beat him more than Ishaq - for over thirty-five minutes. The whole place was scattered with blood. He was shouting, shouting. He also shit and piss himself. He wouldn’t agree to the robbery. Next they started taking statements. All seven policemen were present. [Sergeant A] took my statement. I told them I robbed, even though I did not. [Sergeant A] pointed a gun and forced me to sign the statement. [Sergeant B] took a statement from Ishaq and [Corporal C] from Abubakar”.

The above story is not an isolated incident in most of the offices of the Nigerian Security agencies. Indeed according to Amnesty International Country Report for Nigeria in 2013(Amnesty Country Report, 2013),

“On 9 January, Alexander Nworgu was arrested in Owerri, Imo State, and taken to the police anti-kidnapping unit in Rivers State. He claims that, while in custody, he was regularly beaten with a machete and suspended from the ceiling by his feet every other day. After spending more than a month in police detention he was remanded in prison on 15 February before eventually being released on bail on 6 July. The charges against him were changed to theft while he was in police detention.”

Yet in the controversial Amnesty Report published in 2014, the following instances of torture among others were vividly captured particularly in the North severely ravaged by terrorism. According to the Report, Ahmed, arrested in Tandari area of Potiskum, Yobe state, described his experience of torture as punishment for being suspected of supporting Boko Haram. His Story:

“After the early morning prayers on 12 February 2013, as we were coming out of the mosques, soldiers came and told all of us to lie down on the ground in the street. Some people were trying to arrange their kaftans, the soldiers shot and killed some of them on the spot, some were shot on the legs, and the soldiers began to beat some of us on the head with iron rods, others were beaten with wood. We were then loaded into a Hilux van and taken to Damaturu ‘Guantanamo’. The soldiers threw us in the vehicle one on top of the other ten to twenty people per Hilux car. Because some were on top of the others some died before reaching Damaturu. On reaching Damaturu we were thrown off the vehicle and then they started beating us again. We were kept tied for three days. We were untied after spending three days in ‘Guantanamo’. In ‘Guantanamo’ we were given a handful of food daily, and one polythene bag of 50CL of water per two persons per a whole day. Many of my colleagues did not make it [died in detention]. The beating, the torture was just too much for us. They do all types of things to you, the soldiers. They will tie your hands behind your back, with the elbows touching and then one of them will walk on your tied hands with their boots. Your hands will remain tied and then they’ll pour salt water on your wounds. You can’t rub it, even if it goes into your eyes. My eyes got swollen as a result of that. I thought I was going to be blind. I have never experienced such brutality in my life.”

The Report went further to state that

“Military operations documented by Amnesty International often followed a pattern of mass arrests and “screenings” of people in towns and villages, usually involving beatings and other ill-treatment. Those taken away as suspected Boko Haram members were often held incommunicado in local or smaller military camps without access to their family members or any lawyers for several days. Torture and other ill-treatment by the soldiers was routine – either at the time of or immediately after arrest or while detained – often to punish them for their alleged links with Boko Haram”(Amnesty Report 2014).

Still another account from the said Report was that of Mohammad, a fish seller. The Report cited Mohammed as saying,

that he was arrested after such a “screening” operation in Maiduguri on 29 May 2013. He told Amnesty International that he was in a crowded market at around 10am when about seven Hilux trucks and one armoured car came there. The JTF soldiers surrounded the market. There were three men with the JTF – with masks, helmets and bulletproof jackets – who started “screening”: pointing out individuals – sellers, dealers and customers – to the JTF and moving them to the left or right. Mohammad was one of the 300 men pointed out. Muhammad and all of the selected men were pushed and hit with rifle butts by the soldiers. Around 8pm the men were packed inside eight J-5 Peugeot mini buses with their hands tied with nylon rope behind their backs. “There were at least about 50-60 in a truck. We were packed – one on top of the other – like bags of grain. From there we were taken to Giwa barracks... Our hands were tied throughout the night. .. I was with another about 100 persons in a room (approx 30 x 40 feet). We were kept like that in the room for three days. They barely gave us food to eat in our hands – just barely enough. They gave us water only once a day – one sachet of water for three persons.(Amnesty Report, 2014)”

Still in the same report, Musa a 33-year-old petty trader had this to say

“I was arrested in October 2012 in Tandari ward, Potiskum in Yobe state. I was arrested along with over 180 people on that day (7 October 2012). Many of my colleagues died in detention after our arrest due to beating. When they arrested us, they took us to the JTF headquarters in Potiskum. There, we underwent all sorts of treatment. ...The soldiers took all of us to a detention centre in Potiskum, the ‘rest house’. They have a big hole [in the ground] in the corner of this camp where they put people for long hours and even days. ...they put about seven of us into the hole. We met about four other men in the hole as well. There were broken bottles inside the hole and we were put into the hole with only our trousers on. We were barefooted. I spent over three days in this hole. One of the other men in the hole had blood stain all over his body. I later learnt he had been there for three days. His hands were still tied behind his back but the skin was peeling off. I later learnt that the cable they tied him with had acid on which made his hand decay. While in the hole, they poured cold water on us and at other times they burn polythene and drop the hot melting polythene on our backs. After three days they took us to Damaturu ‘Guantanamo’ where they left us for three days without food or drink. In ‘Guantanamo’, one or two people die every one day, we undergo various types of torture in ‘Guantanamo’. The soldiers will walk on us with their boots. They will beat us in the morning and keep us in the cell all day. It was very hot in the cell. No ventilation. No space to move your legs. They gave us food only once in a day. One of the soldiers told us... that we were lucky to be alive as our fellow detainees from the area were ‘wasted’ [killed] in Potiskum.”(Amnesty Report, 2014)

This Report by the Amnesty Report was vehemently challenged by the Security Agencies in Nigeria as being far from the truth. The Nigerian Police Spokesperson, Emmanuel Ojukwu, stated that,

“at no time in its report, did Amnesty speak or interface with the Police authorities. This obviously shows their disdain and apparent lack of character where the democratic tenets of fair hearing are concerned. The report covered a seven year period of 2007-2014. I dare say that some of the issues raised have since been dispensed with and settled. He further stated that “of a truth, torture or ill-treatment is not, repeat, NOT an official policy of the Nigeria Police. The Code of Conduct of Officers, as well as our Regulations prohibits torture and incivility to members of the public.”(Nnenna Ibeh, 2014)

5. What is the Position of Torture in Nigeria?

As is clear from the above, the persons interviewed by Amnesty International had something to say but an official reaction from those concerned has denied the report as being concocted. Yet in reality in Nigeria, several videos have surfaced online depicting the gross violation and absolute disregard for the rights of the citizens(News Integrity, 2014). If such videos are in existence can we still deny them as being make believe lacking in practical reality? The answer is an emphatic no. It is pertinent to state that the relationship between the average Nigerian and any of the security agencies is that of cat and mouse. If the security agencies or their operatives can brutalize Nigerians simply because they need right of way how then can we deny the fact that they could torture when there is an allegation (Allwell Okpi, 2012)?

From the available reality on the ground, torture is a veritable instrument in the hands of the Nigerian Security agencies. One certainly do not expect them to admit to the gory and heart wrenching stories contained in the Amnesty Report and one can further say that the official reaction is apt as it maintained that ‘torture is not an official policy’ therefore it can be existence just that it is not officially acknowledged.

As evidenced above, one can conveniently state that torture as it is known and by whatever name it is called is not an official policy acknowledged to be in existence in Nigeria for all investigations including terrorism related investigations. However one can also say that it exists and the Government seems not to care that such illegality is part of the tool adopted to curb another illegality. It is really a shame that in the fight against people clearly seen as outlaws that we will adopt their technique. What then distinguishes us from them? Or does it entail that there really is nothing known as terrorism just a matter of definition? For if we adopt the terrorist methods, are we better therefore than the so called terrorist?

6. Conclusions

In concluding this work, we wish to point out that torture by whatever name it is called is an illegal tool. It has been so condemned by several legislations including our own Constitutional provision. If it is so, it entails that whoever is making use of torture no matter the aim sought to be achieved through it is a criminal. If such a person is a criminal, therefore it means that he/she must be charged for the offence of torture. To eradicate issues/instances of torture in Nigeria, it is pertinent to enact more legislation other than the constitutional provisions. Such enactments must have punishments attached to it for acts of torture. More so, the government should adopt other international conventions on Torture and domesticate same through the national assembly and finally, the security agencies should be reoriented to recognize that even the terrorist has rights and it is our conformity to these rights that distinguishes us from the terrorists otherwise the distinction might be blurred.

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