



*Ending Torture. Seeking Justice for Survivors*



## **ANTI-TORTURE LEGISLATIVE FRAMEWORKS IN NIGERIA**

Report of roundtable discussion on the draft-anti-torture Bill

Sheraton Hotel, Abuja

26 February 2016

### **I. Background**

On 26 February 2016, REDRESS and the Human Rights Implementation Centre (HRIC) organised an expert roundtable in Abuja, Nigeria, to discuss the draft anti-torture Bill (the Bill) currently under review in the country. The roundtable benefited from collaboration and cooperation of the Nigerian Law Reform Commission (NLRC) and the National Human Rights Commission. This roundtable was part of a multi-country research project undertaken by REDRESS on anti-torture legislation in a number of African States, including Nigeria. It also followed on from previous workshops in Nigeria organised by the HRIC in 2014 and 2015 during which earlier drafts of the anti-torture Bill were discussed within the context of strengthening the implementation of the Optional Protocol to the UN Convention Against Torture (OPCAT). The projects carried out by REDRESS and the HRIC were both funded by the United Kingdom Foreign and Commonwealth Office under the auspices of its Human Rights and Democracy Programme.

The overall aim of the roundtable was to bring together key stakeholders from the Nigerian Law Reform Commission, National Human Rights Commission, the Bar Association, civil society organisations, and other expert organisations to share information on the current status of the national process for revising the Bill and to provide input for the further development of the Bill.<sup>1</sup> Based on these discussions it was agreed that further input would be submitted to the NLRC to assist it to finalise the draft Bill.

This Report sets out the main areas of discussion on the Bill and provides a broad overview of areas where it was felt the Bill could be further strengthened. It also complements those discussions as it provides additional information on international and regional standards in support of existing provisions and proposed amendments. The Report also reflects discussions on opportunities and strategies to finalise and support the adoption of the Bill.

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<sup>1</sup> See Annex 1 for a copy of the draft Bill discussed at the roundtable; Annex 2 for the agenda of the roundtable and Annex 3 for a list of participants.

## **II. Status of the process for further developing the draft anti-torture Bill**

Professor Jummai A.M. Audi, Commissioner of the Nigerian Law Reform Commission (NLRC) opened the roundtable and Dr. Tony Ojukwu of the National Human Rights Commission set out the need for developing anti-torture legislation in Nigeria and the opportunities that would emerge from such legislation. Mrs. Didi Odigie-Bedell of the NLRC provided information on progress to date with developing a revised draft Bill.

It was noted that an opportunity had arisen in the second half of 2015 for the further development of an anti-torture Bill and the NLRC had been tasked with preparing a draft and submitting this together with an explanatory report to the Attorney-General. It was reiterated that the preferred strategy would be for the NLRC to submit a consolidated draft which draws together and builds upon previous drafts.

In relation to the draft prepared by the NLRC specific issues raised in a previous stakeholder consultation organised by the NLRC in October 2015 were highlighted for particular attention including:

- a) establishing the legal framework for the National Preventive Mechanism;
- b) where to position the National Preventive Mechanism within the overall institutional framework;
- c) addressing conflicts between the draft anti-torture Bill and existing legislation, in particular the Evidence Act;
- d) whether to include in the Bill language on 'incentives' to encourage implementation of the Bill among law enforcement officials; and
- e) who should be responsible for providing funds for reparations, including funds for medical rehabilitation and legal support.

In relation to (d) above and the possibility of including provisions in the Bill to encourage law enforcement officials to implement its provisions, such as service rewards, it was noted that although this has been raised and discussed previously, it had been decided that this was a practice-orientated or internal regulatory measure and should not be included in the Bill. Participants discussed issues a) – c) and e) in the afternoon session of the roundtable.

### **III. Specific observations and recommendations on the draft anti-torture Bill**

Working first in small groups and then feeding back in the plenary session, the participants considered in turn the sections and articles of the current draft prepared by the NLRC. The following provides an overview of the key observations on the draft Bill made by participants of the round-table and the main areas of discussion.

The amendments discussed, together with additional input and supporting information based on international and regional standards are marked on the draft Bill in annex 1.

#### **Article 1: Acts or Omissions Constituting Torture**

##### ***Article 1 (1) Definition of torture***

The draft Bill includes a definition of torture that is mainly in line with Article 1 of the UN Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT or the Convention). However, the definition in Article 1 (1) does not restrict the definition of torture to acts or omissions by State officials but extends it to include acts or omissions by non-state actors. This is thus a broader definition than what is contained in the Convention; for treatment to amount to torture under the Convention, it must be carried out by, or at the instigation of or consent or acquiescence of public officials or another person acting in an official capacity. Participants regarded this extension of the definition to non-state actors largely as a positive feature as it was seen to address issues of violence in the community.

However, outside of this roundtable there has been debate at a broader level among human rights lawyers and defenders as to whether there is a need to widen the definition of torture to allow for torture prosecutions of non-State actors and whether the benefits outweigh the risks. The emphasis on the State reflects the overall role of human rights law to regulate the relationship between individuals and communities with that of the State; it is the State that takes on obligations vis-à-vis those persons and groups within its effective control. It also reflects the odiousness of the crime. The involvement of the State – the body with the obligation and the power to protect all those subject to its jurisdiction – in causing severe pain or suffering makes the crime even more heinous. In contrast, international humanitarian law and international criminal law do not restrict the notion of torture to acts carried out by State officials.<sup>2</sup>

The ‘Public Official Requirement’ is a point of significant discussion among lawmakers, civil society and other stakeholders in almost every country considering introducing anti-torture

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<sup>2</sup> ICTY, *Prosecutor v. Kunarac et al.*, TC, Judgment, 22 Feb. 2001, paras. 495, 496; ICTY, *Prosecutor v. Kunarac et al.*, Appeals Chamber, Judgment, 12 June 2002, para.148; ICTR, *Prosecutor v. Semanza*, TC, Judgment, 15 May 2003, paras. 342-343. See also, Arts. 7(1)(f) (Crimes against Humanity) and 8(2)(c)(i) and (ii) (War Crimes) ICC Statute.

legislation. Proponents of a definition of torture limited to acts involving public officials underline that it is the 'official- element' and link to the State what distinguishes the crime of torture from other crimes – it is this breach of duty to those to which the State owes an obligation to protect, which makes the crime of torture so particular and so heinous. To drop the public official requirement is to lessen the stigma of the crime. Also, it might undermine the prospect of holding the State accountable, by leading to an overly broad understanding of torture that may result in it being used primarily or only against non-State actors. Those arguing in favour of widening the definition point towards the extremely egregious crimes committed with increasing frequency by non-State actors that would meet the severity threshold of torture, for instance in the context of armed conflict, and the corresponding need for accountability of perpetrators and justice for victims.

Participants also highlighted that the current definition in the Bill does not include all the purposes set out in Article 1 (1) of the Convention, as it does not provide for the purpose of 'discrimination of any kind.' There appeared to be a consensus among participants that the definition should therefore be amended to also include 'discrimination of any kind' in order to bring the Bill into conformity with the Convention.

It would also be important for the Bill to expressly state that the list of enumerated purposes is non-exhaustive, by indicating "for purposes such as" to bring the definition in line with Article 1 of the Convention.

Some concern was expressed about the exclusion in the definition of torture in respect to "pain or suffering arising only from, inherent in, or incidental to, lawful sanctions." Several participants suggested that there was a risk that this clause could be interpreted or applied in a way contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment), for instance, given that certain punishments made be sanctioned by the State and may cause severe pain or suffering. However, it was recalled that this clause is reflected in Article 1 of the Convention and that the UN Committee against Torture and other international bodies and experts have interpreted "lawful sanctions" in this context to mean lawful not only under domestic law, but also in conformity with international law and standards, and it would thus be incumbent on Nigerian authorities to interpret the provision in a similar way. Thus, sanctions or punishments which fall foul of international law and standards even though they comply on their face with domestic law, would be impermissible.

#### ***Article 1 (2) – Severe pain or suffering***

Participants suggested that Article 1 (2) which seeks to define "severe pain or suffering" should be moved in part to the section on "Interpretation" as it does not add value to Article 1. Participants agreed that the requirement for harm to be prolonged in order for it to constitute severe pain or suffering, should be deleted.

### **Article 1 (5) – ‘Reasonable correctional measures’**

Participants discussed Article 1 (5) which excludes from acts of torture “any reasonable correctional measures necessary for the welfare and training of a child or ward.” Some participants noted that this was contrary to international and regional standards, as also set out by the African Commission, UN Committee Against Torture and UN Human Rights Committee. For instance, the UN Human Rights Committee has emphasised that Article 7 of the International Covenant on Civil and Political Rights (which also prohibits torture and other forms of ill-treatment), extends to corporal punishment, “including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.”<sup>3</sup> The Committee also emphasised that Article 7 covers “in particular, children, pupils and patients in teaching and medical institutions.”<sup>4</sup> The UN Committee on the Rights of the Child has indicated further that “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light” should be prohibited.<sup>5</sup> Specifically in the context of Nigeria, participants noted that the UN Special Rapporteur on Torture and the UN Committee on the Rights of the Child have consistently called for the prohibition of corporal punishment in the country.<sup>6</sup>

Some participants therefore considered Article 1 (5) of the Bill to be contrary to the objectives and spirit of anti-torture legislation - seeking to domesticate obligations under the Convention Against Torture and the African Charter. The provision is arguably also contrary to domestic law, specifically the Child’s Rights Act which prohibits chastisement. Some participants also expressed concerns about the ambiguous and subjective nature of the term “reasonable” in Article 1 (5) as it leaves the standard open to substantial interpretation.

However, other participants considered that the clause was necessary, particularly in light of the extension of the Act to acts of torture perpetrated by non-State actors. It was suggested that relevant international and regional standards were not sufficiently tailored to the Nigerian context and that these standards should therefore not be applicable to Nigeria. It was not clear to participants how “reasonable” should be defined in this context.

As no consensus could be reached on this provision, there was a slight preference to retain the provision in the Bill for the time being, while highlighting the concerns that it is contrary to Nigeria’s obligations under regional and international law, and provisions of the Child’s Rights Act under domestic law.

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<sup>3</sup> UN Human Rights Committee, General Comment No. 20, para. 5.

<sup>4</sup> Ibid.

<sup>5</sup> See Committee on the Rights of the Child General Comment No. 8, para.11.

<sup>6</sup> See for example, UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum: Follow up to the recommendations made by the Special Rapporteur visits to China, Denmark, Equatorial Guinea, Georgia, Greece, Indonesia, Jamaica, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, Papua New Guinea, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan, A/HRC/19/61/Add.3, 1 March 2012, para 85-92; UN Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Concluding observations: Nigeria, CRC/C/NGA/CO/3-4, 21 June 2010, paras. 40-41.

### ***Schedule on acts amounting to torture***

During the discussion on the definition of torture set out in Article 1 (1) of the Bill, participants considered the benefits and potential drawbacks of including a Schedule setting out the various acts that would amount to torture. Some participants expressed concern that including lists of acts falling within the definition of torture, even if this was accompanied by wording to clarify that the list was non-exhaustive, such as “including,” could possibly be used by those interpreting or applying the Act to define torture strictly in accordance with the list to the exclusion of other acts that could potentially amount to torture. Furthermore, a list might also discourage judges and others interpreting or applying the act from analyzing the severity of pain and suffering in accordance with the specific characteristics of the victim taking into account their age, gender, religion, physical and emotional well-being. However, the majority of participants considered that a Schedule would be helpful to judges and others when considering whether a particular act amounted to torture.

### **Article 2: Offences and Penalties**

#### ***Article 2 (1) – Penalties***

Participants did not discuss the penalties provided for in Article 2 (1). According to Article 2 (1), state actors that are convicted of committing, aiding, abetting, counselling or procuring any person to commit torture will be sentenced to “imprisonment for fifteen years or to a fine of ten million naira or both.” Non-state actors convicted of the same offence would be sentenced to ten years imprisonment or to a fine of five million naira or both. It was suggested that the penalties are problematic in several respects: first, the article does not identify whether the sentence of fifteen years imprisonment (ten years for non-state actors) is a maximum or minimum sentence. If it is supposed to be a minimum sentence, this could be problematic for judges when setting the sentence, as it does not allow for flexibility to take into account individual circumstances. It may also have the opposite of the intended effect by discouraging judges from convicting individuals of torture, for fear of having to issue a long prison sentence without flexibility. Second, on the other end of the spectrum, the current wording provides for a fine of ten million naira (five million naira for non-state actors) to be a possible alternative sentence to imprisonment for torture. This does not reflect the gravity of the crime of torture, and is contrary to international standards which provide that a “significant custodial sentence” is generally appropriate.<sup>7</sup>

Accordingly, Article 2 (1) could be amended so as to provide more clarity and to afford greater flexibility. The same considerations apply to Article 2 (2).

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<sup>7</sup> Chris Inglese, ‘The UN Committee against Torture: An Assessment’, The Hague/ London/ Boston: Kluwer Law International, 2001, p. 342.

### ***Insertion of additional provision on torture as a war crime, a crime against humanity and/or genocide***

One participant suggested that it would be appropriate for the anti-torture Bill to include a provision recognising that torture and other cruel, inhuman or degrading treatment or punishment committed in the context of armed conflict constitutes a war crime. In this respect, it should be recalled that Nigeria has ratified the Geneva Conventions of 1949 and the Statute of the International Criminal Court (Rome Statute). Common Article 3 of the four Geneva Conventions of 1949 and various other provisions in those conventions prohibit cruel treatment and torture and outrages upon personal dignity, in particular humiliating and degrading treatment of civilians and persons *hors de combat*.<sup>8</sup> Torture is also recognised in the two Additional Protocols.<sup>9</sup> In addition, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health constitute grave breaches of the Geneva Conventions.<sup>10</sup>

Torture is also reflected as an underlying offence in the Rome Statute.<sup>11</sup> It is one of the possible underlying offences for a war crime, a crime against humanity, and/or genocide. Torture can constitute a crime against humanity if it is perpetrated as part of a widespread or systematic practice or attack on a population. It can constitute a war crime in both international and non-international armed conflicts when it is perpetrated on persons protected under one or more of the Geneva Conventions. It can also constitute genocide in certain circumstances. The ICC Statute provides that causing serious bodily or mental harm to members of an ethnical, racial or religious group as such, committed with intent to destroy, in whole or in part, that group, satisfies the definition of the crime of genocide.<sup>12</sup>

While this was not discussed explicitly during the plenary of the roundtable, the NLRC should consider whether to include a reference in the anti-torture bill, to those instances when torture may constitute a war crime, crime against humanity or genocide.

### **Article 3: Compensation, Rehabilitation or Restitution to be ordered by court in certain cases**

Participants commended the NLRC for including an express provision on reparation that highlights restitution, rehabilitation, including medical and psychological care, and compensation for a range of economically assessable harm. However, some participants stressed that the Bill should clarify that reparation is a right belonging to victims and an obligation incumbent on the State to provide. It should therefore not be left to the

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<sup>8</sup> Geneva Convention 1 Art. 12(2); Geneva Convention 2 Art. 12(2); Geneva Convention 3 Arts. 13, 17(4), 87(3), 89; Geneva Convention 4 Arts. 27, 32.

<sup>9</sup> Additional Protocol I Art. 75(2); Additional Protocol II Art. 4(2).

<sup>10</sup> Geneva Convention 1 Art. 50; Geneva Convention 2 Art. 51; Geneva Convention 3 Art. 130; Geneva Convention 4 Art. 147; Additional Protocol I Art. 11.

<sup>11</sup> E.g., ICC Statute, Arts. 7(1)(f); 8(2)(a)(ii) and 8(2)(c)(i).

<sup>12</sup> Art. 6(b) ICC Statute.

discretion of the court whether to award reparation. The Bill also does not mention all recognised forms of reparation provided for by regional and international standards; for instance, there is no mention of satisfaction and guarantees of non-repetition.<sup>13</sup> The Bill could usefully include a separate schedule to set out the different forms of reparation that can be awarded so as to provide relevant guidance for courts and other relevant actors.

Furthermore, the Bill should ensure that victims' avenues of redress are not restricted to criminal proceedings. Victims must also have recourse to civil proceedings, and the civil claim for redress must not depend on the conclusion of criminal proceedings.<sup>14</sup> This was understood to be important as access to criminal justice can be difficult for individuals. It was also suggested that the Bill should expressly provide that where there are reasonable grounds to believe that torture or ill-treatment has taken place, victims must be able to access certain measures of reparation, such as rehabilitation, without having to go through a judicial process.<sup>15</sup>

As the right to complain – set in out in Article 5 of the Bill - is an integral component of victims' right to reparation (and redress), the NLRC may furthermore want to consider moving the current draft Article 3 to draft Article 4. Current Article 4 on the definition and criminalisation of ill-treatment could then become Article 3 (see below).

#### **Article 4: Cruel, Inhuman or Degrading Treatment or Punishment**

Some participants suggested that Article 4 of the draft Bill, criminalising cruel, inhuman, or degrading treatment or punishment, should be accompanied by a Schedule setting out examples of the types of acts or omissions which may constitute cruel, inhuman or degrading treatment or punishment as this would help with the interpretation of this offence. However, it was noted by others that, similarly to the suggestion made to produce a Schedule for acts which may amount to torture, a list enumerated acts of other cruel, inhuman or degrading treatment or punishment may be interpreted or applied restrictively. In addition, whether an act or omission amounts to cruel, inhuman or degrading treatment or punishment depends on the circumstances of the case and the particularities of the victim and therefore should be considered having regard to those particularities.

Regarding the penalties provided for under the current draft Article 4, the same considerations as highlighted in regards to the penalties provided for under Article 2, apply. Furthermore, the Bill in Article 4 currently applies the same term of imprisonment for ill-

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<sup>13</sup> See for instance Committee Against Torture, General Comment No. 3, paras.6-18; African Commission, 'International Day in Support of Victims of Torture Statement – 26 June 2015, at <http://www.achpr.org/news/2015/06/d188/>; the African Commission is currently developing a General Comment on the right to redress for victims of torture and ill-treatment under Article 5, which seeks to expressly include all forms of reparation, see for instance, African Commission, Report on Technical Meeting On Drafting a General Comment On The Rights To Redress For Victims Of Torture And Ill-Treatment Under Article 5 Of The African Charter On Human And Peoples' Rights, 6-7 July 2015, at <http://www.achpr.org/news/2015/09/d191/>.

<sup>14</sup> This would be in line with international standards as for instance set out by the Committee Against Torture in its General Comment No. 3 on the implementation of Article 14 by States parties, para.26.

<sup>15</sup> Ibid, para. 27



treatment committed by state and non-state actors whereas Article 2 of the Bill provides for different penalties for torture committed by state and non-state actors. The NLRC may wish to consider whether to differentiate between the level of penalties for state and non-state actors.

### **Article 5: The right to complain and Article 6: Institution of Criminal Proceedings**

In relation to the right to complain it was noted that the power to investigate complaints is not the sole preserve of the police; other bodies such as the National Human Rights Commission also have powers to investigate. Consequently several changes to the text were recommended to ensure that complaints could be submitted to and investigated by other “appropriate authorities with powers to investigate.”

The draft Bill should also ensure that persons making a complaint are protected against any intimidation or reprisals as a consequence of making the complaint or giving evidence. It was suggested that the draft Bill could be further strengthened by having a standalone article on the obligation to protect victims and witnesses.<sup>16</sup>

Also, several participants suggested that the draft Bill stipulate that there is an obligation for the police, and other authorities with investigatory powers, to investigate wherever there are reasonable grounds to believe that an offence under the Act has been committed, even if there has been no complaint. The Bill should also make clear that investigations must be prompt, thorough and impartial.

Complaints mechanisms should be accessible to victims and victims should be able to participate in the investigation process.<sup>17</sup> In criminal proceedings, this means for instance that the victim has a right to be informed of the progress and the results of the investigation, as well as of any criminal or disciplinary hearings.<sup>18</sup>

### **Article 7: Inadmissibility of evidence obtained by torture and other forms of ill-treatment and Article 8: Prohibition of Use of Information Obtained by Torture, Cruel, Inhuman or Degrading Treatment or Punishment**

Participants highlighted that this is a crucial provision as the use of confessions in the investigation of alleged crimes remained the primary form of evidence relied upon by the police, prosecution and judiciary.

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<sup>16</sup> See for instance, African Commission, Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, 2002, para. 49.

<sup>17</sup> Ibid.

<sup>18</sup> African Commission, *Safia Mohammed Issa (represented by REDRESS and the African Centre for Justice and Peace Studies) v Sudan*, Communication 443/2013, admissibility decision, para.58.

Participants emphasised that it was important to identify that the burden of proof was on the State to show that evidence was obtained voluntarily<sup>19</sup> and that this should be reflected in the draft Bill.

It was also noted that it would be important for the Bill to make clear that if it was determined that evidence had indeed been obtained by torture or other prohibited ill-treatment then there is a duty to prosecute the alleged perpetrator/s.

Participants noted that provisions of the existing Evidence Act may need to be revised to bring that Act into conformity with the provisions of the UNCAT and the anti-torture Bill.

### **Article 9: No Transfer of Persons where likelihood of Torture, Cruel, Inhuman or Degrading Treatment or Punishment exists**

Article 9 was not discussed in depth during the plenary sessions. Nevertheless, several concerns regarding Article 9's scope can be mentioned, as the provisions appears to extend only to prisoners or detainees. Furthermore, the language in draft Article 9 suggests that it concerns the prohibition of refoulement as enshrined in Article 3 of UNCAT, yet the draft Article 9 does not do so comprehensively. The Bill should include a provision which clearly sets out that no person shall be expelled, returned, deported or extradited to another State where there are substantial grounds for believing that he or she would be at risk of being subjected to torture or ill-treatment. In determining whether there are such substantial grounds the competent authorities should take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>20</sup>

### **Article 10: Jurisdiction**

Article 10 of the anti-torture Bill provides that “[a]ny court with criminal jurisdiction shall have the power to try cases of torture, cruel, inhuman or degrading treatment or punishment.” It was suggested that there should be an express reference to the obligation to extradite or prosecute in line with Nigeria’s obligations under UNCAT. In this respect, the Bill should also include an express provision on torture being an extraditable offence.

### **Definition of victim**

In the section on Interpretation, the term victim is defined as “a person who suffers an act of torture, cruel, inhuman or degrading treatment or punishment.” It would be important for the NLRC to consider amending the definition to better reflect international and regional standards on the definition of ‘victim’. For instance, the current definition does not provide

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<sup>19</sup> Committee Against Torture, *P.E. v France*, Communication No. 193/2001, para. 6.3.

<sup>20</sup> See Article 3(2) of the UNCAT.

for 'collective' victims, and it also does not emphasise that a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. It also does not sufficiently capture that a victim may include affected immediate family or dependents of the 'primary' victim, as well as other persons who have suffered harm in intervening to assist victims or to prevent victimization.<sup>21</sup>

#### **IV. Areas for further development**

Participants furthermore identified a number of key issues that are currently not reflected in the Bill. These included the following:

##### ***i. The functioning of the National Preventive Mechanism***

During earlier consultations, it had been identified that the draft anti-torture Bill represented an opportunity to set out and clarify the mandate of the National Preventive Mechanism (NPM) in accordance with the Optional Protocol to the UN Convention against Torture (OPCAT). It was recalled that although the National Committee on Torture has been established, and is assumed to have taken on the role of the NPM, it lacks the necessary legal basis to function effectively and its mandate, as set out in the current Terms of Reference, do not reflect the mandate for NPMs as provided for in the OPCAT. It was therefore proposed that additional articles could be included in the Bill that would set out fully the mandate of the NPM, its powers and guarantees relating to its functioning. This could fall under a new Part V under the heading 'the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.'

It was recalled that previous consultations on the NPM had considered whether the mandate of the NPM should be given to a unit established within the National Human Rights Commission as it already has a detention monitoring function. It was also recalled that previous discussions had recognised that access to funding streams were more limited for 'Committees'. However, participants generally expressed the view that the anti-torture Bill should clarify that the National Committee on Torture is to have the NPM mandate. It was also recalled that a monitoring committee was established by the Administration of Criminal Justice Act and this Act made clear provision for the composition, functions and funding for that committee. Therefore this was a useful precedent which could be applied to the NPM.

In terms of the procedure for appointing members of the NPM it was recalled that this should be open, inclusive and transparent and should be set out under the Bill. In order to ensure functional independence in accordance with the obligations under OPCAT, the

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<sup>21</sup> See for instance Committee Against Torture, General Comment No. 3, para.3 and Provision 50 of the African Commission on Human and Peoples' Rights' Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('the Robben Island Guidelines'), 2002.

procedure for appointing members should not be directly and solely decided by the Executive. The appointment procedure can draw on the selection and appointment process set out in the Paris Principles for National Human Rights Institutions, which indicates that the composition of NHRIs: “shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).”

Accordingly following good practice and the example of other States Parties in the region,<sup>22</sup> the appointment procedure should involve a range of civil society representatives and other key independent actors with relevant experience.

## ***ii. Victim and witness protection***

The anti-torture Bill currently lacks a provision on victim and witness protection. In this respect it was noted that the Violence Against Persons (Prohibition) Act 2015 and the Administration of Criminal Justice Act contained provisions that could be useful. Further guidance could also be drawn from the Ugandan anti-torture Act and the Kenyan Victims Protection Act.

## **V. Next steps**

Participants identified a number of action points and agreed to provide further input into the development of the draft anti-torture Bill in the short-term, and in the longer-term to encourage its adoption and implementation.

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<sup>22</sup> See appointment process established by Burkina Faso, Article 22 of Law N° 022-2014/AN ; the National Preventive Mechanism in Mauritius, Article 3(5) of The National Preventive Mechanism Act 2013; and the Mozambique Act No. 33/2009, 22 December 2009.

In the short-term it was agreed that on the basis of the discussions at the roundtable additional input, including draft language, would be provided to the NLRC to assist it to finalise the draft Bill and submit the Bill and supporting explanatory report to the Attorney-General.

It was also suggested that it would be useful for the NLRC to undertake a 'mapping exercise' to review existing laws such as the Terrorism (Prevention) Act, Evidence Act and Police Act to ensure their conformity with UNCAT and identify any potential inconsistencies with provisions of the anti-torture Bill.

Once the Bill is submitted to the Attorney-General it becomes a public document around which advocacy strategies can be developed. It was suggested that it could be useful to discuss with the Chairperson of the NLRC, and other key stakeholders, the most effective and prompt strategy to secure a public hearing in Parliament on the Bill. For example participants noted that it may be possible for the draft to be introduced as a Private Member's Bill in case the presentation of the Bill to Parliament by the Government is delayed. It was also suggested that participants could reach out to members of the National Assembly to identify parliamentarians to 'champion' the Bill.

To secure ownership over the Bill and in the longer-term to facilitate its implementation it was also noted that advocacy strategies needed to include sensitisation of a broad range of stakeholders including the police, prison officials, the judiciary, members of the National Assembly and parliamentarians particularly the Committee on Human Rights and the Committee on Legal Affairs, members of the Bar Association, International Federation of Women Lawyers (FIDA), media, the Attorney General, the media and civil society organisations. These different stakeholders should be engaged in consultations on the Bill and awareness raising activities should be developed. It was noted that to secure the adoption of the Bill and its implementation in practice a range of different advocacy materials, tools and strategies should be developed.

Lastly, participants acknowledged the important role of the NLRC to progress the Bill and in developing the current text and reaching out to a range of stakeholders, including civil society experts, in the process. Participants welcomed the NLRC's willingness to engage civil society and encouraged the NLRC to continue doing so throughout the process up to adoption. The important role of the UN Office on Drugs and Crime was also highlighted.

## **March 2016**

**Annex 1**

**PART C**

**A BILL**

**FOR**

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

ARRANGEMENT OF SECTIONS

**SECTION**

PART I

Prohibition and Criminalization of Torture

1. Acts or omissions constituting torture.
2. Offences and penalties.
3. Compensation, rehabilitation or restitution to be ordered by court in certain cases.
4. Cruel, inhuman or degrading treatment or punishment.

PART II

Criminal Proceedings

5. Right to complain
6. Institution of criminal proceedings
7. The right to protection

PART III

Use of Information Obtained by Torture Cruel, Inhuman or Degrading Treatment or Punishment.

8. Inadmissibility of evidence obtained by torture Cruel, inhuman or degrading treatment or punishment.
9. Prohibition of use of information obtained by torture, cruel, inhuman or degrading treatment or punishment

PART IV

Expulsion, Deportation, Return or Extradition and Transfer of Detainees

10. Expulsion, deportation, return or extradition
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**SCHEDULES**

**A BILL  
FOR  
AN ACT TO PREVENT, PROHIBIT AND PENALIZE ACTS OF TORTURE, CRUEL INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT AND FOR OTHER RELATED MATTERS 2016**

**Commencement**

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

PART I

Prohibition of Torture

**1. Acts or Omissions Constituting Torture**

For the purposes of this Bill “torture” means -

(1) Any act or omission, by which severe pain or suffering whether physical, mental, psychological, pharmacological is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or any other person acting in an official or private capacity for such purposes as:<sup>23</sup>

- (a) obtaining information or a confession from the person or any other person;
- (b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or planning to commit;
- (c) intimidating or coercing the person or any other person to do, or to refrain from doing any act; or
- (d) for any reason based on discrimination of any kind.<sup>24</sup>

~~(2) For the purposes of this section, “severe pain or suffering” means the prolonged harm caused by or resulting from—~~

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

~~(3) Without limiting the effect of subsection (1) of this section, the acts or omissions constituting torture shall include the acts set out in the Schedule.~~

(4) The definition of torture set out in subsection (1) does not include pain or suffering arising from, inherent in or incidental to a lawful sanction.

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<sup>23</sup> See Article 1 of the UNCAT; see Section III. (i) of the roundtable report for discussion on this point.

<sup>24</sup> Ibid.



(5) The acts or omissions constituting torture under this section, shall not include any reasonable correctional measures necessary for the welfare and training of a child or ward.<sup>25</sup>

## 2. Offences and Penalties

(1) Any person who -

- (a) commits torture
- (b) aids, abets, counsels or procures any person to commit torture,

is guilty of the offence of torture and is liable on conviction to **imprisonment for a maximum of fifteen years for state actors.** and to **imprisonment for a maximum of ten years for non state actors.** **A fine of up to ten million naira for state actors and up to five million naira for non state actors can be imposed in addition to imprisonment.**

(2) Any person who conspires with a public official or private person to commit, aid or procure the commission of torture, is guilty of the offence of torture and on conviction is liable to **imprisonment for a maximum of ten years for state actors** and to imprisonment for a maximum of **five years for non-state actors.** **A fine up to five million naira for state actors and up to three million naira for non state actors** can be imposed in addition to imprisonment.

(3) No exceptional circumstances may be invoked as a defence or justification for torture including:

- (a) a state of war or a threat of war;
- (b) internal political instability;
- (c) national security ;
- (d) any state of emergency; or
- (e) an order from a superior officer, a public authority or an individual,

(4) No one shall be punished for disobeying an order, directive, instruction or advice to commit torture, cruel or inhuman or degrading treatment or punishment.

(5) In accordance with the Geneva Conventions of 1949<sup>26</sup> and the two additional protocols,<sup>27</sup> the Statute of the International Criminal Court Statute,<sup>28</sup> torture may in certain proscribed circumstances constitute a war crime, a crime against humanity and/or an act of genocide. Torture can constitute a crime against humanity if it is perpetrated as part of a widespread or systematic practice or attack on a population. It can constitute a war crime in both international and non-international armed conflicts when it is perpetrated on persons protected under one or more of the Geneva Conventions. It can also constitute genocide in certain circumstances. The ICC Statute provides that causing serious bodily or mental harm to members of an ethnical, racial or religious group as such,

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<sup>25</sup> This provision could be contrary to the Child's Right Act 2003, in particular Article 11, and is contrary to regional and international standards: Article 37 of the UN Convention on the Rights of the Child, and also Articles 1 and 16 of the UNCAT. The UN Committee on the Rights of the Child has stated that "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light" should be prohibited, see Committee on the Rights of the Child General Comment 8, §11. The term "reasonable" is ambiguous and subjective and therefore open to interpretation.

<sup>26</sup> Geneva Convention 1 Arts. 12(2), 50; Geneva Convention 2 Arts. 12(2), 51; Geneva Convention 3 Arts. 13, 17(4), 87(3), 89, 130; Geneva Convention 4 Arts. 27, 32, 147.

<sup>27</sup> Additional Protocol I Art. 75(2); Additional Protocol II Art. 4(2).

<sup>28</sup> E.g., ICC Statute, Arts. 7(1)(f); 8(2)(a)(ii) and 8(2)(c)(i).

committed with intent to destroy, in whole or in part, that group, satisfies the definition of the crime of genocide.<sup>29</sup>

### **3. The right to reparation ~~Compensation, Rehabilitation or Restitution to be ordered by court in certain cases~~**

(1) Victims of torture and other cruel, inhuman or degrading treatment or punishment as set out in this Bill have a right to reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

(2) The court may, in addition to any other penalty under this Act and in reference to Schedule 2 of this Bill, make an order for reparations, which may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

~~(a) restitution to the victim, his or her family or dependents to the greatest extent possible and such restitution may include:~~

- ~~(i) the return of any property confiscated;~~
- ~~(ii) payment for harm or loss suffered;~~
- ~~(iii) payment for the provision of services and restoration of rights; or~~
- ~~(iv) reimbursement of expenses incurred as a result of victimization.~~

~~(b) compensation for any economically assessable damage resulting from torture such as:~~

- ~~\_\_\_\_\_ (i) physical or mental harm, including pain, suffering and emotional distress;~~
- ~~\_\_\_\_\_ (ii) lost opportunities, including employment, education and social benefits;~~
- ~~(iii) material damage and loss of earnings, including loss of potential earnings;~~
- ~~(iv) costs required for legal or expert assistance, medicines, medical services, and psychological and social services; and~~

~~(c) rehabilitation including:~~

- ~~(i) medical and psychological care; and~~
- ~~(ii) legal and psycho-social services to the victim in case of trauma.~~

(3) Restitution, compensation, rehabilitation or any payment ordered by the court under sub-section (1) may be satisfied by or with the property or assets of the person convicted of torture, or if the award determines that the convicted person and the State are jointly and severally liable, by or with the property or assets of either or both debtors.

(4) Satisfaction and guarantees of non-repetition, may be ordered against the State in addition to restitution, compensation and/or rehabilitation.

(5) A Victim may lodge civil proceedings to claim reparation irrespective of whether criminal proceedings were lodged and if so, how they concluded

(6) Access to rehabilitation programmes should not depend on the victim pursuing judicial remedies. Rehabilitation shall be provided through rehabilitative services under the national health care system or, if the victim prefers,

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<sup>29</sup> Art. 6(b) ICC Statute.

through non-governmental organizations (NGOs). Rehabilitative services provided by NGOs shall be government funded.

#### **4. Cruel, Inhuman or Degrading Treatment or Punishment**

(1) Cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official or private capacity, which does not amount to torture as defined in section 1 of this Act, is a criminal offence and shall be liable on conviction to **imprisonment for a maximum of seven years imprisonment for state actors and imprisonment of seven years for non-state actors. . A fine of five million naira may be imposed for State actors and a fine of two million five hundred thousand naira for non state actors** in addition to imprisonment.

(2) For the purposes of determining what amounts to cruel, inhuman or degrading treatment or punishment, the court or any other body considering the matter shall have regard to the definition of torture as set out in section 1 of this Act and the circumstances of the case, taking into account the duration of the treatment or punishment, the physical and mental effects and the sex, religion, age and state of health of the victim.

(3) In a trial of a person for the offence of torture, the court may, in its discretion, convict the person for cruel, inhuman or degrading treatment or punishment, where the court is of the opinion that the act complained of does not amount to torture.

## PART II

### Right to Complain

#### **5. Right to Complain**

(1) Any person who suspects or has reasonable grounds to suspect that an offence is being committed under this Act by a public officer or person acting in official capacity or private capacity, has the duty to report to the police or any appropriate authority his or her suspicion of the commission of the offence

(2) A person alleging that an offence under this Act has been committed, whether the person is the victim of the offence or not, has a right to complain to the police or any other appropriate authority with powers to investigate.

(3) Where a complaint is made to the police or any appropriate authority with powers to investigate, prompt, thorough and impartial investigation into the complaint shall be conducted, and where there are substantial grounds to support the complaint, the police shall ~~ensure that the suspect is prosecuted in accordance with the law~~ arrest the person and accordingly charge the person with the offence he or she is alleged to have committed.

(4) Where a complaint is made to any other appropriate authority, such appropriate authority shall investigate the complaint and submit its report to the Attorney General for prosecution, as appropriate.

(5) The authority in charge of the investigation shall keep the victim and/ or the legal representatives of the victim informed about the progress and the results of the investigation.

#### **6. Institution of Criminal Proceedings**

(1) Subject to the provisions of the Administration of Criminal Justice Act, 2015, Criminal proceedings under this Act, may be instituted in one of the following ways:

(a) by a police officer bringing a person arrested before the court upon a charge;

(b) by a public prosecutor laying a charge against a person before the court or

(c) by any person, whether corporate or private individual making a complaint to any appropriate authority.

(2) The police or any other appropriate authority with the powers to investigate the crime shall investigate wherever there are reasonable grounds to believe that an act of torture or other form of prohibited ill-treatment has been committed. This will be the case whether or not the victim or any other person has made a complaint.

#### **NEW ARTICLE: 7. The Right to Protection**

(1) It shall be the responsibility of the State to ensure the protection from violence, threats of violence or any other form of intimidation or reprisal against victims of torture or other forms of prohibited ill-treatment and their families, witnesses of such crimes, those conducting the investigation and human rights defenders involved in advocating for justice.

(2) Any form of threat, intimidation or reprisal is considered an offence punishable with imprisonment.

### **PART III**

Use of Information Obtained by Torture, Cruel, Inhuman or Degrading Treatment or Punishment.

#### **8. Inadmissibility of Evidence Obtained by Torture, Cruel, Inhuman or Degrading Treatment or Punishment**

(1) Any information, confession or admission obtained from a person by means of torture, cruel, inhuman or degrading treatment or punishment is inadmissible in evidence against that person or any other person in any proceeding.

(2) The burden of proof to show that the evidence was obtained voluntarily rests on the prosecution.

(3) Notwithstanding sub-section (1) of this section, such information, confession or admission may be admitted against a person accused of torture, cruel, inhuman or degrading treatment or punishment as evidence that the information, confession or admission was obtained by torture, Cruel, inhuman or degrading treatment or punishment.

(4) Where evidence has been obtained by torture or other cruel, inhuman or degrading treatment or punishment criminal proceedings shall be instigated against the alleged perpetrator/s in accordance with Article 6 of this Act.

#### **9. Prohibition of Use of Information Obtained by Torture, Cruel, Inhuman or Degrading Treatment or Punishment**

(1) A person who uses any information which he or she knows or ought to have reasonably known was obtained by means of torture or other cruel, inhuman or degrading treatment or punishment commits an offence and is liable on conviction to

(a) imprisonment for two years or a fine of one million naira or both for state actors; corporate bodies or

(b) imprisonment for two years or a fine of five hundred thousand or both for non –state actors.

PART IV

Expulsion, return or extradition and transfer of detainees

**NEW ARTICLE 10:** Expulsion, return or extradition

(1) Torture is an extraditable offence.<sup>30</sup>

(2) **No public official shall expel, return, deport or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment.**

(3) In determining whether there are substantial grounds for believing that a person is likely to be tortured or treated in a cruel, inhuman or degrading manner, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>31</sup>

**11. No Transfer of Persons where likelihood of Torture, Cruel, Inhuman or Degrading Treatment or Punishment exists**

(1) Where there are reasonable grounds to believe that a prisoner or detainee is likely to be tortured or treated in a cruel, inhuman or degrading manner, a person shall not —

(a) release, transfer or order the release or transfer of a prisoner or detainee into the custody or control of another person or group of persons or government entity;

(b) transfer, detain or order the transfer or detention of a prisoner or detainee to a non-gazetted place of detention; or

(c) intentionally or recklessly abandon a prisoner or detainee, in any place where there are reasonable grounds to believe that the prisoner or detainee is likely to be tortured, or treated in a cruel, inhuman or degrading manner.

(3) Sub- section (1) of this section applies to any prisoner or detainee in the custody of any public official irrespective of the

(a) citizenship of the prisoner or the detainee;

(b) location in which the prisoner or detainee is being held in custody or control; or

(c) location in which or to which the transfer or release is to take place or has taken place.

New Part V

PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

**12. Designation of a National Preventive Mechanism**

The National Committee on Torture is designated to act as the National Preventive Mechanism in accordance with Article 17 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (OPCAT).

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<sup>30</sup> See Article 8 of the UNCAT.

<sup>31</sup> See Article 3(2) of the UNCAT.

### **13. Composition and appointment**

(1) Members of the National Preventive Mechanism shall be appointed following a public tender by a selection body established by the Ministry of Justice. The selection body shall include representatives from:

- (a) registered human rights organisations in Nigeria;
- (b) academia;
- (c) Parliament;
- (d) Relevant Government departments

(2) Members of the National Preventive mechanism shall serve a term of 5 years, which may be renewable once.<sup>32</sup>

(3) The tenure of a member of the National Preventive Mechanism shall terminate

- (a) upon expiry of the term of his or her mandate,
- (b) upon his or her death,
- (c) upon his or her resignation, or
- (d) upon the declaration of a conflict of interest,

(4) Members of the National Preventive Mechanism shall have the required capabilities and professional knowledge to carry out the preventive mandate to all places of detention,<sup>33</sup> and shall include:

- (a) representatives of registered human rights organisations in Nigeria;
- (b) legal practitioners; and
- (c) health-care practitioners.

(5) The membership of the National Preventive Mechanism should ensure adequate representation of ethnic and minority groups and reflect a gender balance.<sup>34</sup>

(6) Members may not hold positions which could raise questions of conflicts of interest and must act independently and impartially of any person, authority or organisation.<sup>35</sup>

(7) The National Preventive Mechanism, where it considers it necessary, can co-opt any expert with the relevant professional expertise, experience and knowledge, to assist it in the discharge of its functions.

### **14. Functions of the National Preventive Mechanism**

(1) The National Preventive Mechanism shall be charged with the mandate to prevent torture and other cruel, inhuman or degrading treatment or punishment throughout the Federal Republic of Nigeria.<sup>36</sup>

(2) Without prejudice to the generality of subsection (1) of this section, the National Preventive Mechanism shall:<sup>37</sup>

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<sup>32</sup> This reflects the UN Subcommittee's Guidelines on the Establishment of NPMs, UN Doc and the Paris Principles.,

<sup>33</sup> See Article 18(2) of the OPCAT.

<sup>34</sup> See Article 19(a) of the OPCAT.

<sup>35</sup> See Article 18(1) of the OPCAT and also the Principles for National Human Rights Institutions. Based on the OPCAT and Paris Principles the executive should not exclusively determine the selection of the members. It should be a transparent process that also involves both the legislature and civil society.

<sup>36</sup> See Article 29 of the OPCAT.

<sup>37</sup> These provisions incorporate Article 19 of the OPCAT

- a) Regularly examine and make reports on the treatment of the persons deprived of their liberty in all places of detention with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- b) Make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment taking into consideration the relevant norms of the United Nations;
- c) Submit proposals and observations concerning existing or draft legislation;
- d) work, where appropriate, in co-operation or consultation with the National Human Rights Commission, or any person or body, whether public or private, in connection with the discharge of any of its functions under this Act and the Optional Protocol.

#### **14. Guarantees for the National Prevention Mechanism<sup>38</sup>**

(1) To carry out its functions in sub-section (3) of Article the National Preventive Mechanism shall be guaranteed:

- a) access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;
- b) access to all information referring to the treatment of those persons as well as their conditions of detention;
- c) access to all places of detention and their installations and facilities;
- d) the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- e) the freedom to choose the places they want to visit and the persons they want to interview;
- f) the freedom for its members to be accompanied, if needed, by such expert with the relevant professional expertise, experience and knowledge as the Chairperson may determine, on visits to detention centres;
- g) the freedom to produce and publish reports relevant to its mandate; and
- h) the right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

#### **15. Examination of recommendations<sup>39</sup>**

The relevant authorities shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.<sup>40</sup>

#### **16. Secretariat and Staff<sup>41</sup>**

(1) The National Preventive Mechanism shall establish and maintain a Secretariat with such number of staff as it considers necessary for the efficient running of its affairs.

(2) The Secretariat shall be headed by a Secretary who shall be appointed by the members of the National Preventive Mechanism through a public call for applications.

(3) The Secretary and Staff may not hold positions which could raise questions of conflicts of interest.<sup>42</sup>

<sup>38</sup> These provisions reflect Article 20 of the OPCAT

<sup>39</sup> See Article 22 of the OPCAT

<sup>40</sup> See Article of the OPCAT

<sup>41</sup> Based on the Monitoring Committee for the Administration of Criminal Justice Act, Article 471.

(4) Staff members shall be experts with a higher education degree and have an outstanding knowledge in relevant fields.

### **17. Fund of the National Preventive Mechanism<sup>43</sup>**

(1) There is established for the National Preventive Mechanism a fund into which shall be paid:

- (a) budgetary allocation to it through the Office of the Attorney-General of the Federation;
- (b) such monies as may, from time to time, be provided to the National Preventive Mechanism by any public, private or international organisation by way of a grant, support or assistance on such terms as are consistent with its functions; and
- (c) such monies as may be received by the National Preventive Mechanism in relation to the exercise of its functions under this Act.

(2) The Secretary of the National Preventive Mechanism shall be the accounting officer for the purpose of controlling and disbursing monies from the Fund established under this section.

### **18. Annual estimates and accounts<sup>44</sup>**

(1) The Secretary shall submit to the Attorney-General of the Federation not later than 30<sup>th</sup> September in each financial year, an estimate of its expenditure and income during the next financial year.

(2) The Committee shall keep proper accounts and records in respect of each financial year and shall cause its accounts to be audited not later than 2 months from the end of each financial year.

### **19. Annual Report**

The National Preventive Mechanism shall present an annual report to the National Assembly and publish same.<sup>45</sup>

### **20. Privileges, immunities and protection:**

(1) The members and staff of the National Preventive Mechanism shall be granted the privileges and immunities that are necessary for the independent exercise of their functions.<sup>46</sup>

(2) No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.<sup>47</sup>

(3) Confidential information collected by the National Preventive Mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.<sup>48</sup>

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<sup>42</sup> See Article 18(1) of the OPCAT.

<sup>43</sup> Based on the precedent set by the Monitoring Committee for the Administration of Criminal Justice Act, Article 472 .

<sup>44</sup> Based on the Monitoring Committee for the Administration of Criminal Justice Act.

<sup>45</sup> See Article 23 of the OPCAT.

<sup>46</sup> See Article 35 of the OPCAT.

<sup>47</sup> See Article 21(1) of the OPCAT

<sup>48</sup> See Article 21(2) of the OPCAT.



PART VI  
MISCELLANEOUS

**21 Jurisdiction**

(1) Any court with criminal jurisdiction shall have the power to try cases of torture, cruel, inhuman or degrading treatment or punishment.

(2) A court of the Republic has jurisdiction in respect on an act committed outside the Republic which would have constituted an offence under Article 1 of this Bill had it been committed in the Republic, regardless of whether or not the act constitutes an offence at the place of its commission, if the suspect –

- a) Is a citizen of the Republic;
- b) Is ordinarily resident in the Republic;
- c) Is, after the commission of the offence, present in the territory of the Republic, or in its territorial waters or on board a ship, vessel, off-shore installation, a fixed platform or aircraft registered or required to be registered in the Republic and that person is not extradited pursuant to Article 8 of the Convention; or
- d) Has committed the offence against a Nigerian citizen or against a person who is ordinarily resident in the Republic.<sup>49</sup>

**22. Statutes of Limitation and Amnesties**

(1) The offence of as set out in this Bill shall not be subject to a statute of limitation in criminal or civil proceedings.

(2) The offence of torture shall not benefit from any amnesty.

**23. Annual Publication of Reported Cases**

(1) The Minister shall publish a report annually on reported cases on torture and other cruel, inhuman or degrading treatment or punishment. This report shall be made available on the Ministry of Justice’s website.

(2) This report shall include –

- a) Information on number of reported cases of torture and other cruel, inhuman or degrading treatment or punishment disaggregated by age, gender, and nationality of the victims;
- b) Information on the number of prosecutions for any offences under this Act, and outcome of the prosecution;
- c) Information on reparation measures provided to victims of offences under this Act;

**24. Regulations**

(1) The Minister may make regulations for implementation of the provisions of this Act

(2) Without prejudice to subsection (1) the Minister may make recommendation on the regulation in respect of –

- (i) right to counsel for the victim
- (ii) right to medical and other examinations of the victim

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<sup>49</sup> See Article 5 of the UNCAT. Based on the South African anti-torture Law.

(iii) protection of victims, witnesses and persons reporting torture or other cruel, inhuman or degrading treatment or punishment.,

## 25. Interpretation

In this Act unless the context otherwise requires –

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

**“Appropriate Authority”** means any authority such as the National Human Rights Commission, National Committee on Torture and any other agency with investigative powers .

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

**“Convention”** means the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

**“Deadly Weapon”** means -

(a) an instrument made or adapted for shooting, stabbing or cutting, and any imitation of such an instrument;

(b) any substance, which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person that it is likely to cause death or grievous bodily harm; and

(c) any substance intended to render the victim of the offence unconscious.”

**“Minister”** means the Minister responsible for justice;

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

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

**“Optional Protocol”** means the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment adopted by the UN General Assembly of the United Nations on 18 December 2002.

**“Place of detention”** means any place under the jurisdiction or control of the Federal Republic of Nigeria where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

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

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

(a) the intentional infliction or threatened infliction of physical pain or suffering;

(b) the administration or application or threatened administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(c) the threat of imminent death; or

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

**“State”** means Federal, State or Local Government;

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

**“Spouse”** means a husband or wife by recognized under the Matrimonial Causes Act, Islamic and Customary Law;<sup>50</sup>

**“Subcommittee”** means the UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or degrading Treatment or Punishment.

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

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

## 26. Short Title.

This Act may be cited as the Anti – Torture Bill.

## SCHEDULE 1: Acts constituting Torture

### Section 1(3)

#### Acts constituting torture

##### 1. Physical torture includes -

- a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;
- (b) food deprivation or forcible feeding with spoiled food, animal or human excreta;
- (c) electric shocks;
- (d) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices;
- (e) the submersion of the victim's head in water or water polluted with excrement, urine, vomit or blood;
- (f) being tied or forced to assume a fixed and stressful body position;
- (g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;

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<sup>50</sup> See definition in VAPP Act

- (h) mutilation, such as amputation of parts of the body;
- (i) dental torture or the forced extraction of the tooth;
- (j) harmful exposure to the elements such as sunlight and extreme cold; or
- (k) the use of plastic bags and other materials placed over the victim's head with the intention to asphyxiate.

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

- (a) blindfolding;
- (b) threatening the victim or his or her family with bodily harm, execution or other wrongful acts;
- (c) prolonged interrogation of the victim so as to deny him or her normal length of sleep or rest;
- (d) maltreating a member of the victim's family;
- (e) witnessing the torture sessions by the victim's family or relatives;
- (f) denial of sleep or rest;
- (g) shame infliction such as stripping the victim naked, parading the victim in a public place, shaving the head of the victim, or putting a mark on the body of the victim against his or her will; or.
- (h) indefinite or prolonged solitary confinement.<sup>51</sup>

## **3. Pharmacological torture includes -**

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

## **SCHEDULE 2 – Reparation for Victims of Torture and other forms of prohibited Ill-treatment**

In reference to Article 3 of this Bill providing for the right to reparation of victims of torture and other forms of prohibited ill-treatment, and informed by the Committee Against Torture's General Comment No. 3 on the implementation of Article 14 by State parties to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this Schedule sets out the different forms of reparation a court and other actors engaged in the reparation process may take into account.

### **Restitution<sup>52</sup>**

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

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<sup>51</sup> Solitary confinement can be damaging to the physical and mental health of a detainee. Rule 43(a) and (b) of the revised Standard Minimum Rules on the Treatment of Prisoners (the Mandela Rules) prohibits indefinite and prolonged solitary confinement respectively.

<sup>52</sup> Committee Against Torture, General Comment No. 3, para.8.

related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination.

### **Compensation**<sup>53</sup>

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

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

### **Rehabilitation**<sup>54</sup>

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

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

### **Satisfaction**<sup>55</sup>

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

- effective measures aimed at the cessation of continuing violations;
- verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

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<sup>53</sup> Ibid, paras.9-10.

<sup>54</sup> Ibid, paras.11-15.

<sup>55</sup> Ibid, paras.16-17.

- the search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families;
- an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- judicial and administrative sanctions against persons liable for the violations;
- public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims.

**Guarantees of non-repetition<sup>56</sup>**

Guarantees of non-repetition shall include:

- issuing effective, clear instructions to public officials on the provisions of this Bill;
- civilian oversight of military and security forces;
- ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality;
- strengthening the independence of the judiciary;
- protecting human rights defenders and legal, health and other professionals who assist torture victims;
- establishing systems for regular and independent monitoring of all places of detention;
- providing, on a priority and continued basis, training for law enforcement officials as well as military and security forces on human rights law that includes the specific needs of marginalized and vulnerable populations and specific training on the Istanbul Protocol for health and legal professionals and law enforcement officials;
- promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel;
- reviewing and reforming laws contributing to or allowing torture and ill-treatment; ensuring compliance the prohibition of refoulement.

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<sup>56</sup> Ibid, para.18.

Annex 2



*Ending Torture. Seeking Justice for Survivors*



**Roundtable discussion on the draft anti-torture Bill**  
**Sheraton Hotel, Abuja**  
**26 February 2016**  
**Agenda**

<b>09.00 – 09.30</b>	<b>Welcome and introduction:</b> <b>Nigerian Law Reform Commission</b> <b>NHRC</b> <b>REDRESS</b>
<b>09.30 – 10.45</b>	<b>Session 1: Taking stock</b> <b>Chair: Debra Long (HRIC)</b> Presentation on the need for anti-torture legislation: Tony Ojukwu (NHRC) Status of the revision process: Didi Odigie – Bedell (Nigerian Law Reform Commission) Contributions from civil society to date
<b>10.45-11.00</b>	<i>Coffee break</i>
<b>11.00-13.00</b>	<b>Session 2: Providing input into revised Bill</b> <b>Chair: REDRESS</b> In this session as a group will look at the text of the draft anti-torture Bill and identify areas for additional input.
<b>13.00-14.00</b>	<i>Lunch</i>

<b>14.00 – 15.30</b>	<b>Session 3: Providing input into the revised Bill</b> In this session as a group will look at the text of the draft anti-torture Bill and identify areas for additional input.
<b>15.30 – 16.00</b>	<i>Coffee break</i>
<b>16.00 – 17.00</b>	<b>Session 4: Opportunities going forward</b> <b>Chair: Nigerian Law Reform Commission</b> In this session we will discuss the next steps towards the submission of a draft revised Bill, timelines, outreach and advocacy strategies and potential partnerships.
<b>17.00</b>	<i>Close of meeting</i>



### Annex 3

#### List of participants

<b>Name</b>	<b>Organisation</b>
Jummai A.M. Audi	Nigerian Law Reform Commission
Didi Odigie – Bedell	Nigerian Law Reform Commission
Victor Uchendu	Nigeria Law Reform Commission
Ugonna Ezekwem	UNODC
Tony Ojukou	NHRC
Atu Efem	NHRC
Tolulope Tilley-Gyado	NHRC
Fred Ayiaka	NHRC
Atu Jossy	NHRC
Samuel Titilayo	NHRC
Okechukwu Nwanguma	NOPRIN
Isabel Robinson	ICRC
Precious Eriamiatoe	ICRC
Gloria Nweze	Nigerian Bar Association (Ikeja Branch)
Nathaniel Ngwu	LRC
Barbara Maigari	Lawyer
Deji Ajare	SCLD
Nanpon Wuyep	SCLD
Jürgen Schurr	REDRESS
Judy Oder	REDRESS
Debra Long	HRIC

