

Counter-Insurgency Measures and Torture in Nigeria: A *Boko Haram* Perspective

Musa Alkali Lawan, PhD., Joseph I. Aremo, PhD., Atiku Said Haliru, PhD., Abdullah Usman

Department of Public Law, University of Maiduguri, Nigeria

DOI: <https://dx.doi.org/10.47772/IJRISS.2025.910000237>

Received: 12 October 2025; Accepted: 18 October 2025; Published: 08 November 2025

ABSTRACT

This paper explores the relationship between counter-insurgency efforts and the use of torture in Nigeria's fight against *Boko Haram*. It examines the legal and conceptual meaning of torture and analyses how Nigerian security agencies popularly known as (JTF) have responded to the insurgency. The paper highlights widespread reports of torture and human rights abuses during these operations, raising concerns about the violation of citizens' rights. It further discusses the broader implications of these practices and the systemic challenges in holding security forces accountable. This paper concludes by emphasizing the need for reforms that ensure counter-insurgency measures align with Nigeria's human rights obligations, particularly the prohibition of torture and bringing the identified perpetrators to justice and compensation to the victims of torture.

INTRODUCTION

Boko Haram conflict in Nigeria dated back to 2009, when the extremist Islamic insurgent movement popular known as *Boko Haram* meaning (Western Education is Forbidden) with its official name as *Jama'at al Ahlis Sunnah Lidda'awati'Wal Jihda* (which translated as People Committed to the Propagation of the Prophet's Teaching and War) waged a protracted violent campaign against the Nigerian government. The conflict has spread and intensified as a result of a complex web of socio-cultural, economic, ethno-religious and sub-regional factors. It has evolved into a non-international armed conflict between *Boko Haram* and Nigerian security forces in the states of Borno, Yobe and Adamawa and has been marked by egregious violations of human rights committed by both sides. According to a report by Amnesty International the Nigerian government through the counter-insurgency measures by the Joint Military Task Force (JTF) has led to a documented human rights violations, war crimes and possible crime against humanity committed by the JTF in their campaign against *Boko Haram*. One of the serious human rights violation alleged to have been committed by the JTF in their counter-insurgency measures against *Boko Haram* is the right against torture. Torture and Other Forms of ill-treatment have been recognized as one of the worst crime against humanity and violation of human right. This paper, seeks to assess the extent of the JTF engagement in violation of the citizens right against torture in their counter-insurgency measures against *Boko Haram* and whether the perpetrators are held accountable for the violation of the right.

Nature and Meaning of Torture

Torture and other forms of ill-treatment have been recognized as one of the worst crime against humanity and violation of human rights. The nature of torture and its impact is best captured in this statement;

Torture is not only one of the vilest act that one human being can inflict on another, it is also among the most insidious of all human rights violations. All too often, it is veiled in secrecy, except from those who cowering in nearby prison cells, might be its next victims. Victims are often too ashamed or traumatized to speak out, or face further peril of they do; often, they die from wounds. Perpetrators meanwhile, are shielded by conspiracies of silence and by the legal Prohibition of torture had been settled firmly in International Law for a long time without

adopting any exact definition.¹ This gap has been filled by the Convention against Torture and Other Cruel, Inhuman Treatment or Punishment (CAT), which has been adopted by the General Assembly of the United Nations on 10 December 1984, and has entered into force in 1987.²

The drafting of the Convention was conducted by the Commission on Human Rights in 1977, by the request of the General Assembly to complete the earlier preparatory work embodied in previous resolutions.³ The working groups vested with the task have encountered some problems and debates for example around the questions of definition of torture, or justification, but finally these have been settled and the Convention (presented by Sweden) has been adopted.⁴ The general aim of the Convention is to prevent and punish torture, and to achieve this, it has obliged states party to cooperate when necessary.⁵ The definition of torture under the Convention is the result of lengthy discussions, resulting in a complex text, found in Article 1, paragraph 1,⁶ defines torture as:

Torture is severe physical or mental pain or suffering inflicted by a public official, or a person acting in an official capacity or anybody with consent, acquiescence, or at the instigation of the previous persons, for specific purposes. It may be the obtainment of information or a confession from him or any third person, punishment for an act he or a third person has committed or is suspected of having committed, it can be intimidation or coercion against him or a third person.⁷

Torture and other forms of ill-treatment have been recognised as one of the worst crimes against humanity and violation of human rights.⁸ The nature of torture and its impact has been captured best in this statement;

Torture is not only one of the vilest act that one human being can inflict on another, it is also among the most insidious of all human rights violations. All too often, it is veiled in secrecy, except from those who cowering in nearly prison cells, might be its next victims. Victims are often too ashamed or traumatized to speak out, or face further peril if they do; often, they die from their wounds. Perpetrators, meanwhile, are shielded by conspiracies of silence and by the legal and political machinery of states that resorts to torture.⁹

The act of torture and other forms of ill-treatment is often perpetrated by organs of the state such as the military, the police, the prison and other law enforcement officials.¹⁰ Torture and other forms of ill-treatment are violations of human rights and it is practiced in many countries. They are strictly prohibited by a number of international,¹¹

*Department of Public Law, Faculty of Law, University of Maiduguri, Borno State Nigeria; Email: musaalkalilawan@gmail.com; Tel: +2347060757000

**Associate Professor, Faculty of Law, Elizade University, Ilara-Mokin, Ondo State and Currently Chairman, Ondo State Independent Electoral Commission, Akure, Nigeria; Email: aremosonjoe@gmail.com; joseph.aremo@elizadeuniversity.edu.ng; Tel: +2348038411128

*** Department of Sharia, Faculty of Law, University of Maiduguri, Borno State Nigeria; Email: atikus2020@gmail.com; Tel: +2348033892837, +2348023725683

****Department of Sharia and Civil Law, Mohammed Gono College of Legal, Islamic and Educational Studies, Maiduguri, Borno State Nigeria, Email: abfullousman@gmail.com; Tel: 08069535315.

B. Karumi, and A. U. Alkali, Torture as Violation of Human Rights: A Legal Dimension, (2013) (2) Unimaid Journal of Public Law, 341.

²Ibid.

³ See for example the “Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” by the General Assembly on 9 December 1975, GA resolution 3452 (XXX) and GA resolution 3453).

⁴Ibid.

⁵Ibid.

⁶ CAT Art 1. See also, Angel Batman, ‘Spare the Rod and Spoil the Child’ Corporal Punishment in School around the World (2002) (13) Journal of International Comparative Review, 283.

⁷ CAT, Art 1.

⁸ Piwuma Morgan Gason, The Acts of Torture and Other Forms of Ill-Treatment of Citizens by some Institutions and the Role of Criminal Justice System in Nigeria, (2015) (5) (10) (1) International Journal of Humanities and Social Sciences, 208.

⁹ Statement made by United Nations Secretary-General, Koffi Annan on the International Day in Support of Victims of Torture on June 26, 2000.

¹⁰ Piwuma Morgan Gason, (n208).

¹¹ For instance, see United Nations Convention against Torture, Cruel, Inhuman and Degrading Treatment and Punishment.

regional,¹² sub regional and national human rights instruments,¹³ including the laws of war.¹⁴ The general aim of torture is to destroy a human being,¹⁵ destroy his or her dignity and self-esteem.¹⁶ Other reasons for torture include; extracting confessions, to gather information, as a method of sadistic punishment, to retain control by the state by means of intimidation and subjugation, or merely that the person being tortured belonged to a separate group.¹⁷ The act of torture and other forms of ill-treatment do not just occur. It is usually carried out by persons acting in official or personal capacity.¹⁸ Such persons are referred to as perpetrators of torture or torturers as the case may be.¹⁹ Therefore, perpetrators of torture can be referred to as person acting either under official or private capacity who inflicts severe pains (either physical or mental) on individuals for several reasons.²⁰ From this definition, it can be said that torture is the intentional infliction of severe physical or mental pain or suffering by or with the consent of the state authorities for a specific purpose. From the foregoing, one would observe that torture has been prohibited both at the international, regional and national instruments. Article 7 of the ICCPR is very specific on the prohibition of torture.

Nigeria, in compliance with the international obligation on the prohibition of torture, passed Anti-Torture Act, 2017 into law by former President Muhammadu Buhari on December 29, 2017.²¹ Prior to the coming into effect of the Act, there was no law in Nigeria whose sole objective is the prohibition and punishment of torture and other forms of ill-treatment.²² Although, Section 34 of the 1999 Constitution provides that; “Every individual is entitled to respect for the dignity of his person, and accordingly, “No person shall be subject to torture or to inhuman or degrading treatment.” The Constitution did not explicitly state that the freedom from torture, cruel and inhuman treatment is a non-derogable right.²³ However, the Anti-Torture Act, 2017 fills the existing legislative gaps by explicitly making the right to freedom from torture, cruel, inhuman and degrading treatment or punishment a non-derogable right, criminalising torture and protecting victims and witnesses of torture.²⁴ Section 1 of the Act, imposes an obligation on government to ensure that all persons, including suspects, detainees and prisoners are respected at all times and that no person under investigation or held in custody is subjected to any form of physical or mental torture.²⁵ The section goes further to admonish government to adhere to domestic and international standards on absolute condemnation and prohibition of torture.²⁶ While, section 2 of the Act, clearly defines what amount to an act of torture, it states that:

- a. Torture is deemed committed when an act by which pain and suffering whether physical or mental, is intentionally inflicted on a person;
- b. Obtain information or confession from him or a third person;
- c. Punish him for an act he or a third person has committed or suspected of having committed, or
- d. Intimidate or coerce him or third person for any reason based on discrimination of any kind.

¹² See African Charter on Human and Peoples’ Rights, Article 5 Prohibit Torture.

¹³ Constitution of the Federal Republic of Nigeria, 1999 as amended, s. 34 (1).

¹⁴ The Four Geneva Convention of 1949 namely: Geneva Convention 1 for the Application of the Condition of the Wounded and the Sick of Armed Forces in the field; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea Geneva Convention III, relating to the Prisoner of War and Geneva Convention IV, Relating to the Protection of Persons in Time of War (1949).

¹⁵ M. Kosma and J. Cantell, *Neoconservative Ideology and the Use of Torture in Global War on Terror*, 81.

¹⁶ Miller, D. J. *Holding States to their Convention against Torture, Cruel, Inhuman and Degrading Treatment and the need for Broad Interpretation of State Action* (2003) (17) (2) *Georgetown Immigration Law Journal*, 229.

¹⁷ Piwuma Morgan Gason, (n208) 209.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Vanguard, *Anti-Torture Act 2017: Issues, Implication for Police Officers*, (Vanguard May 31, 2018), 5.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Anti-Torture Act, 2017, s 1.

²⁶ *Ibid.*, s.1.

The Section goes on to suggest torture does not include pain or suffering in compliance with lawful sanctions. The Act, also list what constitutes torture. Some of the examples listed in the Act include:

- i. Systematic beating head-banging, punching, kicking, striking with rifle butts and jumping on the stomach;
- ii. Food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten;
- iii. Electric shocks;
- iv. Cigarette burning, burning by electric 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;
- v. The submersion of head in water or water polluted with excrement, urine, vomit or blood;
- vi. Blindfolding;
- vii. Threatening a person or such persons related or known to him with bodily harm, execution or other wrongful acts;
- viii. Confinement in solitary cells against their will or without prejudices to their security;
- ix. Prolonged interrogation to deny normal length of sleep or rest and,
- x. Causing unscheduled transfer of person from one place to another, creating the belief that he shall be summarily execute etc.²⁷

Section 3 of the Act is to the effect that no exceptional circumstances whatsoever, a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for torture. It prohibits secret detention facilities, solitary confinement, incommunicado detention where torture may be carried out.²⁸ It also makes it clear that evidence obtained from torture is inadmissible in any court except for use against a person accused of torture.

The above Section, is in tandem with Section 29 (2) and (3) of the Evidence Act, 2011²⁹ which renders any confessional statement obtained from an accused person by torture, inhuman or degrading treatment involuntary and therefore inadmissible. The use or threat of violence is also considered involuntary hence would be classified as unreliable and inadmissible in evidence against the accused person.³⁰ It is pertinent to note that the Anti-Torture Act, 2017 provides that; ‘‘a person who commits torture shall be liable on conviction to imprisonment to a term of 25 years. If death occurs as a result of the torture, the person involved will be charged with murder’’.³¹

Boko Haram Insurgency.

Insurgency is a protracted struggle conducted systematically, in order to achieve specific intermediate goals leading finally to the overthrow of the existing order.³² According to the United States Counter-Insurgency Guide defined insurgency as: ‘‘The organized use of subversion and violence to seize, nullify, or challenge political control of a region’’³³ insurgency seeks to subvert or displace the government and completely or partially

²⁷Ibid, s.2.

²⁸Ibid, s.3.

²⁹ Cap E14 LFN 2004.

³⁰ Babagana Karumi, Protection of the Right against Torture under International Human Rights Law: A Critical Appraisal, (2015) (37) Journal of Law, Policy and Globalization, 209.

³¹ Anti-Torture Act, 2017, S.9.

³² David, G. Counter-Insurgency Warfare Theory and Practice (New York: Frederick A. Prager, 1964), 64.

³³ United Nations Government, Counter-Insurgency Guide, 2009 <https://www.states.gov/Hpm/PPa/pmpat>> accessed on 17/4/2021, 2.

control the resources and population of a given territory.³⁴ They do so through the use of force (including guerrilla warfare, terrorism and coercion/intimidation), propaganda, subversion and political mobilization.³⁵ Insurgency is therefore the strategy of the weak and is usually characterized by protracted, asymmetric and psychological warfare, which mobilizes the population.³⁶ The main objective of insurgent groups is to discredit the existing government and gain popularity.³⁷ Insurgents may have various objectives, they may want to overthrow an existing government and obtain power, which is known as revolutionary insurgency, or their objectives may be limited to succession, autonomy, separation, or a change in policy.³⁸ *Boko Haram* believes a strict Islamic State under Sharia Law would address the problems of corruption, bad governance, and western influence which does not meet the desires of the Muslim population.³⁹ Since its emergence, the insurgent group has employed all forms of guerrilla tactics and violence to unleash mayhem against the State and people in an attempt to replace the Nigerian institutions, which they perceived as corrupt and western inclined. The violence unleashed by *Boko Haram* on the Nigerian State is unprecedented in the history of insurgency in the country. *Boko Haram* has used bombs to launch attacks against government or western targets, to intimidate opponents and to kill civilians.

Counter-Insurgency Measures by the Security Agencies against *Boko Haram*

Every insurgency draws a response known as counterinsurgency (COIN), which is usually focused on defeating it.⁴⁰ Such a response comes primarily and directly from the State against which insurgency is directed, with the State usually getting support from the international community as the insurgency escalates.⁴¹ Much of the literature on COIN has carefully avoided attempts at furnishing any concise definition on this refractory and elusive term. However, the United States government, based on its experience in COIN operations in Afghanistan and Iraq, defines COIN as: “Comprehensive civilian and military efforts taken to simultaneously defeat and contain insurgency and address its root causes.”⁴² Apparently reinforcing the U.S perspective, R. Scott Moore defines COIN as:

Counterinsurgency is an integrated set of political, economic, social and security measures intended to end and prevent recurrence of armed violence, create and maintain stable political, economic and social structures, and resolve the underlying causes of an insurgency in order to establish and sustain the conditions necessary for lasting stability.⁴³

According to John J. McCuen and Robert Thompson in their writing separately in the 1960s have emphasized the centrality of military and security operations in their conception of COIN. McCuen sees COIN as: “Preserving oneself and annihilating the enemy, establishing strategic bases, mobilizing the masses, seeking outside support, and unifying the effort.”⁴⁴ On his part, Thompson looks at COIN as a “Military response, which entails clearing an area of insurgent activity, holding it for the government, winning its inhabitants, then moving on to another area.”⁴⁵ Having defined counterinsurgency, it is pertinent to note that, the unprecedented nefarious and inhuman activities orchestrated by the *Boko Haram* Fundamentalist Islamic sect have attracted the forceful response of the Federal Government of Nigeria. This is made possible through the establishment and deployment

³⁴ Ibid.

³⁵ Ibid.

³⁶ S. Mefz and R. Millen, *Insurgency and Counterinsurgency in the 21st Century Re-Conceptualizing Threat and Responses* (2004), 178-

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibeang Oden Ewa, *Nigeria's Insurgency and Counterinsurgency: Implications, Issues, and Lessons for National Security* (2018) (6) (1) Review of History and Political Science, 35.

⁴¹ Ibid.

⁴² United States Government, *Counterinsurgency Guide* (United States: Bureau of Political –Military Affairs, Department of State, 2009), 6.

⁴³ Scott, R. Moore, *The Basics of Counterinsurgency* <<https://smallwarsjournal.com/documents/moorecoinpaper.pdf>> 64.

⁴⁴ Ibiang Oden Ewa, (n35) 36.

⁴⁵ Ibid.

of the Joint Task Force Code named (JTF) Operation Restore Order 1 on 12th June 2011⁴⁶ which later renamed as Operation *Lafiya Dole* in 2015.⁴⁷ The JTF comprises of personnel from the Nigerian Armed Forces, Nigeria Police Force (NPF), the Department of State Security (DSS), Nigerian Custom Service (NCS), Nigeria Immigration Service (NIS) and the Defence Intelligence Agency (DIA).⁴⁸ The force was founded with the mandate of restoring law and order in the North-Eastern parts of Nigeria and Borno State in particular.⁴⁹ However, the counterinsurgency measures of the JTF in the *Boko Haram* infested States have intensified the militant activities of the sect, implicating human rights abuses. According to Amnesty International the JTF have perpetrated serious human rights violations in their response to the *Boko Haram*. Hundreds of people accused of link to *Boko Haram* have been arbitrary detained without charge or trial, others have been extra-judicial executed or subjected to enforced disappearance.⁵⁰ The ignoble disposition of the JTF contradicts the internationally recognized and time-honoured responsibility of the security agencies in the protection and preservation of the rights of the citizenry.

Implications of the Counter-Insurgency Measures of the JTF on the Citizens Right against Torture

The Security agencies in their counter-insurgency measures against *Boko Haram* continues to commit gross human rights abuses and serious violations of international human rights and humanitarian laws resulting in extreme violation of the Constitution and other normative regime. One of the serious human rights violation by the security agencies in the fight against *Boko Haram* that shocked the scruples of the international community is right against torture. Torture as one of the serious human rights violation, as it includes violation of series of fundamental rights, including the right to life, right to personal liberty, right to presumption of innocence and also the victim's family right to know the truth about what happened and whereabouts of the victim. It is pertinent to examine some of the human rights violations that may occurred in relation to torture.

1. Arbitrary Arrests and Torture of Suspects: all human beings have the right to enjoy their liberty and security. It is axiomatic that, without an effective guarantee of the liberty and security of the human person, the protection of other individual rights becomes increasingly vulnerable and often illusory.⁵¹ Yet, as it evidenced by the most of the international monitoring organs, arrest and detention without reasonable cause, and without there being any effective legal remedies available to the victims concerned, are commonplace.⁵² In the course of such arbitrary and unlawful deprivations of liberty, the detainees are frequently also deprived of access both to lawyers and to their families, and also subjected to torture and other forms of ill-treatment.⁵³

Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides that:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

While, Article 6 of the African Charter on Human and Peoples' Rights (ACHPR) provides that:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrary arrested or detained.

⁴⁶ P. Mbah and C. Nwangwu, The Counter-Insurgency and Human Rights Abuses in Northern Nigeria 2011-2013, (2014) (4) (5) Journal of Education and Social Research (MCSER), 73.

⁴⁷ Operation Restore Order was later renamed to Operation Lafiya Dole, by Former Chief of Army Staff, Lt. Gen. Tukur Yusuf Buraita in 2015.

⁴⁸ P. Mbah, and C. Nwangwu, (n73)

⁴⁹ Ibid.

⁵⁰ Amnesty International, Nigeria: Trapped in the Cycle of Violence, A Report Published by Amnesty International, 2012, 4.

⁵¹ Human Rights and Arrest, Pre-Trial Detention and Administrative Detention: Human Rights in the Administration of Justice, A Manual on Human Rights for Judges, Prosecutors and Lawyers, 159.

⁵² Ibid.

⁵³ See United Nations Doc. E/CAN.4/1999/63, Report of the Working Group on Arbitrary Detention.

The above human rights treaties stipulated, though in a different terms, that deprivation of liberty must be in all cases be carried out in accordance with the law, the principle of legality. Also, the deprivations of liberty must not be arbitrary; a wide notion was made possible for the international monitoring organs to consider factors that make the domestic laws or their application unreasonable in the circumstances. As to the principle of legality, the Human Rights Committee has held that: ‘It is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation. In other words, the grounds for arrest and detention must be established by law’.⁵⁴

In a case where a person was arrested without warrant, which was issued more than three days later, contrary to the domestic law that lays down that a warrant must be issued within 72 hours after arrest.⁵⁵ The Committee concluded that Article 9 (1) had been violated because the author had been deprived of his liberty in violation of a procedure as established by law.⁵⁶ With regards to the meaning of the words arbitrary arrest in Article 9 (1), the Committee has explained that:

Arbitrariness is not to be equated with against the law, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law...this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances. Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.⁵⁷

In other words, remand in custody pursuant to lawful arrest not only be ‘lawful’ but also ‘reasonable’ and ‘necessary’ in all the circumstances for the aforementioned purposes. Furthermore, the African Commission on Human and Peoples’ Rights, consequently concluded that arrest and detentions carried out by Rwanda Government on grounds of ethnic origin alone ... constitute arbitrary deprivation of the liberty of an individual; such are thus, clear evidence of a violation of Article 6 of ACHPR.⁵⁸ In another case the African Commission held that:

The indefinite detention of persons can be interpreted as arbitrary as the detainee does not know the extent of his punishment, Article 6 of the African Charter had been violated in this case because the victims concerned were detained indefinitely after having protested against torture.⁵⁹

Furthermore, it constitutes an arbitrary deprivation of liberty within the meaning of Article 6 of the African Charter to detain people without charges and without the possibility of bail; in this particular case against Nigeria the victims had been in these conditions for over three years following elections.⁶⁰ In Nigeria, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is the Supreme law of the land. The right against unlawful detention is provided under section 35 of the 1999 Constitution and the section provides that: ‘Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in following cases and in accordance with a procedure permitted by law...’⁶¹

This means that an accused person can be deprived of his personal liberty is against one of the pillars of any democratic set up because it directly in conflict with or offends the power of the state to remove a person out of circulation. In the case of *Onu Obekpa v. Commissioner of Police*⁶² where the accused was held in custody on

⁵⁴ Communication No. 702/1996, C Mclawrence Jamaica (views adopted on 18 July 1997), in UN Doc. GAOR, A/52/40 (Vol.II) pp 230-231, para, 5.5.

⁵⁵ Ibid,

⁵⁶ Communication No, 77/1997, Gridin v Russian Federation (views adopted on 21 July, 2000), in UN Doc GAOR, A/55/40 (Vol.II) p. 175, para, 8.1.

⁵⁷ Communication No. 458/1991, A.W. Mukony v. Cameroon (views adopted on 21 July 1994)

⁵⁸ ACHPR, Organisation Contre La Torture and Others v. Rwanda, Communications NO. 27/89, 46/91. 49/91. And 99/93, decision adopted during the 20th Ordinary Session, October 1996, para. 28.

⁵⁹ ACHPR, World Organisation against Torture and Others v. Zaria, Communications No. 25/89, 47/90, 56/91 and 100/93, decision adopted during the 19th Session, March 1996, para. 67.

⁶⁰ ACHPR, Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, Communication No. 102/93, decision adopted on 31 October 1998, para. 55.

⁶¹ CFRN, 1999 as amended, s.35.

⁶² (1981) 2 NCLR, 420.

the allegation of theft, when he applied for bail, the police opposed the application. However, the court, in granting bail, noted that the spirit behind the provision of section 32 (4) (a) of the 1979 Constitution, now section 35 of the 1999 Constitution is to keep an accused person out incarceration until found guilty. It is a constitutional privilege which he is entitled to under the constitution. Furthermore, section 34 (1) of the 1999 Constitution provided for the right to dignity of human person, which is to the effect that:

Every individual is entitled to respect for his dignity of his person and accordingly-

- a. No person shall be subjected to torture or inhuman or degrading treatment,
- b. No person shall be held in slavery or servitude,
- c. No person shall be required to perform force or compulsory labour.

But, section 34 (2) of the 1999 Constitution, goes on to provide that, ‘force or compulsory labour’ does not include the following: any labour that is required in consequence of the sentence or order of a court, any labour required of members of the armed forces of the federation or the Nigeria Police Force in pursuance of their duties as such, in the case of person who have conscientious objection to service in the armed force of the Federation, any labour required instead of such service and any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community.⁶³ ‘Force or Compulsory Labour’ also does not include any labour or service that forms part of normal communal or other civic obligations for the well-being of the community, such compulsory national service in the armed force as may be prescribed by an Act of the National Assembly or such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of National Assembly.⁶⁴ The words ‘torture’, ‘inhuman’, ‘degrading’, ‘slavery’ are not defined in Section 34 or any section of the 1999 Constitution. However, the distinction between ‘torture’ ‘inhuman’ and ‘degrading treatment or punishment’ reflects deference in the intensity of suffering and assessment of state purpose as determined by contemporary standards.⁶⁵ The distinction would then appear to be a function of the degree or quantum of pain or suffering inflicted on a person.⁶⁶ Niki Tobi JCA (as he then was) in the case of *Uzoukwu v. Ezeonu II*⁶⁷ defined the key words in Section 30 (1) of the 1997 Constitution which is the same Section 34 (1) of the 1999 Constitution. The word ‘dignity’ according to him, as used in the section conveys the meaning or connotation of being degrading at least in ones exalted estimation of his social status or societal standing.⁶⁸ The word ‘Torture’ he said, etymologically means to put a person to some form of pain which could be extreme. It also means to put a person to some form of anguish or excessive pain. He went further to state that it could be physical brutalization of the human person, and it could also be mental worry. This covers a situation where the person’s mental orientation is disturbed that he cannot think and rationally do things, as a rational human being that he is.⁶⁹ With regard to the word ‘inhuman,’ Justice Tobi said that it is the opposite of the word ‘human.’ It then follows that, an inhuman treatment is a barbarous, uncouth and cruel treatment: a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty.⁷⁰ For ‘degrading treatment,’ he stated that it has the element of lowering the social status, character, value or position of a person. In other words, the victims develop some form of complex which is not dignifying at all.⁷¹ In defining ‘slavery,’ he opined that it is the state of being held as a slave, a state of being in drudgery. The word ‘servitude’ conveys generally similar meaning. It also means subjecting a person to compulsory labour or subjecting a person to irksome conditions like slave.⁷²

⁶³ Chukwu Amari Omaka, Right to Life and the Dignity of Human Person (Section 33 and 34 of the 1999 Constitution) Human Rights Law and Practice in Nigeria, Vol. 1 (Published by Chenglo Limited, Enugu, 2005), 113.

⁶⁴ Ibid.

⁶⁵ Murdoch Jim, Liberty and Security of a Person in a State under the Rule of Law. Being the Text of a Paper Delivered at the British –Nigeria Law Week held on 23-27 April (2001), in Abuja, Nigeria. 12.

⁶⁶ Ibid.

⁶⁷ (1991) 6 NWLR (Pt. 200) 708.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

Against the background of these definitions, the provision of section 34 (1) of the 1999 Constitution can be appreciated. A punishment that is unduly excessive may be, by its length or severity or one that is very harsh having regard to the offence for which it is prescribed, may amount to torture. Equally, infliction of punishment selectively or discriminatorily against a group or class of people like minorities or the poor will be cruel or amount to torture.⁷³ Furthermore, section 1 of the Anti-Torture Act 2017 imposes an obligation on government to ensure that all persons, including suspects, detainees and prisoners are respected at all times and that no person under investigation or held in custody is subjected to any form of physical or mental torture. It also admonish government to adhere to domestic and international standards on absolute condemnation and prohibition of torture. The Act further, stated that, no exceptional circumstances whatsoever, a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for torture. However, despite the prohibition of torture through arbitrary arrested and detention by the international, regional domestic instruments, cases of torture by the security agencies through arbitrary arrest and detention in Nigeria is still very rampant, particularly with regard to the Boko Haram insurgencies in the North-East Nigeria. Amnesty International and other sister organisations have interviewed many people with regard to torture by the JTF in their counter-insurgency measures against Boko Haram. It is pertinent here to examine some of the interviews conducted by the Amnesty International and other sister organisations in that regards.

According to Amnesty International, that one Sale Jega (not his real name), a 25 year old carpenter from Maiduguri, who was arrested along with 18 others on the 25th November, 2012 during a cordon-and-search operation in Gwange, and taken to Giwa Barracks. He escaped after more than 15 months in detention when Boko Haram attacked the barracks. His story has it that, on someday 50 o 80 people died, mainly of starvation and thirst. Out of the 19 he was arrested with, only four survived.⁷⁴ He narrated his story thus

We have a sense that they just want us to die. Many people died in in the cell. Anytime we were denied water for two days, 300 people died (in those two days) sometimes we drink peoples' urine, but even the urine at times we could not get. Every day they died, and whenever someone died, (we the other detainees) were happy because of the extra space. And because we will be taken out, to take out the corpses and the military will give us water to wash our hands and when washing our hands, we drink the water.

Suleiman Ali was 15 year old when he was arrested by soldiers in Northern Nigeria and taken to Sector Alpha in Damaturu, Yobe State, a facility locally called as Guantanamo.⁷⁵ Suleiman told Amnesty International that:

He was beaten with gun butts, batons and machetes, and had melted plastic and cool water poured on him. He also says he was forced to watch the extra-judicial execution of other detainees and made to walk and roll over broken bottles.⁷⁶

Suleiman was one of 50 people, mostly aged between 13 and 19, arrested in March 2013 on suspicion of being a member of Boko Haram. The arrests followed the killing of a soldier by unknown gunmen. Suleiman was detained for three weeks without being charged to court, and prevented from contacting his lawyers and family. Along with 31 other detainees, Suleiman was released in April 2013, within a week 30 of those people had died. Suleiman survived and provided a witness account of the violence. A 15 year old Mariam (not her real name) said she was beaten in Monguno Barracks after she had been rescued from Boko Haram custody, even though she explained that she and her friends had been abducted by Boko Haram. She explained that:

The soldiers started beating us saying we are Boko Haram wives. When the beating started, one soldier will come and beat us and then leave, and then another will beat us and leave. We were beaten with a stick and a cane. All parts of our bodies were hit including our heads. You can see the signs of the beating even now on our

⁷³ See *Furman v. Georgia* (1972) 408 U.S 283.

⁷⁴ C. Obi and U. Ezeogu, *International Torture as an Abuse of Human Rights in the Fight against Terrorism in Nigeria: An Ethical Evaluation*, (2017) (13) *Ogirisi: A New Journal of African Studies*, 135.

⁷⁵ Amnesty International, 'They Betrayed Us' Women Who Survived Boko Haram Raped, Starved and Detained in Nigeria, (Published by Amnesty International 2018), 70.

⁷⁶ *Ibid.*

back...she also said that before transporting them to their barracks with their vehicles, the soldiers made us to lie on the road and threatened to run them over.⁷⁷

A 25 year old Falta (not her real name) told Amnesty International that, her child died in Giwa Barracks in or around Mid-2016, she said:

My daughter was five months old when she died. She always fainted whenever she went to the toilet. They gave us drugs in the barracks but she was not responding to them and when I took her to the soldiers to complain, they would chase me away. They never admitted her in the hospital or carried out test on her to find out what was wrong. She was sick for two weeks before she died.

- ii. Rape and Sexual Violence: Rape and sexual violence have an extremely long history and it occurs in peace time and also during conflict or war situation.⁷⁸ For many centuries, women were viewed as ‘victor’s Spoil,’ in ancient Greece, as in many other societies, victors in war gained the right to rape. Women are raped in all forms of armed conflict, both international and internal, whether the conflict is fought primarily on religious, ethnic, political or nationalists grounds, or a combination of all these.⁷⁹ Rape are committed by men from all sides that is, both enemy and friendly forces.⁸⁰ Rape, is a crime whose phenomenon is highly controversial, and emotional issues are really involved. Its social context cannot be ignored, yet it is one the most under reported crimes.⁸¹ It is difficult to obtain accurate official statistics to show the frequency of this offence but one can say that it is on the increase.⁸²

The rampancy and ferocity of rape today either in peace or war situation is of global concern. The law sought to give protection to a father’s interest in the virginity of his daughter or a husband’s interest in his wife’s fidelity. It was therefore, observed in the case of *People v. Al Berta*⁸³ that: The purpose behind early rape laws is to protect the chastity of women and thus their proprietary value to their fathers and husbands.⁸⁴ However, there is no universally accepted definition of rape; definitions vary between different legal systems.⁸⁵ Increasingly however, the elements of crime of rape by the Rome Statute for the International Criminal Court, and International and Regional Human Rights Tribunals have developed principles which should govern definitions of rape in domestic laws.⁸⁶ The definition of rape in the elements of crime to the Rome Statute of the International Criminal Court is the most advanced definition available to international lawyers,⁸⁷ Rome Statute of the International Criminal Court 1998, defines rape as a crime against humanity in Article 7 (1) (g) which provided that:

- i. The perpetrator invade the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body;
- ii. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of coercive environment, or the invasion was committed against a person incapable of giving genuine consent,⁸⁸

⁷⁷ Ibid.

⁷⁸ Babalola Abegunde, Re-Examination of Rape and its Growing Jurisprudence under International Law, (2013) (6) (4) Journal of Politics and Law, 187.

⁷⁹ De-Than C, and Shorts, C., International Criminal Law and Human Rights, (Sweet & Maxwell, London, 2013), 345-386 at 347.

⁸⁰ Babalola Adegunde, (n187)

⁸¹ Ibid.

⁸² Ibid.

⁸³ (1984) N. Y. 2d 154, 167.

⁸⁴ Ibid.

⁸⁵ O. T. Akinwale and O.S. Omoera, A Review of Literature: Rape and Communication Media Strategies in Nigeria,

<<http://www.researchgate.net/publication.pdf>>6 accessed on 18/7/2025., 1.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid Article 7 (1) (g).

Amnesty International recommends that this definition should be fully incorporated into domestic laws so as to maximise the protection of the human rights of women and girls to ensure the right to redress and reparations in case of rape.⁸⁹ Acts of rape discriminatory laws that condone rape or prevent its successful prosecution amount to violations of various international human rights treaties such as United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁹⁰ The International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as regional treaties such as the African Charter on Human and Peoples' Rights (ACHPR).⁹¹ Rape of women and girls is an act of gender based violence and constitutes discrimination as prohibited by CEDAW, which sets out a detailed mandate to secure equality between men and women and to prohibit discrimination against women.⁹² The definition of discrimination against women in article 1 of CEDAW includes violence against women. The definition of discrimination includes gender based violence, that is, violence that is directed against women because she is woman or that affect women disproportionately.⁹³ It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.⁹⁴

The International Criminal Tribunal for the Former Yugoslavia in its judgment in the *Furundžija's* case held that: "rape as coercion or force or threat of force against the victims or a third person."⁹⁵ Also in the case of *Akayesu*, the Tribunal held that; 'rape is a form of aggression' and that the central element of the crime of rape cannot be captured in a mechanical description of objects and body parts.⁹⁶ The Optional Protocol to CEDAW offers women a direct means of seeking redress at the international level for violations of their rights.⁹⁷ Nigeria has ratified CEDAW without reservation on 13 June, 1985 and the Optional Protocol on 22 November, 2004.⁹⁸ The law of rape under Nigeria law is based on statute. The application of the law of rape under statute depends on which part of the country it is being applied. If its application is in the Southern States of the country, the Criminal Code Act would be applied⁹⁹ while in the Northern States of Nigeria the Penal Code Act is applied.¹⁰⁰ The relevant section of the Criminal Code Act with regard to crime of rape is contained in section 357 which provides that:

Any person who has unlawful carnal knowledge of a woman or girl without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.¹⁰¹

Under the Penal Code Act, section 282 provides that:

A man is said to commit rape who ...has sexual intercourse with a woman in any of the following circumstances:

-

- a. Against her will;
- b. Without her consent;
- c. With her consent, when her consent has been obtained by putting her in fear of death or of hurt;

⁸⁹ O. T. Akinwale and O. S. Omoera, (n6) 13.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ CEDAW, Art 1.

⁹⁴ Ibid.

⁹⁵ M. S. Gay and J. McDougall, Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery Practice during Armed Conflict, E/CN.4/SUB. 2/1998/13.

⁹⁶ Prosecutor v. Jean Paul Akayesu, ICTR 96-4-T <[https:// inctr.irmct.org/en/cases/ictr-96-4.](https://inctr.irmct.org/en/cases/ictr-96-4)> accessed on 30/11/2020, 96.

⁹⁷ M. O. A. Ashiru and O. A. Orifowomo, Law of Rape in Nigeria and England: Need to Re-Invent in the Twenty-First Century, (2015) (38) Journal of Law, Policy and Globalization, 32.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Criminal Code Act, s, 357.

- d. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- e. With or without her consent when she is under fourteen years of age or of unsound mind.

Both under the Criminal Code and the Penal Code Acts, mere penetration is sufficient to constitute the offence of rape or sexual intercourse as the case may be.¹⁰² The Penal Code Act also makes specific provision in relation to children under 16 years of age, who have been sexually assaulted by those in position of authority. Section 283 of the Penal Code Act stated that; any consent given by the girl under the age of 16 to her teacher, guardian or any person entrusted with her care or education is not valid consent.¹⁰³ Despite the prohibition of rape and other sexual violence by the international, regional and domestic instruments, still Amnesty International and other Human Rights Organisations have accused Nigerian Military Joint Task Force JTF for commission of crime of rape and sexual violence against women and girls in their counter measures against *Boko Haram* insurgency. Amnesty International and the Human Rights Watch have interviewed some of the victims of alleged rape and sexual violence by the JTF and it is pertinent to examine some of these interviews.

At *Kaleri* neighbourhood in Maiduguri on July, 9, 2011 after the raid, which resulted in burning houses, cars and killing men of the neighbourhood, two JTF soldiers were said to have raped a woman whose husband they had killed. An eye witness to the incidence states that:

I saw two soldiers beat a woman in her compound. They then raped her one after the other. It was very close to where I was hiding...she lay there until the morning when people came to carry her to hospital. They have since taken her to the village for treatment. Because of shame she cannot come back.¹⁰⁴

Twenty (20) year old Ama (not her real name) told Amnesty International that she was raped after accepting food from a JTF member who then felt entitled to payment. She said:

The soldiers and civilian Joint Task Force CJTF will give you food but in the night they will come back around 5pm or 6pm and they will tell you to come with them...one JTF man came and brought food to me, he came back in the evening, but I hid myself. The next day he said I should take water from his place and I went. He then closed the tent door behind me and raped me. He said I gave you these things, if you want them we have to be husband and wife.¹⁰⁵

Twenty-Five (25) year old Kale (not her real name) told Amnesty International that she was raped on two occasions in the camp. She said:

There was a day (in or around April, 2015), I was pregnant, and a soldier raped me. He knew I was five or six months pregnant. He said he saw me three times before. He did not offer me any food, he called me and I ignored him, but on the third day after I ignored him, he forced me to a room, and raped me.¹⁰⁶

Scores of Internally Displaced Persons (IDPs) said that women and girls were being sexually exploited and raped by the soldiers and CJTF members in the satellite camps. They said women and girls were coerced to become the “girlfriend” or “wife” of the soldiers or CJTF members, which involved being available for sex on a regular basis.¹⁰⁷ Women and girls said that they were coerced to become girlfriends of soldiers or CJTF in *Bama* Hospital Camp during the famine like situation of late 2015 and early 2016, when people were dying daily from hunger.¹⁰⁸

¹⁰² Criminal Code Act, s. 6 and Penal Code Act, s. 282.

¹⁰³ M. O. A. Ashiru and O. A. Orifowomo, (n32) 33.

¹⁰⁴ Human Rights Watch, *Spiraling Violence: Boko Haram Attacks and Security Forces Abuses in Nigeria*, (Human Rights Watch, USA 2012,) 9.

¹⁰⁵ Amnesty International, *Interview with a victim of Rape by JTF in the IDPs Camp in Italic*, (Published by Amnesty International, 2017) 42.

¹⁰⁶ Amnesty International, *‘They Betrayed Us’ Women How Survived Boko Haram Raped, Starved and Detained in Nigeria*, (n70) 53.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

1. Challenges of Holding the JTF Accountable for the Commission of Torture in their Counter-Insurgency Measures against Boko Haram.
 - i. Weakness of the Institution: The institutional mechanism charge d with the responsibility of monitoring and discipline the security agencies for human rights violations remains largely ineffective. Internal disciplinary systems within the police, military, and other security agencies lack credibility. In addition, external oversight bodies such as the National Human Rights Commission (NRCH) which is established as a result of demand from the international community from nations that profess to be practising democracy, elevation of the respect for the rule of law, respect for fundamental freedoms and basic human rights and the operation of good governance standards that seek to accommodate the actualisation of the yearnings of the greatest number of the citizenry, as well as the operation guiding principle of the political and economic governance structure proved to be ineffective in that respect, due to the fact that, the appointments of its principals officer are been done by the president, which at times renders the activities of the Commission not independent. Also, the Police Service Commission, the Commission shouldered with the responsibility for the promotion and disciplinary powers over an errant officers of the Nigerian Police Force is also constrained due to inadequate funding, limited autonomy, and weak enforcement powers. These challenges hinders the ability to conduct thorough investigations or enforce punitive measures against perpetrators of torture among the security agencies.
 - ii. Political Interference and Elite Protection: another critical challenges is the role of political interference in shielding perpetrators from accountability. High-ranking officials within the security apparatus often enjoy political protection, thereby undermining efforts at impartial investigation and prosecution of the suspects. In political sensitive cases, torture is sometimes employed as a tool for suppressing dissent or coercing confessions, with perpetrators insulated from consequences due to their affiliations or political expedience of their action.
 - iii. Fear of Retaliation: victims and witnesses of torture frequently refrain from reporting abuses due to fear of reprisal from security agencies. At times the security agencies even threatened some of the international and local organisations whose aim and objectives is the promotion and protection of human rights of the citizens by the security agencies. There are a lots of instance where human rights activities and journalists were subjected to intimidation, threats and even detention by the security agencies for speaking out against torture. This culture of impunity against human rights activities and journalist have hindered the pursuit of justice by the victims of torture.

CONCLUSION AND RECOMMENDATIONS

Nigeria has been noted as facing a crisis of human rights violation with the resultant rating the country as one of the nations with very poor human rights record. Human rights violations cut across all spheres of man's existence and the security agencies, particularly the JTF have been accuse globally as one of the security agencies with a greatest records of human rights violations particularly the right against torture. The fact is that human rights are backed by international, regional and domestic instruments and laws. For there to be violation of human rights, there must be a form of infringement of rights guaranteed under an existing law. to violate the most basic human rights, such as right against torture is to deny individuals their fundamental moral entitlement. It is in this sense that, to treat them as if they are less than human and underserving of respect and dignity. Despite the fact that, JTF have committed serious human rights violation such as torture, cruel, inhuman and degrading treatment and punishment against the citizens in their counter-insurgency measures against Boko Haram, holding them accountable for such violation become a very difficult due to the challenges that bothers on the weak institution, political interference and elite protection of the perpetrators as well as fear retaliation by the security agencies against the victims and the witnesses to the act of torture. In view of the above challenges, the paper recommends that, the institution should be powered in tackling issues of human rights violations and there should also be a political commitment to human rights protection by the government as well as protection to victims of torture and repatriation to the victims of torture by the Joint Military Task Force and furthermore, the identified perpetrators of torture be brought to justice