

CUSTODIAL TORTURE: A NAKED VIOLATION AND DEGRADATION OF THE RIGHT TO HUMAN DIGNITY¹

INTRODUCTION

The very idea of a human being in custody other than for protection and nurturing is an anathema to human existence. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty - an inhuman trait springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypocritical thinking.

Those who are endowed in our law to carry the burden of enforcing our laws, such as the police, have the responsibility to carry such burden with care and in trust for the citizenry. They must not get intoxicated by the enormous powers made available to them by the law for its own cause and in the benefit of the citizens, to molest, harass, intimidate and cage the innocent citizens they are meant to protect.¹

This article is prompted by the attitude of the Law enforcement agents such as the police, the National Drug Law Enforcement Agency (NDLEA), Nigerian Customs; Economic and Financial Crime Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Intelligent Bureau, Coastal Guard, State Security Service (SSS) etc and how they deal with suspects in their custody which to a large extent destroy individual dignity. However, custodial torture is not restricted to the law enforcement agents alone. The locking of a widow out of her matrimonial home has been held to be discriminatory and amounts to inhuman and degrading treatment.² It is a sacred responsibility of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life and human dignity while citizen is in custody whether of the police net or prison custody. No doubt, that citizen may be incarcerated for criminal offence under the law.³

The human dignity is very precious and this is why the constitution of the Federal Republic of Nigeria recognized it, hence, human dignity commands State/National attention more against its violation by Law enforcement agents.⁴ Being a human being is something fortunate and one is accorded with a dignity infused in the human system that must revolt against its non recognition in

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² *Isenafumhe v Joyce Amadin* (2001) 1 CHR p. 458 at 568.

³ *Helen Ugochukwu v Stephen Ugochukwu* (2006) CHR 344 at 351.

⁴ See for example the case of *Ransome - Kuti v. Attorney General Federation* (2001) F.W.L.R (pt 80) 1637 at 1697, where the Supreme Court Per ESO stated that "It seems to me fairly obvious that the Enforcement of the Right not to be tortured or be subject to in human or degrading treatment under the provision of Section 19(1) by means of Section 32 contemplated torture or inhuman treatment arising from criminal process. It does not envisage ordinary action arising civil wrong.

⁵ This is because the right to human dignity and liberty is among the foremost fundamentals of human rights: see Ishola, A. S., "Human Rights, The West and Islamic Law: A Case for Dichotomy", (2004 - 2006) 3 *Al-Maslaha: Journal of Law and Religion*, 209.

any form by reflex action. This ethereal gift is zealously guarded by all within and most wantonly disregarded by most.

Custodial violence, perhaps one of the worst crimes in a civilized society is a matter of concern for many reasons. Custodial violence, including torture and death in the lock-ups, strike heavy blow at the rule of law which demands that the powers of the executive should not only be derived from law but also that they should be limited by law⁵. The law of arrest is one that balances individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other. It weighs and balances the rights, liberties and privileges of a single individual and those of individuals collectively. It emphasizes on what is wanted and where to put emphasis, the criminal or the society, the law violator or the law abider. Transparency of action and accountability are two possible safeguards to prevent any abuse of power to arrest a citizen⁶.

The primary duty of those in uniform is to uphold law and order and protect the citizen. If members of the police force resort to illegal abduction and assassination, if other members of that police force do not record and investigate complaints in this behalf for long periods of time, if those who have been abducted are found to have been unlawfully detained in police stations in the state concerned prior to their probable assassination, the case is not one of errant behavior by a few members of that police force, it betrays scant respect for life and liberty of innocent citizens and becomes a matter of grave concern⁷. This article intends to discuss the conceptual appraisal of torture and human dignity, international prohibition of torture, liability of the police, prison officials or state for the injury sustained by the detained person while in custody, the right to medical care of the detained person as well as the compensation of the detained person whose rights are trampled or trampled upon in the cause of detention.

II. DEFINITION AND MEANING OF TORTURE

The concept, "torture" as a term means the infliction of intense pain to the body or mind, to punish or to extract a confession or information, or to obtain sadistic pleasure. A person or suspect who is detained by law enforcement agents is a person whose freedom is directly controlled or limited. Essentially, torture is a deliberate infliction of pain (physical or mental) for a purpose desired by the perpetrator. To the victim of torture, it results in the violation of the dignity inherent in his humanity. It is an instrument to implore the will of the strong over the weak by suffering and degradation which

⁵ A.S Anand, "curbing custodial crimes" available at www.pib.nic.in/feature/fegr2001/fau/2001/f130820011/html (assessed on 01/06/2010).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ See Bryan G.A. (ed) *Black Law Dictionary*, 8th Edition.

⁹ Such as "affront to (prisoners') dignity as human beings, sometimes reaching the dimension of torture": see A. Adeyemi, "Custodial Rights: Rights of Prison Inmates" 2:11, *JUSTICE: A Journal of Contemporary Legal Problems* 1991 48; lumping many inmates in a single room, lack of provision of adequate food and clothing, and even medical care: see Adeyemi, A. A., "United Nations Human Rights Instruments and Criminal Justice Norms and Standards", in Bassiouni, M. C. and Motale, Z. (eds.), *The Protection of Human Rights in African Criminal Proceedings* (London: Martinus Nijhoff Publishers, 1995) p.10. See also Ifaturoti, T. O., "The Challenges of Nigerian Prisoners in the context of Human Rights Campaigns" in Bassiouni, M. C. and Motale, Z. (eds.), *op. cit.*, 159.

destroys to a large extent the individual personality of the victim¹⁰. Assaulting a detainee with horse whip, inflicting blows on him with a clenched fist and putting him in handcuffs overnight amounts to torture and degrading treatment.¹¹

The word torture has become synonymous with the darker side of human civilization. Adriana P. Bartow observed in the case of *Shri Bisau & Anor v State of West Bengal*,¹² as follows:

Torture is a wound in the soul- so painful that sometimes you can almost touch it, but it is also intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy, including yourself.

Torture means any act by which severe pain and suffering whether physical or mental, is intentionally inflicted by or at the investigation of a public official on a such person for such purposes as obtaining from him or a third person information or conversion, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.¹³ It does not include pain or suffering arising from, inherent in or extent consistent with the standard minimum rules for the treatment of prisoners¹⁴ but includes continuous detentions of suspects without trial in the circumstances of their HIV positive condition which caused them mental and physical agony which must have exacerbated their fear of death especially as the restriction by their detention must have comprised their access to proper or better medical care.¹⁵

The attack on human dignity can assume any form and manifest itself at any level.¹⁶ It is not merely the negative privilege of a crude merciless display of physical power by those who are cast in a role play of police functioning, but also a more mentally lethal abuse of position when springing from high pedestals of power in the form of unjustified accusations, unjust remarks, menacingly display of potential harm, that can strike terror, humiliation and a sense of helplessness that may last longer than a mere physical harm and which brook no opposition.¹⁷

¹⁰ Even beasts in custody get a better deal. The most ferocious of man-eaters when cages are regularly fed and their health is a cause of great concern and anxiety to many. After all, we do possess the sensitivity to realize that the Mother Nature has meant it that way by instilling in the system of even animals, instincts that are inviolable. That is why the onlooker appreciates the majestic coat and gait of a caged man-eater and anyone who harms it knows too well he can do so with impunity to satiate his ego or sheer wantonness that would otherwise freeze or melt.

¹¹ Per Smith J. in *Ifeanyi Anyanor v CP, Delta State & 3 Ors* (2007) CHR pg. 183 at 196.

¹² (2005) CHR 136 at p.144.

¹³ Nsereko, D. D. N., "The Poisoned Tree: Responses to Involuntary Confessions in Criminal Proceedings in Botswana, Uganda and Zambia" in Bassiouni, M. C. and Motala, Z. (eds.), *op. cit.*, p.84.

¹⁴ See article 1 of the General Assembly of the United Nations adopted without vote resolution 3452 (xxx), a declaration on the protection of all persons from being subjected to torture and cruel, inhuman or Degrading Treatment or Punishment.

¹⁵ See *Odafe & Ors v. Attorney General of the Federation* (2005) CHR 309 at 322.

¹⁶ The various forms custodial torture may take include assault, rape, stocks, the rack, crucifixion, mutilation, the electric shock, pulling out finger or toe nails, burning with cigarettes, pulling or squeezing male genitals, inserting foreign objects into the anus or the vagina, near suffocation, blindfolding, exposure to extreme cold or heat, (London) subjection to fatigue, and so forth. See Nsereko, D. D. N., *op. cit.*, 83.

¹⁷ The area of human dignity is in one's sacred self and that field is quite apart and distinct from the field of considerations of rights and duties, powers and privileges, liberties and freedoms or rewards and punishments

On the other hand, dignity is the state of being noble and this may be hereditary such as peerage or for life such as life peerages and knighthoods. The dignities of peerages and *baronetcies* are created by writ or letter patent that are of knighthood by dubbing as knight¹⁸. Degradation is reduction in rank, degree or dignity¹⁹. It also means reviling, holding one up to public obloquy, lowering a person in the estimation of the public, exposing to disgrace, dishonor, or contempt²⁰. Treatment of a suspect will be said to be inhuman and degrading where premeditated and was applied for hours at a stretch and caused either actual bodily injury or intense physical degradation because it was deemed treatment to be degrading because it was such as to arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing them. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1984. The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment²¹.

The duty of states to discountenance both the actual practice of torture and the use of its fruits in judicial proceedings is beyond a treaty obligation, it is a duty arising from the international recognition of the prohibition (against torture) as a peremptory norm of public or customary international law a "*jus cogens*" - which casts upon every member state of the global community whether or not merely to refrain from authorizing or conniving against torture, but also to suppress and discourage its practice.²²

III. The Prohibition of Custodial Torture

Undoubtedly, there is universal prohibition of torture promulgated into law by various Governments internationally. The Universal Declaration of Human Rights 1948²³, the International Covenant on Civil and Political Rights, 1966,²⁴ the American Convention of Human Rights 1989,²⁵ African Charter

wherein the laws operate. . . It a person commits any wrongs, he should be punished, but it is not necessary to humiliate him and mane his dignity as a human being.

¹⁸ See Garner B.A. (ed.) *op.cit*, p. 488.

¹⁹ *Ibid* at p. 456.

²⁰ See the case of *Isenalumhe v. Joyce Amadin (supra)* at p.466.

²¹ This was the view of the European Court on Human Rights in *Georgi Spasov Lochev v. Bulgaria* (2006) CHR at 259.

²² See *A (FC) & others v Secretary of State* (2005) CHR 1 @ 58. See also *Prosecutor v. Furandzija* (1998) ICTY.

²³ Adopted and proclaimed by the General Assembly Resolution 217A (III) of 10th December, 1948. It declared in the preamble that recognition of the inherent dignity and of the equal and unachievable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Article 1 proclaimed that all human beings are born free and equal, in dignity and rights. Article 3 proclaimed that everyone has the right to life, liberty and security of person. Article 5 proclaimed that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

²⁴ This covenant was adopted by the general assembly resolution dated 16th December, 1966. Article 10 of the covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and the accused persons shall save in exceptional circumstances be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. The minimum guarantees to which everyone charged with a criminal offence, is entitled to equality in article 14(3) of the covenant.

on Human and Peoples' Rights,²⁶ all provide that no one should be subjected to torture or inhuman or degrading treatment

Speaking from experience, it is undisputable that the Nigeria law enforcement agents are not interested in protecting the personal liberty of suspects under them hence; they go to any length to obtain their fictitious confessions.²⁷ This attitude is alarmingly perpetrated in several nations of the world.²⁸ In the Asian region, the Asian Human Rights Commission (AHRC) received information regarding illegal detention and custodial torture of a person by the officers from Raninagar Police Station in Murshidabad District West Bengal, India. The victim was arrested from his residence on 28th August 2006 and illegally detained in police station without being produced in the court and tortured for two days allegedly to extract a confession.²⁹ What is even amazing is the rate at which those spurious confessions usually obtained by these ill-educated agents are thrown-out in the court of law. The arrest of a person suspected of crime does not warrant any physical violence on the person. But when a captive exercises his fundamental right to silence³⁰ against self-incrimination during interrogation, the police often abuse their authority by use of criminal force to extort information.

In the Indian case of *Kartar Singh v. State of Punjab*,³¹ the Supreme Court of India condemned the tyrannical way of custodial interrogation that exposes the suspect to the risk of abuse of his person dignity and that interrogation should not be accompanied with torture or use of third degree method. A confession to police officer can not be proved as against a person accused of any

The convention came into force in July, 1978. Article 4(1) provides that every person has the right to his life respected and this right shall be protected by law. Article 5 states the right of every person to have physical, mental and moral integrity respected recognized and it is covenanted between the states who are parties to this convention that no one shall be subject to torture or to cruel, inhuman, or degrading punishment or treatment and that all person deprived of their liberty shall be treated with respect for the inherent dignity of the human person. Rights to human treatment recognized by article 5 cannot be suspended even in time of war, public danger or other emergency situation, as declared in article 27 of this convention.

Adopted by the 18th Assembly of the Heads of State and Government of the Organization of African Unity (OAU) (now African Union (AU)) on 27 June 1981 at Nairobi, Kenya. It was published in US Congress, House of Representatives, Committee on Foreign Affairs, *Human Rights Docs.*, 1983, pp. 155 *et seq.* Article 5 provides that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of legal status. All forms of exploitation and degradation of man particularly slavery trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

There are many judicial authorities wherein some alleged confessional statements were held to be inadmissible in case they were obtained in violation of sections 28 of the Evidence Act Cap E14 LFN, 2004. For example see the case of *Taofeeq Adebayo v. State*, Case No. CA/IL/35C/2006 (Unreported) delivered on 21st June 2007. See generally Bassiouni, M. C. and Molata, Z. (eds.), *The Protection of Human Rights in African Criminal Proceedings* (London: Martinus Nijhoff Publishers, 1995) 477, where several writers commented lamentably on the treatment of detainees and prisoners in their respective countries. Some of these countries include Ghana, Uganda, Rwanda, Kenya, Zambia, South Africa, Sudan, Tanzania, Zimbabwe and others.

of this information was received by the Asian Human Rights Commission (AHRC) from MASUM, a Human Rights organization. See <http://www.ahrchk.net/ua/mainfile.php/2006/1974/assessed> on 01/06/2010

the right to silence is a Constitutional guarantee under the 1999 Constitution of the Federal Republic of Nigeria. sections 35 (2) and 36 (11); Article III OF Philippine Constitution, 1987; *Daniel Sugh v. The State* (1988) 5 SCNJ. In Philippine case of *People v Demiega* 251 SCRA 626,641. See also Ismail A.M, 'Constitutional Right to remain silent' (2010) 3 : 1, *Confluence Journal of Jurisprudence and International Law*, pp. 91 – 100.

1994) 3 SCC569.

offence and confession cause by threats from a person in authority in order to afford any evil the Nigeria Co temporary nature would be irrelevant in criminal proceedings.³²

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The case of 22 years old Md Qudus Ali from Urup, Imphal East district of Manipur is a strange one. On 7 February, 2008, he was allegedly tortured to death in the custody of State Police Commissioner at Thambalkhong in Imphal East District. The victim was allegedly picked up from the premises of the office of the District Commissioner, Imphal East where he had gone in connection with the electoral photo identity card. The police however, claimed that the victim was a "militant" and he was killed in an encounter.³³

Torture is prohibited by both the Constitution and statutory laws of most nations therefore, the fact that torture serves as a means of deterrent to the culprits which brings about public safety could hold water.

Apart from the fact that torture violates, right, it is constitutionally guaranteed as fundamental; any sanction torture will amount to re-cycling the same vice of unlawful violence under the garb of uniform. This situation without mincing words will expose the greater number of citizens to multiple risk of official violence, "The cure can not be worse than the disease itself" and the "end" cannot justify the means".

Furthermore, it is said in certain quarters that with more and more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by various categories of hardened criminals by self-pedaling interrogation. It is felt in those quarters that to lay too much emphasis on protection of their fundamental rights such criminals may go scot-free without exposing any element or iota of criminality with the result that the criminals would remain unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is in line with the expectation of the society that police must deal with the criminals in an efficient and effective manner in order to bring to book those who are involved in the crime.³⁴

It needs to be emphatically stated that the police in pursuing public safety interest, their actions must be fair, right and just within the purview of the constitution. These impermissible forms of interrogation like torture, inhuman and degrading treatment or other intimidating, oppressive and coercive to interrogation should not be employed by the law enforcement agents and other operatives and if they are employed same should be discountenanced by the law courts in criminal proceedings.³⁵

³² See also sections 24 of the Indian Evidence Act and section 28 of the Nigerian Evidence Act respectively. Also see section 330 and 331 of India penal code which provide for punishment to one who voluntarily caused grievous hurt to extort confession or any information which may lead to detection of an offence or misconduct.

³³ See <http://brophaskar.blogspot.com/2009/07/custodial-torture-by-law-enforcing-html> accessed on 01/06/2010.

³⁴ See - *Shri Basu & Anor v. State*, *supra* at 137.

³⁵ The supreme court of Delhi has expressed shock and anguish at the brutality of the police personnel who had thrashed to death the two young men who were in the custody at Doda Pet Police Station in Shimoga District, Karnataka. The deceased persons received serious injuries over 22 years ago on January, 1988. The victim was taken into custody when some engineering college students had a fight with them on the night of December 1987. The trial court sentenced nine police officials to life imprisonment. Supreme Court while condemning the incident stated that there is no doubt that these are the most heinous crimes committed by people who claim to be protectors of the citizens. What is distressing to note is that the incident of torture and death in the police custody took place under the shield of uniform and authority in the four walls of a Police Station or in the lock up where the

The Nigeria Constitution provides thus:

- (1) every individual is entitled to respect for the dignity of his person, and accordingly
- (a) No person shall be subjected to torture or to inhuman or degrading treatment.³⁶

Also, the League of Nations³⁷ which formed the United Nations Organization realized that the bare Charter of that organization was not enough to ensure world peace and Justice and on 10th December, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Germane to the topic under discussion is the preamble to the Declaration which provides *inter alia*:

WHEREAS recognition of the inherent dignity and of the equal and iralienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
WHEREAS disregard of and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human being shall enjoy freedom of speech and belief in freedom from fear and want has been proclaimed as the highest aspiration of the common people³⁸

In the same vein, human being is accorded dignity by the creator³⁹ as commonly believed and espoused by the various religions. It is against this background that the Holy book stated that:

O mankind, We created you from a single (pair of a man and a female, and made you into nations, and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most religions of you. And has full knowledge and is well acquainted (with all things).⁴⁰

Also, Allah said: "Kind words and covering of faults are better than charity followed by injury. Allah is free of all wants and he is most forbearing."⁴¹ The Prophet Mohammed was also reported to have said: "None of you is Muslim until you desire for others what you desire for your self."⁴² No one should be subjected to chastisement by fire and that no one should be hit on the face⁴³

II. Liability of State/Police for injury inflicted on detainees

Under the European Convention for the Protection of Human Rights and Fundamental Freedom, where an individual is taken into police custody in good health but is found to be injured at the time

totally helpless. See Hope Ummid.com, 'Supreme Court expresses anguish over custodial torture, deaths', http://www.ummid.com/sc_anguish_over_custodial_deaths.htm (assessed on 5/6/10).

See section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria.

The League of Nations was formed after the end of the First World War. The occurrence of the second world war in 1939 opened the eyes of the leaders of the then world to the fact that a collection of world leaders without some moral motivating factor may not end World Wars.

See the preamble to the Universal Declaration of Human Rights, 1948.

Yusuf O. Ali, "Islam as the flashlight of Universal Human Rights Formulation" Vol.2, *Al-Maslaha: Journal of Law and Religion*, 1999-2003, p. 146.

See the Holy Quran, Suratul Hujurat 49 verse 13, *The Holy Qur-an: English Translation of the Meanings and Commentary* (Saudi Arabia: The Presidency of Islamic Researches, Ifta, Call and Guidance) p.1593.

See the Holy Quran, Suratul-al-Baqarah, Quran 2 verse 263, *ibid*, p.120

Sahih Bukhari.

Hadith Collection by Muslim.

of release, it is incumbent on the state to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises.⁴⁴

The state must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that given the practical demands of imprisonment, his health and well being are adequately secured.⁴⁵

When assessing conditions of detention, account has to be taken of the cumulative effects of the conditions and the duration of the detention. In particular, regard must be had to the state of health of the detained person. An important factor is the detention regime. In assessing whether treatment is contrary to human standards in any given situations regard must be had to the particular conditions, the stringency of the regime, its duration, the objective pursued and its effect on the person concerned.⁴⁶

In *Selmouni v State*,⁴⁷ the applicant was arrested by a team of police officers in his hotel room upon the allegation that he is a drug peddler. His arrest was followed by unwarranted violence which resulted in the hospitalization of the applicant of injuries, bruises and skin abrasions sustained during the process. The applicant also stated that upon his arrest he was taken back to his hotel room where he was then stripped nude by the police officers. In the course of interrogating him, police officers pulled hard at his hair with such force as could detach the applicant's hair from his scalp. One of the police officers brought out his penis from his pants and asked the applicant to suck it. As the applicant tightened his lips against the offer, the officer urinated all over his body. The doctors who examined the applicant while he was in police custody had found lesions of traumatic origin on the left arm, left orbital region, on the scalp, back, lower limbs, buttock and right ankle. Hence, the extent of the injuries on the applicant increased as the uninterrupted police custody continued. After the hearing of the appeal, the European court of human rights, Strasbourg held that the state is liable for injuries sustained by the applicant while he was in custody.⁴⁸

The expression life or personal liberty mentioned in the Nigeria constitution and other international conventions guarantee against torture or assault even by the state and its functionaries to a person who is taken in custody and no sovereign immunity can be pleaded against the liability of the state arising due to such cruel use of force over the captive. In *D.K. Basu v State*,⁴⁹ the court held that custodial torture is a naked violation of human dignity and degradation which destroys to a very large extent human personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step back ward; flag of humanity must on each such occasion fly half mast. "State terrorism" is no answer to combat terrorism.

Recently, a High Court in Borno State, Nigeria awarded the sum of N100, 000,000.00 (One Hundred Million Naira) damages against the police over the death of a suspect in her custody arising out of

⁴⁴ This position was upheld by the European Courts on Human Rights in the case of *Selmouni v State* (2005) CH 237.

⁴⁵ See *Georgi Spavso Louchev v. Bulgaria*, *op.cit* at 289.

⁴⁶ *Ibid*.

⁴⁷ (2005) CHR 237.

⁴⁸ *Ibid* at p. 276.

⁴⁹ (1997) 1 SC 416.

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torture.⁵⁰ The suspect was put in custody on the pretext that he was an in-law to the leader of Boko Haram.

It is worthy of mention that the poor state of a nation's economy should not be an excuse for degrading detention conditions.⁵¹ Although financial difficulties faced by a Government may not be overlooked, the lack of resources can not in principle justify detention conditions which are so poor as to reach the threshold of severity. Otherwise, this will contradict the constitutional provision that no person should be subjected to torture, inhuman or degrading treatment.⁵²

A large number of reported cases of torture and custodial death are as a result of attempts to extract a confession theft related offences and other petty offences. The implication of this is that suspects belonging to the lower economic and social strata are particularly vulnerable. The police routinely cite "suicide" as a cause of death in custody.⁵³

V. Right to medical care of the Detainees

Detainee or person in custody should have right to medical care.⁵⁴ A broader right to health care is recognized in the International Covenant on Economic, Social and Cultural Rights.⁵⁵ Article 12 provides that every individual has the right to the enjoyment of the highest attainable standard of physical and mental health. In Nigeria, for instance, the prisons officials are under a duty to provide medical care for the detainee.⁵⁶ The state has a responsibility to all the inmates in prison regardless of the nature of their offences.⁵⁷ The inmates have rights to enforce Socio-Economic Rights of the African Charter.⁵⁸

Where the conduct of the state or its agents toward the detainee is reprehensible, unjustifiable, outrageous, malicious and unconstitutional, the detainee is entitled to damages and public apology.⁵⁹ In the case of *Okonkwo v Ogbogu*,⁶⁰ the Supreme Court held as follows:

⁵⁰ Boko Haram is a religious sect in Northern Nigeria whose ideology was purportedly supposedly against the western form of education. The sect has been proscribed by the Nigerian Government.

⁵¹ Some states have complained that they could not comply with the international treaties on treatment of prisoners on the ground that their economy could not meet up with the rising number of criminals. This however leads to inadequate funding of prisons by such governments: see Ifaturoti, T. O., *op. cit.*, pp. 167 and 170.

⁵² See *Georgi Spasov Lovchev v. Bulgaria* *op. cit.* at p. 291.

⁵³ In a reply to the Rajya Sabha on 12 March, 2008, then Minister of India, Shivraj Patil cited suicide as one of the primary causes of custodial death. But the home Minister failed to clarify as to why so many accused had committed suicide in police detention, what had led them to act in this manner and how they had accessed the means like knives, poisons and open electric cables etc as they are in custody. See <http://brpbhaskar.blogspot.com/2009/07/custodial-torture-by-law-enforcing-html> (accessed on 01/06/2010).

⁵⁴ Universal Declaration of Human Rights, G.A. Res. 217A (111), UN. Doc. A/810 at 71, art. 25. see also S. M. Olokooba, et al., "An Overview of the Rights of Prisoners under the Nigerian Law" (2010) 3: 1 *CJJIL*, pp.135 – 140.

⁵⁵ Adopted 16 December 1966, entered into force 3 Jan. 1976 G.A. Res. 2200 (XXI) 21 UN. GAOR supp. (No. 16) at 49; UN. Doc. A/63/6 (1966), art. 12.

⁵⁶ Sections 7 and 8 of the Prisons Act Cap p29 LFN, 2004. However, this right is not justiciable against the background of section 6 of the 1999 Constitution of the Federal Republic of Nigeria which ousted the jurisdiction of the courts on matters arising from Chapter II of the Constitution.

⁵⁷ African Charter on Human and Peoples' Rights, article 2.

⁵⁸ See the case of *Uban v. Director, SSS* (1999) 11 NWLR – and the case of *Odafe & Ors v. Attorney General of the Federation*, *op. cit.* at p. 323.

⁵⁹ See section 35 (1) of the 1999 Constitution of the Federal Republic of Nigeria. See S. M. Olokooba, et al., *op. cit.*, p.139 citing *Ireland v United Kingdom* (1979 – 1980) 2 EHRR 25 para. 162.

Any trespass to person, however slight gives right to action to recover nominal damages. Even where there has been no physical injury, substantial damages may be awarded for the injury, to the man's dignity or for discomfort or inconvenience."

As jokingly as it might sound, what actually reflects the plight of detainees in the hands of the law enforcement agents could be gleaned from the following scenario created by a cartoonist:

MR. A - An international report has described Nigeria police stations as torture chambers.

MR. B - You mean it?

MR. A - Yes, it says that police routinely carry out summary executions of persons accused or suspected of crime.

MR. B - Now I know why the police want a university of their own.

MR. A - Really?

MR. B - Yes, they want to learn how to do those things better and avoid courting international opprobrium.⁶¹

VI. CONCLUSION

From all the above discourse, it is obvious that custodial torture is a universal problem that has called for the intervention of international organizations and national legislations. There is no doubt that respect for human dignity takes the front seat in international discourse.

Also, it would be found that despite the displeasure of the international bodies towards the deprivation of human dignity and torture, as well as the express words used in the attendant instruments prohibiting custodial torture, the act still thrives in many jurisdictions. It is believed that the inability and failure of the law enforcement agents to adhere to the international standards of treatment of detainees and prisoners arises from some of the following circumstances:

- i. Inadequate enlightenment and orientation of the law enforcement officers on the treatment of inmates.
- ii. Non-justiciability of the right of detainees and prisoners to medical care and health facilities in some countries.⁶²
- iii. Lack of or inadequacy of laws regulating the processes of arrest and conditions in prisons and police cells in most of the countries.
- iv. Inadequate funding of the law enforcement agents in some countries
- v. Improper documentation of the records of the arrestees and detainees in some countries thereby enabling the disappearance of some detainees and prisoners without account.

It is, however, believed that most of the aforementioned international provisions are domesticated in most nations of the world, yet, certain further and positive measures needed to be taken.

⁶⁰ (1999) LRCN 580.

⁶¹ See the cartoon portion of *The Punch*, Monday, May 24, 2010, p. 71 by Neearo: Note that the cartoon, though mere imagination of the cartoonist, there are element of truth in the imagination.

⁶² An example of such countries is Nigeria.

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Criminalizing torture for instance by local legislations that will minimize violations of human dignity. Such measures may include:

- i. Education and enlightenment of the law enforcement agents;
- ii. Undertake other procedural measure of obtaining evidence from suspect;
- iii. The records of the law enforcement personnel arresting and handling the arrestee and the records of the detainees and prisoner should be properly documented and updated;
- iv. Adequate and proper information should be given to the relatives of the arrestee or acquaintance who have interest in his welfare;
- v. There should be periodic medical examination of the arrestee, detainees and prisoners to ascertain the state of his health and whether any force is used while in custody;
- vi. Inspecting memo recording injuries so that the events of custodial violence can be easily detected and the perpetrators are duly dealt with;⁶³
- vii. Compensation should be awarded in favour of the victim of custodial torture against such law enforcement agents whose act resulted in infliction of injuries on a suspect is equally recommended;⁶⁴
- viii. Those who make the laws also have a decisive role and responsibility to infuse into those laws, human right norms, principles and standards. They should make laws regulating the processes of arrest, conditions in prisons and what should be done to convicted and imprisoned persons.⁶⁵
- ix. Laying down well defined procedures and machineries which will enable prisoners and detainees voice out their grievances against the actions of prisons' staff.⁶⁶

⁶³ This requirement flows from the provision of sections 34(1)(a) and 35(1) of the 1999 Constitution of the Federal Republic of Nigeria. It ought to be strictly followed not only by the police agency but also by other law enforcement agents that have power to put arrestees in their custody. See also the case of *D.K. Basau v. State of West Bengal* (*supra*).

⁶⁴ See the case of *Okonkwo v Ogbogu* (1996) 37 NWLR 580 where the Supreme Court held that even where there is no physical injury substantial damage may be awarded for the injury to the man's dignity or for discomfort or inconvenience. When liberty has been interfered with damages are given to vindicate the Plaintiff's Rights even though he has not suffered any pecuniary damage.

⁶⁵ Gutto, S. B. O., 'Human Rights and the Rule of Law in the Transformation of the Criminal Justice System in Kenya: The Challenge of the 1990s and Beyond' in Bassiouni, M. C. and Motala, Z. (eds.), *The Protection of Human Rights in African Criminal Proceedings*, (Martinus Nijhoff Publishers, London: 1992) p.133; Bailey, S. H. et al., *Civil Liberties: Cases and Materials*, 3rd ed., (London: Butterworths, 1991) p.105.

⁶⁶ Adeyemi, A. A., *op. cit.*, p.13 citing A. A. Adeyemi, "Towards Victims' Remedies in Criminal Justice Administration in Nigeria" (1989) *Cashiers De Defense Sociale: Bulletin of the International Society of Social Defence*, 1989, p.11.

CUSTODIAL TORTURE: A NAKED VIOLATION AND DEGRADATION OF THE RIGHT TO HUMAN DIGNITY

INTRODUCTION

The very idea of a human being in custody other than for protection and nurturing is an anathema to human existence. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty - an inhuman trait springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypocritical thinking.

Those who are endowed in our law to carry the burden of enforcing our laws, such as the police, have the responsibility to carry such burden with care and in trust for the citizenry. They must not get intoxicated by the enormous powers made available to them by the law for its own cause and in the benefit of the citizens, to molest, harass, intimidate and cage the innocent citizens they are meant to protect.¹

This article is prompted by the attitude of the Law enforcement agents such as the police, the National Drug Law Enforcement Agency (NDLEA), Nigerian Customs; Economic and Financial Crime Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Intelligent Bureau, Costal Guard, State Security Service (SSS) etc and how they deal with suspects in their custody which to a large extent destroy individual dignity. However, custodial torture is not restricted to the law enforcement agents alone. The locking of a widow out of her matrimonial home has been held to be discriminatory and amounts to inhuman and degrading treatment.² It is a sacred responsibility of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life and human dignity while citizen is in custody whether of the police net or prison custody. No doubt, that citizen may be incarcerated for criminal offence under the law.³

The human dignity is very precious and this is why the constitution of the Federal Republic of Nigeria recognized it, hence, human dignity commands State/National attention more against its violation by Law enforcement agents.⁴ Being a human being is something fortunate and one is accorded with a dignity infused in the human system that must revolt against its non recognition in

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² *Isenelumhe v Joyce Amadin* (2001) 1 CHR p. 458 at 568.

³ *Helen Ugochukwu v Stephen Ugochukwu* (2006) CHR 344 at 351.

⁴ See for example the case of *Ransome - Kuti v. Attorney General Federation* (2001) F.W.L.R (pt 80) 1637 at 1697, where the Supreme Court Per ESO stated that "It seems to me fairly obvious that the Enforcement of the Right not to be tortured or be subject to in human or degrading treatment under the provision of Section 19(1) by means of Section 32 contemplated torture or inhuman treatment arising from criminal process. It does not envisage ordinary action arising civil wrong.

⁵ This is because the right to human dignity and liberty is among the foremost fundamentals of human rights: see Ishola, A. S., "Human Rights, The West and Islamic Law: A Case for Dichotomy", (2004 - 2006) 3 *Al-Maslaha: Journal of Law and Religion*, 209.

any form by reflex action. This ethereal gift is zealously guarded by all within and most wantonly disregarded by most.

Custodial violence, perhaps one of the worst crimes in a civilized society is a matter of concern for many reasons. Custodial violence, including torture and death in the lock-ups, strike heavy blow at the rule of law which demands that the powers of the executive should not only be derived from law but also that they should be limited by law⁵. The law of arrest is one that balances individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other. It weighs and balances the rights, liberties and privileges of a single individual and those of individuals collectively. It emphasizes on what is wanted and where to put emphasis, the criminal or the society, the law violator or the law abider. Transparency of action and accountability are two possible safeguards to prevent any abuse of power to arrest a citizen⁶.

The primary duty of those in uniform is to uphold law and order and protect the citizen. If members of the police force resort to illegal abduction and assassination, if other members of that police force do not record and investigate complaints in this behalf for long periods of time, if those who have been abducted are found to have been unlawfully detained in police stations in the state concerned prior to their probable assassination, the case is not one of errant behavior by a few members of that police force, it betrays scant respect for life and liberty of innocent citizens and becomes a matter of grave concern⁷. This article intends to discuss the conceptual appraisal of torture and human dignity, international prohibition of torture, liability of the police, prison officials or state for the injury sustained by the detained person while in custody, the right to medical care of the detained person as well as the compensation of the detained person whose rights are trampled or trampled upon in the cause of detention.

II. DEFINITION AND MEANING OF TORTURE

The concept, "torture" as a term means the infliction of intense pain to the body or mind, to punish or to extract a confession or information, or to obtain sadistic pleasure. A person or suspect who is detained by law enforcement agents is a person whose freedom is directly controlled or limited. Essentially, torture is a deliberate infliction of pain (physical or mental) for a purpose desired by the perpetrator. To the victim of torture, it results in the violation of the dignity inherent in his humanity. It is an instrument to implore the will of the strong over the weak by suffering and degradation which

⁵ A.S Anand, "curbing custodial crimes" available at www.pib.nic.in/feature/fegr 2001/fau/2001/f130820011/html (assessed on 01/06/2010).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ See Bryan G.A. (ed) *Black Law Dictionary*, 8th Edition.

⁹ Such as "affront to (prisoners') dignity as human beings, sometimes reaching the dimension of torture": see A. Adeyemi, "Custodial Rights: Rights of Prison Inmates" 2:11, *JUSTICE: A Journal of Contemporary Legal Problems* 1991 48; lumping many inmates in a single room, lack of provision of adequate food and clothing, and even medical care: see Adeyemi, A. A., "United Nations Human Rights Instruments and Criminal Justice Norms and Standards", in Bassiouni, M. C. and Motale, Z. (eds.), *The Protection of Human Rights in African Criminal Proceedings* (London: Martinus Nijhoff Publishers, 1995) p.10. See also Ifaturoti, T. O., "The Challenges of Nigerian Prisoners in the context of Human Rights Campaigns" in Bassiouni, M. C. and Motale, Z. (eds.), *op. cit.*, 159.

destroys to a large extent the individual personality of the victim¹⁰. Assaulting a detainee with horse whip, inflicting blows on him with a clenched fist and putting him in handcuffs overnight amounts to torture and degrading treatment.¹¹

The word torture has become synonymous with the darker side of human civilization. Adriana P. Bartow observed in the case of *Shri Bisau & Anor v State of West Bengal*,¹² as follows:

Torture is a wound in the soul- so painful that sometimes you can almost touch it, but it is also intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy, including yourself.

Torture means any act by which severe pain and suffering whether physical or mental, is intentionally inflicted by or at the investigation of a public official on a such person for such purposes as obtaining from him or a third person information or conversion, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.¹³ It does not include pain or suffering arising from, inherent in or extent consistent with the standard minimum rules for the treatment of prisoners¹⁴ but includes continuous detentions of suspects without trial in the circumstances of their HIV positive condition which caused them mental and physical agony which must have exacerbated their fear of death especially as the restriction by their detention must have comprised their access to proper or better medical care.¹⁵

The attack on human dignity can assume any form and manifest itself at any level.¹⁶ It is not merely the negative privilege of a crude merciless display of physical power by those who are cast in a role play of police functioning, but also a more mentally lethal abuse of position when springing from high pedestals of power in the form of unjustified accusations, unjust remarks, menacingly display of potential harm, that can strike terror, humiliation and a sense of helplessness that may last longer than a mere physical harm and which brook no opposition.¹⁷

¹⁰ Even beasts in custody get a better deal. The most ferocious of man-eaters when cages are regularly fed and their health is a cause of great concern and anxiety to many. After all, we do possess the sensitivity to realize that the Mother Nature has meant it that way by instilling in the system of even animals, instincts that are inviolable. That is why the onlooker appreciates the majestic coat and gait of a caged man-eater and anyone who harms it knows too well he can do so with impunity to satiate his ego or sheer wantonness that would otherwise freeze or melt.

¹¹ Per Smith J. in *Ifeanyi Anyanor v CP, Delta State & 3 Ors* (2007) CHR pg. 183 at 196.

¹² (2005) CHR 136 at p.144.

¹³ Nsereko, D. D. N., "The Poisoned Tree: Responses to Involuntary Confessions in Criminal Proceedings in Botswana, Uganda and Zambia" in Bassiouni, M. C. and Motala, Z. (eds.), *op. cit.*, p.84.

¹⁴ See article 1 of the General Assembly of the United Nations adopted without vote resolution 3452 (xxx), a declaration on the protection of all persons from being subjected to torture and cruel, inhuman or Degrading Treatment or Punishment.

¹⁵ See *Odafe & Ors v. Attorney General of the Federation* (2005) CHR 309 at 322.

¹⁶ The various forms custodial torture may take include assault, rape, stocks, the rack, crucifixion, mutilation, the electric shock, pulling out finger or toe nails, burning with cigarettes, pulling or squeezing male genitals, inserting foreign objects into the anus or the vagina, near suffocation, blindfolding, exposure to extreme cold or heat, subjection to fatigue, and so forth. See Nsereko, D. D. N., *op. cit.*, 83.

¹⁷ The area of human dignity is in one's sacred self and that field is quite apart and distinct from the field of considerations of rights and duties, powers and privileges, liberties and freedoms or rewards and punishments.

On the other hand, dignity is the state of being noble and this may be hereditary such as peerage or for life such as life peerages and knighthoods. The dignities of peerages and *baronetcies* are created by writ or letter patent that are of knighthood by dubbing as knight¹⁸. Degradation is reduction in rank, degree or dignity¹⁹. It also means reviling, holding one up to public obloquy, lowering a person in the estimation of the public, exposing to disgrace, dishonor, or contempt²⁰. Treatment of a suspect will be said to be inhuman and degrading where premeditated and applied for hours at a stretch and caused either actual bodily injury or intense physical degradation because it was deemed treatment to be degrading because it was such as to arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing them. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1984. The suffering and humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment²¹.

The duty of states to discountenance both the actual practice of torture and the use of its fruits in judicial proceedings is beyond a treaty obligation, it is a duty arising from the international recognition of the prohibition (against torture) as a peremptory norm of public or customary international law a "*jus cogens*" - which casts upon every member state of the global community whether or not merely to refrain from authorizing or conniving against torture, but also to suppress and discourage its practice.²²

III. The Prohibition of Custodial Torture

Undoubtedly, there is universal prohibition of torture promulgated into law by various Governments internationally. The Universal Declaration of Human Rights 1948²³, the International Covenant on Civil and Political Rights, 1966,²⁴ the American Convention of Human Rights 1989,²⁵ African Charter

wherein the laws operate. If a person commits any wrongs, he should be punished, but it is not necessary to humiliate him and mane his dignity as a human being.

¹⁸ See Garner B.A. (ed.) *op.cit.* p. 488.

¹⁹ *Ibid* at p. 456.

²⁰ See the case of *Isenalumhe v. Joyce Amadin (supra)* at p.466.

²¹ This was the view of the European Court on Human Rights in *Georgi Spasov Lochev v. Bulgaria* (2006) CHR at 259.

²² See *A (FC) & others v Secretary of State* (2005) CHR 1 @ 58. See also *Prosecutor v. Furandzija* (1998) ICTY.

²³ Adopted and proclaimed by the General Assembly Resolution 217A (III) of 10th December, 1948. It declared in the preamble that recognition of the inherent dignity and of the equal and unachievable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Article 1 proclaimed that all human beings are born free and equal, in dignity and rights. Article 3 proclaimed that everyone has the right to life, liberty and security of person. Article 5 proclaimed that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

²⁴ This covenant was adopted by the general assembly resolution dated 16th December, 1966. Article 10 of the covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and the accused persons shall save in exceptional circumstances be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. The minimum guarantees to which everyone charged with a criminal offence, is entitled to equality in article 14(3) of the covenant.

on Human and Peoples' Rights,²⁶ all provide that no one should be subjected to torture or inhuman or degrading treatment

Speaking from experience, it is undisputable that the Nigeria law enforcement agents are not interested in protecting the personal liberty of suspects under them hence; they go to any length to obtain their fictitious confessions.²⁷ This attitude is alarmingly perpetrated in several nations of the world.²⁸ In the Asian region, the Asian Human Rights Commission (AHRC) received information regarding illegal detention and custodial torture of a person by the officers from Raninagar Police Station in Murshidabad District West Bengal, India. The victim was arrested from his residence on 28th August 2006 and illegally detained in police station without being produced in the court and tortured for two days allegedly to extract a confession.²⁹ What is even amazing is the rate at which those spurious confessions usually obtained by these ill-educated agents are thrown-out in the court of law. The arrest of a person suspected of crime does not warrant any physical violence on the person. But when a captive exercises his fundamental right to silence³⁰ against self-incrimination during interrogation, the police often abuse their authority by use of criminal force to extort information.

In the Indian case of *Kartar Singh v. State of Punjab*,³¹ the Supreme Court of India condemned the tyrannical way of custodial interrogation that exposes the suspect to the risk of abuse of his person and dignity and that interrogation should not be accompanied with torture or use of third degree method. A confession to police officer can not be proved as against a person accused of any

The convention came into force in July, 1978. Article 4(1) provides that every person has the right to his life and this right shall be protected by law. Article 5 states the right of every person to have physical, mental and moral integrity respected recognized and it is covenanted between the states who are parties to this convention that no one shall be subject to torture or to cruel, inhuman, or degrading punishment or treatment and that all person deprived of their liberty shall be treated with respect for the inherent dignity of the human person. Rights to human treatment recognized by article 5 cannot be suspended even in time of war, public danger or other emergency situation, as declared in article 27 of this convention.

Adopted by the 18th Assembly of the Heads of State and Government of the Organization of African Unity (OAU) (now African Union (AU)) on 27 June 1981 at Nairobi, Kenya. It was published in US Congress, House of Representatives, Committee on Foreign Affairs, *Human Rights Docs.*, 1983, pp. 155 *et seq.* Article 5 provides that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of legal status. All forms of exploitation and degradation of man particularly slavery trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

There are many judicial authorities wherein some alleged confessional statements were held to be inadmissible because they were obtained in violation of sections 28 of the Evidence Act Cap E14 LFN, 2004. For example see the case of *Taofeeq Adebayo v. State*, Case No. CA/IL/35C/2006 (Unreported) delivered on 21st June 2007.

See generally Bassiouni, M. C. and Molata, Z. (eds.), *The Protection of Human Rights in African Criminal Proceedings* (London: Martinus Nijhoff Publishers, 1995) 477, where several writers commented lamentably on the plight of detainees and prisoners in their respective countries. Some of these countries include Ghana, Uganda, Rwanda, Kenya, Zambia, South Africa, Sudan, Tanzania, Zimbabwe and others.

This information was received by the Asian Human Rights Commission (AHRC) from MASUM, a Human Rights organization. See <http://www.ahrchk.net/ua/mainfile.php/2006/1974/assessed> on 01/06/2010

The right to silence is a Constitutional guarantee under the 1999 Constitution of the Federal Republic of Nigeria. Sections 35 (2) and 36 (11); Article III OF Philippine Constitution, 1987; *Daniel Sugh v. The State* (1988) 5 SCNJ. See also *People v Demiega* 251 SCRA 626,641. See also Ismail A.M, 'Constitutional Right to remain silent' (2010) 3 : 1, *Confluence Journal of Jurisprudence and International Law*, pp. 91 – 100.

(1994) 3 SCC569.

offence and confession caused by threats from a person in authority in order to afford any evil the Nigeria Co temporary nature would be irrelevant in criminal proceedings.³²

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The case of 22 years old Md Qudus Ali from Urup, Imphal East district of Manipur is a strange one. On 7 February, 2008, he was allegedly tortured to death in the custody of State Police Commissioner, the League at Thambalkhong in Imphal East District. The victim was allegedly picked up from the premises of the office of the District Commissioner, Imphal East where he had gone in connection with the December, 11 electoral photo identity card. The police however, claimed that the victim was a "militant" and that he was killed in an encounter.³³

Torture is prohibited by both the Constitution and statutory laws of most nations therefore, the claim that torture serves as a means of deterrent to the culprits which brings about public safety could hold water.

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Apart from the fact that torture violates, right, it is constitutionally guaranteed as fundamental; any sanction to torture will amount to re-cycling the same vice of unlawful violence under the garb of uniform. This situation without mincing words will expose the greater number of citizens to multiple risk of official violence, "The cure can not be worse than the disease itself" and the "end" cannot justify the means".

Furthermore, it is said in certain quarters that with more and more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by various categories of hardened criminals by self-pedaling interrogation. It is felt in those quarters that to lay too much emphasis on protection of their fundamental rights such criminals may go scot-free without exposing any element or iota of criminality with the result that the criminals would remain unpunished and in the ultimate analysis the society would suffer. The concern is genuine and the problem is real. To deal with such a situation, a balanced approach is needed to meet the end. None of the above is a panacea. Justice. This is in line with the expectation of the society that police must deal with the criminals in an efficient and effective manner in order to bring to book those who are involved in the crime.³⁴

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It needs to be emphatically stated that the police in pursuing public safety interest, their actions must be fair, right and just within the purview of the constitution. These impermissible forms of interrogation like torture, inhuman and degrading treatment or other intimidating, oppressive and coercive to interrogation should not be employed by the law enforcement agents and other operatives and if they are employed same should be discountenanced by the law courts in criminal proceedings.³⁵

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³² See also sections 24 of the Indian Evidence Act and section 28 of the Nigerian Evidence Act respectively. Also section 330 and 331 of India penal code which provide for punishment to one who voluntarily caused grievous hurt to extort confession or any information which may lead to detection of an offence or misconduct.

³³ See <http://brophaskar.blogspot.com/2009/07/custodial-torture-by-law-enforcing-html> accessed on 01/06/2010.

³⁴ See - *Shri Basu & Anor v. State*, *supra* at 137.

³⁵ The supreme court of Delhi has expressed shock and anguish at the brutality of the police personnel who had thrashed to death the two young men who were in the custody at Doda Pet Police Station in Shimoga District, Karnataka. The deceased persons received serious injuries over 22 years ago on January, 1988. The victim was taken into custody when some engineering college students had a fight with them on the night of December, 1987. The trial court sentenced nine police officials to life imprisonment. Supreme Court while condemning the incident stated that there is no doubt that these are the most heinous crimes committed by people who claim to be protectors of the citizens. What is distressing to note is that the incident of torture and death in the police custody took place under the shield of uniform and authority in the four walls of a Police Station or in the lock up where the

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The Nigeria Constitution provides thus:

- (1) every individual is entitled to respect for the dignity of his person, and accordingly
- (a) No person shall be subjected to torture or to inhuman or degrading treatment.³⁶

Also, the League of Nations³⁷ which formed the United Nations Organization realized that the bare Charter of that organization was not enough to ensure world peace and Justice and on 10th December, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. germane to the topic under discussion is the preamble to the Declaration which provides *inter alia*:

WHEREAS recognition of the inherent dignity and of the equal and iralienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
WHEREAS disregard of and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human being shall enjoy freedom of speech and belief in freedom from fear and want has been proclaimed as the highest aspiration of the common people³⁸

In the same vein, human being is accorded dignity by the creator,³⁹ as commonly believed and espoused by the various religions. It is against this background that the Holy book stated that:

O mankind, We created you from a single (pair of a man and a female, and made you into nations, and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most religions of you. And has full knowledge and is well acquainted (with all things).⁴⁰

Also, Allah said: "Kind words and covering of faults are better than charity followed by injury. Allah is free of all wants and he is most forbearing."⁴¹ The Prophet Mohammed was also reported to have said: "None of you is Muslim until you desire for others what you desire for your self."⁴² No one should be subjected to chastisement by fire and that no one should be hit on the face⁴³

N. Liability of State/Police for injury inflicted on detainees

Under the European Convention for the Protection of Human Rights and Fundamental Freedom, where an individual is taken into police custody in good health but is found to be injured at the time

totally helpless. See Hope Ummid.com, 'Supreme Court expresses anguish over custodial torture, deaths', http://www.ummid.com/sc_anguish_over_custodial_dealth.htm (assessed on 5/6/10).

See section 34(1) of the 1999 Constitution of the Federal Republic of Nigeria.

The League of Nations was formed after the end of the First World War. The occurrence of the second world war in 1939 opened the eyes of the leaders of the then world to the fact that a collection of world leaders without some moral motivating factor may not end World Wars.

See the preamble to the Universal Declaration of Human Rights, 1948.

Yusuf O. Ali, "Islam as the flashlight of Universal Human Rights Formulation" Vol.2, *Al-Maslaha: Journal of Law and Religion*, 1999-2003, p. 146.

See the Holy Quran, Suratul Hujurat 49 verse 13, *The Holy Qur-an: English Translation of the Meanings and Commentary* (Saudi Arabia: The Presidency of Islamic Researches, Ifta, Call and Guidance) p.1593.

See the Holy Quran, Suratul-Baqarah, Quran 2 verse 263, *ibid*, p.120

Sahih Bukhari.

Hadith Collection by Muslim.