

# A BILL

## FOR

AN ACT TO GIVE EFFECT, IN ACCORDANCE WITH SECTIONS 34 (1) OF THE 1999 ,CONSTITUTION (AS AMENDED) TO THE RESPECT OF HUMAN DIGNITY AND PROTECTION FROM INHUMAN TREATMENT BY PROHIBITING AND PREVENTING ANY FORM OF TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; TO PROVIDE FOR THE CRIME OF TORTURE; TO GIVE EFFECT TO THE OBLIGATIONS OF NIGERIA AS A STATE PARTY TO THE UNITED NATION'S CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND FOR OTHER RELATED MATTERS

*Sponsored By Senator 'Biodun Christine Olujimi*

[ ] Commencement

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

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PART I - PRELIMINARY

1. In this Bill unless the context otherwise requires:

Interpretation

"commission" means the National Human Rights Commission established by the National Human Rights Commission Act Cap N46, Laws of the Federation 2004;

"Convention" means the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 and ratified by the Federal Republic of Nigeria on 28th, June, 2001;

"deadly weapon" includes:

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

(ii) any substance, which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a

1 person that it is likely to cause death or grievous bodily harm; and  
2 (b) any substance intended to render the victim of the offence  
3 unconscious."

4 "Minister" means the Minister of Justice;

5 "offender", means a person who performs an act of torture;

6 "public official" means a person whether a public officer or not, employed by  
7 the Federal, State or Local government or any Government agency or any other  
8 person paid out of public funds;

9 "spouse" means a husband or wife by a lawful marriage;

10 "superior officer" means a person in a higher position of authority than the  
11 officer alleged to have committed torture;

12 "victim" means a person who suffers an act of torture.

13 PART II - PROHIBITION AND CRIMINALISATION OF TORTURE

Definition of  
torture

14 2.-(1) In this bill, torture means any act or omission, by which severe  
15 pain or suffering whether physical 'Or 'mental, is intentionally inflicted on a  
16 person by or at the instigation of or with the consent or acquiescence of any  
17 person whether a public official or other person acting in an official or private  
18 capacity for such purposes as:

19 (a) obtaining information or a confession from the person or any other  
20 person;

21 (b) punishing that person for an act he or she or any other person has  
22 committed, or is suspected of having committed or of planning to commit; or

23 (c) intimidating or coercing the person or any other person to do, or to  
24 refrain from doing, any act.

25 (2) For purposes of this bill, "severe pain or suffering" means the  
26 prolonged harm caused by or resulting from:

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

29 (b) the administration or application, or threatened administration or  
30 application, of mind-altering substances or other procedures calculated to

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1 disrupt profoundly the senses or the personality;

2 (c) the threat of imminent death; or

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

7 (3) Without limiting the effect of subsection (1), the acts  
8 constituting torture shall include the acts set out in the Schedule to this bill.

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

12 3.-(1) Notwithstanding anything in this bill, there shall, be no  
13 derogation from the enjoyment of the right to freedom from torture.

Prohibition of  
torture

14 (2) The following shall not be a defence to a charge of torture:

15 (a) a state of war or a threat of war;

16 (b) internal political instability;

17 (c) public emergency, prevention and or prosecution of crime; or

18 (d) an order from a superior officer or a public authority.

19 4.-(1) A person who performs any act of torture as defined in  
20 section 2 and the Schedule to this bill is guilty of an offence and is liable on  
21 conviction to imprisonment for a term not exceeding Fifteen (15) years.

Criminalization  
of torture

22 (2) A person shall not be punished for disobeying an order to  
23 undertake actions amounting to torture, cruel or inhuman treatment.

24 5. Notwithstanding section 4, where it is proved that at the time of,  
25 or immediately before, or immediately after the commission of torture the:

Circumstances  
aggravating  
torture

26 (a) offender uses or threatens to use or used a deadly weapon;

27 (b) offender uses or used sex as a means of torture;

28 (c) victim was a person with a disability;

29 (d) victim was pregnant or becomes pregnant;

30 (e) offender causes death;

- 1 (f) the victim was subjected to medical experiments;  
2 (g) victim acquires HIV/AIDS;  
3 (h) victim was under the age of 18 years;  
4 (i) the victim is incapacitated;  
5 (j) the act of torture is recurring;  
6 (k) offender commits any act which the court considers aggravating;  
7 the offender and any other person jointly connected with the commission of an  
8 act of torture is liable, on conviction to a minimum of 20 years imprisonment.

Compensation,  
rehabilitation or  
restitution to be  
made by court in  
certain cases

9 6.-(1) The court may, in addition to any other penalty under this bill,  
10 order for reparations, which may include:

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

- 13 (i) the return of any property confiscated;  
14 (ii) payment for harm or loss suffered;  
15 (iii) payment for the provision of services and restoration of rights; or  
16 (iv) reimbursement of expenses incurred as a result of victim is at ion.

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

19 (i) physical or mental harm, including pain, suffering and emotional  
20 distress;

21 (ii) lost opportunities, including employment, education and social  
22 benefits;

23 (iii) material damage" and loss of earnings, including loss of potential  
24 earnings;

25 (iv) costs required for legal or expert assistance, medicines, medical  
26 services, and psychological and social services; and

27 (c) rehabilitation including:

28 (i) medical and psychological care; or

29 (ii) legal and psycho-social services to the victim in case of trauma.

30 (2) Restitution, compensation, rehabilitation or any payment ordered

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1 by the court under subsection (1) may be satisfied by the property of the  
2 person convicted of torture.

3 7.-(1) Cruel, inhuman or degrading treatment or punishment  
4 committed by or at the instigation of or with the consent or acquiescence of a  
5 public official or other person acting in an official or private capacity, which  
6 does not amount to torture as defined in section 2 and the schedule, is a  
7 criminal offence and shall be liable on conviction to imprisonment not  
8 exceeding five years or a fine not exceeding Two Hundred Thousand Naira  
9 or both.

Cruel, inhuman  
or degrading  
treatment or  
punishment

10 (2) For the purposes of determining what amounts to cruel,  
11 inhuman or degrading treatment or punishment, the court or any other body  
12 considering the matter shall have regard to the definition of torture as set out  
13 in section 2 and the schedule 2 and the circumstances of the case.

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

18 PART III - OTHER PARTIES TO THE OFFENCE OF TORTURE

19 8.-(1) A person who, whether directly or indirectly:

Other parties to  
offence of torture

20 (a) procures;

21 (b) aids or abets;

22 (c) finances;

23 (d) solicits;

24 (e) incites;

25 (f) recommends;

26 (g) encourages;

27 (h) harbours;

28 (i) orders; or

29 (j) renders support to any person, knowing or having reason to

30 believe that such person is committing or about to commit an offence

1 preparation or commission or instigation of torture commits an offence and is  
2 liable on conviction, to imprisonment not exceeding five years or a fine not  
3 exceeding Two Hundred Thousand Naira or both.

Accessory after  
the fact to the  
offence of torture

4 9.-(1) A person who receives or 'assists another who is, to his or her  
5 knowledge, guilty of an' offence under this bill, in order to enable him or her to  
6 escape punishment, becomes an accessory after the fact to the offence of  
7 torture.

8 (2) A person who is or becomes an accessory after the fact to the  
9 offence of torture commits an offence and is liable on conviction, to  
10 imprisonment not exceeding five years or a fine not exceeding Two Hundred  
11 Thousand Naira or both.

12 (3) A wife does not become an accessory after the fact to an offence of  
13 which her husband is guilty by receiving or assisting him in order to enable him  
14 to escape punishment by receiving or assisting in her husband's presence and  
15 by his authority another person who is guilty of an offence in the commission of  
16 which her husband has taken part in order to enable that other person to escape  
17 punishment, nor does the husband become an accessory after the fact to an  
18 offence of which his wife is guilty by receiving or assisting her in order to  
19 enable her to escape punishment.

Responsibility  
of a superior over  
actions of a  
subordinate

20 10. A superior officer is liable for any act of torture committed by a  
21 subordinate under his or' her authority and control where:

22 (a) the superior knew, or consciously disregarded information which  
23 clearly indicated, that the subordinate was committing or about to commit an  
24 act of torture;

25 (b) the acts committed by the subordinate concerned activities that  
26 were within the responsibility and control of the superior; and

27 (c) the superior failed to promptly investigate, diligently pursue  
28 administrative and disciplinary measures to prevent re-occurrence, and  
29 cooperate with judicial authorities to prosecute the offence.

1           **11.**-(1) A person alleging that an offence under this bill has been committed, whether the person is the victim of the offence or not, has a right to complain or report to the Police, Commission or any other relevant institution or body having jurisdiction over the offence.

Right to complain

5           (2) Where a complaint is made, a prompt investigation into the complaint shall be conducted, and where there are substantial grounds to support the complaint, the police shall arrest and detain the person and accordingly charge the person with the offence he or she is alleged to have committed.

10          (3) Any person arrested and detained under subsection (2), shall be assisted in communicating as soon as legally possible with the nearest appropriate representative of the state of which he or she is a national or if the person is a stateless person, with the representative of the state where the person ordinarily resides.

15           PART IV- USE OF INFORMATION OBTAINED BY TORTURE

16          **12.**-(1) Any information, confession or admission obtained from a person by means of torture is inadmissible in evidence against that person in any proceeding.

Inadmissibility of evidence obtained by torture

19          (2) Notwithstanding subsection (1), such information, confession or admission may be admitted against a person accused of torture as evidence that the information, confession or admission was obtained by torture.

23          **13.** A person who uses, information which he or she knows or ought to have reasonably known to have been obtained by means of torture in the prosecution of the person tortured, commits an offence and is liable on conviction to imprisonment not exceed4Ig three years or a fine not exceeding One Hundred and Fifty Thousand Naira or both.

Prohibition of use of information obtained by torture

28           PART V - GENERAL

29          **14.** A person who suspects or has reasonable grounds to suspect that torture is being committed by a public official, person acting in official

Duty to report torture

1 capacity or private capacity, has a duty to report to the police, the commission,  
2 of his or her suspicion of torture.

Protection of  
victim, witnesses  
and persons  
reporting torture

3           **15.** It shall be the responsibility- of the State to ensure that any person  
4 including the:

5           (a) complainant;

6           (b) witnesses; or

7           (c) person making a complaint, whether the victim or not; is protected  
8 against all manner of ill-treatment or intimidation as a consequence of his or  
9 her complaint or any evidence given.

Regulations

10           **16.** The Minister may make regulations for the effective  
11 implementation of the provisions of this bill.

Citation

12           **17.** This bill may be cited as Torture (Prevention and Prohibition) Bill,  
13 2015.



## SCHEDULE

## Section 2(3)

## Acts constituting torture

## 1. Physical torture including:

(a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;

(b) food deprivation or forcible feeding with spoiled food, animal or human excreta;

(c) electric shocks;

(d) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices;

(e) the submersion of the victim's head in water or water polluted with excrement, urine, vomit or blood;

(f) being tied or forced to assume a fixed and stressful body position;

(g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;

(h) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue;

(i) dental torture or the forced extraction of the teeth;

(j) harmful exposure to the elements such as sunlight and extreme cold; or

(k) the use of plastic bags and other materials placed over the victim's head with the intention to asphyxiate.

## 2. Mental or psychological torture including:

(a) blindfolding;

(b) threatening the victim or his or her family with bodily harm, execution or other wrongful acts;

(c) confining a victim incommunicado, in a secret detention place

- 1 or other form of detention;
- 2 (d) confining the victim in a solitary cell or in a cell put up in a public  
3 place;
- 4 (e) confining the victim in a solitary cell against his or her will or  
5 without prejudice to his or her security;
- 6 (f) prolonged interrogation of the victim so as to deny him or her  
7 normal length of sleep or rest;
- 8 (g) maltreating a member of the victim's family;
- 9 (h) witnessing the torture sessions by the victim's family or relatives;
- 10 (i) denial of sleep or rest;
- 11 (j) shame infliction such as stripping the victim naked, parading the  
12 victim in a public place, shaving the head of the victim, or putting a mark on the  
13 body of the victim against his or her will;
- 14 3. Pharmacological torture including:
- 15 (a) administration of drugs to induce confession or reduce mental  
16 competence;
- 17 (b) the use of drugs to induce extreme pain or certain symptoms of  
18 diseases; and
- 19 (c) other forms of deliberate and aggravated cruel, inhuman or  
20 degrading pharmacological treatment or punishment.
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