



AVOCATS SANS FRONTIERES
France

Là où la défense n'a plus la parole

**AVOCATS SANS FRONTIÈRES FRANCE REPORT TO THE UN COMMITTEE AGAINST
TORTURE**

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NIGERIA REVIEW AT THE 72nd SESSION OF THE UN CAT (8 November–3 December 2021)**

Submitted: October 15, 2021

Avocats Sans Frontières France¹ (ASF France) is an international solidarity organisation founded in 1998 which contributes to the respect of fundamental rights throughout the world, anywhere it is useful and necessary. ASF France mission is to:

- Promote access to Justice for vulnerable persons, those arbitrarily detained or tortured.
- Defend anyone deprived of a free and independent defense and human rights defenders threatened or abused in the exercise of their functions and,
- Strengthen the capacity of local (Judicial and CSO) actors in the defense and promotion of human rights.

ASF France has been implementing anti-torture projects in Nigeria since 2009 on its ProCAT project aimed at promoting principles of the United Nations Convention Against Torture (UNCAT) and enhancing access to justice for torture victims through its network of pro bono lawyers. The project is which is currently being implemented in five states² in Nigeria with the support of the United Nations voluntary Funds for victims of torture (UNVFVT) has provided free legal assistance to over 850 torture victims between 2009 and 2021. In 2019, ASF France working with its local partners³ launched its SAFE project which aims to contribute to ending serious human rights violations particularly, torture, ill-treatment, arbitrary detention and extra-judicial killings perpetrated with impunity by state security agencies in Kaduna, Enugu and Lagos States. Free Legal Assistance has also been provided to 56 victims of torture on the project through its pro bono legal aid services, The SAFE project is implemented in Enugu, Kaduna and Lagos states with support from the European Union and Agence Française de développement (AFD).

ASF France became an NGO with special consultative with the Economic and Social Council of the United Nations (ECOSOC) in 2005.

¹ <https://www.avocatssansfrontieres-france.org>

² Edo, Enugu, Kaduna, Imo and Lagos states.

³ Nigerian Bar Association and Carmelite Prisoners Interest Organization



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- **Introduction**

Torture is regularly used by security agencies in Nigeria despite its ratification of the UN Convention against torture (UN CAT) and the optional protocol (OPCAT). Human rights reports on Nigeria have consistently indicated that use of torture is prevalent and almost institutionalized⁴. The Nigerian government is yet to show any meaningful political will to hold perpetrators of torture to account. There are no known security personnel standing trial for torture committed despite the passage of the anti-torture Act in 2017 criminalizing torture. In October 2020, Nigeria experienced riots across its major cities with citizens demanding for an end to torture, extortion and police brutality using the #EndSARS hashtag.

Although Nigeria ratified the UN CAT in 2001, it is yet to submit a report to the CAT as required under the Convention. Avocats Sans Frontières France would be providing below a report about Human Rights in Nigeria as regards the issue of torture. This report is drawn from the experience of ASF France while implementing projects against torture in Nigeria since 2009 on its ProCAT project and later the SAFE project.

- **Legal framework against torture in Nigeria**

International:

Article 2(1) of the UN CAT⁵ provides that: ‘Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction’

The International Covenant on Civil and Political Rights (ICCPR⁶) expressly prohibits torture and other cruel, inhuman or degrading treatment or punishment. Article 7 of the ICCPR provides that: ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’

Article 5 of the Universal Declaration of Human Rights (UDHR)⁷ provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

Regional:

Nigeria is a signatory to the **African Charter on Human and Peoples Rights (ACHPR)⁸ which is a foremost human rights instrument for the African continent.** The ACHPR in Article 5 provides that: *‘Every individual shall have the right to the respect of the dignity inherent in a human being and to the*

⁴ <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nigeria/> .

<https://www.amnesty.org/en/documents/afr44/9505/2020/en/>

⁵ <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

⁶ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁷ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁸ <https://au.int/en/treaties/african-charter-human-and-peoples-rights>



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recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'

The Nigerian government has not only ratified this charter but has also domesticated it by virtue of 12 of the Nigerian Constitution thereby making it part of the Nigerian laws.

National:

S.34 of the Nigerian Constitution prohibits torture and promotes human dignity.

"Every individual is entitled to respect for the dignity of his person, and accordingly (a) No person shall be subject to torture or to inhuman or degrading treatment."

This provision of the constitution expressly outlaws torture or any inhuman or degrading treatment in Nigeria. The Nigerian constitution is the supreme law of the country and has binding force on all authorities and persons throughout Nigeria

Section 1 of the Anti- torture Act 2017 states that:

The Government SHALL

- (a) ensure that the right of all persons, including suspects, detainees and prisoners are respected at all times, and that no person placed under investigation or held in custody of any person in authority shall be subjected to physical harm, force, violence, threat or intimidation or any act that impairs his free will; and*

The Act made torture an offence punishable with up to 25 years imprisonment for perpetrators.

- **Efforts at torture prevention in Nigeria.**

The Nigerian constitution prohibits torture but makes no concrete provision for its prevention through a well-structured institutional strategy. Following the ratification of its ratification of the Optional protocol to the UN Convention against torture in 2009, Nigeria set up a National committee on Torture. This body which is domiciled at the Federal Ministry of Justice in Nigeria's capital is Nigeria's attempt at setting up a National Prevention Mechanism for torture as required under the OPCAT⁹. The Nigerian Committee on torture hardly met the criteria of independence given its important oversight functions over Nigerian security institutions. Amongst its duties, the Committee is expected to visit detention centers to investigate alleged cases of torture and receive complaints on torture.

The Committee which was later renamed to be known as **National Committee Against torture (NCAT)** has been unable to discharge its duties majorly due to lack of funding. This challenge flows directly from

⁹ <https://www.bristol.ac.uk/law/research/centres/hric/projects/the-implementation-of-the-opcat-in-nigeria/>



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the lack of independence of the Committee which is situated in the Federal Ministry of Justice. This leaves its funding to the discretion of the Justice Ministry and the substantive Attorney General of the Federation.

The Administration of Criminal Justice Act (ACJA) and the Administration of Criminal Justice Laws (ACJL) of various states also provide for periodic visits by the Judiciary (Chief Magistrates).

These laws provide that statement of a suspect should be taken in the presence of his lawyer or a relative and should be recorded with a video camera as a measure to prevent torture. This however is not respected in practice as the Nigerian Police and other detaining agencies continue to interrogate suspects alone, under duress while.

The National Human Rights Commission (NHRC)¹⁰ in Nigeria as part of its mandate ought to carry out regular audit of detention centers with a view to checking human rights violations in detention centers in Nigeria. The last published report by the Commission on its website is the report of the 2019 visit to Police divisions in the FCT, Abuja.¹¹ Lack of access to detention centers especially Police has hampered the implementation of the Force Order 20 which put in place a Police Duty Solicitor Scheme.

- **Access to Justice for torture victims in Nigeria**

Constitution: The Nigerian constitution provides that anyone whose human rights has been breached can follow a judicial procedure to obtain a remedy for such violation. The Constitution assigned jurisdiction for such legal remedy to the High Court whether at the federal level or at the state level. Consequent upon this, the Chief Justice of Nigeria provided a procedural law for the enforcement of fundamental human rights in Nigeria. This procedural law is called the Fundamental Human Rights (FHR) Enforcement Rules 2009.¹² . The 2009 rules replaced a previous rule made in 1979.

FHR Sui generis: The FHR procedure is sui generis and was ordinarily targeted at obtaining a speedy trial for enforcement of Human Rights in Nigeria. This however is not so in practice as the experience of Avocats Sans France in using this procedure for enforcement for HR victims in Nigeria revealed that such cases can last up to 2 years or more in some cases. These delays in obtaining justice from the courts have contributed to the challenges of access to justice for victims of torture.

Difficulty in obtaining evidence as proof of torture in Nigeria

Proof of torture in the court is often stringent and tilted in favor of the perpetrator where the principle of 'he who asserts must proof' is adopted regularly by the Nigerian courts. The victim is often required to obtain medical evidence as proof of torture even when he never had access to medical care in detention. The prison doctors often decline request to provide medical reports of treatment or documentation of detainee at the time of admission to the custodial center. This crucial document would ordinary be important

¹⁰ <https://www.nigeriarights.gov.ng/>

¹¹ <https://www.nigeriarights.gov.ng/files/publications/POLICE-REPORT.pdf> assessed 13/10/2021

¹² <https://www.refworld.org/pdfid/54f97e064.pdf>



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in indicating the physical and medical state of the detainee as at the time of admission into the custodial facility including any injuries or gunshot wounds. Some of these factors may it very difficult for victims to proof their case in court and obtain a remedy for torture suffered.

Notwithstanding these challenges, some human rights organizations dedicated to providing Access to Justice for victims have been able to successfully enforce the rights of victims of torture in Nigerian courts across various states such as Imo, Enugu and Kaduna states.¹³ In some of these cases, the court declared that the actions of the Police amounted to torture, inhuman and degrading treatment and punishment. Monetary damages were awarded sometimes against the Police as compensation for the victim. For example, in the case of Oguchi Kelechi Ihejirika v COP Imo State litigated by ASF France on behalf of the victim in July 2020, a High Court in Imo State ordered for declaratory reliefs for the torture meted out on the victim. Monetary reliefs in the sum of N2, 000,000 was also granted as compensation for the unlawful, illegal and unconstitutional violations of the victim's rights as enshrined in Sections 34 & 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Costs in the sum of N20, 000 was also awarded in favour of the victim.¹⁴

ASF France prosecuted a Fundamental Right Enforcement case on behalf of Mr. Abiodun Adeyeni who was severely tortured in detention of the Nigeria Police Force, he informed our legal team that he was hung on a pole and beaten until he fainted. He was also forced to sleep on dead bodies of some of the inmates already killed in custody by type police. The High Court in Lagos state delivered a Judgment on June 25, 2021 on Mr. Adeyeni's favor for torture suffered including award of #20 million compensation.

ASF France also provided legal representation to Mr. Wasiu Oyedele who was also tortured while in Nigeria Police Force detention. Mr. Wasiu informed ASF legal team that he was forcefully stripped naked by the Police and laid flat on a bench while the police officer flogged him with electrical cables.

On September 30, 2021, a High Court in Lagos state delivered Judgment in his favor including an award of #1 million compensation for the torture, inhumane degrading treatment.

Challenges with enforcement of court processes: Even in cases where judgment is successfully obtained by a victim of torture, enforcement of such judgement to obtain monetary damages awarded against the Police is very difficult. Many victims therefore are still left without a remedy even where the court awarded compensation to them. The difficulty in enforcing court judgments against Nigerian government institutions and the Police is particularly due to a national legislation that provides for all Judgment creditors to apply to the Attorney General for leave before enforcement of such judgement. This requirement which is contained in the Sheriff and Civil Process Act is seen as many human rights activists as a clog in the wheel of justice¹⁵.

¹³ <https://guardian.ng/news/lawyers-without-borders-secure-judgments-against-torture/> assessed 13/10/21

¹⁴ [ASF France records success in ProCAT project judgements - National Accord Newspaper](#)

¹⁵ <https://punchng.com/how-agf-cbn-shield-police-military-from-paying-damages-to-victims-of-rights-abuses/>



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- **EndSARS panel**

Following the #EndSARS protests that erupted across Nigeria in October 2020, various panels of investigations were set up by the Nigerian government both at the national level and at the state level. They were assigned the responsibility of receiving petitions on Human violations including torture, extortion and extra judicial killing perpetrated widely by the now defunct Special Armed Robbery Squad (also known as SARS) and other units of the Nigerian Police. Some of these panels reportedly stopped sitting due to lack of funding¹⁶. The reports of the concluded panels are yet to be made public. No Police Officer is yet to be prosecuted for torture following the petitions submitted by several victims to these panels

- **Anti-torture Act**

The anti-torture Act was signed into law by the current Nigerian President, Muhammadu Buhari in December 2017. The Act finally criminalized torture in Nigeria and prescribes a maximum of 25years imprisonment for perpetrators. It also upholds the principle of absolute prohibition for torture. It retains a definition that is very similar to the definition of torture in Article 1 of the UN Convention Against torture.¹⁷

- **Victim protection (fear of reprisal)**

There are no provisions for victim protection in Nigeria. The government has no mechanism in place to ensure that victims are protected from perpetrators. This remains one of the challenges for victims of torture to come forward and seek justice. The fear of reprisal is rife among victims making many too afraid to report violations to their human dignity and torture endured in the hands of security personnel in Nigeria.

- **Rehabilitation for torture victims**

Even though the constitution prohibits torture, it makes no provision for the rehabilitation of torture victims. There are no plans or programs developed by the government for the rehabilitation of torture victims in Nigeria. Even when they successfully enforce their Rights in court, victims are left to live with the psychological sequelae emanating from the torture experience. This is true for both physical and psychological torture.

The Nigerian constitution only provides a legal remedy but makes no provision for psychosocial support for torture victims.

The Anti-torture Act of 2017 focuses of punishment for torture perpetrators but provides no specific guidance on how torture victims can access psychosocial support to deal with the trauma associated with the torture experienced.

- **Accountability and punishment for perpetrators**

¹⁶ <https://thenationonlineng.net/endsars-lagos-judicial-panel-suspends-sitting-indefinitely/>

¹⁷ <https://gazettes.africa/archive/ng/2018/ng-government-gazette-dated-2018-01-09-no-3.pdf>



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There is no accountability for perpetrators of torture in Nigeria. Since the passage of the Anti-torture Act in 2017 which has now criminalized torture, no security personnel have been prosecuted for torture, yet torture occurs frequently at various detention centers in Nigeria. No security personnel or public official has also been prosecuted for torture following the findings of the various panels of enquiry set up following the #EndSARS protests in Nigeria.

- **Conclusion**

It is time for Nigeria to show respect and commitment to the provisions of the UNCAT which it has ratified by effectively instituting strong accountability mechanisms for perpetrators of torture and by ensuring torture victims receive justice through judicial remedy but also psycho-social support.

- **Suggested recommendations to the Nigerian government**

- Adequate measures and systems should be put in place to ensure rehabilitation of torture victims.
- There is need for immediate and full implementation of anti-torture Act to ensure that perpetrators of torture are held accountable.
- Need to guarantee access to Police stations and other detention centers for lawyers as a torture prevention mechanism.
- Need to guarantee access to Police stations for stakeholders and bodies like the NHRC, National Committee Against torture and the Administration of Criminal Justice monitoring committee as an additional torture prevention mechanism.
- To install cameras for statement taking of suspects to avoid obtaining statement under duress during torture.
- To make public the findings of the panels of enquiries set up following the #EndSARS protests and to ensure Police officers found culpable of torture are prosecuted under the Anti-torture Act 2017. Also ensure that victims are adequately compensated, and monetary damages are accessible to victims.
- Train and raise awareness among Police Officers and other security personnel on the anti-torture Act 2017.