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# Nigerian Legal System and the Protection of the Right against Torture under Emergency Situation: The Boko Haram Insurgency Experience

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## **Abstract**

*Torture is an old form of human right abuse that involves the infliction of physical or psychological pain on another person in order to obtain information or to punish the victim. Several International instruments have guaranteed the right against torture and demand State Parties to take practical steps in order to ensure that this important human right is respected. In view of the fact that torture is done by the state or agents of the state, it is sometimes difficult for appropriate redress due to non-availability of adequate enforcement mechanisms. The right against torture has been guaranteed under the 1999 Constitution FRN. Every individual whose right against torture is abused has the right to seek for legal redress in a court of law. Following the declaration of the state of emergency in some states of Northern Nigeria due to the Boko Haram insurgency, there have been serious cases of human right abuses from the military and other law enforcement agencies. This paper therefore intends to examine the position of torture under the Nigerian law, the alleged cases torture by security agencies with a view to suggesting ways through which offenders will be made to face justice and minimize such cases of human right abuses.*

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**Key Words:** *Torture, State of Emergency, Nigeria, Boko Haram*

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## **1. INTRODUCTION**

The protection of the right against torture is an internally acclaimed human right that cannot be derogated in all situations, including during state of emergency. Several international instruments have guaranteed the right against torture. Following the havoc and human right abuses that took place during the World War II the United Nations adopted the Universal Declaration of Human Rights 1948.<sup>1</sup> Article 5 of the declaration asserted the right of every human being against torture. This was followed by several other International instruments on human right protection. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (CAT)<sup>2</sup> is the only international instrument that is solely dedicated to the prohibition of torture and other forms of cruel and inhumane and degrading treatment. In addition, several regional instruments such as the African Charter on Human and Peoples' Rights have prohibited torture.<sup>3</sup> These international Instruments demand that States Parties shall ensure that they enforce the Instruments in their various countries.

Nigeria like most nations, the law has prohibited torture and has provided for means of redress to victims of torture. The Nigerian Constitution which is the Supreme law of the

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<sup>1</sup> Adopted and Proclaimed by the General Assembly on the 10<sup>th</sup> of December 1948 by Resolution 217 (111).

<sup>2</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987

<sup>3</sup> See Article 5 African Charter on Human and Peoples' Rights

land has guaranteed the right of every individual against torture and all forms of inhumane and degrading treatment. The boko haram insurgency in northern Nigeria has led to the death of thousands and the destruction of property worth millions of naira. The Nigerian military and other security agencies have detained thousands on suspension of being part of the dreaded group; unfortunately several cases of innocent people becoming victims of these detentions have been reported. More disturbing is the cases of torture, executions and other forms of human rights abuses. This paper therefore intends to examine the issue of human right abuses specifically relating to the right against torture under the emergency situations in the states of northern Nigeria and how the law can be effectively utilized to minimize such human right abuses.

## 2. NIGERIA AND THE LEGAL SYSTEM

The entity Nigeria came into being in 1914 following the amalgamation of the Northern and southern protectorates.<sup>4</sup> Lord Lugard was appointed by the British colonial administration as the Governor General.<sup>5</sup> Nigeria remained under the colonial administration until 1<sup>st</sup> October 1960 when Nigeria got its independence. Nigeria became a republic in 1963.<sup>6</sup> Nigeria witnessed its first Military coup in 1966 which resulted in the death of many leaders especially from the Northern Part of the country.<sup>7</sup> Sir Abubakar Tafawa Balewa the first prime Minister and Sir Ahmadu Bello the Premier of the Northern Region were all killed. That resulted in a counter coup by soldiers mostly of northern origin.<sup>8</sup> The happenings led to a bloody civil war that lasted for 30 months. Nigeria got its first republic in 1979. The Military intervened again in 1983 under the leadership of Brig. General Buhari, the administration of Buhari was short lived as it was ousted by another coup led by Gen. Babangida.<sup>9</sup> Due to pressure both from home and abroad, Babangida handed over to an Interim Government under Shonikan who was deposed by General Abatcha. Abatcha died in a mysterious circumstances and General Abulsalam took over.<sup>10</sup> Abdulsalam handed over to a democratically elected government under the leadership of gen. Obasanjo in 1999 since then Nigeria has remained under a democratic government.<sup>11</sup>

Nigeria had experienced several constitutional changes since independence. Whenever the Military take over government they abrogate the constitution and introduce a new Constitution when they want to hand over power to a civilian government. Nigeria has had three constitutions since independence. It started with the 1963 Republican Constitution, then the 1979 Constitution and finally the 1999 Constitution. Though in 1989 a new Constitution was drafted but it did not see the light of the day.

The Nigerian Constitution is the supreme law of the land. It is the mother law from which all the laws in Nigeria derive their validity. According to the Constitution, its provisions are supreme and any law that is in conflict with the Constitution shall be void to the extent of its inconsistency.<sup>12</sup> The Constitution provided for the creation of the three arms

<sup>4</sup> Oduwobi, T., *From Conquest to Independence: The Nigerian Colonial Experience*, (2011), HAOL, Núm. 25, P19

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> MUSE, S.F., *Military Rule: Consequences on Public Participation in Nigeria*, (2014), *Projournal Of Humanities And Social Science*, vol. 2 (3), P2.

<sup>8</sup> Ibid

<sup>9</sup> Adeakin, I., *Military Prerogatives, Authoritarianism and the Prospects for Democratic Consolidation in Nigeria*, <http://www.cpsa-acsp.ca/papers-2012/Adeakin.pdf> viewed 25/2/2015.

<sup>10</sup> Dibua, J.I., *Modernization and the Crisis of Development in Africa: The Nigerian Experience*, (USA: Ashgate, 1988), at 129.

<sup>11</sup> Ibid

<sup>12</sup> Section 1(3) of the 1999 Constitution

of government which are the Legislature, executive and judiciary. The legislature is the arm of government that is responsible for law making. At the national level the Senate and House of Representative make laws for the whole country. The senate is the Upper House that is made up of 109 Senators.<sup>13</sup> The senate is headed by the President of the Senate assisted by the Deputy Senate President. In the absence of the Senate President, the Deputy Senate President presides over the house.<sup>14</sup> The lower house is the House of Representative with 360 members. The house of representative is presided over Speaker of the house who is a member of the House that is elected by the members.<sup>15</sup> The Deputy Speaker assists the speaker in the discharge of his duties. In the absence of the Speaker, the Deputy Speaker presides over the House. At the State level the State Houses of Assembly have the mandate to make laws for the good governance of their respective states. The State House of Assembly is headed by the Speaker of the House. The Deputy Speaker assists the speaker in the discharge of his duties.<sup>16</sup>

The executive arm of government is responsible for the implementation of the policies of the government. The President is the chief executive and number one citizen in the Country. The Vice President assists the President and in case the president dies, impeached or is incapable of performing his duties, the Vice President will be appointed as the President.<sup>17</sup> At the State levels, the Governor is the chief executive officer of the state and he is the chief security officer of the state. Just like in the case of the President, the Deputy Governor will be appointed the Governor in case of death, impeachment or inability to discharge his duties by the Governor.<sup>18</sup>

The judiciary is the arm of government that is saddled with the responsibility of interpreting the laws.<sup>19</sup> The judicial arm of the government is a very important arm of the government when the issue of human rights and the protection of the dignity of man are brought to question. This is because the judiciary ensures that the executive and its agents respect the rule of law and do not subject the citizens to abuse. In hierarchy, the Supreme Court is the apex court in Nigeria with unlimited jurisdiction.<sup>20</sup> The Supreme Court has both original and appellate jurisdiction over matters. The Supreme Court has original jurisdiction on matters or disputes between states or between a state or states and the Federal Government.<sup>21</sup> It has appellate jurisdiction with respect to appeals from the court of Appeal.<sup>22</sup> The Chief Justice of the Federation is the head of the Supreme Court and the leader of the judicial arm of the government.<sup>23</sup> Next to the Supreme Court is the Court of Appeal. The Court of Appeal entertains appeals from the Federal High Court, State High Court, Sharia Court of Appeal, Customary Court of Appeal and the National Industrial Court. The President of the Court of Appeal presides over the Court of Appeal.<sup>24</sup> Federal High Court, State High Court, sharia court of Appeal, Customary Court of Appeal and the National Industrial Court are also superior courts of record.<sup>25</sup> The Federal High Court has exclusive jurisdiction over several issues that relates to the federal government such as matters relating

<sup>13</sup> Section 48 of the 1999 Constitution

<sup>14</sup> Section 5(1)(a) of the 1999 Constitution

<sup>15</sup> Section 49 of the 1999 Constitution

<sup>16</sup> Section 5(1)(b) of the 1999 Constitution

<sup>17</sup> Section 5(1)(a) 1999 Constitution

<sup>18</sup> Section 5(2) 1999 Constitution

<sup>19</sup> Section 6(1) 1999 Constitution

<sup>20</sup> Section 230 1999 Constitution

<sup>21</sup> Section 239 1999 Constitution

<sup>22</sup> Section 233 1999 Constitution

<sup>23</sup> Section 230 1999 Constitution

<sup>24</sup> Section 237 1999 Constitution

<sup>25</sup> See section 6 1999 Constitution

to currency, sea, etc.<sup>26</sup> the State High Court are courts with unlimited jurisdiction and they entertain matters on appeal from the Magistrates Courts and Sharia or Customary Courts which the Sharia and Customary Courts of Appeal have no jurisdiction.<sup>27</sup> The Sharia Court of Appeal has jurisdiction to entertain appeals from the Sharia Courts at the lower level on matters of Islamic personal law such as marriage, divorce, custody, inheritance and *waqf*.<sup>28</sup> Customary Court of Appeal entertains appeals from the Customary Courts at the lower level.<sup>29</sup> At the lower level, the Magistrates Courts, Sharia Courts and Customary Courts are courts of first jurisdiction that entertain matters from litigants.

With respect to the tiers of government, there are three tiers of government in Nigeria. These are the federal, state and local government. The federal government is government at the central level. The laws passed by the legislature at the central level are referred to as Act. During military regime, the laws made by the Military at the federal level are referred to as Decree.<sup>30</sup> The state government comes next to the federal government. There are 36 states in the federation with Abuja as the Federal Capital Territory.<sup>31</sup> The laws made by the state government is referred to as Law while during military rule, the laws at the state level is referred to as Edict. The third tier of government is referred to as the Local Government. There are 774 local governments in Nigeria. The laws made by the local government are referred to as bye law.<sup>32</sup>

With respect to the sources of Nigerian laws, the following are the sources of Nigerian Law;

a. Local legislation- The first source of Nigerian law is the local legislation made by the Nigerian legislature. The main body that is vested with the power to make law for the good governance of Nigeria is the legislative arm of government. The Constitution has vested the power to make laws on the legislature constituting the Senate, House of Representatives and the States Houses of Assembly.<sup>33</sup>

In addition to the legislature, the courts through the case are said to be a source of law. Ordinarily, the duty of the courts is to interpret the laws and not to make laws however, since the decisions of superior courts are binding on the inferior courts, that rule of *stare decisis* through judicial activism is said to be a source of law.<sup>34</sup> Similarly based on the principle of delegated legislation, some executive bodies can make laws for the purpose of governing the activities of their staff or members. This situation is referred to as delegated legislation. For example the chief judge of a state can make rules of the courts which all the courts in the state are expected to follow hence serving as a form of subsidiary legislation.<sup>35</sup>

b. Islamic law- Islamic law is another important source of the Nigerian law. Even before the coming of the British colonial administration. Islamic law has been in existence and is been applied by Nigerians as the source of their law especially in Kanem Borno and Sokoto Caliphates.<sup>36</sup> Under Islamic law, the Glorious Qur'an and traditions of the Prophet (PBUH) are the primary sources of the law. *Ijma* (consensus of Muslim jurists) and *Qiyas* (analogical deduction) are the secondary sources. While *Istihsan*, *uruf* and *adat* (custom) are the

<sup>26</sup> See Sections 249-254 1999 Constitution

<sup>27</sup> See Sections 270-274 1999 Constitution

<sup>28</sup> See Sections 275-279 1999 Constitution

<sup>29</sup> See Sections 280-284 1999 Constitution

<sup>30</sup> Tobi, N., Sources of Nigerian Law, (Lagos: M.J. Professional Publishers Ltd, 1996), P2.

<sup>31</sup> Section 3 1999 Constitution

<sup>32</sup> Section 3(6) of the 1999 Constitution

<sup>33</sup> See section 4 1999 Constitution

<sup>34</sup> Tobi, N., Op. Cit.

<sup>35</sup> Ibid

<sup>36</sup> Ostien P., and Dekker, A., "Sharia and National Law in Nigeria", in Sharia and National Law: Comparing the Legal Systems of Twelve Islamic Countries, Otto J.M. editor, (Egypt: Leiden University Press, 2010), at 585.

subsidiary sources.<sup>37</sup> In order to tame the application of Islamic law and subject it to the repugnancy tests, the colonial administration referred to Islamic law as customary law. This has been subsequently objected by some highly respected judges in Nigeria. For example in *Alkamawa v Bello*, Commasi JSC stated that Islamic law is not the same as customary law because it does not belong to any particular tribe. It is more universal and rigid than even the English common law.<sup>38</sup>

c. Customary law: Customary law a law that is derived from the customs and traditions of the people. Osborn CJ observed in *Lewis V Bankole*, thus

“...indeed, one of the most striking features of West African native custom to my mind is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its individualistic characteristics.”<sup>39</sup>

Similarly, in *Oyewunmi Ajagungbade III V Ogunesan*, Obaseki JSC observed that customary law is

“The organic and living law of all indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is a mirror of the culture of the people.”<sup>40</sup>

Long before the coming of the colonial administration, many parts of Nigeria apply customary law in their day to day activities.<sup>41</sup> When the colonial administration came, they did not completely do away with the local customs and traditions but rather stated that before any custom becomes applicable, it must not be repugnant to natural justice, equity and good conscience. There is however no standard for measuring what is repugnant to natural justice equity and good conscience. It depends on what the judge feels. That therefore makes the customary law highly uncertain because at any point in time the judges can decide that the customary is contrary to natural justice equity and good conscience.

It is important to mention that customs in Nigeria have certain characteristic which include being the accepted way of life of the people. It is a mirror of accepted usage, it is universal and flexible. Where a claimant wants to rely on a particular custom, he is expected to show the court that the particular custom has satisfied all the requirements mentioned above.<sup>42</sup>

d. Received English Law: The received English law is equally one important source of Nigerian law. The Received English Law comprises of the Common law of England, Doctrines of Equity and statutes of General Application.

Even after independence, English law has remained a valid source of Nigerian Law. Section 45 of the Interpretation Act clearly states;

“Subject to the provisions of this section and except in so far as other provision is made by any federal law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1<sup>st</sup> day of January, 1990, shall be in force in Lagos and in so far as they relate to any matter within the exclusive legislative competence of the federal legislature, shall be in force in elsewhere in the Federation.”

<sup>37</sup> Doi, A., *Sharia the Islamic Law*, (Kaduna: Tangaza, 1984), 80.

<sup>38</sup> (1998) 8 NWLR (pt 561) 173

<sup>39</sup> (1908) 1NLR 81

<sup>40</sup> (1990) 3NWLR 182 at 207

<sup>41</sup> Saussine, A.P. and Bernard, J., *The Character of Customary Law: Legal, Historical and Philosophical Perspectives*, (USA: Cambridge University Press, 2007), at 1.

<sup>42</sup> Section 14(1) Evidence Act

Further, the High Court Laws of Eastern,<sup>43</sup> Northern,<sup>44</sup> and Western Regions<sup>45</sup> have provided for the application of English law in Nigeria.

The common law of England is the law that is applicable in the four realms of the United Kingdom which comprises of England, Scotland, Ireland and Wales. The doctrines of equity came due to the harshness and rigidity of the common law.<sup>46</sup> Under the common law, for every case, a particular writ was used and when there is a new issue that is not covered by a writ, then the victim will not have the assistance of the court. Due to the numerous complaints filed before the king, he dedicated the chancellor to attend to such complaints and find a remedy for the victims. The chancery gradually developed into the equity courts.<sup>47</sup> At a point the judges of the Common law courts felt threatened by the intervention of equity and that resulted in rivalry between the two courts. King James II through the Judicature Act settled the conflict by combining the common law and equity courts into one court and whenever there is conflict between the common law and equity, equity prevails.<sup>48</sup> The Statute of general application constitute of all the laws that are applicable in England on or before 1<sup>st</sup> January, 1900. In *Young v Abina*,<sup>49</sup> the West African Court of Appeal held that it would still be applicable in Nigeria even if it has been repealed or amended in England after 1<sup>st</sup> January, 1900. However in *Lawal v Ejidike*<sup>50</sup> the Court of Appeal held that it will be ridiculous for Nigerian Courts to continue to apply a law of England even if that law has ceased to apply in England. Hence a Statute of General Application only applies in Nigeria only if it remains a valid and enforceable law in England on the date in question.

### 3. HUMAN RIGHTS IN NIGERIA

Human rights are right of every human being by virtue of is being a human being. Following the havoc of the World War II, the world came to appreciate the reality that there is the need to have an internationally recognized instrument on human right protection which every national of the World is supposed to respect. That brought to light the Universal Declaration of Human Rights 1948. This important international human right instrument guaranteed several rights to man and urges Nation States to ensure that they respect these rights. Several other International Instruments on human right protection followed which requires States Parties to ensure that the rights of man are respected. Nigeria is a signatory to most of these human rights Instruments. However the Constitution of Nigeria 1999 requires that before any international Instrument can have a binding effect in Nigeria, it must be domesticated into its local law.<sup>51</sup>

Chapter IV of the 1999 Constitution of the Federal republic of Nigeria provided for several rights which no body is permitted by law to deprive or deny. The right to life is guaranteed by the Constitution and no person is allowed to take the life of another except through the pronouncement of a court of law in accordance with the law of the land. The Constitution states;

“(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

<sup>43</sup> sections 14 and 20 of the High Court Law, Eastern Region No. 27 of 1955

<sup>44</sup> Section 28 and 28a of the High Court Law, Northern Region No. 8 1955.

<sup>45</sup> Section 4 and 5 of the Laws of England (Application) Law, Western Region Cap 60, Laws of Western Region

<sup>46</sup> Park, A.E.W., *Sources of Nigerian Law*, (Lagos: African Universities Press, 1963), P6.

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> (1940) 6 WACA 180

<sup>50</sup> (1997) 2 NWLR 319

<sup>51</sup> Section 12 1999 Constitution

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

(a) for the defence of any person from unlawful violence or for the defence of property:

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny.”<sup>52</sup>

The right to personal liberty,<sup>53</sup> right against discrimination based on sex, gender, tribe or religion<sup>54</sup> and the right against torture are provided for by the Nigerian Constitution.<sup>55</sup> Other rights guaranteed in the Constitution include the right to fair hearing<sup>56</sup> and the right to peaceful assembly.<sup>57</sup> The right to freedom of religion, thought and conscience is one of the right under the Nigerian Constitution that has always been a source of debate from various quarters. While the individual is at liberty to choose the religion of his choice and he must not be forced to accept or change his religion, the application of this right must not extend to breaching or trampling upon the right of others.

Similarly, Chapter II of the Constitution provides for social rights that are non-Justiciable. The Constitution referred to it has Fundamental Objectives and Directive Principles of State Policy. Under these rights, the government is expected to strive and endeavour to provide for every Nigerian citizen the rights spelt out in the chapter. These rights include the right to education, health, environment etc.<sup>58</sup> Though the Constitution has stated that the rights in the Chapter are non-Justiciable, the African Court of Justice stated in the case of SERAP v Federal Republic of Nigeria and Universal Basic Education Commission<sup>59</sup> that the right to education though mentioned as non-justiciable, and that since corruption is the cause of denial of the right to Nigerian citizens, it then becomes incumbent on the state ensure that it provides for its citizens this important right.

Human rights are part and parcel of the Nigerian law, the Constitution which is the supreme law of the land has dedicated a whole chapter for the protection of the right of every human being. The state and all its agencies are under an obligation to ensure that they respect this important right of man.

## 4. STATE OF EMERGENCY

### 4.1 Some Conflicts in Nigeria

Nigeria has gone through many crises in its political history. Seven years after its independence Nigeria went through a bloody civil war that lasted for 30 months. The civil war started when the Igbos from the Southeastern part of the country wanted to cut out of Nigeria to have a state of their own called Biafra.<sup>60</sup> There were several attempts to settle them but that failed. The civil war claimed the lives of over a million Nigerians. The war ended without victor and vanquish. The unity of Nigeria was maintained.<sup>61</sup>

<sup>52</sup> Section 33 1999 Constitution

<sup>53</sup> Section 35 1999 Constitution

<sup>54</sup> Section 42 1999 Constitution

<sup>55</sup> Section 34 1999 Constitution

<sup>56</sup> Section 36 1999 Constitution

<sup>57</sup> Section 40 1999 Constitution

<sup>58</sup> See Sections 13- 24 1999 Constitution

<sup>59</sup> Suit number ECW/CCJ/APP/808

<sup>60</sup> <http://www.enotes.com/homework-help/what-were-causes-biafran-nigerian-civil-war-what-466264>

<sup>61</sup> Ibid

Another instance of conflict or uprising in Nigeria is the case of maitasine crises. The crises started in Kano state where a group that claimed it works with the Qur'an only and any person that does not believe in their cause is a disbeliever and should be killed. They killed hundreds and it took the intervention of the military to quell the uprising.<sup>62</sup> A similar maitasine uprising resurfaced in Yola and Maiduguri and that has resulted in the death of hundreds of innocent souls.<sup>63</sup>

There was a serious uprising and conflict in most states of south western Nigeria after General Babangida annulled the June 12 Presidential election. Alhaji MK Abiola won the presidential election in 1992. The Yorubas felt the election was annulled due to the fact that Abiola was a Yoruba man. That led to attack on Northerners by the Yorubas. Several lives were lost and properties worth millions of Naira were destroyed. The conflict lasted long and was one of the factors that forced General Babangida to handover to an interim government.<sup>64</sup>

After Nigeria returned to democratic rule in 1999, many states in Northern Nigeria introduced sharia criminal justice system. The Christian Association of Nigeria objected to this move and maintained that it is a calculated attempt to Islamize Nigeria. The Muslims contended that the sharia introduced, is for Muslims alone and it is not meant for non-Muslims. They further argue that the Nigerian Constitution has stated that every citizen is entitled to the right to religion and the application of Islamic criminal law is part and parcel of the right to religion of the Muslims. The Constitution states;

“(1): Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2): No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction, ceremony or observance related to a religion other than his own, or a religion not approved by his parent or guardian.

(3): No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.”<sup>65</sup>

This schism led to serious conflict resulting in the lost of thousands of lives and destruction of property worth millions of naira.

The oil rich Niger Delta region of Nigeria has equally gotten its share of the conflict. In the case of the Nigeria Delta, they agitated for the protection of their environment that is destroyed by the oil exploration that is taking place in the region. Similarly, they claimed that since they produce the oil that is more than 90% of Nigeria's income, they should be given special consideration and allowed to enjoy more from the national cake. When the federal government failed to timely respond and address their demands, they resorted to the use of arms to fight the federal government. At last late President Yar'adua granted them amnesty and developed a well planned strategy for the development of the area.<sup>66</sup>

<sup>62</sup> Adebayo, R.I., *Ethno-Religious Crises and the Challenges of Sustainable Development in Nigeria*, (2010), *Journal of Sustainable Development in Africa*, Volume 12, No.4, at 215.

<sup>63</sup> Ibid

<sup>64</sup> Obadare, E., *Democratic Transition and Political Violence in Nigeria*, (1999), *Africa Development*, Vol. XXIV, Nos. 1 & 2, at 211.

<sup>65</sup> Article 35 of the 1979 Constitution

<sup>66</sup> Egwemi, V., *From Militancy to Amnesty: Some Thoughts on President Yar'adua's Approach to the Niger Delta Crisis*, (2010), *Current Research Journal of Economic Theory* 2(3), P 136.



The conflict between Muslims and Christians in Plateau state saw the declaration of a state of emergency for the first time in the new Nigeria under a democratic government. In the words of Leteju;

“Jos which was hitherto a serene town had become a mass grave of decaying corpses nose-wrenching odors and para trooping vultures as arrows, machetes, swords and guns of varying sophistication were employed (freely used) indiscriminately. Human bodies were strewn on virtually every street in Jos. People who were not blown up by bullets were simply hacked down and their throats slit in the manner of slaughtering of an animal. Many others were sprayed with petrol and set ablaze. The stench of burnt bodies was suffocating. Buildings and vehicles were not spared. A particular car dealer in Jos metropolis lost all the vehicles on display in his fleet to the mayhem.”<sup>67</sup>

Due to the alarming lost of lives and property President Obasanjo declared a state of emergency based on the power granted to him by the Nigerian Constitution. Though the president appointed a military administrator, the Constitution did not allow or grant him such a power.<sup>68</sup>

#### 4.2 Boko Haram Conflict

*Jamat ahlu sunnah li dawati wa al-Jihad* popularly called boko haram (western education is prohibited) is a group popular referred by some Muslim jurists as khawarij. Historically al-khawarij started a far back as the time of the companions of the Prophet (PBUH) when a group claimed that everyone must work with the Qur'an and any person that does not work or agree with their belief is a disbeliever and should be killed.<sup>69</sup> The case of boko haram has even gone beyond just killing people for not working with the Qur'an, they equally kill people that do attend western education and submit to democracy.<sup>70</sup>

Boko haram crisis in Nigeria started when the group under the leadership of their late leader Muhammad Yusuf had a conflict with security operatives over the use of helmet some members of the group were shot and wounded. In revenge, the group attacked several police and military formations in Maiduguri. The conflict lasted for three days and many members of the group including their leader were killed. Hundreds of other members of the group were equally arrested. A year later the group re-emerged and gradually became a much organized and sophisticated armed group. The conflict has claimed thousands of lives and has displaced over 3 million people in north eastern Nigeria.<sup>71</sup>

In an effort to crush the group, security operatives in Nigeria especially the military has been accused of detaining, torturing and summarily executing thousands of innocent civilian on suspicion of being members of the dreaded group. Amnesty International has come out with several implicating report of torture of innocent civilians by the Nigerian military.<sup>72</sup>

<sup>67</sup> Lateju, F.T. & Adebayo, R.I. (2006). Christian-Muslim Encounter in Nigeria and Interfaith Perspective on Religion in Conflict and Peace Building. A Report of the Centre for Interfaith Relations and Cross-Cultural Outreach submitted to Life and Peace Institute, Sweden.

<sup>68</sup> See section 305 of the 1999 Constitution.

<sup>69</sup> Baksh, A.Q., ISIS The Contemporary Kharijite Sect, available at <http://calltoislam.com/pdf/ISIS%20-%20The%20Contemporary%20Kharijite%20v2.pdf> viewed 26/2/2015

<sup>70</sup> Sampson, I.T., Religious violence in Nigeria: Causal diagnoses and strategic recommendations to the state and religious communities, available at <http://www.ajol.info/index.php/ajcr/article/viewFile/78703/69042>.

<sup>71</sup> Barna, J., In Depth Analysis Insecurity in Context: The Crises of Boko Haram in Nigeria, [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/536393/EXPO-AFET\\_NT\(2014\)536393\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/536393/EXPO-AFET_NT(2014)536393_EN.pdf)

<sup>72</sup> Ibid

## 5. TORTURE UNDER THE NIGERIAN LAW

Nigeria is a signatory to several international instruments that prohibit torture. The United Nations Declaration of Human Rights, CAT and several other UN and African Union instruments have prohibited torture and demand states parties to take practical steps towards ensuring that perpetrators of such cruelty are brought to justice.<sup>73</sup> Internationally recognised human rights arise from the inherent (moral) nature of the human person. For example, Article 1 of the Universal Declaration begins; “all human beings are born free and equal in dignity and right”.<sup>74</sup> The Vienna Declaration uses almost the same language “all human rights derive from the dignity and worth inherent in the human person”.<sup>75</sup> Article 1 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) of December 10, 1984. Defines torture as;

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction.”

Torture for whatever motive is contrary to the laws in Nigeria. The Nigerian constitution has granted the right against torture to every citizen of Nigeria. Where any person’s right against torture is deprived, the constitution allows him to seek for legal redress in a court of law.<sup>76</sup>

With respect to the right against torture, the Constitution states

“(1) 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;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour.

(2) for the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;

(c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;

(d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or

(e) any labour or service that forms part of -

(i) normal communal or other civic obligations of the well-being of the community.

(ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or

<sup>73</sup> Article 2 of the United Nations Convention Against Torture.

<sup>74</sup> UDHR of 1948, December, 10.

<sup>75</sup> Ladan, M. T., *Material and Cases on Public International Law* (ABU Press: Zaria, Nigeria, 2007), P. 5.

<sup>76</sup> Section 46 1999 Constitution

(iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.”<sup>77</sup>

Similarly, torture is a form of assault on the person of another, this according to the penal code amount to causing hurt or pain on another person and therefore a criminal offence.<sup>78</sup>

Certainly, one of the motives behind torture is for the purpose of taping information from the victim. Under the Evidence Act, any person that is compelled through torture to make a confession will not be bound by that confession. The courts will consider such a confession as an involuntary confession which is considered inadmissible by the court. Section 29 (2) and (5) the new Evidence Act 2011, any confession obtained from an accused person by torture, inhuman or degrading treatment, the use or threat of violence, hence by oppression, would not be voluntary but would be classified as unreliable and inadmissible in evidence against the accused person.

Similarly, a victim of torture can institute an action for assault and battery against his attacker. This is because under the Nigeria civil law, a person has the right to seek for damages for any form of harm done to him by another person and the injury or harm caused to him will determine the amount of damages he will claim from the attacker or will be awarded to him by the court.

## **6. ANALYSIS OF TORTURE UNDER EMERGENCY**

The Nigerian Constitution has vested the President of the Federal Republic of Nigeria with the power to declare a state of emergency in any part of Nigeria due to conflict, natural disaster or other calamities. The Constitution states

The President shall have power to issue a Proclamation of a state of emergency only when -

- (a) the Federation is at war;
- (b) the Federation is in imminent danger of invasion or involvement in a state of war;
- (c) there is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;
- (d) there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger;
- (e) there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;
- (f) there is any other public danger which clearly constitutes a threat to the existence of the Federation;”<sup>79</sup>

Sequel to the power bestowed on him by the Constitution a state of emergency was declared in Borno, Yobe and Adamawa states of north eastern Nigeria.

There were reported cases of rampant human right abuses by the security operatives in Nigeria especially the Military.<sup>80</sup> The right against torture is a non-derogable right that cannot be denied even during emergencies. It is therefore appropriate to state that the abuse of the right against torture cannot be excused by the fact that there was a declaration of a state

<sup>77</sup> Section 34 1999 Constituion

<sup>78</sup> Section 240 Penal Code

<sup>79</sup> Section 305 (3) 1999 Constitution

<sup>80</sup> Amnesty International (2014) Written Statement to 25<sup>th</sup> Session of the UN Human Rights Council .(3<sup>rd</sup> to 28<sup>th</sup> March 2014)

of emergency in the North eastern part of the country. All the machineries of law should be allowed to take its full course for the purpose of punishing offenders so that such abuses will not be allowed to take place in the future.

## **7. CONCLUSION**

Nigeria is the most populous black nation in the world. In its political history, Nigeria has gone through several conflicts that had claimed the lives of millions of Nigeria. It is estimated that the Nigerian civil war alone has resulted in the death of over a million Nigerians. After Nigeria returned to a democratic rule in 1999, President Obasanjo was the first to declare a state of emergency in Plateau state in order to address the ethno religious crises that has loomed the state for a very long time.

Boko haram crisis in Nigeria has resulted in the death of thousands and the displacement of over three million Nigerians. The conflict which started as a small unrest from a group that claimed it wants to establish an Islamic state, turned out to be a foremost conflict. The group killed very one that did not believe in their cause. The group is known to have killed children, the aged and even women. The attacks from the group even extended beyond the Nigerian boundaries. A state of emergency was declared by President Jonathan but that has still not solved the problem. The ordinary Nigerian has suffered badly from this terrorist group. There were equally cases of torture, rape and summary execution from security operatives in Nigeria.

The Nigerian Constitution is clear that the right against torture is a non-doragable right. Every person is entitled to the enjoyment of this right even during a state of emergency. It is therefore appropriate to state that the declaration of the state of emergency cannot be an excuse to trample upon the right against torture. Since the Penal Code is clear to the effect that any person who causes grievous harm to another is to face the wrath of the law, security operatives found to have tortured, raped or abused innocent civilians should be made to face justice and there must be no cover ups. The courts must also ensure that they go extra mile by refusing to admit confessions that have the elements of duress so as to block or discourage the security operatives from resorting to torture to obtain confessions.