

## The rights of patients against torture under the Nigerian law

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### Abstract

**Background:** The concept of human rights in general has become a universal concept, which can be swept aside for no just reason. That is why it has been recognised both at the state and interstate level, as something fundamental, applicable and enforceable at all time. Torture is one out of several human rights issues that negatively affects individual in his person and the state of health. This paper discusses the rights of patients against torture as found under the Nigerian law and other outside relevant legislations. Incidental to this topic is the discussion on how these human rights issues affects medical practice.

**Methods:** This paper applies doctrinaire method, which involves exploring available literatures on the topic, relevant statutes, medical codes of ethics, and court cases.

**Results:** There is overwhelming evidence that shows that torture inflicted on a patient, in whatever forms, is not acceptable under the 1999 Constitution of Federal Republic of Nigeria (CFRN). Laws outside of Nigeria against the practice of torture on the patient can be find in regional document like African Charter of Human and People's rights (ACHPR) and in records of International Human Rights Instruments (IHRIs) like the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). All these legal documents' positions are substantiated with provisions from relevant statutes, plethora of Nigerian and foreign court cases, and medical codes of conduct. In addition, where there is any infringement of this right, the affected patient has all the rights, as a citizen of this country, to seek for redress in national, regional and international courts after following the required processes.

**Conclusion:** The right against torture in any form is enshrined in Nigerian law. The power confers on a medical practitioner or healthcare provider in the treatment of any patient, does not permit the practitioner to inflict torture on the client before, during and after medical treatment. Therefore, a patient's fundamental right against torture under medical treatment must be respected.

**Key words:** Torture, Human Rights, Medical Treatment, Patient's Rights.

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### Introduction

Human rights seem to predate man from the divine perspective. Thus, the history of human right is not only as old as human existence, but also the growth of its development does cut across epochs. An understanding of the growth in human right

is in *stricto sensu* tied to definition of right.

This by priori thinking suggested that, right should only become meaningful when it exists as an interest protected by law. The implication of which grants the victim denied their rights the recourse to seek for enforcement of such rights. And where such

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rights are unenforceable, there is provision of law to seek for restoration through the process laid down by the law.

One of the rights protected under the law is rights against torture. Torture is one out of several human rights issues that negatively affects individual in both health and sickness. Torture is more frowned at when it applies to the vulnerable like women, the elder, the young and especially the sick. Although, torture on the vulnerable often occur at an individual level, but on the long run affects the society. This is because, every individual tortured soon become a sum of people victimized. Such generality of unjustly treated people's interest and in particular that of the sick needs to be protected. As a way of preventing the torture of patients, this paper discusses the rights of patients against torture as found under the Nigerian law and other outside relevant legislations. This proactive step is incidental to further discussion on how these human rights issues affects medical practice and their breach constituting a violation of medical ethics.

### **Methodology/Results**

To determine the existence of the rights of patient against torture under the Nigerian law, this paper resort to doctrinaire method of research. This involves exploring the history and development of relevant legal regimes and documents at all levels. The results of

such exploration shows that there are ample law at the municipal, regional and internationally that prohibits act of torture in all its ramifications, particular where such act affects the rights of the patients. Existing national documents include the 1999 Constitution of Federal Republic of Nigeria (CFRN)<sup>1</sup> and the 1990 Medical and Dental Practitioners Act (M&DPA).<sup>2</sup> At the regional level, documents like African Charter of Human and People's rights (ACHPR)<sup>3</sup> exists. And at the global arena, International Human Rights Instruments (IHRIs) uncovered include the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>4</sup> International Covenant on Civil and Political Rights (ICCPR),<sup>5</sup> Convention on Child Rights (CRC),<sup>6</sup> and the Universal Declaration of Human Rights (UDHR).<sup>7</sup> Based on these documents, this paper will delineate the legal ramification of torture of patient under the following subheadings.

### **Meanings and Development of Human Rights in History**

Ordinarily, the word "rights" have been defined differently by scholars or jurists from many schools of law. Literally, "right" means "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others."<sup>8-10</sup> An expansion of the definition of right is as a "faculty, that resides in a determinate party or

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parties by virtue of a given law, and which avails against a party or parties (or answers to a duty lying on a party or parties), other than the party or parties in whom it resides.”<sup>11</sup> In another legal view to understanding right more holistically is by defining a legal right as “an interest recognised and protected by a rule of legal justice, an interest, the violation of which would be a legal wrong to him whose interest it is, and respect for which is a legal duty.”<sup>12</sup>

Where such rights is confer on human race, it becomes “human rights.” Such rights are said to be inherent, possessed by all human beings, irrespective of their race, colour, geography, age and gender. The constant reference to it as natural rights is based on its link to the basic assumption that it originates from the natural law. In other words, it is God-given, irrespective of whether someone accepted it as so or otherwise. Human rights prepare the mind of everyone to admit that there is an all-encompassing obligation man owe to one another, and a duty which all men is expected to carry out and fulfil it, at all time.

Flowers writes that, “throughout much of history, people acquired rights and responsibilities through their membership in a group, a family, indigenous nation, religion, class, community, or state.”<sup>13</sup> Most societies have

had traditions similar to the "golden rule" of “do unto others as you would have them do unto you.”<sup>14</sup> The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran) and the Analects of Confucius are five of the oldest written sources that formulated the “golden rule.” This rule addresses the questions of people’s duties, rights, responsibilities, propriety and justice. It also tends to the health and welfare of their members.<sup>14</sup> All these shape the contributions of philosophers of ancient Greece, (like Socrates), or later, the Stoic philosophers, the Roman statesman Marcus Cicero, the Greek essayist Plutarch, and the Islamic Golden Age philosopher Ibn Sina (Avicenna) in formulating “explicitly the doctrine of the rights of the individual.”<sup>14</sup>

Essentially as Walt opines, people continue to emphasize on it because the “rights of men are inherent, inalienable, pre-existing to the state in which the state has to protect, but cannot confer, was formidable weapon in the political battle against tyranny.”<sup>15</sup> Natural and liberal Philosophers like Emmanuel Kant, Thomas Hobbes, John Locke, David Hume, Ibn Sina and many more, were the earliest contributors to the connection between natural law and natural rights. Their contributions helped in raising awareness on the existence of human rights in the West.<sup>14</sup>

<sup>19</sup> They help stimulate the realisation of such

historical documents like the 1628 Petition of Rights, the 1689 Bill of Rights, Virginia Bill of Right of 1776, French Rights of Man and Citizens of 1776, and the 1791 American Bill of Rights.<sup>14-19</sup>

By the 10<sup>th</sup> of December 1948, a Universal Declaration of Human Rights (UDHR) came into existence.<sup>7</sup> Even with that, Shaw writes that, the declaration was not meant to be “a legally binding document as such but, as its preamble proclaims, ‘a common standard of achievement for all peoples and nations.’”<sup>21</sup> The success of the above trends, led to the improvement of certain valid principles that are acceptable universally, and those that assist individual person, society and humanity at large. These principles are later recognized as the inalienable rights of man because they are fundamental, ethical and pervadingly basic. The appreciation of these principles with regards to human rights have influence subsequent documents like, the 1950 European Convention on Human Rights, the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1982 Charter of Rights and Freedoms by Canada and, the most recent 2000 Charter of Fundamental Rights of the European Union.<sup>22</sup> In Nigeria, after the colonial experience came the 1990 Medical and

Dental Practitioners Act (M&DPA)<sup>2,23</sup> and the 1999 Constitution of Federal Republic of Nigeria (CFRN).<sup>1,23</sup>

### **Concept of Rights of the Patient against Torture**

The rights of patient generate from the overall rights accruable to all human beings. For any right to be deemed applicable, it must be a rights conferred by the law either directly, like those rights clearly spelt out in Nigerian statutes, or indirectly through process of adoption, accession, ratification etc., of regional or international human rights instruments.<sup>1-8</sup> To be eligible to enjoy these rights, the patient must be a human being first, and so whatever right is considered under human right is also applicable to such individual.<sup>22</sup>

Ordinarily, there are many rights that a patient can enjoy under the human rights regimes. One of such rights is the rights against torture. By definition, the word “torture,” is traced to its Latin origin *tortus*, which means “to twist.” Literally, it means the infliction of bodily pain or mental suffering for punishment or to provide information, or to intimidate, coerce, discriminate against, or repress a person or group of people to fulfill the desire of the torturer.<sup>24-26</sup>

Jurisprudentially, the United Nations Committee Against Torture (UNCAT)

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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 is suspected of having 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 person acting in an official capacity. It does not include pain or suffering arising only from, or incidental to lawful sanctions”*<sup>24-29</sup>

Rodley writes that such definition was arrived at by a combined reading of the provisions of three international human rights' instruments.<sup>24</sup> These are: the 1975 UN Declaration against Torture;<sup>27</sup> the 1984 UN Convention against Torture (UNCAT);<sup>28</sup> and the 1985 Inter-American Convention to Prevent and Punish Torture.<sup>29</sup> It also extends to the sets of case law under human rights treaties prohibiting torture, especially the European Convention on Human Rights. In fact, case law has influenced the content of definitions which, in turn, have influenced later case law.”<sup>22</sup>

### **What is not Regarded or Considered as Torture**

In recent time, there have been move by some countries to try to restate what torture is not. There is effort to distinguish between torture in *stricto sensu* and other criminal acts, which according to Méndez is another form of torture known as “Cruel, Inhuman, and Degrading Treatment” (CIDT).<sup>27,28,30,31</sup> In the case of *Ireland v. United Kingdom*,<sup>24</sup> where the European Court of Human Rights considered the five interrogation techniques used by the UK's security forces on Irish Republic Army (IRA) suspects, though as inhuman and degrading, yet it was not regarded as torture. According to the Court, the notion of torture is characterized by ‘a special stigma’ attaching to ‘deliberate inhuman treatment causing very serious and cruel suffering.’<sup>24</sup> In another related examples, the UNCAT, as cited by Mendez regarded use of lethal injection in capital punishment as one not constituting as torture.<sup>30</sup>

### **Elements Constituting Act of Torture**

In practice, if all the above do not constitute torture, then the question is, what then amount to torture? In answering this question, Rasmuseen states that what simply qualify as torture is: any act by severe pain or suffering; whether physical or mental, is inflicted; it is intentionally inflicted; it has a purpose; and it is done by a public official or other persons acting in an official capacity.<sup>31</sup>

Rodley while analyzing the components of action or omission that constitute torture identified three pillars.<sup>24</sup> These pillars, according to him, evidently include:

1. **The Relative Intensity of Pain or Suffering Inflicted:** it must not only be severe, it must also be an aggravated form of already prohibited (albeit undefined) cruel, inhuman or degrading treatment or punishment;
2. **The Purposive Element:** is for obtaining information, confession, etc.;
3. **The Status of the Perpetrator:** A public official must inflict or instigate the infliction of the pain or suffering.<sup>20</sup>

Furthermore, in another study carried out by Philips, for a crime of torture to be said to have been committed, four elements must be present.<sup>25</sup> These are:

- I. **Infliction of Severe Treatment or Punishment:** For conduct (either as an act or omission) to be regarded as 'torture' under article 1 of the Convention, there must be an infliction of mental and/or physical harm of a certain level of severity. The jurisprudence of the European Committee on Human Right met the standard on the level of severity required when it provided that such

'torture' have to be "deliberate inhuman treatment causing very serious and cruel suffering."

- II. **Intention (*Mens Rea*):** Such action or omission must be deliberate and intentionally inflicted.
- III. **Purpose:** the reason for the action or omission must be purposive, like for "obtaining information or a confession, punishing, intimidating, coercing or any reason based on discrimination of any kind."
- IV. **Public (as opposed to private) Conduct:** "the 'pain and suffering' must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. This element is broader than what is considered in other legal instruments."<sup>32</sup>

There are many forms of torture as documented by analysts, and various experts; these are domestic torture, medical/healthcare torture, capital punishment /death sentence, brainwashing technique, interrogation technique and state controlled torture. The one relevant to this paper is the medical/healthcare torture that is the use of healthcare knowledge and skills by healthcare providers to engage in acts of torture meeting the Cruel, Inhuman and

Degrading Treatment (CIDT) criteria.<sup>27,28,30,31</sup> Examples of these kind of torture on the patient include: application of treatments which will enhance torture, use of mind-altering substances, such as LSD, to assist interrogations, deliberate refusal to prescribe or serve analgesic to patient in pain. It also extends to refusal to use anaesthetic agents in indicated healthcare procedures, surgical interventions, explorations, and diagnostic investigations, which the medical caregiver knows to be painful. It is an act of torture in healthcare practice if young, inexperienced doctor was made to conduct medical or surgical treatment, which later lead to medical error and thereafter required revision. Same applied to nurses who use abusive language on patient as is often the practice in labour ward or health substaff who neglected his/her assigned duty or a cashier in healthcare institution delaying the payment process that further delays time to receive medical consultation. Another form is to falsify medical records and forge healthcare reports to cover up torture. Aside the psychological and physical trauma these instances might cause, all of these complied with the definition of Cruel, Inhuman and Degrading Treatment (CIDT).<sup>27,28,30,31</sup>

### **Legal Regimes on the Patients' Rights Against Torture**

There are many legal regimes that try to protect the rights of patients against all forms of torture. Some of these are international, regional and municipal laws. We shall examine few of these in the following lines:

#### **Patients' Rights Against Torture Under the International Human Rights Law**

Generally, under the international Human Rights Instruments (IHRIs), the ICCPR, ICESCR and UDHR constituted what is known as "International Bill of Rights. Nigerian is a party to these documents as it has ratified them though without that of their protocols. They are so important that in their evolution, the violation of both documents were mostly traced to deprivation of people of their inalienable right.<sup>3-8</sup>

One of the hallmarks of rights to freedom from torture, cruel, inhuman, and degrading treatment is Art. 7 of the ICCPR.<sup>5</sup> This Art ensures that patient is freed from any forms of torture, cruel, inhuman and degrading treatment. In other words, it means that on no account should a patient be subjected to treatment that has element of torture, cruelty, inhuman and degrading treatment in it. The article adds that no one shall be subjected without his free consent to medical or scientific experimentation. The UN Committee through its General Comment No. 20 (which replaces General Comment No. 7), explain this article stating that, apart



from Art., 7 allowing no limitation (as per para. 3), the Committee states clearly in para 2 that: "the aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual." It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1 of the Covenant, which stipulates that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Thus, a patient who undergoes painful medical treatments requires to be giving analgesic promptly and adequately for the relief of pain. Where patient was not given this treatment in time thereby leading to suffering (physical, physiological and psychological, or even complication like shock), then the failure of the caregiver to prescribe, dispense and give the appropriate painkiller is tantamount to cruel, inhuman and degrading treatment.

Under the Convention on Child Rights (CRC),<sup>32</sup> the rights of the child is to be freed

from all forms of torture, cruel, inhuman, and degrading treatment. This right is of universal application to both the child and the adult. Where a child is undergoing medical treatment, it is the responsibility of the caregiver, both at the private and institutional level, to ensure that the medical treatment given to the child is free from all sorts of torture, cruelty, inhumanity and degrading treatment. Art. 37 (a) of the convention provides that: "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." In one of the Report of the Special Rapporteur on Torture, of the issues repeatedly raised is the impact on the mental health of children who enter the justice system and the accompanying threats presented by inhuman and violent conditions. In the Convention Against Racial and People Discrimination (CRPD),<sup>33</sup> one of the human rights protected is the rights to freedom from torture, cruel, inhuman, and degrading treatment. Persons with disability has another right both upon the individual and the State to the effect that no one shall subject them to any forms of torture. Art. 15 (1) of CRPD provides that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular; no one shall be subjected without his or her free consent to medical or scientific experimentation."



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And for effective compliance, Art. (2) of the CRPD mandates each State Party to “take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.” In other words, a patient with disability is to enjoy the rights against all sorts of torture from cruel, inhuman and degrading treatment both at the private and public level. Where an action or omission led to the infliction of the violation of this right, the victim can enforce it.

The Convention Against Torture is all about taking affirmative action to prevent all forms of torture, and all forms of degrading acts, both in the present and the future. There are different national and international approaches to its interpretation and implementation. The efficacy of various advocacies against torture generates a global response. There emerge various inputs from many international instruments, which made it applicable everywhere. Some of these instruments can be summarized as follows;

- In 1948 the United Nations (UN) adopted the Universal Declaration of Human Rights. This instrument, although not binding in nature, was the first to prohibit torture. In Article 5 of the declaration stated, “No one

shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

- In 1949, the Geneva Conventions, has a provision referred to as, the Common Article 3.). This brings civilians under the protection of international laws prohibiting torture. In fact, the Geneva Conventions defined torture as a grave breach of the Conventions and prohibited its use against Prisoners of War (POWs).
- The European Convention on Human Rights (ECHR), was adopted by the Council of Europe in 1950 and come to effect in 1953. Article 3 of this Convention prohibits torture.
- The 1966 UN Covenant on Civil and Political Rights (ICCPR) codified the civil and political rights set forth in the Universal Declaration of Human Rights in a binding international treaty. Its Article 7 provided that no one shall be subject to torture or cruel, inhuman, or degrading treatment or punishment.
- The African Commission on Human Rights (ACHR) (1969), in Article 5, forbid all forms of torture.
- In 1984 the UN adopted UNCAT which went into effect in 1987.

- In 1985, UN Special Rapporteur on torture was created.
- Under UNCAT, torture is never permitted, even in times of war. Article 2 explicitly states that “no exceptional circumstance whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”
- Article 3 of UNCAT stipulates that countries that have ratified it are prohibited from returning or extraditing (*refoulement*) a person to another state where there are substantial grounds to believe the person would be in danger of being subjected to torture. The same Article creates obligation among the states party to it, to criminalize torture in their local legislation. In Article 5-9, the treaty assumed a personal, territorial and universal jurisdiction among world populace.

Like all other international instruments on human rights, UNCAT, since its birth, have also witnessed certain level of success and failures. In other words, there is substantive compliance as well as gross violations that require commendation and recommendation

respectively. In between the two extreme, some States may do so half way, which requires different approach in tackling them.

### **Rights of Patients against Torture under the Regional Human Rights Body**

The African (Banjul) Charter on Human and Peoples' Rights (ACHPR)<sup>3</sup> is one of the most notorious regional document against torture. Weston writes that, like all other regional human right body, the rights protected in ACHPR are well structured and exhaustive human rights value content. As a matter of fact, Art., 5 of it prohibits all forms of “exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.” The charter did not only make provisions for all the rights, it went further to establish a safeguard for them, particularly in part II of the charter by creating African Commission on Human and Peoples' Rights. As regard to this commission, its Article 30 vested the it with the power to “promote human and peoples' rights and ensure their protection in Africa.”

The Art. 5 of the Charter titled, “Right to Human Dignity and Freedom against Degrading Treatment” provides that, “(E)very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and

degradation...particularly...torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” In fact, in trying to explain this article, the Communication, para., 155 of the African Commission states that, Art. 5 of the Charter is for “the protection of both the dignity of the human person, and the physical and mental integrity of the individual.” Also, while the Charter does not define what the words, or the phrase “torture or degrading treatment or punishment,” means, it however criminalises it altogether.

In fact, the African Commission, especially paragraph 156 of its communication, states that

torture is whatever “constitutes the intentional and systematic infliction of physical or psychological pain and suffering in order to punish, intimidate or gather information...

Therefore, an accused patient brought to the hospital does not imply that he/she can be subjected to undignified or ill treatment. Rather, being human before becoming a criminal, indicates that he/she is entitled to receive proper medical treatment for his/her ailment. Where the contrary is done, it would amount to torture as established in the case of *Odafe (infra)*, where the court held that it is act of torture if a sick person under prison custody is not given appropriate medical

treatment. According to Judge Nwodo (as he then was): “I therefore hold that the State having failed to provide medical treatment for the applicants who are diagnosed as HIV/AIDS carriers, their continuous detention without medical treatment amounts to torture.”

### **Rights of Patients against Torture under the Nigerian Law**

There are various municipal laws in Nigeria that prohibits all forms of torture. To wit, the CFRN provides in Sect. 34, that (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.”<sup>1</sup> This provision is a constitutional one which made it known that any patient of Nigerian origin subjected to torture is having his/her right violated and can seek for fundamental enforcement of such rights.<sup>30,35</sup>

Another legal document is the domesticated Child Right Act No.6, 2003,<sup>32,36</sup> in Sect. 11(b) provides that, no child shall be “subjected to torture, inhuman or degrading treatment, or punishment.” The protection of the dignity of any individual is not based on age factor. As a human being, we are all born free and entitled to respect as such. A child is no different as he/she is a person as well, which by the provision in Sect.11(a) to (d) merits been protected as such. The section

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Sadiq AA: Patients' rights against torture provides that: "Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be - (a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse; (b) subjected to torture, inhuman or degrading treatment or punishment; (c) subjected to attacks upon his honour or reputation; or (d) held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child."

As such, being a patient does not mean the child can be molested by the nature of his/her birth. When there is need to carry out any treatment on the child, he/she must not be subjected to any form of torture, cruel, inhuman, degrading treatment or punishment. The Administration of Criminal Justice Law No. 10 passed by Lagos State House of Assembly, in Sect. 12(2) provided that, "after the arrest of the person under subsection (1), a private person shall not subject the arrested person to torture, inhuman and degrading treatment." Where he is a patient, such person cannot be denied of food, of medicine and of care because been accused of a crime does not serve as a license to be tortured.<sup>23</sup>

The UDHR<sup>7</sup> is also a domesticated international human rights instrument. Therefore, Art. 5 where torture was

proscribed, is also applicable in Nigeria. The Geneva Convention Relative to the Treatment of Prisoners of Wars<sup>37</sup> was also domesticated by this country, Nigeria, vide the Geneva Convention Act Cap 162 LFN 1990; Cap G3 LFN, 2004. Thus, its article 3(1)(a) that criminalizes "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture," are also implementable under the Nigerian law.

### **Rights of Patient Against Torture Under Medical Code**

One of the law regulating medical and dental practices in Nigeria is the Medical and Dental Practitioners Act (M&DPA).<sup>2</sup> This Act, by virtue of its Sect, 1(2) (c), mandates the Medical and Dental Council of Nigeria (Medical Council) to "(R)evueing and preparing from time to time a statement as to the code of conduct which the Council consider desirable for the practice of the professions in Nigeria." From there a Code of Conduct, titled, The Code of Medical Ethics in Nigeria, was created for the maintenance of ethical standard of the medical practitioners in Nigeria. This code by implication, does not regulate the ethics of the medical practitioners, but also promotes the rights of the patients.

Under the General Principles of the Ethics of Medical and Dental Practices, the practitioners, vide paragraph 2.1, are

expected to provide “competent medical care, with compassion and respect for human rights and dignity.” Elsewhere in the code, practitioners, according to paragraph 10A (d) are to be “dedicated to providing competent medical service in full professional and moral independence, with compassion and respect for human dignity.” This respect of human dignity goes with as though it meant torture.

### **Legal Remedy against Torture**

The act of torture is a violation against constitutional rights of whoever is affected. Elsewhere, we have stated that in any clear act of violation of constitutional rights, the one whose right is infringed as right under the law to enforce it. As a consequence of his right been violated, he alone has the *locus standi* to seek for redress by going to court to enforce his/her right. The CFRN<sup>1</sup> mandates the High Court, in this instance, is empowered with special jurisdiction to entertain such kind of cases from express provision in Sect. 46 (1) and (2) of the CFRN (as amended). The relevant section, to wit, provides: (1) Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in the State for redress; (2) Subject to the provision of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in

pursuance of this section and make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under the Chapter.

Besides the enforcement by the Courts in the country, by the African Charter on Human and People's Right (Ratification and Enforcement) Act,<sup>3</sup> every patient who is a victim of torture can as well seek for the enforcement of his/her rights in both domestic or regional court, especially the ECOWAS Community Court in which Nigeria is a member. It presupposes that any patient who complaint of violation of his right against torture has a duty to enforce it, a position affirmed by the Africa Commission in one of its communication, particularly in the case of *Social and Economic Rights Action Centre (SERAC) and anors v. Nigeria*.<sup>4</sup>

In fact, it is the trite based on its which establishes the Community Court of Justice. The ECOWAS Court becomes the judicial organ of the Community and with that, can enforce the ECOWAS law in national courts through the enforcement of its judgments in these courts. The reason is that, Art.15 (4) of the Revised Treaty, states that the judgments of the Court shall be binding on the Member

States, the Institutions of the Community and on individuals and corporate bodies. In other words, a Nigerian can have his or her right enforced where it is denied by the domestic court in ECOWAS Court. An ECOWAS case example was that of *Olajide v Federal Republic of Nigeria*,<sup>22</sup> where a Nigerian businessman, Mr Olajide was denied free movement across the border of West African states. He challenged this at the ECOWAS Court, and although a preliminary objection of a lack of individual access to the ECOWAS Court was held initially, the Court heard the merit of the case and after review, access of individual to the ECOWAS Court in 2005 was granted.

### Conclusion

In all that has been said so far, the act of torture is clearly considered as what is not accepted both at the local, state, regional and international level. We have shown above the position of the law, which shows that wherever individual's right is affected as per a proven case of torture, the law provides a remedy. Apart from the fact that it goes against the law, it equally violates medical and health code of ethics, which regulates the professionals of the medical, surgical, dental and health throughout the country.

### References

1. The 1999 Constitution of Federal Republic of Nigeria (as amended), CAP C23, LFN 2004.

2. Medical and Dental Practitioners Act 1990 (Decree No 23 of 1988), M8 LFN 2004.
3. African (Banjul) Charter on Human and Peoples' Rights, *OAU Doc. Cab/leg/67/3 rev. 5*, 21 *I.L.M.* 58.
4. International Covenant on Economic, Social and Cultural Rights <http://www.ohchr.org/english/law/cescr.htm> (last visited 20/2/2011).
5. International Covenant on Civil and Political Rights (ICCPR) - <http://www.ohchr.org/english/law/ccpr.htm> (last visited 20/2/2011).
6. UN General Assembly Resolution 44/25. November 20, 1989. <http://www2.ohchr.org/English/law/crc.htm>. (Accessed 14 November, 2009).
7. Universal Declaration of Human Rights. (1948) Adopted and proclaimed by the United Nations General Assembly (UNGA) Resolution 217A(III) on 10 December 1948
8. Holland T.E. *The Elements of Jurisprudence*, 12<sup>th</sup> edition, Oxford at the Clarendon Press, London, 1916; page 83.
9. Rutherford L. and Bone S. *Osborn's Concise Law Dictionary*, (8th edition), Sweet & Maxwell, London, 1993; page 293.
10. Black H.C. *Black's Law Dictionary Revised* 4<sup>th</sup> edition, St. Paul, Minn., West Publishing Co., 1968; page 1486.
11. Austin J. *The Province of Jurisprudence Determined*, John Murray, London, 1832; page 306.
12. Salmond J. *Jurisprudence*, in: Manning, C.A.W., (ed.), 8<sup>th</sup> edition. Sweet & Maxwell, Ltd London, 1930; page 238.
13. Flowers N. Human Rights Here and Now, Celebrating the Universal Declaration of Human Rights,' University of Minnesota, Human Rights Resource Centre, U.S., 2009; part 1, page 1.
14. "Development of Human Right.," Microsoft Encarta 2009 [DVD]. Redmond, WA: Microsoft Corporation, 2008;
15. Walt S. Universalizing Human Rights: The Role of Small States in the Construction of Universal Declaration of Human Rights,<sup>23</sup> *Human Rights Quarterly*, 2001; 45, 46.
16. Brian T. The Idea of Natural Rights - Origins and Persistence,'<sup>2</sup> *Northwestern Journal of International Human Rights*, 2004; vol. 1, page 6 – 8;
17. Murray N. R. *The Ethics of Liberty*, New York University Press, U.S., 1998; page 22 – 25.
18. Hasnas J. Toward a Theory of Empirical Natural Rights, *Social Philosophy & Policy Foundation*, USA., 2005; page 112-124.



19. Donald J.A. Natural Law and Natural Rights, James's Liberty file Collection Index, 2009; page 3-5.
20. Elegido J.M., *Jurisprudence*, Spectrum Books Limited, Ibadan, Oyo, Nigeria, 2002, page 21.
21. Shaw M.N. *International Law*, 4<sup>th</sup> edition, Cambridge University Press, U.K., 1997; page 207.
22. Harris D.J. *Cases and Materials on International Law*, 5<sup>th</sup> edition, Sweet & Maxwell, London, page 630-631; Shaw, loc cit, 1998; page 200-202;
23. Smith I.O. Constitutional and Legal Framework for the Protection of Human Rights in Nigeria,' *The Guardian Newspaper*, August 5, 2003; page 80.
24. Rodley N. S. *The Definition (s) of Torture in International Law*. Current legal problems 2002; 55(1):467-493
25. Philip L. Submission to United Nations Committee Against Torture in response to Draft General Comment No 2. Human Rights Law Resource Centre Ltd, Melbourne, Australia, 2014. On: [www.hrlc.org.au](http://www.hrlc.org.au) (last visited 30/3/2014).
26. Awofeso N. *Torture: Understanding and Addressing a Highly Reprehensible Aspect of Prison Violence*. Australasian Journal of Correctional Staff Development (AJCSD), 2014. On: [http://csa.intersearch.com.au/csajspui/bitstream/10627/482/1/Understanding\\_torture.pdf](http://csa.intersearch.com.au/csajspui/bitstream/10627/482/1/Understanding_torture.pdf). (Accessed on 25/05/2019).
27. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA 1975; res. 3452 (XXX), Annex, 9 Dec.
28. United Nations on Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) GA Res. 39/46, Annex, 10 Dec.1984.
29. Inter-American Convention to Prevent and Punish Torture. OAS Treaty 1985; Series No. 67.
30. Méndez J.E. The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment. *Human Rights Brief*, 2002; 20(1):2-6.
31. Rasmussen O. V. The Medical Aspects of the UN Convention against Torture. *Torture*, 2006; 16(1):58.
32. Convention on the Rights of the Child. General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49. On: <https://www.unicef.org/sites/default/files/2019-04/UN-Convention-Rights-Child-text.pdf>. (Accessed on 12-05-2019)
33. Convention on the Rights of Persons with Disabilities (CRPD). UN General Assembly Resolution. December 13, 2006. [http://www2.ohchr.org/english/law/disabilities\\_convention.htm](http://www2.ohchr.org/english/law/disabilities_convention.htm). (Accessed 14/11/2009).
34. UN General Assembly Resolution 39/46. December 10,1984. <http://www2.ohchr.org/english/law/cat.htm>. (Accessed 14/11/2009).
35. Sadiq A.A. and Aliyu N.A., The Right of Patient to Disclosure of Risks of Treatment Under the Nigerian Law. *Dala Journal of Orthopaedics*, Vol.1 No. 2, December 2017, page 72-75.
36. Child's Rights Bill - An Act to provide and protect the rights of a Nigerian Child; and other related matters. On: <http://nass.gov.ng/document/download/5907>. (Accessed on 25/05/2019).
37. Convention relative to the Treatment of Prisoners of War. Geneva, 27 July 1929. On: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTR/O/305?OpenDocument>. (Accessed on 25/05/2019)

Conflict of interest: Nil