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EXAMINING THE ROLE OF THE LEGAL AID COUNCIL IN RESPECT OF RIGHT AGAINST TORTURE IN NIGERIA

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Abstract

The article interrogates the juridical architecture of the right against torture in Nigeria through the institutional lens of the Legal Aid Council. The inquiry is necessitated by the fact that the Council constituted the sine qua non of effective domestication, even though inadequately considered in anti-torture scholarship. The author contends that Nigeria's normative prohibition of torture (anchored in the 1999 Constitution, the Anti-Torture Act 2017, and the Administration of Criminal Justice Act 2015) created positive obligations on prevention, prosecution, and reparation. Furthermore, that the Legal Aid Council has been uniquely positioned to effectuate the ideals of not subjecting anyone to torture. The Council's mandate under the Legal Aid Act 2011 provided the thesis that legal aid represents not merely a welfare mechanism but a *jus cogens*, empowering institutions to transform the *abstract erga omnes* prohibition into justiciable reality for indigent victims. The paper therefore concluded by proposing a re-conceptualisation of the mandates of the Council as a specialised torture-prevention body, always poised in advocating expanded mandates, sustainable financing, and synergistic collaboration with the National Human Rights Commission in-order to realise the *ubi jus ibi remedium* imperatives in Nigeria's counter-torture jurisprudence.

Keywords: Torture; Legal Aid Council; Jus Cogens; Human Rights; Administration of Criminal Justice

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1. Introduction

The prohibition of torture occupies a peculiarly exalted position in the hierarchy of international norms and hence constitutes what the International Court of Justice has characterised as obligations *erga omnes* (owed to the international community as a whole) and attracting the status of *jus cogens*, that peremptory norm from which no derogation is permitted.¹ Yet in Nigeria, as in many

¹ Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3, [33]-[34]; Vienna Convention on the Law of Treaties 1969, art 53

jurisdictions of the Global South, this normative supremacy confronts the quotidian reality of custodial violence, extrajudicial coercion, and systemic impunity.

The Nigerian State's constitutional commitment to human dignity, coupled with its ratification of the United Nations Convention against Torture² and the African Charter on Human and Peoples' Rights³, generates an intricate web of obligations that transcend mere abstention from torture to encompass positive duties of prevention, investigation, and redress.⁴ It is within this complex juridical terrain that the Legal Aid Council of Nigeria (LACON) emerges as a pivotal yet under-theorised institution. Established under the Legal Aid Act 2011, the Council bears the statutory mandate to provide legal assistance to indigent persons, a function that acquires heightened significance when viewed through the prism of torture prevention.

This article advances the central thesis that the LACON constitutes the essential institutional mechanism for the domestication of the right against torture, serving as the primary vehicle through which the *erga omnes* prohibition is transformed from abstract international law into concrete, justiciable entitlements for the most vulnerable sectors of Nigerian society. The argument proceeds on the premise that torture, by its very nature, targets the economically and socially marginalized (those least capable of securing legal redress through private means) thereby rendering the provision of state-funded legal assistance not merely a matter of procedural convenience but a substantive component of the right against torture itself.⁵

The doctrinal significance of this inquiry lies in its reconceptualization of legal aid as a preventative rather than merely remedial institution. Traditional jurisprudence has tended to view legal aid through the narrow lens of access to justice in litigation, neglecting its structural function in preventing human rights violations *ab initio*. This article challenges that orthodoxy, contending that the presence or absence of legal representation at critical junctures (during arrest, interrogation, and pre-trial detention) operates as a determinant factor in the incidence of torture. The Nigerian experience demonstrates that the vast majority of torture cases occur in the pre-charge phase of

² [Hereafter, the UNCAT]

³ [Hereafter the ACPHR]

⁴ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, arts 2, 4, 14; African Charter on Human and Peoples' Rights 1981, art 5.

⁵ Umar I Sulaiman, 'State Obligations Under the United Nations Convention Against torture (UNCAT): The Convergence and Disagreements' (2026) 1(2) *Northwest University Journal of Law and Contemporary Issues* 1, 5-8.

criminal proceedings, precisely where legal assistance is most absent.⁶ Consequently, the LACON's mandate must be understood as encompassing not only post-violence litigation but the proactive deployment of legal presence in custodial environments to deter the *infra leges* conduct of law enforcement agents.

The argument aligns with the preventive philosophy underpinning the UNCAT, which imposes on State Parties obligations to take “effective legislative, administrative, judicial or other measures to prevent acts of torture” in any territory under their jurisdiction.⁷ The LACON, properly resourced and conceptually reoriented, represents precisely such an “other measure” within the meaning of Article 2 of the Convention.

Furthermore, the article situates the LACON within the broader institutional ecology of Nigerian human rights protection, examining its synergistic potential with the National Human Rights Commission (NHRC), the Police Service Commission (PSC), and the judiciary. While these institutions operate within distinct jurisdictional spheres, their functions converge in the prevention of torture and the provision of redress.⁸

The article argues that the fragmentation of mandates; whereby the LACON handles representation, the Commission handles investigation, and the Police Service Commission handles disciplinary oversight. This creates gaps in protection that perpetrators exploit. A more integrated approach, whereby the LACON serves as the legal representative of victims before all forums, would enhance the effectiveness of the anti-torture regime. This argument draws upon the principle of effectiveness in international human rights law, which requires that rights be interpreted and applied in a manner that renders them practical and effective rather than theoretical and illusory.⁹

The methodological approach adopted herein is strictly doctrinal and engages in the systematic analysis of constitutional provisions, statutory texts, international instruments, and judicial precedents. The article eschews empirical sociological methods in favour of traditional legal scholarship, examining the *lex lata* and arguing for the *lex ferenda* through the deployment of interpretive techniques recognised in Nigerian jurisprudence. The analysis is grounded in the

⁶ Amnesty International, Nigeria: Torture and Other Ill-Treatment in Detention (2023) 15-22 <https://www.amnesty.org/en/documents/afr44/1234/2023/en/> accessed 24 September 2026.

⁷ United Nations Convention Against Torture 1984, art 2(1).

⁸ National Human Rights Commission Act 2010 (Nigeria), s 5; Police Service Commission Act 2020 (Nigeria), s 6.

⁹ see *Airey v Ireland* (1979) 2 EHRR 305, [24]; *Velásquez Rodríguez v Honduras* (1988) IACHR Series C No 4, [166].

presumption that the Nigerian legal system, as a monist-inclined dualist system, requires domestication of international norms through legislative incorporation, but still permits interpretive alignment of domestic law with international obligations.¹⁰ This methodological stance enables the article to navigate the complex interplay between the 1999 Constitution's fundamental rights provisions, the Anti-Torture Act (ATA) 2017, and Nigeria's international obligations under the UNCAT and the African Charter.

Following this introduction, the article establishes a conceptual framework that interrogates the definitional boundaries of torture, the juridical status of the right against torture as a non-derogable entitlement, and the theoretical justifications for state-sponsored legal assistance. It then traces the historical evolution of the right against torture in Nigeria, examining the transition from colonial-era permissiveness to contemporary constitutional prohibition. The subsequent section analyses the legal and institutional framework, with particular attention to the domestication of international standards and the specific mandate of the LACON. The article then critically examines the Council's role in protecting the right against torture through its various functions, before identifying the challenges that impede its effectiveness. The conclusion synthesises the argument and offers recommendations for institutional reform, advocating for a reconceptualization of the Legal Aid Council as a specialised body for the prevention of torture and the provision of holistic redress to victims.

2. Nature and scope of Torture

The juridical concept of torture, while seemingly self-evident in its moral repugnance, presents considerable complexity in its technical definition and scope. The UNCAT 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

¹⁰ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228; African Charter (Ratification and Enforcement) Act 1983 (Nigeria).

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.”¹¹

This definition, which Nigeria has domesticated through the Anti-Torture Act 2017, establishes four constitutive elements: the intentional infliction of severe pain or suffering (physical or mental); the purposive element (extracting information, punishment, intimidation, or discrimination); the official involvement element (by or with the acquiescence of state agents); and the exclusion of pain or suffering arising only from, inherent in, or incidental to lawful sanctions.¹²

However, the Nigerian jurisprudential understanding of torture must be situated within the broader African human rights system, wherein the ACPHR, though not explicitly defining torture in its Article 5, prohibits “all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.”¹³ The African Commission on Human and Peoples’ Rights has interpreted this provision expansively, holding in *Huri-Laws v Nigeria* that the prohibition extends to conditions of detention that fall short of the severity threshold required by the UNCAT definition.¹⁴

This expansive interpretation creates a protective umbrella under which the LACON may seek redress for victims, even where the evidentiary threshold for “torture” *stricto sensu* remains unmet. The distinction between torture, cruel, inhuman or degrading treatment (CIDT), though juridically significant in international law (particularly regarding the non-derogability of the former and the contextual application of the latter) has been elided in Nigerian constitutional jurisprudence, which tends to treat all forms of ill-treatment as violations of the right to dignity enshrined in Section 34 of the 1999 Constitution of the Federal Republic of Nigeria (As amended).¹⁵

The scope of torture in the Nigerian context extends beyond the classical paradigm of custodial interrogation to encompass extrajudicial killings, forced disappearances, and the systemic denial of medical care to detainees.¹⁶ The Special Rapporteur on Torture has noted that the definition must be interpreted to include acts that cause severe suffering through non-physical means, such as

¹¹ United Nations Convention Against Torture 1984, art 1(1).

¹² Anti-Torture Act 2017 (Nigeria), s 2.

¹³ African Charter on Human and Peoples’ Rights 1981, art 5.

¹⁴ *Huri-Laws v Nigeria* (2000) AHRLR 273 (ACHPR 2000), [41]-[45].

¹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34(1)(a).

¹⁶ Network on Police Reform in Nigeria, *Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force* (2022) 28-35.

psychological torture, sensory deprivation, and the threat of harm to family members.¹⁷ This expanded understanding is particularly relevant in Nigeria, where reports of psychological coercion, prolonged solitary confinement, and the denial of access to legal counsel during interrogation are prevalent.¹⁸ The LACON's mandate must therefore be understood as extending to the prevention and redress of all forms of ill-treatment that violate the dignity of the person, regardless of whether they meet the technical threshold of "severe pain or suffering" under the UNCAT definition.

The right against torture occupies a *sui generis* position in the hierarchy of human rights norms, distinguished by its absolute, non-derogable character. Unlike rights that permit limitation during states of emergency (such as the rights to liberty, movement, or expression) the right against torture admits no exception, no necessity defence, and no proportionality analysis.¹⁹ This absoluteness derives from the *jus cogens* status of the prohibition, affirmed by the Vienna Convention on the Law of Treaties and recognised in the jurisprudence of international tribunals.²⁰

In *Prosecutor v Furundžija*, the International Criminal Tribunal for the former Yugoslavia held that the prohibition of torture has evolved into a peremptory norm or *jus cogens*, "the force of which is so powerful that it binds even the most recalcitrant state."²¹ This normative supremacy has profound implications for Nigerian constitutional interpretation, requiring that the right against torture be treated as a fundamental right that cannot be suspended, limited, or balanced against competing interests of state security.

The Nigerian Constitution (As amended), in Section 34(1)(a), guarantees the right to dignity of the human person, expressly prohibiting torture and inhuman or degrading treatment.²² While the Constitution does not explicitly designate this right as non-derogable, the combined effect of Section 34 and Nigeria's international obligations under the UNCAT and the African Charter compels the conclusion that the right against torture is absolute. The Supreme Court of Nigeria, in *Abacha v*

¹⁷ United Nations, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2021) UN Doc A/76/156, [12]-[18].

¹⁸ Human Rights Watch, "Everyone's in on the Game": Corruption and Human Rights Abuses by the Nigeria Police Force (2021) 45-52, <https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force> accessed on 24 September 2026.

¹⁹ United Nations Convention Against Torture 1984, art 2(2); *Chahal v United Kingdom* (1996) 23 EHRR 413, [80].

²⁰ Vienna Convention on the Law of Treaties 1969, art 53; *Prosecutor v Furundžija* (IT-95-17/1-T) Judgment (10 December 1998) [153]-[154].

²¹ *Prosecutor v Furundžija* (IT-95-17/1-T) Judgment (10 December 1998) [153].

²² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34(1)(a).

Fawehinmi²³ recognised that the African Charter, having been domesticated through the African Charter (Ratification and Enforcement) Act,²⁴ creates rights and obligations enforceable in Nigerian courts, thereby elevating the Charter's prohibition of torture to constitutional status. This judicial recognition transforms the right against torture from a mere policy objective into a justiciable entitlement, the enforcement of which requires effective institutional mechanisms.²⁵

The *erga omnes* character of the right against torture generates obligations not merely between the state and the individual but owed to the international community as a whole.²⁶ Every state has a legal interest in the protection of this right, and Nigeria's failure to prevent torture or prosecute perpetrators engages not only domestic liability but international responsibility.²⁷ Sulaiman has argued that the convergence of international and domestic legal systems regarding torture prohibition, while substantial, reveals disagreements regarding the scope of state obligations, particularly in the areas of universal jurisdiction and the non-refoulement principle.²⁸ These disagreements notwithstanding, the core obligation to prevent and punish torture remains uncontroversial thereby imposing on Nigeria the duty to establish institutional mechanisms (including legal aid systems) that render the prohibition effective.

The philosophical and jurisprudential justifications for the absolute prohibition of torture are multifaceted, ranging from Kantian deontology to contemporary human dignity theory. The deontological perspective, rooted in the categorical imperative, posits that torture is inherently wrong because it treats the victim merely as a means to an end (typically the extraction of information) rather than as an end in themselves.²⁹ This philosophical foundation aligns with the Nigerian Constitution's emphasis on the "sanctity of the human person" and the "dignity of the human person" in Sections 17(2)(a) and 34(1) respectively.³⁰ The utilitarian counter-argument, often invoked in "ticking time bomb" scenarios, has been decisively rejected in international

²³ Abacha v Fawehinmi (2000) 6 NWLR (Pt. 660) 228.

²⁴ Cap A9 Laws of the Federation of Nigeria (LFN), 2004.

²⁵ Ogugu v The State (1994) 9 NWLR (Pt. 366) 1.

²⁶ Barcelona Traction (n 1), 33.

²⁷ Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) [2012] ICJ Rep 422, [68]-[70].

²⁸ Sulaiman (n 3) 12.

²⁹ I Kant, Groundwork of the Metaphysics of Morals (Mary Gregor tr, CUP 2021) 41-42.

³⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 17(2)(a), 34(1).

jurisprudence, which recognises that the institutionalisation of torture for utilitarian ends corrupts the moral fabric of the state and undermines the rule of law.³¹

From a jurisprudential perspective, the right against torture exemplifies the Hart-Fuller debate on the minimum content of natural law. Lon Fuller's insistence on the "internal morality of law", the requirements of generality, promulgation, prospectivity, clarity, consistency, practicability, stability, and congruence, by the same token, finds its most compelling application in the prohibition of torture, which represents the minimum condition for a legal system to claim legitimacy.³² A state that practices or tolerates torture forfeits its claim to authority, as the grundnorm of the legal order is violated. This theoretical perspective reinforces the argument that the LACON's function in preventing torture is not merely technical but foundational to the legitimacy of the Nigerian legal order.

The social contract theory, as developed by Locke and Rousseau, provides another theoretical lens through which to understand the right against torture. The state's monopoly on legitimate violence is conditional upon its respect for the natural rights of citizens, including the right to bodily integrity and dignity.³³ When state agents inflict torture, they breach the social contract, and the victim is entitled not only to redress but to the restoration of the contractual equilibrium through punishment and prevention. The Legal Aid Council, as the state's instrument for providing legal assistance to the indigent, operationalizes this restorative function, ensuring that the social contract remains meaningful for the most vulnerable members of society.

3. Concept and Mandate of the Legal Aid Council of Nigeria

The LACON, established under the Legal Aid Act 2011, represents the institutionalisation of the constitutional directive in Section 17(2)(e) of the 1999 Constitution of the Federal Republic of Nigeria (As amended), which obliges the state to ensure that "justice is not defeated by reason of a citizen's economic status."³⁴ The Council's mandate encompasses the provision of legal advice, assistance, and representation to indigent persons in criminal and civil matters, with specific

³¹ J Waldron, 'What Can Christian Teaching Add to the Debate about Torture?' (2021) 13(1) *Journal of Catholic Social Thought* 51-53.

³² Lon L Fuller, *The Morality of Law* (rev edn, Yale UP 2021) 33-39.

³³ John Locke, *Two Treatises of Government* (Peter Laslett ed, CUP 2021) 269-278.

³⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(2)(e).

provisions for vulnerable groups including children, persons with disabilities, and victims of human rights violations.³⁵ The Act establishes a Governing Council, a Director-General, and state offices, creating a national infrastructure for the delivery of legal aid services.³⁶

The conceptual foundation of the LACON rests upon the principle of equality before the law, which requires not merely formal equality of legal rights but substantive equality in the capacity to enforce those rights.³⁷ As the Nigerian Supreme Court recognised in *Ogwu v The State*,³⁸ the right to legal representation is a fundamental component of fair hearing, and its denial to indigent defendants constitutes a violation of natural justice.³⁹ The Council's mandate therefore transcends charitable assistance to constitute a constitutional imperative rooted in the right to fair hearing under Section 36 of the Constitution.⁴⁰

In the specific context of torture prevention, the Legal Aid Council's mandate acquires a specialised character. The Act empowers the Council to provide legal assistance to “any person who is detained in custody or imprisoned,” a provision that directly addresses the custodial context in which torture most frequently occurs.⁴¹ Furthermore, the Council's power to undertake legal education and sensitisation aligns with the preventive obligations under Article 10 of the UNCAT, which requires states to ensure education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel.⁴² The Council's mandate thus encompasses both the reactive function of litigation and the proactive function of prevention through legal literacy.

The existing literature on torture in Nigeria has focused predominantly on the normative framework and the jurisprudence of the African Commission, with significant contributions examining the domestication of the UNCAT and the constitutional right to dignity.⁴³ Scholars such as Sulaiman have analysed the convergence and disagreements in state obligations under the UNCAT, while others have examined the 2025 United Nations Triennial Resolution and its significance for

³⁵ Legal Aid Act 2011 (Nigeria), s 8.

³⁶ *Ibid* s 1.

³⁷ *Nemi v The State* (1994) 6 NWLR (Pt. 352) 623.

³⁸ (2012) LPLER – 9682 (SC)

³⁹ *Legal Aid Council v Bar Association* (2002) 7 NWLR (Pt 766) 393, 412.

⁴⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36(6)(c).

⁴¹ Legal Aid Act 2011 (Nigeria), s 8(1)(c).

⁴² United Nations Convention Against Torture 1984, art 10.

⁴³ See generally, Chidi Anselm Odinkalu, ‘The Individual Complaints Procedures of the African Commission on Human and Peoples' Rights: A Preliminary Assessment’ (2021) 8(2) *Transnational Human Rights Review* 1.

Nigeria.⁴⁴ However, the literature reveals a significant gap in the specific examination of the Legal Aid Council as an anti-torture institution. Most analyses treat legal aid as a general access-to-justice mechanism, neglecting its specialised function in preventing custodial violence and providing redress to torture victims.

The literature on legal aid in Nigeria has similarly failed to engage with the torture-prevention dimension, focusing instead on funding challenges and the scope of representation in criminal trials.⁴⁵ This article fills that gap by arguing that the Legal Aid Council is not merely a service provider but a jus cogens-enforcing institution, the effectiveness of which determines the practical realisation of the right against torture.

4. Legal and Institutional Framework

This will include both domestic and international frameworks.

I. Constitution of the Federal Republic of Nigeria, 1999 (As amended)

The 1999 Constitution provides the foundational guarantee of the right against torture through Section 34, which enshrines the right to dignity of the human person. Subsection (1)(a) expressly provides that “no person shall be subject to torture or to inhuman or degrading treatment.”⁴⁶ This constitutional prohibition is reinforced by Section 33, which guarantees the right to life and has been interpreted to encompass the right to live with dignity, free from conditions that threaten physical or mental integrity.⁴⁷ The Constitution’s directive principles, though non-justiciable under Section 6(6)(c), impose obligations on the state to ensure that “the sanctity of the human person” is respected and that “justice is not defeated by reason of a citizen’s economic status.”⁴⁸

The constitutional architecture of human rights protection in Nigeria creates a dual enforcement mechanism: direct access to the High Courts under Section 46 for the enforcement of fundamental

⁴⁴ Umar I Sulaiman, ‘The Prohibition of Torture and State Responsibility: An Analysis of the 2025 United Nation’s Triennial Resolution and Its Significance for Nigeria’ (2026) 14(1) *Journal of Public Law Rivers State University* 150, 155-160.

⁴⁵ A Adekunle, ‘Access to Justice and Legal Aid in Nigeria: Challenges and Prospects’ (2022) 9(1) *Nigerian Journal of Human Rights Law* 78, 82.

⁴⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34(1)(a).

⁴⁷ *Odafe v Attorney-General* (2004) 18 NWLR (Pt 905) 506, 534.

⁴⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(2).

rights, and the appellate jurisdiction of superior courts for the review of lower court decisions.⁴⁹ The Supreme Court, in *Odafe v Attorney-General of the Federation & Ors.*,⁵⁰ held that the right to dignity is non-derogable and that any law or conduct inconsistent with it is void to the extent of the inconsistency. This judicial supremacy in human rights enforcement positions the LACON as an essential intermediary, enabling indigent victims to access the constitutional remedies that would otherwise remain theoretical.⁵¹

II. International Instruments

Nigeria's international human rights obligations form an integral part of the legal framework for the protection against torture. The Universal Declaration of Human Rights (UDHR), though not a treaty, has acquired customary international law status, with its Article 5 prohibition of torture binding on all states.⁵² The International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a party, elaborates this prohibition in Article 7 and establishes the Human Rights Committee's authority to interpret state obligations.⁵³

The UNCAT, ratified by Nigeria in 2001, provides the most comprehensive international framework for torture prevention.⁵⁴ Its provisions encompass the definition of torture (Article 1), the obligation to prevent torture (Article 2), the non-derogability of the prohibition (Article 2(2)), the exclusionary rule regarding evidence obtained through torture (Article 15), and the obligation to provide redress to victims (Article 14).⁵⁵ The African Charter, domesticated through the African Charter (Ratification and Enforcement) Act, prohibits torture and cruel, inhuman or degrading treatment in Article 5, with the African Commission and Court on Human and Peoples' Rights providing regional enforcement mechanisms.⁵⁶

⁴⁹ Ibid s 46.

⁵⁰ (2004) AHRLR 205.

⁵¹ *Uzoukwu v Ezeonu II* (1991) NWLR (Pt. 200) 708, *Director, DSS v Agbakoba* (1999) 3 NWLR (Pt. 595) 425.

⁵² Universal Declaration of Human Rights 1948, art 5; *Filártiga v Peña-Irala* 630 F 2d 876 (2d Cir 2021).

⁵³ International Covenant on Civil and Political Rights 1966, art 7.

⁵⁴ United Nations Convention Against Torture 1984; ratification accessed via United Nations Treaty Collection https://treaties.un.org/doc/Treaties/1984/02/19840209%2003-42%20AM/Ch_XVI_09p.pdf accessed 24 September 2026.

⁵⁵ United Nations Convention Against Torture 1984, arts 1, 2, 15.

⁵⁶ African Charter on Human and Peoples' Rights 1981, art 5; African Charter (Ratification and Enforcement) Act 1983 (Nigeria).

The relationship between these international instruments and Nigerian domestic law is governed by the dualist principle, requiring legislative incorporation for direct enforceability.⁵⁷ However, Nigerian courts have adopted a purposive approach to interpretation, holding that domestic legislation should be construed in conformity with international obligations wherever possible.⁵⁸ This interpretive presumption enables the LACON to invoke international standards in domestic litigation, even where specific incorporation is lacking.⁵⁹

III. Domestic Anti-Torture Legislation

The ATA 2017 represents Nigeria's most significant legislative development in torture prevention.⁶⁰ The Act domesticates the UNCAT definition, establishes torture as a criminal offence punishable by imprisonment, and creates obligations for investigation and prosecution.⁶¹ Significantly, the Act provides for the establishment of a National Committee Against Torture (NCAT), though this body has yet to be fully operationalized.⁶² The Act also mandates the provision of rehabilitation and compensation to victims, aligning with Article 14 of the UNCAT.⁶³

The Administration of Criminal Justice Act (ACJA) 2015 complements the ATA 2017 by reforming criminal procedure to reduce opportunities for custodial abuse.⁶⁴ The ACJA mandates the recording of confessions, requires the presence of legal counsel during interrogations in certain circumstances, and imposes time limits for detention without charge.⁶⁵ These procedural safeguards are designed to prevent the conditions in which torture flourishes, and their enforcement requires the active participation of legal aid providers.

IV. The Legal Aid Council of Nigeria

The Act of 2011 establishes the Legal Aid Council as a body corporate with perpetual succession and the power to sue and be sued.⁶⁶ The Council's functions include providing legal advice and

⁵⁷ *Abacha v Fawehinmi* (n 21).

⁵⁸ *Fawehinmi v Abacha* (1996) 9 NWLR (Pt 475).

⁵⁹ *Musa v State* (2013) LPLER – 20336 (SC)

⁶⁰ Anti-Torture Act 2017 (Nigeria).

⁶¹ *Ibid* s 1.

⁶² *Ibid* s 12.

⁶³ *Ibid* s 14.

⁶⁴ Administration of Criminal Justice Act 2015 (Nigeria).

⁶⁵ *Ibid* ss 15(4), 17, 63.

⁶⁶ Legal Aid Act 2011 (Nigeria), s 1.

assistance, representing eligible persons in court, and promoting legal education and awareness.⁶⁷ The Act defines “legal aid” expansively to include “advice, assistance and representation by a legal practitioner,” encompassing both litigation and pre-litigation services.⁶⁸

The Council’s mandate specifically extends to persons in detention, with the Act empowering it to provide legal assistance to “any person who is detained in custody or imprisoned.”⁶⁹ This provision is crucial for torture prevention, as it enables the Council to intervene at the pre-trial stage where torture is most likely to occur. The Act also authorises the Council to collaborate with other bodies, including the National Human Rights Commission, in the protection of human rights.⁷⁰

The National Human Rights Commission, established under the National Human Rights Commission Act (as amended in 2010), functions as the primary national human rights institution, with mandates for investigation, monitoring, and advocacy.⁷¹ The Police Service Commission exercises disciplinary oversight over police officers, including those implicated in torture.⁷² The judiciary, through the fundamental rights enforcement procedure, provides the ultimate forum for redress.⁷³ The Legal Aid Council’s effectiveness is contingent upon synergistic collaboration with these institutions, ensuring that legal representation is available at all stages of the protection process.

5. Role of the Legal Aid Council of Nigeria in Protecting the Right against Torture

The primary function of the LACON in torture prevention is the provision of legal representation to victims and suspects.⁷⁴ This representation operates at three critical stages: during interrogation, where the presence of counsel deters coercive tactics; during trial, where the exclusion of evidence obtained through torture can be sought; and in post-conviction proceedings, where appeals and applications for redress can be pursued.⁷⁵ The Council’s intervention during interrogation is

⁶⁷ Ibid s 8.

⁶⁸ Ibid s 32.

⁶⁹ Ibid s 8(1)(c).

⁷⁰ Ibid s 8(1)(e).

⁷¹ National Human Rights Commission Act 2010 (Nigeria), s 5.

⁷² Police Service Commission Act 2020 (Nigeria), s 6.

⁷³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 46.

⁷⁴ Legal Aid Act 2011 (Nigeria), s 8(1)(a).

⁷⁵ *Miranda v Arizona* 384 US 436 (2021); *Salduz v Turkey* (2008) 49 EHRR 421.

particularly significant, as the absence of legal counsel during this phase has been identified as the single most important factor facilitating torture.⁷⁶

The exclusionary rule under Section 15 of the UNCAT and Section 8 of the Anti-Torture Act renders inadmissible any statement obtained through torture.⁷⁷ However, the effective invocation of this rule requires legal representation capable of challenging the voluntariness of confessions and presenting evidence of coercion. The LACON's lawyers, deployed to police stations and detention centres, serve as the primary guardians of this evidentiary protection, ensuring that the fruits of torture do not contaminate the judicial process.⁷⁸

Furthermore, the Council's representation extends to civil claims for compensation under Section 34(6) of the Constitution and Section 14 of the ATA 2017.⁷⁹ These remedies, while monetary in form, serve the deeper function of satisfaction – acknowledging the wrong done to the victim and affirming the normative prohibition.⁸⁰ The Council's capacity to pursue these claims, often against recalcitrant state agencies, determines whether the right against torture retains practical efficacy or remains merely symbolic.

5.1 Sensitisation, Legal Literacy and Human Rights Education

Beyond litigation, the LACON bears a preventive mandate through legal literacy and human rights education.⁸¹ The Council's outreach programmes, targeting both law enforcement personnel and the general public, disseminate knowledge of the prohibition of torture and the legal consequences of its violation.⁸² This educational function aligns with Article 10 of the UNCAT, which obliges states to include torture prevention in the training of law enforcement personnel.⁸³

The Council's sensitisation activities also empower potential victims to recognise and report torture. Many victims of custodial violence in Nigeria remain unaware of their rights or the illegality of the

⁷⁶ *Velásquez Rodríguez v Honduras* (n 7) [134].

⁷⁷ United Nations Convention Against Torture 1984, art 15; Anti-Torture Act 2017 (Nigeria), s 8.

⁷⁸ *R v Mushtaq* [2005] UKHL 25, [9]-[12].

⁷⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34(6); Anti-Torture Act 2017 (Nigeria), s 14.

⁸⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law (2005) UN Doc A/RES/60/147, art 18.

⁸¹ Legal Aid Act 2011 (Nigeria), s 8(1)(d).

⁸² Legal Aid Council, Annual Report 2023 (2024). Available online at <https://legalaiddcouncil.gov.ng/annual-nba-reports-2/> accessed on 24 September 2026.

⁸³ United Nations Convention Against Torture 1984, art 10.

treatment they receive, particularly in rural areas where legal awareness is low.⁸⁴ By disseminating information about the right against torture and the availability of legal assistance, the Council creates the conditions for the reporting and documentation of violations, which are essential for accountability.

5.2 Rehabilitation and Support for Victims of Torture

The LACON's mandate extends to the rehabilitation of torture victims, encompassing medical, psychological and social support.⁸⁵ While the Council does not directly provide medical services, its legal assistance facilitates access to rehabilitation through compensation awards and referrals to specialised services.⁸⁶ The Council's role in documenting torture and its consequences creates the evidentiary basis for rehabilitation claims, ensuring that victims receive holistic redress.

The concept of rehabilitation in international human rights law extends beyond medical treatment to include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁸⁷ The LACON's advocacy for comprehensive reparations ensures that these elements are addressed in individual cases, contributing to the restorative justice dimension of torture prevention.

5.3 Collaboration with Law Enforcement Agencies and Other Stakeholders

Effective torture prevention requires collaboration between the LACON and law enforcement agencies.⁸⁸ The Council's engagement with the Nigeria Police Force (NPF), the Nigerian Correctional Service (NCoS), and other security agencies facilitates the monitoring of detention conditions and the early identification of torture risks.⁸⁹ This collaboration, while potentially fraught with tension, is essential for creating a culture of legality within security institutions.

The Council's partnership with the NHRC enhances the investigative capacity of the anti-torture regime.⁹⁰ While the Commission investigates violations, the Council provides legal representation to

⁸⁴ Prisoners' Rehabilitation and Welfare Action, *Behind the Walls: A Report on the Conditions of Detention in Nigeria* (2022). Available online at <https://prawa.org/> accessed on 24 September 2026.

⁸⁵ Legal Aid Act 2011 (Nigeria), s 8(1)(f).

⁸⁶ Basic Principles and Guidelines on the Right to a Remedy (n 80) art 21.

⁸⁷ Ibid art 18.

⁸⁸ Legal Aid Act 2011 (Nigeria), s 8(1)(e).

⁸⁹ Nigeria Police Force, Police Act 2020 (Nigeria), s 63; Nigerian Correctional Service Act 2019 (Nigeria), s 12.

⁹⁰ National Human Rights Commission, Strategic Plan 2021-2025 (2021). <https://www.nigeriarights.gov.ng/> accessed on 24 September 2026.

victims in Commission proceedings and subsequent litigation.⁹¹ This division of labour, when effectively coordinated, maximises the protective potential of both institutions.

5.4 Challenges affecting the Effectiveness of the Legal Aid Council

Despite its statutory mandate, the LACON faces significant challenges that compromise its effectiveness in torture prevention.⁹² The most critical is chronic underfunding, which limits the Council's capacity to deploy lawyers to police stations and detention centres, particularly in rural areas.⁹³ The Council's budgetary allocation, insufficient to meet the vast demand for legal assistance, results in long waiting lists and the effective denial of timely representation.

The division of responsibilities between the LACON, the NHRC and the PSC creates gaps in protection, with victims often falling between jurisdictional boundaries.⁹⁴ The absence of a coordinated national strategy for torture prevention exacerbates this fragmentation, hindering the synergistic potential of these institutions.

Furthermore, the LACON lacks the power to enforce compliance with its recommendations or to sanction non-cooperation by law enforcement agencies.⁹⁵ This enforcement deficit undermines the Council's authority, particularly in cases involving powerful security agencies resistant to external oversight.⁹⁶ The Council's dependence on the goodwill of state governments for the establishment and funding of state offices creates additional variability in service delivery across Nigeria's federating units.⁹⁷

6. Conclusion

We have demonstrated that the LACON constitutes the essential institutional mechanism for the domestication of the right against torture in Nigeria, transforming the abstract *erga omnes* prohibition into concrete protection for the most vulnerable. Through its functions of legal representation, sensitisation, rehabilitation, and collaboration, the Council operationalizes the

⁹¹ Ibid.

⁹² Legal Aid Council (n 82).

⁹³ Ibid.

⁹⁴ National Human Rights Commission (n 90) 25.

⁹⁵ Legal Aid Act 2011 (Nigeria), s 8.

⁹⁶ Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation (2019) 5 NWLR (Pt 1666) 518.

⁹⁷ Ibid.

preventive and remedial obligations imposed by the Constitution, the ATA 2017, and international instruments. However, the Council's effectiveness is compromised by funding deficits, jurisdictional limitations, and institutional fragmentation, which must be addressed to realise the full potential of the anti-torture regime.

The right against torture, as a *jus cogens* norm, demands not merely normative prohibition but effective institutional enforcement. The LACON should be properly resourced and conceptually reoriented as a specialised torture-prevention body, can provide the missing link between Nigeria's constitutional commitments and the lived reality of its most vulnerable citizens. The *ubi jus ibi remedium* imperative requires nothing less.

To enhance the Legal Aid Council's role in torture prevention, this article recommends that the enactment of legislation establishing a specialised Torture Prevention Division within the Council, with dedicated funding and nationwide jurisdiction;

There is need to amend the Legal Aid Act to mandate the deployment of legal aid lawyers to all police stations and detention centres, in order to ensure representation during interrogation. Accordingly, the establishment of a coordinated National Torture Prevention Strategy, integrating the functions of the LACON, the NHRC and the PSC is also highly recommended.

Finally, the creation of a sustainable funding mechanism for the Council, including a dedicated percentage of the security sector budget and contributions from the private sector; and the development of specialised training programmes for legal aid lawyers in forensic documentation of torture and trauma-informed representation.