

**AN EXAMINATION OF STATE SPONSORED TORTURE: A COMPARATIVE
ANALYSIS OF NIGERIA AND SOUTH AFRICA**

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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW AND THE
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DECEMBER, 2025

CERTIFICATION

I, **George O. OHIOMA** with Matriculation Number **PG/LAW2415401** hereby certify that apart from references made to other people's works as duly acknowledged herein, this entire project is the product of my personal research and has neither in part nor in whole been presented for another degree elsewhere.

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APPROVAL

We certify that this project work was completed by **George O. OHIOMA** with Matriculation Number **PG/LAW2415401** in partial fulfilment of the requirements for the award of the Degree of Masters in Law (LL.M) of the University of Benin

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DEDICATION

This work is dedicated to God Almighty alone.

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I wish to express my profound gratitude to my supervisor, **Dr. Jacob O. Garuba**, for his invaluable guidance, constructive criticism and unwavering support throughout the course of this project. His mentorship has been a source of inspiration and has greatly contributed to the successful completion of this work.

To others too numerous to mention, thank you all

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ABSTRACT

State sponsored torture remains a serious human rights concern despite its clear prohibition under international and regional law. In Nigeria and South Africa, reports of torture by state agents, especially police and security personnel, continue to raise questions about respect for human dignity, the rule of law and accountability within state institutions. This study examines state sponsored torture through a comparative analysis of Nigeria and South Africa in order to understand why the practice persists and how both countries have responded to it.

The study aims to examine the nature and justification of state sponsored torture and to assess the effectiveness of the legal and institutional frameworks designed to prevent it in Nigeria and South Africa. A doctrinal and comparative research approach is adopted, drawing on legislation, court decisions, international conventions, official reports and relevant academic writings.

The study finds that although both countries have formally committed themselves to the prohibition of torture and have put legal safeguards in place, enforcement remains weak in practice. South Africa has recorded more progress, largely due to its strong constitutional culture and oversight mechanisms, while Nigeria continues to struggle with poor implementation of laws, limited accountability for offenders and deep rooted institutional impunity. In both jurisdictions, torture is still commonly justified on the grounds of security, crime control and public order.

The study concludes that ending state sponsored torture requires more than legal prohibition. It demands genuine political will, effective oversight of security agencies and a culture of respect for human rights. The study recommends stronger institutional accountability, improved enforcement of existing laws and continuous human rights training as practical steps toward addressing torture in both Nigeria and South Africa

CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

The protection of human dignity and the prohibition of torture are core tenets of international human rights law,¹ reflecting a universal commitment to safeguarding individuals from inhumane and degrading treatment. Nigeria, as a state party to key international treaties such as the United Nations Convention Against Torture 1984² and the African Charter on Human and Peoples' Rights 1986³, has a legal obligation to uphold these principles within its domestic framework. However, systemic challenges persist in ensuring full adherence to these standards. Reports of torture, extrajudicial violence, and inhumane treatment by security forces and law enforcement agencies raise concerns about the effectiveness of legal protections and institutional enforcement mechanisms.

This study examines Nigeria's adherence to international human rights standards concerning the right to dignity and the prohibition of torture and compares it to that of South Africa. It will explore legal and institutional frameworks, including the provisions of the Anti-Torture Act 2017 and constitutional safeguards, assessing their alignment with international obligations. The study will analyze human rights concerns arising from arbitrary detention, custodial abuses, and law enforcement excesses, highlighting the gap between legal commitments and practical enforcement. The study examines Nigeria's adherence to international monitoring mechanisms and the contributions of the judiciary, civil society, and human rights institutions in ensuring accountability. It finally calls for a legal and policy framework that

¹ ICRC, 'Prohibition and punishment of torture and other forms of ill-treatment' <https://www.icrc.org/sites/default/files/document/file_list/prohibition-and-punishment-of-torture-icrc-eng.pdf> accessed 1st September 2025.

² United Nations Convention Against Torture 1984, Article 2.

³ African Charter on Human and Peoples' Rights 1986, Article 26.

strengthens counter-torture efforts, aligns with global human rights standards, and includes effective enforcement mechanisms.

1.2 BACKGROUND TO THE STUDY

State sponsored torture continues to remain a grave violation to human rights globally.⁴ This blatant disregard for fundamental rights is more often than not justified by threats to national security and the concerns thereof. While there are numerous international instruments that strictly prohibit torture, various governments, particularly in Africa continue to engage in acts of torture by using instruments of the state like security agencies and law enforcement bodies to punish, intimidate and harass citizens.

Nigeria's affiliation to state torture can be traced to the colonial era when British administrations used repressive tactics to suppress resistance movements and maintain colonial rule.⁵ Following the independence of Nigeria in 1960, Nigeria experienced a series of military coups that led to an extended period of military rule between 1966 and 1999.⁶ During this time, military regimes engaged in widespread human right abuses including systemic torture, arbitrary arrests and extrajudicial killings.⁷ In the post military era, state sponsored torture evolved within the civilian security architecture. Units like the Special Anti-Robbery Squad were notorious for police brutality and human rights violations.⁸

⁴ Ed Bates, State Immunity for Torture, *Human Rights Law Review*, Volume 7, Issue 4, 2007, Pages 651–680, <https://doi.org/10.1093/hrlr/ngm025>

⁵ Katuka Y, Itodo SM, and Okafor MC, 'Colonialism: Effects on the Nigerian State' (2025) Nasarawa State University, Keffi <https://keffi.nsuk.edu.ng/bitstreams/e64784b1-3779-41c4-8b37-c15c3527216a/download> accessed 22 February 2025.

⁶ Ola Peter, 'Military Rule in Nigeria: 1966-1999' (2024) Within Nigeria <https://www.withinnigeria.com/piece/2024/02/05/military-rule-in-nigeria-1966-1999/> accessed 22 February 2025.

⁷ Ibid.

⁸ Amnesty International, 'Nigeria: Torture, cruel inhuman and degrading treatment of detainees by Nigerian security forces' (2014) Amnesty International <https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440012014en.pdf> accessed 22 February 2025.

In South Africa, the trajectory of state sponsored torture is deeply rooted in the apartheid era when white minority governments used state resources to suppress black majority and maintain racial segregation.⁹ During the Apartheid period, the police and the military on regular basis employed torture to extract confessions intimidate activists and dismantle anti-apartheid movements such as the Pan African Congress.¹⁰ Additionally, prominent political detainees like Nelson Mandela were subjected to severe physical and psychological tortures. While these practice persisted, it was heavily condemned by international human rights activists.

Despite the numerous municipal and international instruments forbidding the use of state sponsored torture, the use of state sponsored torture by countries particularly in Africa continues to persist. This study sets to investigate the legal and institutional frameworks in place to combat state sponsored torture in Nigeria and South Africa.

1.3 STATEMENT OF THE PROBLEM

Both Nigeria and South Africa constitutionally and statutorily prohibit torture and have criminalized it Nigeria through the Anti-Torture Act 2017¹¹ and South Africa through the Prevention and Combating of Torture of Persons Act 13 of 2013¹². Yet credible monitoring shows torture and ill-treatment persist in police stations, security service operations, and places of detention, while prosecutions and convictions for the crime of torture remain rare relative to incident reports. The core problem the study addresses is the implementation and accountability gap between formal legal guarantees and actual practice: why, despite robust black letter law and multiple

⁹ Centre for the Study of Violence and Reconciliation, 'Torture in South Africa: The Act and the Facts' (2014) CSVr <https://www.csvr.org.za/pdf/Torture%20in%20South%20Africa.pdf> accessed 22 February 2025.

¹⁰ Ibid.

¹¹ Section 2 Anti-Torture Act 2017

¹² Section 3 Prevention and Combating of Torture of Persons Act, 2013. <https://www.gov.za/sites/default/files/gcis_document/201409/36716act13of2013.pdf> accessed 1st September 2025.

oversight bodies, do torture and other ill-treatment continue; why are criminal investigations and prosecutions for torture infrequent or ineffective; and which institutional, procedural, and evidential arrangements in each country enable impunity or, conversely, improve accountability. This problem is sharpened by: continued reports of torture and custodial abuses in Nigeria after the enactment of the Anti-Torture Act; the Committee against Torture's 2021 findings that Nigeria still lacks an effective, independent national preventive mechanism under OPCAT; and ongoing South African data from IPID and JICS that record assaults, deaths in custody, and registered "torture" cases despite a decade of specialized anti-torture legislation¹³. The study seeks to generate actionable reforms by comparing legal frameworks, oversight architecture, data on complaints and outcomes, admissibility rules for confessions, and recent jurisprudence or policy measures that either close or widen the impunity gap in both countries.

1.4 AIM AND OBJECTIVES OF THE STUDY

This study aims at carrying out a comparative review of state sponsored torture using Nigeria and South Africa as case studies. Distilled from this broad aim, the objectives of this study have been categorized into five folds, to wit:

1. To examine the historical context of state-sponsored torture in Nigeria and South Africa.
2. To examine the legal and institutional frameworks governing the prohibition of torture in Nigeria and South Africa.
3. To examine the impact of state sponsored torture on victims, and the society at large.

¹³ United Nations, 'Concluding observations in the absence of the initial report of Nigeria' <<https://www.ohchr.org/en/documents/concluding-observations/catengacoar1-concluding-observations-absence-initial-report?>> accessed 1st September 2025.

4. To provide recommendations aimed at strengthening the protection of human rights and preventing the continued use of state sponsored torture in Nigeria and South Africa.

1.5 SIGNIFICANCE OF THIS STUDY

This study aims at contributing to the growing body of research on human rights violations particular state sponsored torture by providing a comparative review using Nigeria and South Africa as case studies. This research sheds light on the legal and institutional contexts within which state sponsored torture occurs. This research is further significant to human rights organizations, policymakers and law enforcement agencies. The findings will benefit policymakers by offering lessons on how best to go about the protection of human rights.

Additionally, this study contributes to the growing body of academic literature on the evolution of and respect for human rights as well as the merits and demerits of state sponsored torture. This research further raises public awareness on the consequences of state sponsored torture thereby fostering institutional and legal reforms.

1.6 SCOPE AND LIMITATIONS OF THE STUDY

This study centers on state sponsored torture in Nigeria and South Africa by providing a comparative review of their legal frameworks and historical contexts. The research explores how torture has been used as a tool by the state in aiding counter terrorism efforts, gaining political control of power, and used in the enforcement of law.

This study covers the legal and historical frameworks in both countries, including constitutional provisions and international human rights obligations. This study assesses the effectiveness of mechanism put in place to prevent and address the issue of state sponsored torture such as the establishments of human rights commissions,

and judicial interventions. In keeping with the research topic, the geographical scope of this study focuses on Nigeria and South Africa with a focus on key institutions involved in state sponsored torture including law enforcement agencies and military officials.

LIMITATIONS

This study faces several limitations. First, the reliance on secondary data, such as journal articles, newspapers, and government publications, restrict access to firsthand accounts and official documents, skewing the results of this study. Second, the historical scope of the research, particularly in analyzing the historical aspect of state sponsored torture, may encounter interpretative biases in available records. Third, the study focuses exclusively on Nigeria and South Africa limits the application to other jurisdictions. Fourth, geographical and linguistic barriers might affect access to relevant South African sources. Despite these constraints, the study adopts a rigorous methodological approach to ensure reliability and validity, providing valuable insights into state sponsored conflict.

1.7 RESEARCH METHODOLOGY

This study employs a doctrinal research methodology, integrating historical, analytical, and comparative approaches to comparatively examine state sponsored torture in Nigeria and South Africa. The historical approach traces the origins of the state sponsored torture, while comparative approach examines similar the similarities and differences in legal and institutional frameworks of both jurisdictions. Data is primarily sourced from secondary materials, including peer-reviewed journal articles, newspapers, magazines, government publications, and unpublished theses and dissertations. This methodology ensures a comprehensive understanding of state

sponsored torture, combining legal analysis with historical and diplomatic perspectives for robust insights.

1.8 CONCLUSION

This study examines Nigeria and South Africa's adherence to international human rights standards concerning dignity and the prohibition of torture, focusing on the gap between legal commitments and practical enforcement. It analyzes historical contexts, legal frameworks (including the Anti-Torture Act 2017 in Nigeria and the Prevention and Combating of Torture of Persons Act 13 of 2013), and institutional mechanisms in both countries. The study aims to identify actionable reforms by comparing oversight architectures, data on complaints, admissibility rules, and recent jurisprudence to address impunity and strengthen counter-torture efforts. It employs a doctrinal research methodology, integrating historical, analytical, and comparative approaches.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS, THEORETICAL AND HISTORICAL FOUNDATION, AND LITERATURE REVIEW

2.1 Conceptual Clarifications

2.1.1 Torture

Torture may be construed as a concept embedded in the understanding of human rights. In this sense, human rights are inalienable rights each individual is entitled to from birth which remained significant for their well-being as they continued to live as human persons. Torture is an internationally recognized crime by the United Nations (UN) and has been referred to as one of the vilest acts perpetrated by humans on their fellow human beings'. The nature of torture on the face of it informed the reasons why there are so many international instruments that condemned the act, and however, made it an aspect of Fundamental Human Rights guaranteed by global and regional instruments for the enjoyment of all human beings through instrumentalities of the law¹⁴. According to the World Organization Against Torture (WOAT), torture is 'an intentional destruction of a human being by another'. This implies that the method of inflicting pain and suffering varies, but have the same objective of injuring the person, erasing him as an individual and denying him humanity. Be that as it may, the provisions of Article 1 of United Nation Convention Against Torture (UNCAT), defines torture as follows:¹⁵

“Any actions which result to an unjustified pains, injury or sufferings either in physical or mental form deliberately inflicted on the victims with an intention of forcefully obtaining from him or another person information or confessional

¹⁴ Paola Gaeta, ‘Another Step in What It Means to Be Human - Prohibition v. Criminalization of Torture as a Private Act’, *Journal of International Criminal Justice*, (2021), 425–38. <<https://doi.org/10.1093/jicj/mqab032>> accessed 1st September 2025.

¹⁵ HM Watkins, ‘The Morality of War: A Review and Research Agenda’, *Perspectives on Psychological Science*, (2020), 231–49. <<https://doi.org/10.1177/1745691619885872>> accessed 1st September 2025.

statement against his desire or compelling him to accept the commission of an act done by another. It could be an unreasonable action against a person because of his tribes, color or language. Sometimes, unjust c may arise from agents of government acting in their official capacities to perpetrate illegalities which is also regarded as torture.”

In a similar vein, the act of torture is said to have been perpetrated according to the provisions of NATA 2017 when such actions result to an unjustifiable sufferings or injuries either in physical or mental form with an intention to forcefully obtained an information from the victim. What this suggests is that an unjustifiable act on any person deliberately committed also amounts to torture. Thus, Section 3 of NATA, 2017 provides that there is "no justifiable grounds for unjust treatment of human persons." This section remained a significant section of the Act, and however, provides as follows:¹⁶

“On no account whatsoever, whether in situations of warfare, internal violence; conditions of emergencies or political instabilities should the act of unjustified treatment on human beings be seen as grounds for ill-treatment otherwise known as torture.”

According to International Criminal Court (ICC), an offence of unjustified treatment comprised of the following attributes:¹⁷

- i. Crime offender,
- ii. Crime offender who committed the offence for the purposes of forcefully obtaining an information from the victim;

¹⁶ Section 3 Anti-Torture Act 2017

¹⁷ Birju Kotecha, ‘The International Criminal Court’s Selectivity and Procedural Justice’ *Journal of International Criminal Justice* (2020) 107–39. <<https://doi.org/10.1093/jicj/mqaa020>> accessed 1st September 2025.

- iii. Crime offender may be a military personnel or a civilian not participating in warfare;
- iv. Crime offender is someone conversant with the relevant provisions of the law prohibiting unjustified treatment against any person;
- v. When an unjustified treatment occurred during military warfare not of global nature, and
- vi. Crime offender who is knowledgeable about the rules of IHL regarding the conduct of warfare.¹⁸

Regarding the attributes listed above, the paper revealed that no acceptable standards exists as a determinant factor for legal evaluations of the act of the crime offender in situations of military warfare or what should be used to justify that crime offender understands the resultant effects of his actions.¹⁹ Be that as it may, it may be stated that unjustifiable treatment, inhumane and dehumanizing treatments or maltreatment, are considered to be one of the significant grounds that seems to justify an act of torture, and very vital to all the Convention bordering on human rights. It is clear from the perspective of ICC that what determines the standard of what amounts to ill-treatment or dehumanizing conditions has been set at a high level. This suggests that only serious ill-treatment or dehumanizing conditions are regarded as torture. Although, an unjustifiable treatment must reach a reasonable point of severities known as the objective test before it could be termed as torture.²⁰

¹⁸ Elizabeth Salmón and JP Pérez-León-Acevedo, 'Reparation for Victims of Serious Violations of International Humanitarian Law: New Developments' *International Review of the Red Cross* (2022) 15–43 <<https://doi.org/10.1017/S1816383122000297>> accessed 1st September 2025.

¹⁹ Yordan Gunawan and others, 'Foreign Fighters in the Ukrainian Armed Conflict: An International Humanitarian Law Perspective' *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* (2023), 145–57 <<https://doi.org/10.24090/volksgeist.v6i2.9315>> accessed 1st September 2025.

²⁰ MO Mimiko and others, 'Unresolved Jurisprudence of Crime against Humanity under Article 7 of the Rome Statute of the International Criminal Court', *Beijing Law Review* (2016), 420–29 <<http://doi.org/10.4236/blr.2016.74033>> accessed 1st September 2025.

Aside from the above understanding of the concept of torture, it is worthy highlighting that torture involves physical suffering which takes many forms such as electrical shocks, false imprisonment, denial of medical care, severe overcrowding, and beatings. It also involves sexual abuse like rape, molestation; human trafficking; forced nudity or sexual humiliation. More so, mental or psychological torture can inflict equal pain on human being. This kind of torture does not cause any physical injury to the person's body. The most important lesson to learn from the various definitions of torture is that what differentiates torture from other related acts of cruelty, inhumane or dehumanizing conditions stems from the aim or reasons behind such an ill-treatment on the victim. It must be stated that torture can be so devastating to the mental health of survivors which oftentimes leads to conditions such as post-traumatic stress disorder (PTSD), tension; loss of self-esteem, and other mental situations.

2.1.2 State Sponsored Torture

Torture is defined in Article 1 of the UN Convention against Torture (CAT) as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted for specific purposes (e.g., obtaining information, punishment, intimidation or coercion, or discrimination), when such pain or suffering is inflicted by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. In this project, “state-sponsored torture” refers to conduct meeting the CAT Article 1 criteria, i.e., torture carried out directly by state agents or with their instigation, consent, or acquiescence²¹.

²¹ United Nations, 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>> accessed 1st September 2025.

The Nigeria's 1999 Constitution protects the dignity of the human person; "no person shall be subject to torture or to inhuman or degrading treatment." This binds all state authorities²². In criminal procedure and evidence, Section 29 of the Evidence Act 2011 requires courts to exclude confessions obtained by oppression; "oppression" includes torture and inhuman or degrading treatment. Together, these rules define and constrain state conduct and bar reliance on torture-tainted statements in prosecutions. South Africa's 1996 Constitution protects freedom and security of the person and explicitly guarantees the right not to be tortured. Parliament enacted the Prevention and Combating of Torture of Persons Act 13 of 2013 to implement CAT: it adopts the CAT definition, criminalizes torture, and provides for prosecution and penalties for offenders acting as public officials or under color of law. The official government publication and consolidated text confirm these obligations and definitions.²³

2.1.3 Human Rights

The relevant human rights are the inherent, legally protected entitlements to dignity and to freedom from torture and cruel, inhuman or degrading treatment or punishment, recognized across global, regional, and domestic law. Internationally, the prohibition appears in Article 5 of the Universal Declaration of Human Rights (UDHR) and in Article 7 of the International Covenant on Civil and Political Rights (ICCPR). Regionally, Article 5 of the African Charter on Human and Peoples' Rights protects dignity and prohibits torture and ill-treatment; the African Commission's General Comment No. 4 clarifies states' duties of prevention, investigation, punishment, and reparation. Domestically, Nigeria's Constitution guarantees dignity and prohibits

²² Section 34 Constitution of the Federal Republic of Nigeria, 1999(as amended)

²³ <<https://www.gov.za/documents/prevention-combating-and-torture-persons-act?>> accessed 1st September 2025

torture, and South Africa's Constitution guarantees freedom and security of the person, including the right not to be tortured in any way.

2.2 History of the Global Fight Against Torture

In the aftermath of the Second World War, the world community resolved in the General Assembly of the United Nations, that torture could no longer be tolerated or legitimized by the state. While there was an existing recognition that torture was prohibited under international Law. This prohibition had never previously been stated in clear terms by the International community. The desire to do so after 1945 was based in no small part on the Nuremberg trials, which had focused world attention on crimes against humanity committed by Nazi war leaders. The Universal Declaration of Human Rights (1948), the UN's first major achievement in the field of human rights, constitutes the basis for many of the UN human rights instruments that followed. Article 5 of the Universal Declaration of Human Rights states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The initial post war enthusiasm for International Human Rights Conventions trickled to a virtual standstill during the worst years of cold war, and it was not until 1975 that the United Nations defined the obligations of UN members' states relating to torture By virtue of the declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment (1975), UN member states are obliged to take effective measures for the prevention of torture and to ensure provision of redress for torture victims. In the postwar years, torture continued to be widely practiced in many repressive regimes around the world. Even well established democracies, which had long since outlawed

use of torture by military or law enforcement personnel in their colonies²⁴ in Countries in which they had significant political or strategic interests. With the end of colonial era, and the rapid growth in number of newly independent nations in Africa, the Americas and Asia, the practice of torture spread in ways that could probably not have been anticipated at the founding of the UN.²⁵ Many of the new nations were poorly prepared for the transition to independent rule, without strong democratic traditions or structures, and with a police force and military that had little understanding of Human Rights Conventions and Instruments, or of how the prohibition against torture might be relevant to their work, torture was more widespread now than it had ever been, and was being practiced in large number of countries to crush movements for political change and to maintain control over restless communities. The realization that torture was so widespread and that the universal prohibition against torture was being so blatantly disregarded was the catalyst for the first global campaign against torture by Amnesty International in 1973. In 1975, the World Medical Association adopted the Tokyo Declaration condemning direct or indirect medical participation in the practice of torture.

In response to the developing medical work against torture and in response to the manifest failure of the International Community to prevent acts of torture from occurring, the UN established the UN voluntary fund for victims of torture (UNVFVT) in 1981 to finance medical and psychological support for torture victims. The UN Convention Against Torture (1984) which entered into force on 26th June 1987 requires state parties to exercise jurisdiction to punish torture committed within their

²⁴ Charles Ogune, 'PROTECTION FROM TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT' <<https://ir.kiu.ac.ug/items/7412649e-5030-480a-b3d9-0dd8c8e459ae>> accessed 1st September 2025.

²⁵ Ibid

territory either by or against their national²⁶. The convention also provides for measures to be taken in the prevention of torture and the rehabilitation of torture victims. As of September 2010, 147 of the 192 UN member states have ratified the UN Convention against Torture. Uganda ratified in 1986 However every year the UN Special Rapporteur on torture receives information on torture being practiced in 60 to 80 countries this is because torture continues to be committed with impunity on a very large scale by most government agencies²⁷. Governments now have a responsibility to ensure the realization and promotion of human rights which include freedom from torture under International Law. Governments that wish to have international credibility today have to ensure that they put in place a framework of law that enables all citizens to enjoy quality of life in which their human rights are recognized and protected.

2.3. Theoretical Review

State monopoly of violence and theories of repression. Classic political sociology that treats the state as the entity that holds and controls legitimate force frames torture as an instrument of coercion used when a state (or parts of its security apparatus) seeks control beyond ordinary law enforcement. In this framing torture is not an aberration but a technique tied to regime survival, order maintenance and the suppression of political or criminal threats; empirical studies and cross-national work show torture's relationship to perceived threats, weak judicial oversight and impunity.

2.3.1 Human-rights/legal prohibition and implementation theory

International law (the UN Convention Against Torture (UNCAT) and regional human-rights treaties create a legal prohibition that states must translate into domestic

²⁶ Article 4 of the UN Convention Against Torture

²⁷ Ibid (n8)

law and practice. Implementation theory isolates the difference between formal compliance (signing/ratifying treaties, adopting statutes) and effective compliance (criminal prosecutions, independent investigations, victim remedies and systemic prevention). Nigeria and South Africa offer contrasting case studies: both are formally committed to the prohibition, but implementation and accountability show important divergences and similar weaknesses. Nigeria's Anti-Torture Act (2017)²⁸ criminalizes torture but implementation and prosecutions remain limited; South Africa's TRC documented systematic state torture during apartheid and created a transitional framework that emphasized truth and conditional amnesty rather than criminal prosecution, leaving long-term accountability questions.

2.3.2 Transitional justice & impunity theory

Transitional justice scholarship examines trade-offs between truth, justice and reconciliation after systemic abuses. The South African TRC is the paradigmatic case: it illuminated the scale and structure of state torture during apartheid but traded conditional amnesty for truth, producing debates about whether this produced durable accountability or entrenched impunity. Comparative work on transitional mechanisms helps explain why crimes committed under earlier regimes remain un-addressed and how that legacy shapes contemporary state conduct and victims' access to remedy. The TRC volumes and subsequent evaluations of its outcomes provide the empirical basis for applying transitional justice theory to South Africa's experience and for asking whether similar mechanisms or their absence affected Nigeria's handling of historic and contemporary torture allegations²⁹.

²⁸ Section 2 Anti-Torture Act 2017

²⁹ B Hamber and S Kibble, 'From Truth to Transformation: The Truth and Reconciliation Commission in South Africa' *Catholic Institute for International Relations Report*, February (1999)

Institutional scholarship on security-sector reform (SSR) explains how formal reform measures reorganization of police, removal/retraining of special units, new oversight bodies do not change behavior. In Nigeria, episodes such as the SARS scandal and the 2020 #EndSARS protests underscore both formal actions (disbanding and rebranding units) and persistent institutional failures to prosecute or reform. In South Africa, SSR after 1994 sought to transform security organs but problems of continuity, secrecy and incomplete prosecutions left structural vulnerabilities that the TRC partially exposed. Use SSR literature to connect organizational incentives, training and oversight failures to ongoing torture risks. Amnesty and human-rights monitors document these institutional failures in both contexts³⁰.

2.4. Gaps in Literature

First, comparative empirical work that uses matched case sets (similar allegations in both countries) to test prosecutorial outcomes, evidential thresholds and the role of political will is limited. Second, there is limited post-statute evaluation research: few systematic studies measure the impact of Nigeria's Anti-Torture Act (2017) or South Africa's 2013 Act on conviction rates, complaint processing, or detainee-treatment practices. Third, scholarship on the role of international monitoring tools (CAT reviews, OPCAT national preventive mechanisms) in producing domestic enforcement is underdeveloped. Practically oriented research should prioritize (a) measured enforcement indicators, (b) institutional mapping of oversight and complaints flows, and (c) comparative study of transitional mechanisms (TRC) versus

<<https://www.csvr.org.za/wp-content/uploads/1999/02/From-Truth-to-Transformation.pdf?>> accessed 1st September 2025.

³⁰ Amnesty International, 'Nigeria: Accountability For Human Rights Violations Remains Elusive' *Amnesty International Submission To The 45th Session Of The Upr Working Group, January-February 2024*. <<https://www.amnesty.org/en/wp-content/uploads/2023/07/AFR4469702023ENGLISH.pdf?>> accessed 1st September 2025.

ordinary criminal prosecution as routes to accountability³¹.

2.5. Conclusion

This study provides conceptual clarifications on torture, state-sponsored torture, and human rights, drawing from international law, regional charters, and domestic constitutions of Nigeria and South Africa. It outlines the historical context of the global fight against torture, from the Universal Declaration of Human Rights to the UN Convention Against Torture. The study reviews relevant theories including state monopoly of violence, human-rights/legal prohibition and implementation theory, and transitional justice & impunity theory. It identifies gaps in the literature, including comparative empirical work, post-statute evaluation research, and scholarship on international monitoring tools.

³¹ BS Ayo-Ojo, 'The Nigerian Anti-Torture Act of 2017 and Its Compatibility with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the African Charter on Human and Peoples' Rights' *Journal of African Law* (2024) 341-358.

CHAPTER THREE

A CRITICAL EXAMINATION OF STATE SPONSORED TORTURE

3.1. Introduction

State-sponsored torture refers to the systematic infliction of severe pain or suffering by government agents or with their acquiescence, typically for purposes such as obtaining information, punishment, or intimidation. This abhorrent practice constitutes a grave violation of human rights and is explicitly prohibited under international law, including the Convention against Torture. Despite this, numerous states continue to engage in or condone torture, often justifying it under the guise of national security or law enforcement, thereby igniting widespread condemnation and controversy on moral, ethical, and legal grounds.³²

The methods of state-sponsored torture are diverse, encompassing both direct and indirect techniques that inflict physical and psychological harm. Direct methods include physical beatings, electric shocks, and sexual assault, which often lead to immediate and severe injuries. Indirect methods, such as prolonged isolation, sleep deprivation, and psychological coercion, can result in long-term mental health issues, including post-traumatic stress disorder and depression.³³ The ramifications of these practices extend beyond individual victims, affecting families and communities by fostering a climate of fear and distrust. The debate surrounding state-sponsored torture is marked by significant controversies, including the tension between national security interests and human rights protections. Advocates for human rights argue that the use of torture undermines democratic values and the rule of law, while proponents may

³² RM Duffy, 'Kelly BD. Psychiatric assessment and treatment of survivors of torture' *BJPsych Advances* (2015) 106-115 <<https://www.cambridge.org/core/journals/bjpsych-advances/article/psychiatric-assessment-and-treatment-of-survivors-of-torture/66255DE798339DA52DF1ABECE0715176>> accessed 1st September 2025.

³³ 'The Legal Prohibition Against Torture' <<https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture>> accessed 1st September 2025.

contend that extreme circumstances justify such measures. Nevertheless, the consensus in international law remains clear: torture is an unacceptable violation that must be eradicated.³⁴

3.2. Historical Review of State Sponsored Torture

State-sponsored torture has ancient roots: many pre-modern states used physical coercion as an accepted tool of criminal justice, interrogation, and political control. Torture appeared in legal codes and royal practices across civilizations where rulers relied on forced confessions, public corporal punishment, and ritualized cruelty to deter crime and suppress dissent. During the colonial era, torture and harsh punitive measures were often normalized as part of empire-building. Colonial administrations used interrogation, forced labour, punitive expeditions, and detention without regular legal safeguards to control colonized populations. Recent work links contemporary patterns of state torture in some post colonial states to these colonial practices, showing institutional continuities in methods, legal justifications, and racial targeting.³⁵

The 20th century saw mass, systematic state torture employed by totalitarian and authoritarian regimes. Nazi Germany and Stalinist USSR engaged in state violence that combined interrogation, forced labour camps, medical abuses, and extrajudicial killings as tools of political domination. After World War II, revelations about these practices helped catalyze international law reforms and debates about state accountability. The Nuremberg trials and subsequent medical ethics reforms

³⁴ Matthew Fisher, 'The Use of State-Sponsored Torture for National Security: A Debate on the Permissibility of Torture in the Name of Public Safety' <<https://scholarship.rollins.edu/honors/85/>> accessed 1st September 2025.

³⁵ Anushka Sehmi, 'Legacies of Colonial Violence in Contemporary Transitional Justice: Memories of Mau Mau, the 'Kapenguria Six' and the 'Ocampo Six' in Kenya' *International Journal of Transitional Justice* (2024) 32–48 <<https://academic.oup.com/ijtj/article/18/1/32/7624695?>> accessed 1st September 2025.

established legal and moral precedents condemning torture and medical complicity in abuse.³⁶

From the 1950s through the 1980s, many authoritarian regimes used torture as a counterinsurgency and counter-subversion tactic. Latin American “dirty wars” (Argentina, Chile, Guatemala) featured enforced disappearances, secret detention centers, and torturous interrogations aimed at eliminating political opposition; estimates of those disappeared in Argentina reached tens of thousands. State security apparatuses often formalized clandestine detention and torture as state policy rather than isolated excesses.³⁷

The global human-rights movement and documentation by organizations such as Amnesty International established that torture was widespread and used across ideological divides. Amnesty’s early reports and campaigns in the 1970s framed systematic torture as a transnational problem and helped create pressure for international prohibition. The movement’s documentation work made possible legal and normative responses at the UN and regional human-rights bodies.³⁸

A milestone in the legal prohibition of torture was the United Nations Convention against Torture (CAT), adopted by the UN General Assembly on 10 December 1984 and entering into force in 1987. CAT codified a near-absolute prohibition on torture, established state obligations to prevent and investigate torture, and created monitoring mechanisms. Regional human-rights courts also developed jurisprudence reinforcing prohibition and defining state responsibility for torture and ill-treatment.

³⁶ SS Crosby and G Benavidez, ‘From Nuremberg to Guantanamo Bay: Uses of Physicians in the War on Terror’ *Am J Public Health* (2018) 36-41 <<https://pmc.ncbi.nlm.nih.gov/articles/PMC5719692/>> accessed 1st September 2025.

³⁷ Erin Blakemore, ‘30,000 People Were ‘Disappeared’ in Argentina’s Dirty War. These Women Never Stopped Looking’ <<https://www.history.com/articles/mothers-plaza-de-mayo-disappeared-children-dirty-war-argentina?>> accessed 1st September 2025.

³⁸ <<https://www.amnesty.org/fr/wp-content/uploads/2021/06/act400011973eng.pdf?>> accessed 1st September 2025.

Despite legal prohibitions, late 20th- and early 21st-century conflicts and security paradigms produced renewed instances of state-authorized or state-tolerated torture. Documented cases include systematic abuses under military dictatorships, and more recently allegations arising from counter terrorism operations, most notably Abu Ghraib (Iraq) and detention practices at Guantánamo Bay. Which revealed how policy choices, legal rationales, contractor involvement, and impunity can recreate spaces for abuse even within formally constrained legal systems. Detailed investigations and human-rights reports traced chains of command, policy memos, and institutional failures that enabled abuse.³⁹

Medical and professional complicity has been a recurrent feature. Historical evidence shows that physicians and psychologists have at times been involved in designing, facilitating, or sanitizing torture techniques ranging from Nazi medical experiments to documented participation in modern interrogations raising persistent ethical and accountability questions for professions that ostensibly protect life and health. Scholarly reviews document how states have co-opted medical expertise to make torture more “effective” or to conceal its harms.⁴⁰

Contemporary state-sponsored torture often combines legacy practices, new technologies, and legal reinterpretations. States may use secret detention, administrative detention without effective judicial review, rendition networks, detention outsourcing to contractors, and psychological techniques alongside physical abuse. Regional and international court decisions, as well as investigative reporting and NGO documentation, show that torture is not restricted to one region or political system; it resurfaces where legal safeguards erode, oversight is weak, and security

³⁹ 'The Road to Abu Ghraib' <<https://www.hrw.org/reports/2004/usa0604/usa0604.pdf>> accessed 1st September 2025.

⁴⁰ Ibid (n5)

imperatives are prioritized over rights. Recent rulings by judicial bodies continue to play a central role in defining state accountability for such abuses.⁴¹

Scholars identify recurring drivers of state-sponsored torture: political survival strategies (silencing opponents), counterinsurgency doctrines that prioritize intelligence extraction over rights, institutional cultures in law-enforcement and security services that reward brutality, legal gaps or reinterpretations that create exceptions, and impunity that follows when accountability mechanisms are weak. Efforts to prevent torture therefore require legal reform, independent oversight, political will, professional accountability (including for medical personnel), and robust civil-society documentation. Amnesty, Human Rights Watch, and UN monitoring bodies remain primary sources for ongoing documentation and pressure.

In sum, the historical record shows a long continuity of state use of torture, shifting justifications and techniques over time, and repeated cycles in which legal prohibition is established only to be undermined by political pressures and institutional failures. The post-1945 legal framework, especially CAT and regional jurisprudence, provides strong norms and mechanisms; the key challenge remains enforcement, transparency, and ending impunity. Continued documentation, litigation, and policy reform are necessary to translate prohibitions into durable prevention.

3.3 Methods of Torture

Torture encompasses a variety of methods employed to inflict severe pain and suffering on individuals, often for the purposes of extracting information, punishment, or intimidation. These methods can be categorized into direct and indirect forms of torture, each leading to significant physical and psychological consequences for the victims.

⁴¹ European Court of Human Rights, <<https://www.echr.coe.int/?>> accessed 1st September 2025.

3.3.1 Direct Methods of Torture

Direct torture methods involve the intentional infliction of pain through various physical techniques. Physical Beatings: Techniques such as falanga (beating the soles of the feet) can lead to chronic pain and mobility issues⁴². Electric Shock: Applying electric currents to sensitive body parts, including the genitals and nipples, is another notorious method. Asphyxiation Techniques: Methods like water boarding, where the victim is made to feel as if they are drowning, are widely recognized as torture practices⁴³. Prolonged Physical Restraint: Suspending individuals in uncomfortable positions for extended periods can result in severe physical injuries and psychological trauma. Sexual Assault: Sexual torture, which may lead to long-term physical and mental health issues, is a grave violation of human rights and dignity. These direct methods of torture often yield immediate and severe physical injuries, including pain, nerve damage, and other lasting disabilities.

3.3.2 Indirect Methods of Torture

Indirect methods can lead to debilitating effects without direct physical injuries. Sleep Deprivation: Prolonged lack of sleep can cause significant cognitive impairments and emotional distress. Isolation and Solitary Confinement: Extended periods of isolation can severely impact mental health, leading to conditions such as anxiety and depression. Environmental Manipulation: Exposure to extreme temperatures, either heat or cold, can induce suffering and physical distress. Psychological Coercion: Techniques designed to induce fear, such as threats of harm or psychological regression, are also forms of indirect torture that can leave lasting scars. The

⁴² Ibid (n1)

⁴³ Wikipedia 'Torture in the United States' <https://en.wikipedia.org/wiki/Torture_in_the_United_States> accessed 1st September 2025.

consequences of both direct and indirect methods of torture can be profound, often leading to chronic health issues, including neurological damage, psychiatric disorders, and a heightened risk of physical ailments such as hypertension and chronic pain syndromes.⁴⁴

3.4 Economic, Political, and Social Factors Influencing Torture and Inhumane Acts

3.4.1 Economic Factors

In addition, in underdeveloped and resource-rich areas, the Nigerian economic situation has been a major factor in the frequency of torture and inhumane crimes. Economic inequity, poverty, and resource conflicts have contributed to the increasing prevalence of militarism and breaches of human rights.⁴⁵ Over the past ten years, the disintegration of economic ties has resulted in more government intervention, militarism, and overly forceful treatment of underprivileged groups.

The Niger Delta conflict, in which indigenous people such as the Ogoni people have experienced violent persecution in their fight for control over oil resources, is among the most well-known instances of this.⁴⁶ Security personnel, particularly the military and police, have often used fatal force, torture, and arbitrary detentions against those accused of opposing government policies or multinational oil companies.⁴⁷ This economic conflict has resulted in systemic persecution of indigenous people, whereby

⁴⁴ Ibid (n12)

⁴⁵ Amnesty International, *Nigeria: A Comprehensive Approach to End Torture and Inhumane Practices* (Amnesty International 2020).

⁴⁶ Human Rights Watch, *World Report: Nigeria – Resource Conflict and State Repression* (Human Rights Watch 2013) <https://www.hrw.org> accessed 12 December 2025.

⁴⁷ Okeke C, 'The Economic Impact of Resource Conflicts in Nigeria: A Case Study of the Niger Delta' (2018) 12(3) *African Journal of Policy and Development* 45–67.

demonstrations against resource extraction and environmental damage are frequently greeted with state-approved violence.⁴⁸

Beyond the Niger Delta, economic struggle has driven criminal activity that has resulted in more government crackdowns and violations of human rights. People accused of theft, fraud, or insurrection are sometimes subjected to cruel questioning methods, arbitrary detentions, and extrajudicial killings as unemployment and poverty continue.⁴⁹ Economic policies failing to offer stability and job possibilities have led to a vicious cycle of violence whereby the state turns to force and repression instead of sustainable economic changes.⁵⁰

Moreover, financial disparity directly affects the capacity of the government to defend human rights. Strong economies and stable governments help to explain why people support human rights campaigns, legal responsibility, and law enforcement openness more in those countries. But in Nigeria, economic unrest has resulted in weak institutional structures whereby law enforcement abuses and corruption are unbridled and unchecked.⁵¹ The use of torture and cruel treatment will probably continue as a tool of social and political control without economic reforms giving equal wealth distribution and employment possibilities top priority.

In Nigeria, poverty, economic uncertainty, and resource disputes, as well as other factors, have greatly influenced torture and cruelty. Marginalized groups will endure

⁴⁸ United Nations, *The Impact of Economic Disparity on Human Rights in Developing Nations* (United Nations 2015) <https://www.ohchr.org> accessed 12 December 2025.

⁴⁹ Amnesty International, *Sharia Law and Human Rights in Nigeria* (Amnesty International 2019) <https://www.amnesty.org> accessed 12 December 2025.

⁵⁰ World Bank, *Poverty and Economic Instability in Sub-Saharan Africa: A Developmental Perspective* (World Bank 2021) <https://www.worldbank.org> accessed 12 December 2025.

⁵¹ Transparency International, *Corruption and Law Enforcement in Nigeria: A Barrier to Human Rights Protection* (Transparency International 2020) <https://www.transparency.org> accessed 12 December 2025.

militarization, abuses of human rights, and government persecution if economic inequalities exist. Dealing with these problems calls for better legal protections, investment in human capital, and socioeconomic changes to stop state-sponsored violence and thereby preserve fundamental human rights.

3.4.2 Political Factors

Political instability has significantly contributed to the prevalence of torture and other cruel acts in Nigeria. One of the most pressing concerns is the Boko Haram insurgency, which has been linked to political manipulation, weak governance, and systemic human rights violations.⁵² There have been allegations of collusion between some political figures and Boko Haram, with reports indicating that certain politicians have either directly or indirectly supported the group to undermine national stability or achieve personal political gains.⁵³ This has further complicated efforts to combat terrorism and protect civilians.

Despite the Nigerian government's counterterrorism efforts, both federal and state authorities have largely failed to hold perpetrators accountable for the widespread use of torture and inhumane actions against citizens. Human rights organizations have repeatedly criticized the Nigerian government for turning a blind eye to allegations of extrajudicial killings, unlawful detentions, and enforced disappearances by security forces under the pretense of fighting insurgency.⁵⁴

⁵² Amnesty International, *Nigeria: A Comprehensive Approach to End Torture and Inhumane Practices* (Amnesty International 2020).

⁵³ Onuoha FC, 'Boko Haram and the Evolving Threat of Terrorism in Nigeria' (2014) 7(3) *African Security* 196–220.

⁵⁴ Human Rights Watch, *Nigeria: Military Abuses and Lack of Accountability in Counterterrorism Operations* (Human Rights Watch 2019) <https://www.hrw.org> accessed 12 December 2025.

The Boko Haram insurgency has profoundly affected national security, freedom of movement, and economic activities in Northern Nigeria. Civilians in affected regions live in constant fear of attacks, restricting their ability to engage in daily activities and travel freely.⁵⁵ In addition to Boko Haram's actions, rival factions and politically motivated groups have exploited the insurgency to advance their own interests, further destabilizing the region and contributing to a surge in human rights abuses.⁵⁶

Beyond physical violence, Boko Haram's impact has extended to economic and social structures, leading to the collapse of businesses, forced migration, and loss of livelihoods in the northern states. Many communities that once thrived on trade and agriculture have been economically crippled, as people flee their homes in search of safety.⁵⁷ The government's failure to address these socio-political crises has allowed the cycle of violence, torture, and displacement to persist.

The intersection of political instability, weak governance, and insurgency has significantly contributed to torture and human rights abuses in Nigeria. Addressing this issue requires stronger accountability measures, increased transparency in counterterrorism operations, and greater efforts to dismantle the political networks enabling extremist groups. Furthermore, protecting civilian rights and ensuring lawful conduct by security forces must be prioritized to break the cycle of violence and repression.

3.4.3 Social Factors

⁵⁵ Ewi M and Salifu U, *Boko Haram and the Kidnapping Crisis in Nigeria* (Institute for Security Studies 2017) <https://issafrica.org> accessed 12 December 2025.

⁵⁶ United Nations, *Human Rights Violations in Nigeria's Counterterrorism Strategies* (United Nations 2021) <https://www.ohchr.org> accessed 12 December 2025.

⁵⁷ Ogonnaya U, 'The Economic Consequences of Insurgency in Northern Nigeria' (2018) 27(2) *African Security Review* 45–62.

Social components can assist those who have gone through multiple forms of torture such as growing their family and social networks, practicing creativity, or getting spiritual support from leaders of their political group and local community. In some ways, societal surroundings could support negative emotions and powerlessness among those who have gone through torture. The emotional and psychological recovery of survivors depends much on social support structures.

Through intimate family, friends, or broader community connections, restoring social networks helps validate experiences and lessen isolation. Art, music, and writing are among the creative activities that offer therapeutic means for survivors to process and communicate trauma, therefore enabling them to recover agency over their stories.⁵⁸ Many also still depend critically on spiritual and religious support, which provides hope and healing following trauma.⁵⁹ Moreover, community leaders inside political groups or regional organizations can create communal healing environments that honor common pain and act for justice and reconciliation.⁶⁰

Social elements, however, can also have adverse effects on torture survivors, particularly in hostile surroundings or under stigma. In these situations, unfriendly people or lack of assistance aggravate emotions of powerlessness and strengthen a sense of victimhood. When destructive activities become accepted or justified within the society, social conventions can reinforce cycles of violence in conflict-prone areas. Douglas Noll claims that a basic tenet of the science of international relations is that people are essentially driven by self-interest and exhibit egoistic inclinations, which

⁵⁸ Van der Kolk BA, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (Viking 2014).

⁵⁹ Pargament KI, *The Psychology of Religion and Coping: Theory, Research, Practice* (Guilford Press 2002).

⁶⁰ Miller KE, 'The Psychological Effects of War on Survivors of Torture: A Comprehensive Review of the Literature' (2009) 21(4) *International Review of Psychiatry* 351–356.

may lead to acts of violence, conflict, and aggression unless limited by the presence of a threat.⁶¹ This understanding of human behavior clarifies how violence can spread in such areas, especially in cases when the social and political systems fail to enforce responsibility and advance peace.

Boko Haram's activities provide a sobering illustration of how unbridled brutality and injustice may bloom. Boko Haram has heightened the sense of powerlessness and disappointment in impacted populations by their systematic use of brutality and terror. Rooted in a profound self-interest and contempt of human dignity, these acts have helped to widen the social and political crises and impede healing and reconciliation.⁶² As Noll advises, in the absence of stabilizing influences, violence and aggression become practical tools for expressing control, thereby extending cycles of misery and revenge.

3.5 Impacts of State-Sponsored Torture

The direct physical consequences of state-sponsored torture are profound and can vary significantly based on the methods employed. One of the most common outcomes is chronic pain, which can manifest in numerous ways depending on the type of torture experienced. For example, individuals subjected to falanga, a form of torture involving beating the soles of the feet, may endure persistent heel pain, altered sensation, and abnormal gait. Similarly, those who have been suspended by their arms

⁶¹ Noll DE, *Elusive Peace: How Modern Diplomatic Strategies Could Better Resolve World Conflict* (Prometheus Books 2011).

⁶² Cook D, *Boko Haram: A History of the Nigerian Islamist Movement* (Oxford University Press 2015).

may suffer from brachial plexus injuries, neurogenic pain, and stretch arthritis syndrome, alongside impaired neurological sensations⁶³.

The psychological impacts of torture are equally severe, often leading to conditions such as complex post-traumatic stress disorder (PTSD), major depression, and anxiety disorders. Survivors frequently report emotional disturbances, sleep issues, chronic pain, and difficulties with concentration. The effects are not confined to the survivors alone; secondary traumatization can affect family members, leading to their own mental and emotional distress. A study focused on individuals who fled state repression in Türkiye noted that survivors exhibited a lack of trust, feelings of injustice, and various stress-related symptoms, including rumination, listlessness, and suicidal thoughts. Many also experienced memory lapses and chronic psychosomatic complaints like fatigue, headaches, and sleep disturbances.

The ramifications of state-sponsored torture extend beyond individual suffering to affect the coherence and stability of entire communities. It serves as a method of state repression designed to weaken targeted populations, leading to a pervasive climate of fear and distrust. The emotional and physical toll on survivors can ripple through communities, undermining social cohesion and collective well-being. Research highlights the importance of addressing these public health concerns, as they represent a significant burden on mental health services and social support systems⁶⁴.

3.6 Arguments in Support of State-Sponsored Torture

⁶³ Ibid (n1) <<https://www.cambridge.org/core/journals/bjpsych-advances/article/psychiatric-assessment-and-treatment-of-survivors-of-torture/66255DE798339DA52DF1ABECE0715176#:~:text=The%20direct%20physical,impaired%20neurological%20sensations.>> accessed 1st September 2025.

⁶⁴ Fisher Matthew, 'The Use of State-Sponsored Torture for National Security: A Debate on the Permissibility of Torture in the Name of Public Safety' *Honors Program Theses* 85 (2019) <<https://scholarship.rollins.edu/cgi/viewcontent.cgi?article=1089&context=honors>> accessed 1st September 2025.

Proponents of the use of state-sponsored torture often argue that national security and assurance of the public safety are direct responsibilities of the state that should be prioritized over all else. They claim that torture, while certainly not the preferred method of gathering critical information, is ethically justifiable as a means of protecting the security and interests of the citizens of the United States when no other suitable method is available. They typically posit that torture by no means should be the go-to method of obtaining information, but when specific circumstances arise and all other alternatives are ineffective, then it can be justified. They might also agree that torture is an immoral practice, but still hold that it is justifiable if innocent lives are at risk and no other option can be exercised to ensure public safety. It is difficult to believe that the many Americans who support torture do so because they find torture to be a moral, humane, and honorable practice. Instead, it is more likely that they view torture as an “unfortunate necessity” or “necessary evil” that must be regrettably undertaken to promote the general welfare of the innocent citizens of the state.

The Ticking Time Bomb Scenario

Proponents of torture seek to justify their belief through a wide variety of arguments. While many of these explanations tend to be rooted in ethical theories and works of philosophy, proponents also seek to find support for state-sponsored torture through both pragmatic arguments and application of real-world situations. Essentially all arguments that they employ center around some form of a cost-benefit analysis in which the extent of the harm done by the acts of torture is compared to the extent of the benefits received by whatever information is gained from the interrogation methods. The first major argument that follows the idea of a cost benefit analysis is one of the most thoroughly discussed and debated concepts in the history of the

torture question: the ticking time bomb scenario. This concept of the ticking time bomb scenario stems from an ethical thought experiment first pioneered by utilitarian Jeremy Bentham in his 1804 essay *Means of Extraction for Extraordinary Reasons*.

In his essay, Bentham asks the reader to consider an occasion in which reasonable suspicion exists that a suspect has information that, if attained, could reduce the suffering or forthcoming suffering of countless innocent civilians.⁶⁵ Bentham further pushes the reader to imagine that “at this very time a considerable number of individuals are actually suffering, by illegal violence inflictions equal in intensity to those which if inflicted by the hand of justice, would universally be spoken of under the name of torture.”⁶⁶ He then asks the reader a heavy and open-ended question: “should any scruple be made of applying equal or superior torture, to extract the requisite information from the mouth of one criminal, who having it in his power to make known the place where at this time the enormity was practicing or about to be practiced” in order to save or relieve the suffering of the hundreds of innocents?⁶⁷

Brought into simpler terms, Bentham asks the reader to consider whether the immoral act of torture on one criminal can be justified if committing it leads to the reduction in the equal suffering or torture of the many, especially when those individuals have committed no such crime. Even though Bentham is directly asking if torture of suspects is permissible when it can prevent the harm of others, what he is indirectly asking us to do is choose the solution that yields the greatest benefit to the many or the greatest utility an ideal which will be further discussed in sections to come. He is not asking the reader if the suspect should be tortured for simply committing a crime

⁶⁵ Davies J, ‘Interdisciplinary Studies in the Long Nineteenth Century’ (19 December 2012) <https://19.bbk.ac.uk/articles/10.16995/ntn.643/> accessed 5 December 2018.

⁶⁶ Ibid.

⁶⁷ Ibid.

or harboring information; he instead suggests that torture should be implemented if doing so will end or prevent the suffering of the civilians a decision that certainly produces greater benefits for more people than the harm done to the one criminal.

In her journal article “The Trolley Problem,” Judith Jarvis Thomson recalls her experience posing this hypothetical question to many individuals with each one responding that switching to the other track was either morally permissible or morally required.⁶⁸ While not all agreed that it was morally required, none found that it would be morally wrong to do so.⁶⁹ Thomson then instructs the reader to consider a follow-up hypothetical situation. Imagine that you are an excellent surgeon, in fact so excellent that every time you perform a transplant, the organs always take and the patients always live. At the moment you have five different patients in need of life-saving organ transplants, but no organ donors are available. Time is almost up for these patients when it is brought to your attention that a healthy young man with the correct blood type has come to the hospital for an annual check-up. You conclude that all you have to do is sacrifice this one healthy patient to save the five dying patients. Realizing this, you ask the patient if he would be willing to die and donate his organs, but he declines. With these considerations in mind, Thomson asks the reader: “Would it be morally permissible for you to operate anyway?”⁷⁰ Thomson continues, saying that everyone to whom she asked this question answered “No, it would not be morally permissible.”⁷¹

⁶⁸ Thomson JJ, ‘The Trolley Problem’ (1985) 94(6) *Yale Law Journal* 1395–1415, doi:10.2307/796133.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

Thomson then wonders, why is it that one hypothetical is moral and the other is not if both decisions result in the death of one individual and the saving of five who would otherwise die? In other words, each results in a net effect of saving four lives. She argues that the distinction lies in the difference between “killing and letting die.”⁷² Thomson asserts that Foot would come to a similar conclusion – that turning the trolley is morally permissible, but conducting the surgery is not. In the trolley example, the options are to kill one or kill five obviously the best choice is to kill only one. On the other hand, with the surgery example, the options are to kill one or let five die. Foot and Thomson suggest that causing injury is far worse morally than failing to provide aid, arguing that “the former is worse than the latter [in] that the negative duty to refrain from causing injury is stricter than the positive duty to provide aid.”⁷³ The ticking time bomb scenario and the Trolley Problem discussed in detail by Bentham, Foot, and Thomson both serve as good starting points for discussion on theoretical cases concerning the use of torture, but analysis of real-life twenty-first century applications will probably serve us better in answering the overall research question at stake.

Alan Dershowitz, a well-known criminal defense lawyer and Felix Frankfurter Professor of Law, Emeritus at Harvard University School of Law, brought the ticking time bomb scenario back to life in a series of works he completed following the 9/11 terror attacks and the onset of the War on Terror in the early 2000s. In his iteration of the scenario, which he offers in a 2001 Los Angeles Times article titled “Is There a Torturous Road to Justice,” he asks the reader to consider a realistic situation – that

⁷² Ibid.

⁷³ Thomson JJ, ‘The Trolley Problem’ (1985) 94(6) *Yale Law Journal* 1395–1415, doi:10.2307/796133.

law enforcement has captured a suspected terrorist who is believed to have vital information regarding an imminent “large-scale threat.” This individual additionally refuses to disclose any information of the threat which is about to endanger thousands or more innocent citizens.⁷⁴ Dershowitz then asks, “would torturing one guilty terrorist to prevent the deaths of a thousand innocent civilians shock the conscience of all decent people?”⁷⁵ He assures the reader that doing so certainly would not. In order to prove that it would not, he tells the reader to think of a situation in which a young child has been kidnapped and buried in a box with two hours of oxygen. The kidnapper has been apprehended, but refuses to disclose any information about the child’s location. Should torture of the suspect be considered?

Dershowitz argues that it is clear that law enforcement would torture the criminal in an attempt to save the innocent child.⁷⁶ In reaching this conclusion, he pivots, asserting that given past history, evidence suggests that when given limited permission to carryout torture, law enforcement personnel will expand its use.⁷⁷ He continues, saying that he has “no doubt that if an actual ticking bomb situation were to arise, our law enforcement authorities would torture.”⁷⁸ He makes the claim that it is clear that authorities will look to torture if and when the ticking time bomb scenario arises, just as it did on the morning of September 11, 2001. The bigger question, he

⁷⁴ Dershowitz AM, ‘Is There a Torturous Road to Justice?’ (Los Angeles Times, 10 December 2025) <https://www.latimes.com/archives/la-xpm-2001-nov-08-me-1494-story.html> accessed 12 December 2018.

⁷⁵ Ibid.

⁷⁶ Dershowitz AM, ‘Is There a Torturous Road to Justice?’ (Los Angeles Times, 8 November 2001) <https://www.latimes.com/archives/la-xpm-2001-nov-08-me-1494-story.html> accessed 12 December 2018.

⁷⁷ Ibid.

⁷⁸ Ibid

argues, is “whether such torture should take place outside of our legal system or within it.” He believes that if we are to have torture, then it ought to be authorized by law for the many inherent benefits that doing so would bring benefits that will be analyzed later on in this investigation of the ethics and legality of torture.⁷⁹

When considering either the trolley problem or the ticking time bomb scenario, one might argue that choosing to do nothing is the most morally correct option as doing nothing removes personal fault from the succeeding results. This, however, is not the case – opting to do nothing is selecting an option in and of itself. In fact, one could reasonably argue that doing nothing directly yields personal fault as “we do have a Samaritan responsibility to protect others to the best of our ability when possible.”⁸⁰

When considering just the ticking time bomb dilemma, it becomes even more difficult to accept no action as a solution. In this situation, we have strong reason to believe that a suspect in our custody is harboring vital information that could save countless lives. Regardless if this individual is the perpetrator of the threat at hand, “the refusal to relay such valuable information results in some degree of guiltiness.”⁸¹

In contrast, the numerous potential victims of the act of terror are assumed to be innocent, at least for the context of this situation. Considering this, it is generally understood that the role of law enforcement is to promote the public safety and remove dangerous offenders from the public arena. It is their duty to fulfill that task, even if that means resorting to torture if necessary. Ultimately, the suspect’s confirmed, or at the very least, highly likely guiltiness, “signifies that he or she has forfeited his or her rights to some degree and no longer deserves the entirety of

⁷⁹ Ibid.

⁸⁰ Fisher M, ‘Ethics of the Use of State-Sponsored Torture for National Security’ (POL 318: Applied Political Ethics, Rollins College 2017).

⁸¹ Ibid.

protections that the innocent citizens are entitled to by the state.”⁸² Torture cannot be justified when directed toward an innocent civilian, but when applied toward a law-breaking criminal for the sake of protecting the innocent, then it is justifiable if no more effective and morally superior options are present.

Torture from a Utilitarian Standpoint

The ticking time bomb scenario, as introduced and championed by its proponents, provides a strong case for state-sponsored torture when presented in terms of protecting the innocent rather than simply punishing the accused. It seeks to determine the morality and justifiability of torture based on a cost-benefit analysis of the suffering induced by the torture on the suspect in comparison to the suffering prevented for the innocent. The argument holds that the prevention in suffering of the many more than off-sets the suffering imposed on the few. This argument, on a deeper level, is nothing more than an extrapolation of the philosophy of utilitarianism which also considers the importance of a cost-benefit analysis when gauging the morality of a decision.

Being that the nature of this research topic concerns whether a certain political phenomenon, in this case the use of torture by the state, is ever justifiable, it follows that any reasonable and properly thorough analysis should include arguments based in political philosophy. In this application, utilitarianism is the philosophy of moral decision-making that most strongly supports, and in some cases even mandates, the use of torture by the government. The utilitarian ethical theory is most generally understood to be “the view that the morally right action is the action that produces the

⁸² Ibid.

most good.”⁸³ One important point to note before delving into the specifics of the theory, is that it is a form of consequentialism, meaning that the morally correct option is entirely dependent on the results or consequences produced.⁸⁴ In contrast with egoism, from a strictly utilitarian standpoint, one is required to maximize good consequences for all, not just oneself.⁸⁵ Utilitarianism is also unique in that it is distinguished by impartiality – all individuals’ happiness are viewed equally.⁸⁶

The concept of “good” is defined differently depending on specific subtypes of utilitarianism and the specific philosopher studying the theory. For the classic utilitarians, Jeremy Bentham and John Stuart Mill, good was synonymous with pleasure. In other words, the morally correct option is that which yields the maximum pleasure for the maximum number of people. They defined the opposite of pleasure as pain. Bentham, in an *Introduction to the Principles of Morals and Legislation*, famously declared that people seek pleasure and the avoidance of pain, since they “...govern us in all we do, in all we say, in all we think...”⁸⁷ In addition to admitting this natural tendency, he also put forward the principle of utility as the standard for the actions of both individuals and the government.⁸⁸ Decisions and their resulting actions can be morally approved when they promote happiness and pleasure, but not

⁸³ Driver J, ‘The History of Utilitarianism’ (Stanford Encyclopedia of Philosophy, 22 September 2014) <https://plato.stanford.edu/entries/utilitarianism-history/> accessed 12 December 2025.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Driver J, ‘The History of Utilitarianism’ (Stanford Encyclopedia of Philosophy, 22 September 2014) <https://plato.stanford.edu/entries/utilitarianism-history/> accessed 12 December 2025.

⁸⁸ Bentham J and Lafleur LJ, *An Introduction to the Principles of Morals and Legislation* (Hafner Pub. Co 1948).

when they cause unhappiness and pain.⁸⁹ Bentham further stressed that lawmakers must be sensitive to changing social factors to determine what decisions maximize utility at any given time. This is the case because a law that is good at one point in time may be bad in another the consequences and effects of laws and decisions change over time.⁹⁰

John Stuart Mill, a follower of Bentham, admired and followed much of his work even though he disagreed with some of his beliefs, namely on the nature of happiness. While Bentham believed that there were no qualitative differences between different “pleasures,” Mill held that Bentham was too egalitarian in his hedonistic approach, instead asserting that simple-minded, sensual pleasures were less valuable than “more sophisticated and complex pleasures.” He posited that “intellectual pleasures are of a higher, better, sort than the ones that are merely sensual, and that we share with animals.”⁹¹ He made additional distinctions between pleasures relating to “intensity, duration, certainty or uncertainty, propinquity or remoteness and more.”⁹² Despite this key difference, Mill did agree with Bentham in that people desire happiness – the utilitarian end – and that general happiness is “a good to the aggregate of all persons.”⁹³ Both Bentham and Mill supported utilitarianism as a tool to inform law and social policy in a manner that produced the greatest good for the entirety of, or at least most of a state’s citizenry, a virtuous moral cause.⁹⁴

⁸⁹ Driver J, ‘The History of Utilitarianism’ (Stanford Encyclopedia of Philosophy, 22 September 2014) <https://plato.stanford.edu/entries/utilitarianism-history/> accessed 24 November 2018.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

Applying Mill's view of happiness, it quickly becomes clear how a utilitarian case for government directed torture can be formulated. The suffering that the innocent ticking time bomb scenario victims would face would be both low-level sensual and high-level intellectual and abstract. Of course, the actual suffering that would occur relating to bodily harm or death would be a decrease in utility alone, but the loss of ability of the victims to live fulfilling, loving, and self-actualizing lives is arguably a much greater degree of suffering than the actual death itself. On the other hand, the suffering of the tortured suspect would be merely sensual in that he or she would be subjected to sensory deprivation and other physical (though short-term) harm. While this is still a decrease in utility for the individual objected to it, the overall decrease is significantly less than that for the innocent.

In "Terrorism, Ticking Time Bombs, and Torture," author Fritz Allhoff explains that even though utilitarianism can be used to justify torture, it does not provide ethical justification for the implementation of torture in all situations.⁹⁵ Allhoff asserts that under the doctrine of utilitarianism, torture would have to "be the least harmful remedy applied to resolve the Fisher 33 situation, otherwise utility would not be maximized."⁹⁶ Any "insufferable"⁹⁷ exhibition of torture would be unacceptable and morally intolerable if an alternative method of interrogation would elicit the same information and desired result.⁹⁸ In fact, he admitted that while utilitarianism can be used to justify torture, he thinks "that torture is rarely justified, at least in part because

⁹⁵ Allhoff F, *Terrorism, Ticking Time-Bombs, and Torture: A Philosophical Analysis* (University of Chicago Press 2012).

⁹⁶ Ibid.

⁹⁷ Fisher M, 'Ethics of the Use of State-Sponsored Torture for National Security' (POL 318: Applied Political Ethics, Rollins College 2017).

⁹⁸ Ibid.

it is rarely necessary to prevent a serious and imminent threat , but also because it would rarely be the best way to prevent such a threat.”⁹⁹ Despite the rarity of justified situations, Allhoff still argues that “there can be cases where torture is the lesser evil” based on the concept of utility, but “such a commitment...hardly amounts to an endorsement of terrorism simply because of the relative paucity of those cases.”¹⁰⁰ Allhoff’s argument is not for wide-reaching justification and implementation of torture, but just for its moral acceptance in a very small percentage of cases that cannot be resolved using other methods.

The utilitarian argument seeks to justify state-sponsored torture through strict consequentialism. It employs a cost-benefit analysis of the suffering induced by the torture in comparison to the suffering prevented by the torture. In this case, utilitarianism justifies any situation in which torture’s use maximizes utility for the maximum number of individuals while simultaneously minimizing suffering and unhappiness as well. Granted, few of these situations exist as all other morally superior options that yield the same result would need to be considered and attempted first. Additionally, the ticking time bomb scenario is also admittedly uncommon, yet still plausible and possible. Further, opponents of this argument are likely to assert that it is too hypothetical in nature and that there is no way to account for uncertainty in expected outcomes. While this consideration does bring about a fair level of concern, proponents would counter that uncertainty is far preferable to certain harm. If torture is not considered and an enemy combatant does not disclose the life-saving

⁹⁹ Ibid.

¹⁰⁰ Allhoff F, *Terrorism, Ticking Time-Bombs, and Torture: A Philosophical Analysis* (University of Chicago Press 2012) — Allhoff uses the term “terrorism” in place of “torture,” suggesting a personal view that state-sponsored torture can be considered a form of state-sponsored terrorism, regardless of intent.

information, then we can be certain that the innocent civilians will die. Overall, while utilitarianism may not be a “catch-all” moral theory in that the means, regardless of how immoral they are, are justified by the ends, it does serve as a strong argument in favor of government directed torture.

A Philosophical Argument for Torture: The Role of Government

The primary purpose of government is a concept that has been studied extensively and debated even more diligently by many political philosophers throughout the years. Perhaps the greatest contributions to this discussion on the role of the state have come from many of the great social contractarians including Thomas Hobbes, John Locke, and Jean-Jacques Rousseau, among others. These social contractarians, throughout their various works, sought to explain reasons why individuals relinquished their individual freedoms and consented to a social contract to form the governments that oversee them. The most powerful and respected of these explanations is that people consent to the social contract and give up some of their personal freedoms for the protections and safety that the state can offer them in return, through the creation of a civil society. This idea stems from John Locke’s *Second Treatise on Civil Government*, a philosophical work that had a profound influence on the Founding Fathers and the development of the American political system.¹⁰¹

In the *Second Treatise*, John Locke begins his discussion on the nature and purpose of civil government by defining political power as the:

“right to make laws with the death penalty and consequently all lesser penalties for regulating and preserving property, and to employ the force of the community in enforcing such laws and defending the

¹⁰¹ Locke J, *The Second Treatise on Civil Government* (Prometheus Books, Amherst, NY 1986).

commonwealth from external attack; all this being only
for the public good.”⁹⁰

Following his definition of political power, Locke proceeds to discuss the State of Nature or the state in which men are naturally in to explain political power and derive it from its proper source.¹⁰² He describes a state in which all men are perfectly free to determine their own actions and determine and dispose of their own possessions without the permission of others, essentially “subject only to the limits set by the law of nature.”¹⁰³ He also describes this state as one of equality in which no man has power over another. However, he does note that this liberty does not equate to a license to abuse others where no constraints on one’s behavior exist. Locke continues, explaining that man is entitled to his own self-preservation and can do harm to another person if his motive is anything other than the justified punishment of an offender:

“Everyone is obliged to preserve himself and not opt out of life willfully, so for the same reason everyone ought, when his own survival isn’t at stake, to do as much as he can to preserve the rest of mankind; and except when it’s a matter of punishing an offender, no one may take away or damage anything that contributes to the preservation of someone else’s life, liberty, health, limb, or goods.”¹⁰⁴

He concludes his discussion on the state of nature by stating that all men remain in this state until a special agreement or consent between them to develop a political society is constructed.¹⁰⁵

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Locke J, *The Second Treatise on Civil Government* (Prometheus Books, Amherst, NY 1986).

After discussing the state of nature, Locke then discusses that state of war which he describes as a “state of enmity and destruction.”¹⁰⁶ While other social contractarians equated the states of nature and war, such as Thomas Hobbes, who famously referred to the life of a man in the state of nature as “solitary, poor, nasty, brutish, and short,” Locke suggested that the two states were actually quite distant from each other.¹⁰⁷ Locke asserted that:

“A state of nature, properly understood, involves men living together according to reason, with no-one on earth who stands above them all and has authority to judge between them. Whereas in a state of war a man uses or declares his intention to use force against another man, with no-one on earth to whom the other can appeal for relief.”¹⁰⁸

When referencing the state of war, he is referring more to conflicts on the individual level rather than between nations. He argues that in the state of war, in the absence of a common authority to act as an arbitrator to resolve disputes, men are forced to implement their own means to protect their liberties and property.

In concluding his discussion on the states of nature and war, Locke claims that with the lack of “authority to decide between contenders, and the only appeal [being] heaven, every little difference is apt to end up in war.”¹⁰⁹ This, he reasons, is a great motivation by which men choose to put themselves into a society and leave the state of nature.¹¹⁰ Even if consenting into a civil society yields the reduction in some freedoms such as the ability to fully do as one pleases, Locke posits that men are

¹⁰⁶ Ibid.

¹⁰⁷ Hobbes T, *Leviathan* (Clarendon Press, Oxford 2012).

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

willing to make such a sacrifice if the consequence is the state's protection of their property, liberties, and welfare.¹¹¹ He furthers his pursuit of answering the question of why men choose to become part of a society. Answering his own question, he says:

“Though in the state of nature he has an unrestricted right to his possessions, he is far from assured that he will be able to get the use of them, because they are constantly exposed to invasion by others. All men are kings as much as he is, every man is his equal, and most men are not strict observers of fairness and justice; so his hold on the property he has in this state is very unsafe, very insecure. This makes him willing to leave a state in which he is very free, but which is full of fears and continual dangers; and not unreasonably he looks for others with whom he can enter into a society for the mutual preservation of their lives, liberties and estates, which I call by the general name ‘property’.”¹¹²

In giving up the “equality, liberty, and executive power” that they had in the state of nature, men have the intention of better preserving their own persons, liberty, and property.¹¹³ Locke puts forward the idea that the sole purpose of the state is that of preserving and protecting the people that it serves. He argues that the very purpose for which men enter into society is “to be safe and at peace in their use of their property” and that the avenue by which “this is to be achieved is the laws established in that society.”¹¹⁴ A simple summation of Locke's arguments is that people in a state of nature recognize the need for an executive power to protect their liberties and property, so they consent to forming a civil society to which they will all be bound. They acknowledge that this government's sole purpose is for the people's mutual benefit. That is, to serve them, their safety, and needs and it can be rightfully

¹¹¹ Ibid.

¹¹² Ibid, 40.

¹¹³ Ibid, 41.

¹¹⁴ Ibid, 43.

overthrown, dissolved, and replaced if at any point it ceases to fulfill these functions. Along these lines, Locke would be very likely to support torture (at least on foreign combatants) since he explains that the state is not entitled to uphold the rights of non-citizens. Locke's arguments are important in the debate on torture because his philosophy serves as the basis for much of the Founding Father's thinking as they drafted America's political system. His ideas on the role of government, which were formulated into America's system of government, directly impact the permissibility and justifiability of torture. However, before directly linking Locke's philosophy with the debate on torture, let's first analyze the intermediary variable which is Locke's impact on America's government.

As mentioned above, the work of many great political thinkers influenced the development and construction of the United States' system of government. Of these philosophers, few had greater impact on American political thought than John Locke. The ideas that he presents in the Second Treatise on Civil Government serve as critical foundational elements of the Declaration of Independence, the Constitution, and many state and local level documents. In fact, Donald L. Doernberg, a professor at the Elisabeth Haub School of Law at Pace University points out in "We the People": John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action that the very first words of the preamble to the Constitution "suggest one element unique to the American Revolution: its outcome was a government created by the people."¹¹⁵ Doernberg suggests that these beginning words of America's birth of sovereignty echo the concepts put forth by both Locke and another famous social

¹¹⁵ Doernberg DL, 'We the People: John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action' (1985) *California Law Review* <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2069&context=californialawreview> accessed 12 December 2025

contractarian, Jean Jacques Rousseau.¹¹⁶ He argues that this idea of popular sovereignty in that states derive “their just powers from the consent of the governed,” appearing most directly in the Declaration of Independence, predates the Constitution and can be ultimately credited to Locke and Rousseau.¹¹⁷

Doernberg further writes in *We the People* that it would be difficult to overstate Locke’s influence on “the American Revolution and the people who created the government that followed it.”¹¹⁸ While continually stressing his influence on the Framers, he does make a point to mention that they did not always accept his theories fully without question.¹¹⁹ In some forms, he argues, American political philosophy went beyond Locke, especially when it came to the removal of government officials and alterations to the government without the need for political revolution.¹²⁰ Most notably, the Founding Fathers entirely rejected “Locke’s concept of absolute legislative supremacy over the executive and the courts, instead developing the ‘three coequal branches,’” which created a marked distinction between the American and English systems of government.¹²¹ At any rate, Doernberg holds to his arguments and echoes the following quote from *Constitutional Democracy: A Nineteenth-Century Faith*: generally speaking “the framers established their government in frank Lockean style upon the consent of the governed.”¹²²

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

Arguments in Opposition to Torture

Unlike supporters of torture who find conditional support for its use under very specific circumstances, opponents to state-sponsored torture often take an absolutist position that such a practice can never be justifiable under any circumstances, in any place, by any person, or for any reason. They typically argue that torture is an abhorrent, barbaric practice that serves no purpose in a civilized society. Among their many grievances, they often assert that it is fundamentally immoral, unethical, illegal, and simply ineffective. Even in difficult situations like the ticking time bomb scenario, they maintain that torture is a violation of human rights and undermines the values of democracy and the rights that it is meant to maintain. Additionally, opponents fully reject the idea of choosing the “lessor of two evils” in regard to the threat of compromising either the safety and security of citizens or the civil liberties of a supposed criminal. They argue that electing to choose one “evil” over another is ultimately still unacceptable as the ends cannot justify the means if the means are inherently immoral.

Despite these criticisms, proponents of torture still maintain that the state has an absolute responsibility to protect its citizenry from harm. They argue that the government must uphold individual safety and national security even if that requires resorting to less than favorable measures such as torture. Even still, opponents continue to reject these arguments on moral, ethical, legal, and effectual bases. In describing the reasoning that opponents of torture use to not only persuade of their own viewpoints, but also to counter the logic of proponents I will discuss and explain the following arguments: a moral argument on the fundamental violation of human rights, an ethical argument based in deontology, a legal argument containing analysis

of relevant legislation, and a pragmatic argument on the ineffectiveness of torture as an information-seeking method.

Moral Argument in Opposition to Torture

Stated simply, opponents of torture find all of its forms, including actions classified under euphemisms such as “enhanced interrogation,” to be immoral and unacceptable regardless of circumstances. They argue that torture represents a complete and systematic degradation of civil liberties and violates the fundamental human rights that citizens are entitled to. Along the same line of thinking used to teach a child the difference between right and wrong, even if a suspected criminal is in custody, torture is never the answer as “two wrongs do not make a right.” Regardless of the context of the situation or factors in play, “the duty of the government is still to protect all of its citizens, meaning that the government has no justification for engaging in torture.”¹²³ Any subsequent use of torture ultimately results in not just the devaluation or total dismantlement of the citizenry’s rights and liberties, but also significant damage to the health and efficacy of the democracy to which the citizens belong.

While torture represents a reduction in civil liberties, some scholars such as Suzy Killmister, author of “Dignity, Torture, and Human Rights,” argue that its effects can be much wider in scope. She argues torture not only causes short-term physical suffering, but also psychological damage, most notably a violation of the victim’s dignity.¹²⁴ She asserts that dignity is not an inherent feature of individuals, but “rather a status that is conferred—whether by the individual herself or her community.”¹²⁵, Killmister makes the argument that torture as a practice is immoral because it strips

¹²³ Ibid.

¹²⁴ Killmister S, ‘Dignity, Torture, and Human Rights’ (2016) 19(5) *Ethical Theory & Moral Practice* 1087–1101, doi:10.1007/s10677-016-9725-6.

¹²⁵ Ibid

the individual of his or her sense of self-worth and autonomy, both of which are ideals that a democracy should protect.¹²⁶

“...dignity does not assume the role of grounding human rights, but is instead given the more restricted task of identifying a core wrong involved in particular human rights violations. Most paradigmatically, dignity is put forward as the value that is threatened by practices such as torture... Part of what is wrong with torture, it is argued, is that it violates the victim’s dignity, where this is often taken to be intimately connected to the humiliation and degradation that torture inflicts. Torture is not the only human right for which this claim is made, though it is perhaps the most common. What is particular about such rights is that to fail to uphold them is purported to strip the victim of her dignity, as opposed to simply failing to respect her dignity.”¹²⁷

While the physical suffering that results from torture lends obvious support for arguments that it is a violation of human rights, Killmister makes a convincing argument that the emotional and Some opponents of torture suggest that part of the reason that torture has gained a degree of support is a climate of fear in response to the 9/11 attacks and other panic in recent years about the threat of terrorism. However, Amber Edmondson, author behind “The Moral Justification Against Torture” reminds her readers that “it is important not to allow our usual moral objections to be silenced by panic.”¹²⁸ In her paper, she works to deconstruct the “climate of fear” phenomena which she believes is, in part, causing increased support for torture.¹²⁹ David Luban, a prominent figure on the topics of justice and ethics, similarly describes this fear

¹²⁶ Killmister S, ‘Dignity, Torture, and Human Rights’ (2016) 19(5) *Ethical Theory & Moral Practice* 1087–1101, doi:10.1007/s10677-016-9725-6 — Killmister notes that dignity may be a conferred status rather than an inherent feature, echoing work by Bird C (2014) and Waldron J (2012).

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

climate in an article in the Virginia Law Review titled “Liberalism, Torture, and the Ticking Time Bomb,” which he says results in a sort of “panic moral justification” for torture.¹³⁰ He makes the argument that the ticking time bomb scenario and the unrealistic sense of urgency and panic that it creates is nothing more than an example of sleight-of-hand reductionism that is:

“built on a set of assumptions that amounts to intellectual fraud [and meant to] construct a liberal ideology of torture, by which liberals reassure themselves that essential interrogational torture is detached from its illiberal roots... constructing a torture culture.”¹³¹

In other words, Luban argues that the ticking time bomb and the accompanying acceptance of torture as just develops a false sense of morality that is induced by panic and urgency without respect to moral codes and democratic values.¹³²

Deontological Argument in Opposition to Torture

An extension of this aforementioned moral reasoning for opposing torture is an ethical argument based on deontology or deontological ethics. Deontology is an ethical theory that directly conflicts with the utilitarian argument that supporters of torture often employ. Unlike the consequential nature of utilitarianism in which the morality of a decision is determined by the end results, deontology holds that “some choices cannot be justified by their effects that no matter how morally good their consequences, some choices are morally forbidden.”¹³³ According to deontologists, the “rightness or wrongness” of a choice is determined by conformity to moral norms.

¹³⁰ Luban D, ‘Liberalism, Torture, and the Ticking Bomb’ (2005) in *Intervention, Terrorism, and Torture*, doi:10.1007/978-1-4020-4678-0_15.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Alexander L and Moore M, ‘Deontological Ethics’ (Stanford Encyclopedia of Philosophy, 17 October 2016) <https://plato.stanford.edu/entries/ethics-deontological/> accessed 11 December 2025.

They argue that individuals have a duty to do what is morally right even if another option may potentially produce superior results. Regardless of circumstances, an act cannot be carried out if it is not morally right, “no matter the Good that it might produce.”¹³⁴ Deontology directly contrasts with utilitarianism as it is concerned with the morality of the “means” while utilitarianism is focused on the maximization of utility, or the “ends,” without regard to the process of achieving said results.

The method by which deontology seeks to develop moral norms for behavior and decision-making is through universalization. In other words, an action cannot be morally acceptable if it could not be applied to all circumstances or the entire population. Essentially, if it is unjust to torture some then it should be unjust to torture any and all.

Legal Arguments Against Torture

The two arguments in opposition to torture that I have already presented form a strong basis for prohibiting its use by the government for any purpose. However, potential critics or proponents of state-sponsored may rightfully claim that these two arguments, both moral and ethical, are limited by their theoretical nature and are entirely subjective and open to interpretation.¹³⁵ If these two arguments are not concrete enough or do not do enough to convince critics that state-sponsored torture can never be justified and implemented, then perhaps a legal analysis based on United States Federal law can. Stated rather simply, any use of torture by government officials is Federally illegal anywhere in the United States and anywhere abroad. While no

¹³⁴ Ibid.

¹³⁵ Smith K, ‘Is Torture Ever Morally Acceptable? If So, Under What Circumstances? If Not, Why Not?’ (E International Relations Students, 22 December 2007) <https://www.e-ir.info/2007/12/22/is-torture-ever-morally-acceptable-if-so-under-what-circumstances-if-not-why-not/> accessed 6 December 2025.

specific mention of the concept of torture itself exists in the United States Constitution, its practice has been outlawed on numerous occasions at the Federal level. The most important legal documents that prohibit the use of torture are the Constitution (though indirectly), the Geneva Conventions, the United Nations Convention Against Torture, Title 18 of the U.S. Code, and a collection of Supreme Court cases that have been heard since 9/11. In analyzing these different documents, I will present and examine the legal arguments against torture that opponents say inhibit the government from justifiably and lawfully using the practice as a means of extracting information from suspected terrorists.

The United States Constitution plays a powerful role in analysis of the question of the legality of government-directed torture. Considering that the Constitution is a rather general document, it does not make any specific mentions to the practice of torture, but several of its tenets do outlaw groups of broader injustices to which torture is a part of. The practice does directly conflict with several concepts presented in the Bill of Rights. An article titled “The Legal Prohibition Against Torture” published in Human Rights Watch discusses several of these provisions which directly outlaw torture. More specifically, the article explains that:

“The U.S. courts have located constitutional protections against interrogations under torture in the Fourth Amendment's right to be free of unreasonable search or seizure (which encompasses the right not be abused by the police), the Fifth Amendment's right against self-incrimination (which encompasses the right to remain silent during interrogations), the Fifth and the Fourteenth Amendments' guarantees of due process (ensuring fundamental fairness in criminal justice system), and the Eighth Amendment's right to be free of cruel or unusual punishment.”¹³⁶

¹³⁶“The Legal Prohibition Against Torture” (Human Rights Watch, 11 March 2003) <https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture> accessed 12 December 2025

While each of these amendments to the Constitution outlaws torture in one way or another, the Fourth and Eighth Amendments likely provide the best constitutional arguments for the prohibition of torture. The Fourth Amendment clearly outlines that it is unconstitutional to subject individuals to unreasonable search and seizure including their “persons, houses, papers, and effects” without a warrant.¹³⁷ In the case of torture, it is not constitutional to hold a suspected terrorist without a warrant that is substantiated by acceptable evidence.¹³⁸ The Eighth Amendment also distinctly prohibits torture as it certainly falls under the category of “cruel and unusual punishments,” especially if authorities are not even certain that a suspect is guilty.¹³⁹ While arguing that torture is illegal from a Constitutional basis requires a small degree of inferences and assumptions, albeit generally understood and agreed upon inferences and assumptions, the legality of other documents is significantly clearer and direct. Critics of this reasoning have claimed that the Bill of Rights is only applicable to U.S. citizens. This criticism has been met with refutations from the Supreme Court and arguments that international law outlaws torture inflicted on all individuals: “The prohibition against torture is universal and covers all countries both regarding U.S. citizens and persons of other nationalities.”¹⁴⁰

The Geneva Conventions, first drafted in 1864 and expanded following the conclusion of the Second World War, are a set of international protocols that provide an “agreed-upon framework of legal protections to safeguard soldiers, civilians... military

¹³⁷ U.S. Constitution, amend. 4.

¹³⁸ U.S. Constitution, amend. 8.

¹³⁹ Ibid.

¹⁴⁰ ‘The Legal Prohibition Against Torture’ (Human Rights Watch, 11 March 2003) <https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture> accessed 12 December 2025.

personnel shipwrecked at sea...[and] prisoners of war and civilians under enemy control.”¹⁴¹ Lionel Beehner, author of an article titled “The United States and the Geneva Conventions,” published by the Council on Foreign Relations, explains that the Conventions have been ratified by nearly every country, a total of 194, including the United States.¹⁴² Beehner writes that states that violate the Conventions are liable to be held accountable for charges of war crimes under Common Article Three,¹⁴³ which “bars torture, cruel, inhumane, and degrading treatment, as well as outrages against the human dignity of prisoners of war, or POWs.”¹⁴⁴ It also specifically prohibits “violence of life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.”¹⁴⁵ The Geneva Conventions also expressly outlaw any use of force to extract information, which is the exact and only reason why the government would consider its use in the first place, at least according to the arguments put forward by proponents. Article 31 of the Fourth Geneva Conventions states this prohibition clearly: “No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.”¹⁴⁶

¹⁴¹ Beehner L, ‘The United States and the Geneva Conventions’ (Council on Foreign Relations, 20 September 2006) <https://www.cfr.org/background/united-states-and-geneva-conventions> accessed 14 December 2018.

¹⁴² Ibid

¹⁴³ Begley T, ‘Is It Time to Ratify Additional Protocol I?’ (INTERCROSS, 6 July 2015) <http://intercrossblog.icrc.org/blog/d9r104eqyjqgma49vlapmk6a9l67i> accessed 27 March 2019 — noting that the U.S. did not ratify Additional Protocols I and II of the Geneva Conventions in 1977; these protocols primarily concern protections for civilians, while the torture issue largely involves enemy combatants under the original conventions.

¹⁴⁴ Ibid.

¹⁴⁵ ‘The Legal Prohibition Against Torture’ (Human Rights Watch, 11 March 2003) <https://www.hrw.org/news/2003/03/11/legal-prohibition-against-torture> accessed 12 December 2025

¹⁴⁶ Ibid.

3.7 Justification of state sponsored Torture

States most commonly invoke national security/counter-terrorism, investigative necessity (to obtain confessions or information), public order or deterrence rationales, and emergency/immunity claims. Those claims are repeatedly rejected by international law (absolute prohibition), and domestic legal frameworks in both countries nominally prohibit torture but enforcement gaps, weak accountability, emergency/operational practices, and police/military culture create the space where those justifications are used in practice.

- i. National security/counter-terrorism: Security agencies justify severe interrogation measures as necessary to prevent imminent attacks, to obtain intelligence, or to suppress insurgency. In Nigeria this is a recurring theme in the military and police response to Boko Haram and other armed groups; agencies treat suspected members or associates as security threats and sometimes detain, interrogate and abuse them on that basis. Recent NGO reporting documents unlawful detention and abuse of women and girls who escaped Boko Haram, with the military detaining them on the premise they were “affiliated” or might pose a security risk¹⁴⁷.
- ii. Investigative necessity / extracting confessions: Police in both jurisdictions commonly (and explicitly) try to extract confessions or information by force. Human Rights Watch and Amnesty findings show torture methods in Nigeria were used to obtain confessions and “evidence”. In South Africa courts have found police used torture to coerce confessions that led to unlawful arrests and

¹⁴⁷ Ope Adetayo, 'Amnesty International says Nigerian army detains girls who escape from Boko Haram' <<https://www.reuters.com/world/africa/amnesty-international-says-nigerian-army-detains-girls-who-escape-boko-haram-2024-06-10/?>> accessed 1st September 2025.

convictions; the Constitutional Court has ordered state compensation where confessions were induced by torture.¹⁴⁸

- iii. Deterrence, punishment and discipline: In some operational cultures, torture is used as punishment (to “teach a lesson”) or to intimidate criminal suspects or communities. Reports note that policing cultures and impunity can make such practices appear as routine disciplinary measures rather than exceptional abuses. Emergency powers, impunity and operational immunity: States sometimes rely on emergency powers, counter-terrorism laws, or the operational autonomy of the military/police to justify harsh measures. Even when specific domestic laws criminalize torture, security actors claim necessity, lack of alternatives, or operational imperatives. International and domestic monitoring bodies repeatedly find that such claims are used to excuse or conceal unlawful treatment.¹⁴⁹

3.8 Conclusion

This chapter critically examines state-sponsored torture, a severe human rights violation explicitly prohibited under international law. It explores the historical roots of torture, its evolution across different eras, and its persistent use despite legal prohibitions. The chapter details various direct and indirect torture methods, highlighting their devastating physical and psychological impacts on individuals and communities. It also addresses the justifications states often use to defend torture, such as national security, while emphasizing the international legal consensus that deems torture unacceptable. The chapter concludes by stressing the need for

¹⁴⁸ 'Rest in Pieces: Police Torture and Deaths in Custody in Nigeria' <<https://www.hrw.org/report/2005/07/27/rest-pieces/police-torture-and-deaths-custody-nigeria?>> accessed 1st September 2025.

¹⁴⁹ 'NIGERIA 2022 HUMAN RIGHTS REPORT' <https://www.state.gov/wp-content/uploads/2023/03/415610_NIGERIA-2022-HUMAN-RIGHTS-REPORT.pdf?> accessed 1st September 2025.

continued vigilance, documentation, and enforcement of legal safeguards to prevent torture and ensure accountability.

CHAPTER FOUR

STATE SPONSORED TORTURE: A COMPARATIVE ANALYSIS OF NIGERIA AND SOUTH AFRICA

4.1. Introduction

This chapter analyzes the legal and institutional frameworks in Nigeria and South Africa designed to combat state-sponsored torture. It examines Nigeria's 1999 Constitution, the Anti-Torture Act of 2017, and related legislation, highlighting implementation gaps despite formal adoption of the law. The analysis extends to South Africa's 1996 Constitution and the Prevention and Combating of Torture of Persons Act of 2013, alongside its oversight bodies like IPID and JICS. It evaluates the extent to which each country has domesticated its obligations under UNCAT and OPCAT, noting challenges in prosecution rates, NPM effectiveness, and overall implementation despite legal advancements.

4.2 Legal and Institutional Framework against State Torture

4.2.1 Nigeria

The 1999 Constitution (as amended) guarantees the dignity of the human person and an explicit prohibition against torture. Section 34(1)(a)¹⁵⁰ provides that “no person shall be subject to torture or to inhuman or degrading treatment.” This constitutional guarantee is the starting point for all domestic obligations to prevent and remedy torture. Nigeria also enacted the Anti-Torture Act¹⁵¹ to give statutory content to the prohibition and to create substantive offences for torture and related acts. The statute defines “torture”, creates offences for torture and cruel, inhuman or degrading treatment, sets penalties, and provides for victim assistance and compensation

¹⁵⁰ Constitution of the Federal Republic of Nigeria, 1999(as amended)

¹⁵¹ Anti-Torture Act, 2017

mechanisms and for education and training¹⁵². The Act appears on national legislative databases and international treaty law repositories as “Anti-Torture Act, 2017.” It was published in national law repositories and is available in the consolidated legislative texts.

Nigeria’s Anti-Torture Act is a significant step to domesticate Nigeria’s obligations under the UN Convention Against Torture (UNCAT) and the Optional Protocol (OPCAT). The Act includes offences and penalties but implementation gaps resourcing, specialized investigative capacity, and case-by-case prosecutions have limited its practical effect. The UN and African Commission periodic reviews note the formal adoption of the law and caution that enactment has not led to systematic prosecution and remedy¹⁵³.

Procedural safeguards and criminal procedure

At federal level the Administration of Criminal Justice Act (ACJA) 2015 reforms criminal procedure: it consolidates procedure, prescribes time frames, and sets rules designed to reduce pre-trial delay and arbitrary detention. ACJA contains provisions on arrest, bail and disclosure that are material to preventing the use of torture to extract evidence. Police practice, however, often predates ACJA’s reforms and implementation is uneven across states¹⁵⁴.

The Police Act 2020¹⁵⁵ replaced older colonial era provisions and introduced governance reforms for the Nigeria Police Force (NPF). The Act includes disciplinary and organizational provisions intended to improve accountability but like comparable reforms elsewhere its effect depends on implementation, the availability of

¹⁵² Section 2&3 Anti-Torture Act 2017

¹⁵³ African Commission on Human and People's Rights, 'Concluding Observations and Recommendations Nigeria: 6th Periodic Report, 2015 - 2016' <<https://achpr.au.int/en/state-reports/concluding-observations-and-recommendations-nigeria-6th-periodic-report-2015?>> accessed 5th September 2025.

¹⁵⁴ Section 8 Administration of Criminal Justice Act, 2015.

¹⁵⁵ Nigeria Police Act, 2020

independent investigative capacity and political will. The Nigerian Correctional Service Act 2019¹⁵⁶ (which repealed the Prisons Act) modernizes the law on custodial management and prisoner rights and was published in the official gazette in 2019. The Act includes standards for treatment and certain non-custodial measures but systemic problems in detention facilities overcrowding, poor health facilities and inadequate inspections persist.

Evidence law and exclusion of coerced confessions

The Evidence Act 2011 contains the operative rules on confession and hearsay relevant to torture-tainted statements. The Evidence Act provides that confessions caused by “oppression” (a term that the Act expressly indicates includes torture, inhuman or degrading treatment) are to be excluded unless specified exceptions apply¹⁵⁷. The statutory exclusion and common law rules on admissibility can be invoked to suppress confession evidence obtained by torture; in practice the application of these rules depends on effective investigation and on courts’ readiness to probe police conduct.

Remedies and accountability mechanisms

Statutory and institutional instruments relevant to remedy and oversight include:

- i. National Human Rights Commission (NHRC), established under the National Human Rights Commission Act¹⁵⁸ (1995) with power to investigate complaints and report on patterns of abuse;
- ii. The Anti-Torture Act’s victim assistance and compensation provisions, which create a statutory route to redress in principle;

¹⁵⁶ Nigerian Correctional Service Act, 2019.

¹⁵⁷ Section 28&29 Evidence (Amendment) Act, 2023

¹⁵⁸ National Human Rights Commission Act, 1995

- iii. Police governance institutions such as the Police Service Commission (a constitutional or statutory body responsible for appointments and discipline) and internal police disciplinary structures created under the Police Act 2020;¹⁵⁹
- iv. Prosecutorial organs (Attorney-General's office, Federal and State Prosecution services) and the courts which exercise criminal and civil jurisdiction, including damages claims against state actors.

The NHRC can investigate and recommend, but it lacks coercive enforcement power equivalent to a court. The Anti-Torture Act adds a statutory cause of action but implementation (investigations, prosecutions, civil damages awards) remains limited. International treaty bodies and NGOs have repeatedly documented low prosecution and conviction rates for security-force abuses.¹⁶⁰

Monitoring, NPM and international status

Nigeria is party to the key international instruments:

- i. Nigeria is a State Party to the UN Convention Against Torture (UNCAT). The UN Treaty Collection and related treaty status resources record Nigeria's accession/ratification record. Nigeria's instrument of accession/ratification and the country's engagement with the Committee Against Torture have been the subject of treaty body reviews.
- ii. Nigeria ratified the Optional Protocol to UNCAT (OPCAT) and designated a national preventive mechanism; however international monitoring bodies have questioned whether Nigeria's designated NPM the National Committee

¹⁵⁹ Policy and Legal Advocacy Center, 'President Buhari Signs Police Bill Into Law' <<https://placng.org/Legist/president-buhari-signs-police-bill-into-law/?>> accessed 5th September 2025.

¹⁶⁰ Amnesty International, 'NIGERIA HUMAN RIGHTS AGENDA 2023' <<https://www.amnesty.org/en/wp-content/uploads/2023/11/AFR4471572023ENGLISH.pdf?>> accessed 5th September 2025.

Against Torture (NCAT) fully meets OPCAT requirements in practice. The Committee Against Torture's concluding observations in 2021 noted shortfalls in the practical operation of the NPM and gaps in implementation.¹⁶¹

Regionally, Nigeria is party to the African Charter on Human and Peoples' Rights and has been the subject of communications to and decisions by the African Commission and the ECOWAS Court concerning allegations of torture, ill-treatment and failures to investigate. For example, the African Commission has found violations against Nigeria in communications concerning ill-treatment and arbitrary detention; the ECOWAS Community Court of Justice has issued judgments finding Nigeria liable where complaints were fully established. Recent ECOWAS judgments arising from the October 2020 protests (the #EndSARS events) found Nigeria in breach of obligations including prohibition of torture and duties to investigate and provide remedy.¹⁶²

4.2.2 Nigerian Government's Response and Foreign Diplomatic Perspectives

Although the federal republic of Nigeria admits the lack of qualified and successful critiques, it has been claimed that it has knowledge and awareness of the use of cruel acts and torture inside the country. Still, the Nigerian government is aware of its natural weaknesses and tendencies toward ideas. But recently, especially under the direction of former President Goodluck Jonathan, the Nigerian governments especially in terms of creating sensible plans to handle cases of human rights abuses and violations have made great progress. According to Adamu, the Nigerian

¹⁶¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 'Information received from Nigeria on follow-up to the concluding observations in the absence of its initial report' <<https://docs.un.org/en/CAT/C/NGA/FCOAR/1?>> accessed 5th September 2025.

¹⁶² International Centre for Investigative Reporting, 'ECOWAS court awards N5 million compensation to Nigerian torture victim' <<https://www.icirnigeria.org/ecowas-court-awards-n5-million-compensation-to-nigerian-torture-victim/?>> accessed 5th September 2025.

government is assiduously implementing policies to guarantee the availability and sufficiency of systems for handling cases of violations of human rights.¹⁶³

Diplomatically, acts of torture and cruel treatment violate people's rights; this is especially true in cases where techniques including physical beatings and nail extraction are used. Still, the main goals of this approach are to either destroy or marginalize the prisoners, therefore reducing the likelihood of torture and other cruel treatment in Nigeria.

According to Michelle Faul, the research by Amnesty International indicates that the frequency of torture in Nigeria has become rather standardized and systematized.¹⁶⁴

The presence of unofficial officials in charge of torture (OC) in various military bases and police stations clearly demonstrates this. Still, the practice of arbitrarily branding and gathering many people and torturing them under the guise of spotting or apprehending Islamic radicals extremists is reminiscent of a historical witch hunt. Moreover, even to the most apathetic observer of human rights, the extent and degree of torture inflicted upon the male, female, and young population of Nigeria by the authorities assigned the responsibility of ensuring the welfare and safety of the citizenry is deplorable and terrible, transcending national boundaries.

The Nigerian government has set up a commission meant to eradicate the widespread torture practice in the country. It is noteworthy that the Federal Republic of Nigeria is aggressively tackling violations of human rights throughout the nation. Nonetheless, it has been noted that the Nigerian government has developed a significant budget plan

¹⁶³ Adamu FL, 'Gender, Law and the Enforcement of Morality in Nigeria' (2008) 78 *African Journal of the International African Institution*.

¹⁶⁴ Faul M, 'Amnesty International Reports Nigerian Police Routinely Use Torture' (World Post 2015) http://www.huffingtonpost.com/2014/09/18/nigeria-human-rights_n_5842274.html accessed 14 December 2025.

of around 9 billion naira to improve and advance the basic human rights of people all throughout the nation. This includes ensuring fair treatment and providing consistent and appropriate medical care for prisoners. R.P. Barton claims that the responsibility of protection is conventional and has increasing importance in contemporary diplomacy.¹⁶⁵

Barston (year, p. 4) claims that numerous kinds of protection that embassies and consulates are now obliged to handle have come from people's greater mobility, the growth of international sports, and the incidence of world conflicts.¹⁶⁶ Particularly in relation to groups like Boko Haram, it has been noted that the Nigerian government has been actively establishing international negotiations and strengthening the bilateral relationship to eradicate acts of torture and inhumane treatment in the framework of the issue of torture in Nigeria, in cooperation with foreign agencies. Notably, human rights violations by the Nigerian military have deprived individuals of their liberties.

The 2013 World Report emphasizes the results of the United States Department of State, which cause serious questions about the abuses of human rights by the Nigerian security forces under their control against the Boko Haram attacks.¹⁶⁷ The Nigerian government should communicate with the National Human Rights Advocate and pass laws requiring incarceration of those who transgress human rights. The human rights advocate has also made significant efforts to completely stop the use of torture as a means of gathering information from national citizens. This is so because the use of

¹⁶⁵ Barston PR, *Modern Diplomacy* (British Library Cataloguing in Publication Data 2013) ISBN: 978-1-4479-2141-7.

¹⁶⁶ Ibid.

¹⁶⁷ Human Rights Watch, *World Report: Nigeria – Resource Conflict and State Repression* (Human Rights Watch 2013) <https://www.hrw.org> accessed 12 December 2025.

torture as an interrogation method is antiquated and useless, usually causing damage to human life instead of producing positive results.

1. Diplomatic Perspective

Diplomatically, the use of intelligence interviews more especially, questioning and evaluation interviews—can help the Nigerian military and police significantly get positive results without turning to torture or other cruel methods. Unlike physical force, intelligence interviews—also known as non-coercive interrogation techniques concentrate on obtaining information using psychological approaches, rapport building, and critical questioning.¹⁶⁸ These approaches have been demonstrated to be more successful in providing consistent intelligence while maintaining human rights criteria.¹⁶⁹ Particularly with relation to its law enforcement departments, Nigeria has come under heavy fire recently over its use of torture during interrogations. One well-known instance happened in the past year when Nigerian police tormented a suspect. The suspect finally confessed to issues of which they had no prior knowledge as the degree of the physical abuse grew stronger.

This incident is a prime example of the larger problem: torture not only results in false confessions, therefore compromising the court system, but also fails to offer correct information. Torture has been demonstrated to corrupt the facts since people under severe pressure may confess to crimes, they did not commit only to alleviate their suffering.¹⁷⁰ This approach thereby aggravates the issue of injustice inside the Nigerian judicial system rather than producing the intended results.

¹⁶⁸ McCoy AW, *A Question of Torture: CIA Interrogation, from the Cold War to the War on Terror* (Metropolitan Books 2006).

¹⁶⁹ Shalev S, 'The Effects of Torture: Psychological and Neurological Damage' (2005) 6(1) *Journal of Trauma and Dissociation* 27–44.

¹⁷⁰ Ibid.

Given these problems, the Nigerian government must pass laws allowing the military forces and law enforcement agencies to employ intelligent interviews. The Nigerian military and police can increase their operational results and simultaneously defend individual rights by concentrating on intelligence-gathering methods free of physical violence. Effective worldwide initiatives stressing the need for psychological strategies over physical force might inspire the application of intelligent interviews.¹⁷¹ These approaches which rely on cognitive interviewing techniques, open-ended inquiries, active listening, and building confidence with suspects all of which produce more consistent and useful intelligence.

To help victims of torture in their quest for justice, the Nigerian government can work with foreign human rights groups like Amnesty Worldwide. Advocacy of the rights of torture victims worldwide has been greatly aided by Amnesty International; their knowledge could assist the Nigerian government to solve structural problems with its law enforcement methods. Together, these groups can supply the tools victims need to pursue justice and advocate changes in Nigerian interrogation techniques.¹⁷² This cooperation would be crucial in increasing knowledge of the negative consequences of torture on people and society, thereby helping to drive the justice system of Nigeria free of torture and cruelty. Moreover, the general acceptance of intelligent interviews could support radical transformation inside Nigerian society. Studies have demonstrated severe psychological repercussions of torture, such as anxiety, depression, and post-traumatic stress disorder (PTSD), among other conditions.¹⁷³

¹⁷¹ Shalev S, 'The Effects of Torture: Psychological and Neurological Damage' (2005) 6(1) *Journal of Trauma and Dissociation* 27–44.

¹⁷² Amnesty International, *Nigeria: End the Practice of Torture* (Amnesty International 2017) <https://www.amnesty.org> accessed 12 December 2025.

¹⁷³ Ibid.

Beyond the individual victims, these consequences sweep through societies and help to create a culture of mistrust, dread, and hatred. Nigeria may establish a fairer system that advances both security and human rights by offering a substitute that honors human dignity. Using intelligent interviews would probably result in more consistent admissions and help Nigeria's justice system to be more credible on the international scene.

Legally speaking, national laws in Nigeria already outlaw torture, as established in the Constitution and several international human rights treaties Nigeria has ratified, including the United Nations Convention Against Torture.¹⁷⁴ Notwithstanding these legal bans, torture is nonetheless rampant in the security industry because of ingrained systematic problems, poor enforcement, and lack of responsibility. Adopting intelligence interviews will not only help Nigeria to comply with world norms but also give its people the chance to exercise their right to freedom of expression and defense from cruel treatment.

Considering all factors, the adoption of intelligence interviews in Nigeria presents a viable and necessary solution to the ongoing issues of torture and cruel treatment within the nation's law enforcement system. Supported by international human rights organizations such as Amnesty International, the Nigerian government might shift toward a more efficient, compassionate, and fair method of questioning that upholds human rights and generates more trustworthy intelligence free from using force.

4.2.3 South Africa

The South African Constitution (1996) contains a clear prohibition: section 12(1)(d) guarantees the right “not to be tortured in any way” and section 12(1)(e) guarantees

¹⁷⁴ Ibid.

the right not to be treated or punished in a cruel, inhuman or degrading way¹⁷⁵. These are entrenched rights within the Bill of Rights and are enforceable by the courts. South Africa enacted the Prevention and Combating of Torture of Persons Act (Act No. 13 of 2013) to criminalize torture, define associated offences, provide penalties and give domestic effect to South Africa's international obligations. The Act provides for prosecutions, extraterritorial jurisdiction and specific investigative tasks intended to implement the constitutional prohibition.¹⁷⁶

Oversight and accountability bodies

South Africa's institutional framework for oversight includes:

- i. Independent Police Investigative Directorate (IPID): Established under statute to investigate criminal offences allegedly committed by SAPS members and to oversee certain other law enforcement misconduct matters¹⁷⁷. IPID investigates deaths in custody, serious injury, torture, and other offences and produces annual reports with data on complaints and investigations. IPID's capacity and backlog challenges have been the subject of parliamentary oversight debate.
- ii. Judicial Inspectorate for Correctional Services (JICS): Inspects and reports on conditions of detention and custodial deaths in correctional facilities. JICS produces reports and engages with the Department of Correctional Services.
- iii. South African Human Rights Commission (SAHRC) and the Public Protector complementary oversight institutions that can investigate and report on rights abuses and recommend remedial action. The National Prosecuting Authority

¹⁷⁵ Constitution of the Republic of South Africa, 1996

¹⁷⁶ Section 3 Prevention and Combating of Torture of Persons Act, 2013.

¹⁷⁷Independent Police Investigative Directorate Annual Report, <https://www.gov.za/sites/default/files/gcis_document/202310/ipid-annual-report.pdf> accessed 5st September 2025.

(NPA) is the prosecutorial organ responsible for criminal charges against state officials.¹⁷⁸

International status and treaty implementation

South Africa is a party to UNCAT and has domestic legislation (PCTPA) intended to implement its obligations. The UN Committee Against Torture reviewed South Africa's second periodic report and issued concluding observations in 2019 identifying areas for improvement (investigation, prosecution, detention conditions and oversight). The Committee's recommendations urge reforms and better data collection. South Africa has also engaged with OPCAT implementation obligations and its institutions have both inspection and investigation mandates¹⁷⁹.

4.3 Conclusion

In conclusion, both countries have constitutional prohibitions against torture and have enacted legislation to criminalize it, namely the Anti-Torture Act in Nigeria and the Prevention and Combating of Torture of Persons Act in South Africa. Nigeria's framework includes the Administration of Criminal Justice Act, the Police Act, and the Nigerian Correctional Service Act, along with institutions like the National Human Rights Commission. However, implementation gaps, limited resources, and low prosecution rates hinder its effectiveness. South Africa's framework features the Independent Police Investigative Directorate, the Judicial Inspectorate for Correctional Services, and the South African Human Rights Commission. Both countries are parties to the UN Convention Against Torture, with South Africa also engaging with OPCAT implementation.

¹⁷⁸ The role of the SAHRC' <<https://www.sahrc.org.za/home/21/files/Prevention%20of%20Torture.pdf%20Updated%2002042015.pdf?>> accessed 5th September 2025.

¹⁷⁹ IHL Databases, 'Prevention and Combating of Torture of Persons Act, 2013' <<https://ihl-databases.icrc.org/en/national-practice/prevention-and-combating-torture-persons-act-2013-0?>> accessed 5th September 2025.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Key Findings

This study set out to examine state-sponsored torture in Nigeria and South Africa by tracing its historical roots, analyzing legal and institutional frameworks, and assessing implementation in light of international human rights obligations. The findings show that both Nigeria and South Africa formally prohibit torture through constitutional guarantees and dedicated statutes the Anti-Torture Act 2017 in Nigeria and the Prevention and Combating of Torture of Persons Act 2013 in South Africa. Both states are parties to the United Nations Convention Against Torture (UNCAT) and the African Charter on Human and Peoples' Rights, and both have established oversight institutions intended to prevent and redress violations. Despite these commitments, torture and ill-treatment remain recurrent features of policing and detention practices in both countries. The study finds a significant implementation gap between black-letter law and practice, as prosecutions are rare, oversight bodies lack sufficient authority or resources, and victims encounter barriers in accessing remedies. Historical continuities are also evident: Nigeria's legacy of military authoritarianism and South Africa's apartheid-era practices continue to shape institutional cultures of security agencies.

International treaty monitoring bodies, including the UN Committee Against Torture, have raised concerns about Nigeria's weak national preventive mechanism under OPCAT and South Africa's limited success in ensuring independent investigations and timely prosecutions. The study therefore concludes that while both countries possess strong normative frameworks, systemic institutional weaknesses and political inertia have undermined enforcement and accountability.

5.2 Policy Recommendations

In the present setting, I have found a complete answer to solve the pervasive cases of torture and cruel behavior committed by Nigerian police and military members. The solution recommended is the acceptance of intelligent interviewing as a necessary substitute for torture. This approach should be used before coercion or violence to get information from criminals or suspects. The demand for efficient interrogation techniques continues to grow, and it is clear from intellectual research and methodical evaluation that these are the most moral and effective ways to get important information. By contrast, torture is still not just morally repugnant in the present setting, I have found a complete answer to solve the pervasive cases of torture and cruel behavior committed by Nigerian police and military members. The solution recommended is the acceptance of intelligent interviewing as a necessary substitute for torture. This approach should be used before coercion or violence to get information from criminals or suspects. The demand for efficient interrogation techniques continues to grow, and it is clear from intellectual research and methodical evaluation that these are the most moral and effective ways to get important information. By contrast, torture is still not just morally repugnant.

Introducing intelligent interviews into Nigeria's detention and police systems would, in my opinion, significantly ethical behavior and the efficacy of law enforcement. There are some steps that could be suggested to eliminate torture and other cruel policies among the security personnel of Nigeria. The government should focus on this following recommendation:

1. Nigeria should give the implementation of intelligent interviewing methods top priority in its security system. Apart from violating fundamental human rights,

torture compromises the rule of law and encourages a vicious cycle of cruelty instead of addressing criminal affairs. Police and military personnel, among other law enforcement officials, have been shown to turn to physical violence, especially in cases of inadequate knowledge in investigative techniques. Turning toward organized, non-coercive techniques like intelligent interviews can help criminal investigations to be more reliable and of quality (Amnesty International, 2020). Human rights groups, especially Amnesty International, should improve their involvement in Nigeria by offering thorough educational campaigns and legal help to authorities of law enforcement and prisons. Regular visits to prisons, combined with advice on best practices for interrogation and detention management, can help transform institutional cultures and reduce the need for torture. Moreover, companies like Amnesty International could support the creation of strong worldwide monitoring systems that confirm adherence to human rights treaties and provide law reform advice.¹⁸⁰

2. Nigeria's government should closely collaborate with foreign agencies like the United Nations to create diplomatic plans meant to combat abuses of human rights, including torture. Nigeria can improve its reputation on the international scene by encouraging communication and cooperation with agencies concentrated on human rights protection, thereby resolving internal issues regarding violations of human rights.
3. Nigerian institutions of police and military must undergo thorough reforms if they are to properly fight torture. The legislation covers the establishment of independent monitoring agencies to track interrogations and detention standards. Furthermore, including psychological tests and contemporary forensic methods in

¹⁸⁰ Human Rights Watch, 2021

interrogations would provide more moral substitutes for physical coercion, therefore assuring that justice is done without compromising human dignity.

4. Apart from tackling violations of human rights, Nigeria must concentrate its economic plan to guarantee sustainability and long-term expansion. The agriculture sector, which helps the nation try to lessen reliance on oil income, presents major opportunities for economic development. Should Nigeria give agriculture priority, it may boost public health, create jobs, and encourage environmentally friendly development.
5. Investing in rural infrastructure- including roads, storage facilities, and irrigation systems—should be of major importance. Such investments would improve output and lessen farmers' sensitivity to erratic weather conditions.
6. Farmers and agricultural companies depend on credit and financial support systems; hence, access to these is vital. A strong financial system that provides low-interest loans, subsidies, and insurance could support small-scale farmers and agricultural innovation, enabling them to compete internationally.
7. Repositioning Agriculture as a Growth Driver: Nigeria may go from comparative advantage in agricultural output to competitive advantage by stressing agricultural innovation. Along with improving local food production, this change will support the expansion of agribusinesses, thereby addressing poverty and unemployment. Agricultural exports could become a major source of foreign trade, boosting the national economy.
8. Nigeria might move from a country mostly dependent on oil to a diversified economy propelled by sustainable practices in agriculture and other sectors if it uses these ideas. In addition to helping to maintain economic stability, such

practices will advance social fairness and human rights, therefore reducing internal strife and raising Nigeria's profile internationally.

5.3 Areas for Further Research

The study highlights critical areas requiring deeper inquiry. These include systematic evaluation of the practical impact of Nigeria's Anti-Torture Act and South Africa's Torture Act on conviction rates and detainee treatment; comparative analysis of prosecutorial approaches to torture allegations in both countries; empirical studies on the effectiveness of national preventive mechanisms under OPCAT; survivor-centered research to document the long-term impact of torture on individuals and communities; and further examination of how transitional justice measures, such as South Africa's Truth and Reconciliation Commission, have influenced present-day accountability for torture.

5.4 Conclusion

The prohibition of torture is absolute under international law, yet Nigeria and South Africa continue to struggle with entrenched practices that undermine this obligation. Both countries have enacted strong constitutional and statutory frameworks, but their failure to translate these commitments into effective enforcement has fostered impunity and eroded public trust in state institutions. Closing the gap between law and practice requires more than legislative action; it demands political will, institutional reform, and sustained vigilance by civil society, the judiciary, and international partners. Only through robust implementation, accountability, and survivor-centered remedies can Nigeria and South Africa meaningfully comply with their human rights obligations and move toward the eradication of torture as a tool of governance.

Ultimately, deeply ingrained in systematic corruption, political unrest, and economic inequalities, the continuation of torture and inhumane crimes in Nigeria still constitutes a serious violation of human rights. Law enforcement and military departments still use cruel interrogation methods and extrajudicial penalties despite legal systems and international norms forbidding such actions. Dealing with these problems calls for immediate reforms covering intelligence-based interrogation techniques, tougher responsibility standards, and more worldwide cooperation. Nigeria can only escape the cycle of human rights violations and build a fair and equitable society by relentless dedication to human dignity, rule of law, and economic restructuring.

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