A BILL

FOR

AN ACT TO GIVE EFFECT, IN ACCORDANCE WITH SECTIONS 34 (1) OF THE 1999 ,CONSTITUTION (AS AMENDED) TO THE RESPECT OF HUMAN DIGNITY AND PROTECTION FROM INHUMAN TREATMENT BY PROHIBITING AND PREVENTING ANY FORM OF TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; TO PROVIDE FOR THE CRIME OF TORTURE; TO GIVE EFFECT TO THE OBLIGATIONS OF NIGERIA AS A STATE PARTY TO THE UNITED NATION'S CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND FOR OTHER RELATED MATTERS

Sponsored By Senator 'Biodun Christine Olujimi

[ ] Commencement

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

PART I - PRELIMINARY

1. In this Bill unless the context otherwise requires: Interpretation

"commission" means the National Human Rights Commission established by the National Human Rights Commission Act Cap N46, Laws of the Federation 2004;

"Convention" means the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on10 December 1984 and ratified by the Federal Republic of Nigeria on 28th, June, 2001;

"deadly weapon" includes:

(a) (i) an instrument made or adapted for shooting, stabbing or cutting, and any imitation of such an instrument;

(ii) any substance, which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a

person that it is likely to cause death or grievous bodily harm; and

(b) any substance intended to render the victim of the offence unconscious."

"Minister" means the Minister of Justice;

"offender", means a person who performs an act of torture;

"public official" means a person whether a public officer or not, employed by the Federal, State or Local government or any Government agency or any other person paid out of public funds;

"spouse" means a husband or wife by a lawful marriage;

"superior officer" means a person in a higher position of authority than the officer alleged to have committed torture;

"victim" means a person who suffers an act of torture.

PART II - PROHIBITION AND CRIMINALISATION OF TORTURE

Definition of torture

2.-(1) In this bill, torture means any act or omission, by which severe pain or suffering whether physical 'Or 'mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as:

(a) obtaining information or a confession from the person or any other person;

(b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or

(c) intimidating or coercing the person or any other person to do, or to refrain from doing, any act.

(2) For purposes of this bill, "severe pain or suffering" means the prolonged harm caused by or resulting from:

(a) the intentional infliction or threatened infliction of physical pain or suffering;

(b) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to

disrupt profoundly the senses or the personality;

(c) the threat of imminent death; or

(d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

(3) Without limiting the effect of subsection (1), the acts constituting torture shall include the acts set 'out in the Schedule to this bill.

(4) The definition of torture set out in subsection (1) does not include pain or suffering arising from, inherent in or incidental to a lawful sanction.

Prohibition of torture

3.-(1) Notwithstanding anything in this bill, there shall, be no derogation from the enjoyment of the right to freedom from torture.

(2) The following shall not be a defence to a charge of torture:

(a) a state of war or a threat of war;

(b) internal political instability;

(c) public emergency, prevention and or prosecution of crime; or

(d) an order from a superior officer or a public authority.

Criminalization of torture

4.-(1) A person who performs any act of torture as defined in section 2 and the Schedule to this bill is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding Fifteen (15) years.

(2) A person shall not be punished for disobeying an order to undertake actions amounting to torture, cruel or inhuman treatment.

Circumstances aggravating torture

5. Notwithstanding section 4, where it is proved that at the time of, or immediately before, or immediately after the commission of torture the:

(a) offender uses or threatens to use or used a deadly weapon;

(b) offender uses or used sex as a means of torture;

(c) victim was a person with a disability;

(d) victim was pregnant or becomes pregnant;

(e) offender causes death;

(f) the victim was subjected to medical experiments;

(g) victim acquires HIV/AIDS;

(h) victim was under the age of 18 years;

(i) the victim is incapacitated;

(j) the act of torture is recurring;

(k) offender commits any act which the court considers aggravating;

the offender and any other person jointly connected with the commission of an act of torture is liable, on conviction to a minimum of 20 years imprisonment.

Compensation, rehabilitation or restitution to be made by court in certain cases

6.-(1) The court may, in addition to any other penalty under this bill, order for reparations, which may include:

(a) restitution of the victim, his or her family or dependents to the greatest extent possible and such restitution may include:

(i) the return of any property confiscated;

(ii) payment for harm or loss suffered;

(iii) payment for the provision of services and restoration of rights; or

(iv) reimbursement of expenses incurred as a result of victim is at ion.

(b) compensation for any economically assessable damage resulting from torture such as:

(i) physical or mental harm, including pain, suffering and emotional distress;

(ii) lost opportunities, including employment, education and social benefits;

(iii) material damage" and loss of earnings, including loss of potential earnings;

(iv) costs required for legal or expert assistance, medicines, medical services, and psychological and social services; and

(c) rehabilitation including:

(i) medical and psychological care; or

(ii) legal and psycho-social services to the victim in case of trauma.

(2) Restitution, compensation, rehabilitation or any payment ordered

by the court under subsection (1) may be satisfied by the property of the person convicted of torture.

Cruel, inhuman or degrading treatment or punishment

7.-(1) Cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official or private capacity, which does not amount to torture as defined in section 2 and the schedule, is a criminal offence and shall be liable on conviction to imprisonment not exceeding five years or a fine not exceeding Two Hundred Thousand Naira or both.

(2) For the purposes of determining what amounts to cruel, inhuman or degrading treatment or punishment, the court or any other body considering the matter shall have regard to the definition of torture as set out in section 2 and the schedule 2 and the circumstances of the case.

(3) In a trial of a person for the offence of torture the court may, in its discretion, convict the person for cruel, inhuman or degrading treatment or punishment, where the court is of the opinion that the act complained of does not amount to torture.

PART III - OTHER PARTIES TO THE OFFENCE OF TORTURE

Other parties to offence of torture

8.-(1) A person who, whether directly or indirectly:

(a) procures;

(b) aids or abets;

(c) finances;

(d) solicits;

(e) incites;

(f) recommends;

(g) encourages;

(h) harbours;

(i) orders; or

(j) renders support to; any person, knowing or having reason to believe that the support will be applied or used for or in connection with the

preparation or commission or instigation of torture commits an offence and is liable on conviction, to imprisonment not exceeding five years or a fine not exceeding Two Hundred Thousand Naira or both.

Accessory after the fact to the offence of torture

9.-(1) A person who receives or 'assists another who is, to his or her knowledge, guilty of an' offence under this bill, in order to enable him or her to escape punishment, becomes an accessory after the fact to the offence of torture.

(2) A person who is or becomes an accessory after the fact to the offence of torture commits an offence and is liable on conviction, to imprisonment not exceeding five years or a fine not exceeding Two Hundred Thousand Naira or both.

(3) A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment by receiving or assisting in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part in order to enable that other person to escape punishment, nor does the husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

Responsibility of a superior over actions of a subordinate

10. A superior officer is liable for any act of torture committed by a subordinate under his or' her authority and control where:

(a) the superior knew, or consciously disregarded information which clearly indicated, that the subordinate was committing or about to commit an act of torture;

(b) the acts committed by the subordinate concerned activities that were within the responsibility and control of the superior; and

(c) the superior failed to promptly investigate, diligently pursue administrative arid disciplinary measures to prevent re-occurrence, and cooperate with judicial authorities to prosecute the offence.

Right to complain

11.-(1) A person alleging that an offence under this bill has been committed, whether the person is the victim of the offence or not, has a right to complain or report to the Police, Commission or any other relevant institution or body having jurisdiction over the offence.

(2) Where a complaint is made, a prompt investigation into the complaint shall be conducted, and where there are substantial grounds to support the complaint, the police shall arrest and detain the person and accordingly charge the person with the offence he or she is alleged to have committed.

(3) Any person arrested and detained under subsection (2), shall be assisted in communicating as soon as legally possible with the nearest appropriate representative of the state of which he or she is a national or if the person is a stateless person, with the representative of the state where the person ordinarily resides.

PART IV- USE OF INFORMATION OBTAINED BY TORTURE

Inadmissibility of evidence obtained by torture

12.-(1) Any information, confession or admission obtained from a person by means of torture is inadmissible in evidence against that person in any proceeding.

(2) Notwithstanding subsection (1), such information, confession or admission may be admitted against a person accused of torture as evidence that the information, confession or admission was obtained by torture.

Prohibition of use of information obtained by torture

13. A person who uses, information which he or she knows or ought to have reasonably known to have been obtained by means of torture in the prosecution of the person tortured, commits an offence and is liable on conviction to imprisonment not exceed4Ig three years or a fine not exceeding One Hundred and Fifty Thousand Naira or both.

PART V - GENERAL

Duty to report torture

14. A person who suspects or has reasonable grounds to suspect that torture is being committed by a public official, person acting in official

capacity or private capacity, has a duty to report to the police, the commission, of his or her suspicion of torture.

Protection of victim, witnesses and persons reporting torture

15. It shall be the responsibility- of the State to ensure that any person including the:

(a) complainant;

(b) witnesses; or

(c) person making a complaint, whether the victim or not; is protected against all manner of ill-treatment or intimidation as a consequence of his or her complaint or any evidence given.

Regulations

16. The Minister may make regulations for the effective implementation of the provisions of this bill.

Citation

17. This bill may be cited as Torture (Prevention and Prohibition) Bill, 2015.

SCHEDULE

Section 2(3)

Acts constituting torture

1. Physical torture including:

(a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;

(b) food deprivation or forcible feeding with spoiled food, animal or human excreta;

(c) electric shocks;

(d) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices;

(e) the submersion of the victim's head in water or water polluted with excrement, urine, vomit or blood;

(f) being tied or forced to assume a fixed and stressful body position;

(g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;

(h) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue;

(i) dental torture or the forced extraction of the teeth;

(j) harmful exposure to the elements such as sunlight and extreme cold; or

(k) the use of plastic bags and other materials placed over the victim's head with the intention to asphyxiate.

2. Mental or psychological torture including:

(a) blindfolding;

(b) threatening the victim or his or her family with bodily harm, execution or other wrongful acts;

(c) confining a victim incommunicado, in a secret detention place

or other form of detention;

(d) confining the victim in a solitary cell or in a cell put up in a public place;

(e) confining the victim in a solitary cell against his or her will or without prejudice to his or her security;

(f) prolonged interrogation of the victim so as to deny him or her normal length of sleep or rest;

(g) maltreating a member of the victim's family;

(h) witnessing the torture sessions by the victim's family or relatives;

(i) denial of sleep or rest;

(j) shame infliction such as stripping the victim naked, parading the victim in a public place, shaving the head of the victim, or putting a mark on the body of the victim against his or her will;

3. Pharmacological torture including:

(a) administration of drugs to induce confession or reduce mental competence;

(b) the use of drugs to induce extreme pain or certain symptoms of diseases; and

(c) other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.