

RATIFICATION OF OPCAT – NIGERIA’S OBLIGATIONS

Nigeria ratified by accession the Optional Protocol to the Convention against Torture (OPCAT) on the 27th of July 2009 becoming the 49th in the world and the 6th African country after Mali, Senegal, Mauritius, Benin, and Liberia.

I congratulate the Attorney-General of the Federation, Chief Michael Kaase Aandoaka for this bold and positive step. Bold, in the sense that he has in effect opened the doors of all detention places to unobstructed regular visits and inspection by the Subcommittee on Prevention of Torture (SPT) the body responsible for the implementation of OPCAT. Positive, because this may very well be the beginning of the gradual disappearance of torture in Nigeria. The rhetoric of the Rule of Law may begin to assume a reality in its Human rights component if torture, cruel and degrading treatment is put on the front burner of the policy of the Government.

The UN Convention against Torture was adopted by the UN General Assembly on 10th December 1984; it is the only legally binding treaty at the global level concerned exclusively with the eradication of torture.

It has a three- prong obligation on States to prohibit, prevent and punish acts of torture.

Torture and ill treatment of persons deprived of their liberty usually take place in centres of detention that are inaccessible to any form of public scrutiny. This is the ideal context for torturers to operate with complete impunity. Monitoring the treatment and conditions of detention of persons deprived of their liberty through unannounced and regular visits is one of the most effective means of prevention of torture and ill treatment. It is now widely accepted that one of the best safeguards against torture and ill treatment is for places of detention consistently to be as transparent as possible. This positive evolution led to the adoption on 18 December 2002 of the Protocol to the Convention against Torture whose objective is ‘ *to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel inhuman or degrading treatment or punishment* ’

This Protocol is novel in that it creates a two-pillar system, with regular visits to places of detention being conducted by the STP and an independent national preventive mechanism which must be established by State parties within one year of ratification. By including oversight by the national mechanism, the Protocol emphasizes that the implementation of human rights is first and foremost a national responsibility which should be overseen by impartial national protection system.

Obligation of Nigeria under the OPCAT

Each State party to the Protocol is expected within one year of ratification or accession to establish or designate one or several Independent National Preventive Mechanism (NPM) for the prevention of torture at the domestic level. The Protocol does not specify any particular form that the NPM must take as long as they meet the requirements set out in the Protocol. Some countries designate existing bodies that have mandates to conduct visits for example, human rights commissions, ombudsman, or NGOs.

While States have some flexibility on how to set out the MPN, they must meet the following conditions;

It must be established by law (by constitutional amendment or an enactment by legislature). The enabling act must guaranty their independence. It is incompatible with the provision and aim of the Protocol for government representatives to be present in

any capacity. It should also provide for adequate and long-term funding free from political restrictions. The composition should reflect independent, capable, gender-balanced and representative membership. 'Places of detention' and 'detainees' must be given the widest possible application of definition. The NPM must be given full, immediate, unhindered access to all places of detention and detainees; in addition to unrestricted access to all relevant information.

The National Human Rights Commission of Nigeria as it stands today obviously falls far short of these criteria. To designate it as an NPM requires a constitutional amendment this will guaranty independence of funding and membership, among others. The inherent challenges associated with this are obvious. To fully achieve the aims of OPCAT, a new body capable of meeting these requirements should be considered.

In addition to either establishing or designating an NPM, Nigeria is obliged to receive the Subcommittee on Prevention and grant it access to **ALL** places of detention. It undertakes to provide the SPT with all information they may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty. Nigeria is also obliged to examine recommendations of the SPT on the prevention and enter into dialogue with possible implementation measures.

Beyond the challenges of establishing or designating an NPM, Nigeria has the daunting task of putting its house in order ahead of the visits. One does not invite visitors to help **wash its dirty linen**. The notoriety of Nigeria's human rights violation is internationally acclaimed. The practice of Torture and ill treatment is widespread and endemic. The finding of the UN Special Rapporteur on Torture, Manfred Nowak, best describes the situation of torture in Nigeria. It reads

'Torture is widespread in police custody, the condition of police cells visited were appalling. All prisons visited were characterised by severe overcrowding.... These findings are not new as many credible human rights organisations as well as the UN human rights mechanism have documents and conclude that torture is widespread in the country and that the condition of detention is unacceptable. Nigerians themselves have exhaustively identified the nature and scale of this problem. Indeedin a meeting with the UNSR in May 2007 President Obasanjo clearly acknowledged the severity of the problem of torture in the country.'

It is in the context of the above report which is true in its representation of the situation of torture in Nigeria that the task ahead needs to be examined. It is common knowledge that prison congestion is linked with bad administration of justice. The initiative of Bayo Ojo Esq, former Attorney- General, to hasten prosecution of awaiting trial inmates by engaging private legal practitioners while laudable, has not greatly impacted on the prison population. For the condition of prisons in Nigeria to be lifted from its abysmal fall, an aggressive justice reform must be pursued.

The Attorney-General need not look too far. A lot of work has been done by the two Presidential Committees on Prison and Justice Reform. Their recommendations which have hitherto been ignored should be evaluated for implementation.

Serious consideration ought to be given to alternate programmes to imprisonment. Suspended sentences and community service should be introduced.

There are countries in the Americas where categories of prisoners can work regularly and return to prison at night. Others are confined to their homes with a movement sensor attached to their feet to monitor their movement. While Nigeria may not be ripe for these sophisticated innovations, it can draw inspirations that the time for change is nigh!!

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