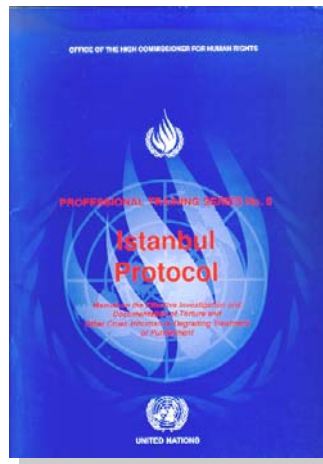


## Reference Materials

The Istanbul Protocol: International Guidelines for the Investigation and Documentation of Torture

# ACTION AGAINST TORTURE A PRACTICAL GUIDE TO THE ISTANBUL PROTOCOL FOR LAWYERS IN UGANDA

2004



This guide has been written by the REDRESS TRUST as part of the Istanbul Protocol Implementation Project, an initiative of Physicians for Human Rights USA (PHR USA), the Human Rights Foundation of Turkey (HRFT), the World Medical Association (WMA), and the International Rehabilitation Council for Torture Victims (IRCT)

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The Istanbul Protocol: International Guidelines for the  
Investigation and Documentation of Torture

## ACTION AGAINST TORTURE

### A PRACTICAL GUIDE TO THE ISTANBUL PROTOCOL FOR LAWYERS IN UGANDA

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**ACTION AGAINST TORTURE:  
A PRACTICAL GUIDE TO THE ISTANBUL PROTOCOL FOR LAWYERS**

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**REFERENCE MATERIALS REGARDING THE USE OF THE ISTANBUL  
PROTOCOL: INTERNATIONAL GUIDELINES FOR THE INVESTIGATION  
AND DOCUMENTATION OF TORTURE**

The Istanbul Protocol is the first set of international guidelines for the investigation and documentation of torture. The Protocol provides comprehensive, practical guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting the findings to the relevant authorities. Initiated and co-ordinated by Physicians for Human Rights USA (PHR USA), Action for Torture Survivors and the Human Rights Foundation of Turkey (HRFT), the Protocol was developed over three years with the involvement of more than 40 organisations, including the International Rehabilitation Council for Torture Victims (IRCT) and the World Medical Association (WMA).

With the generous support of the EU, the 'Istanbul Protocol Implementation Project' was carried out between March 2003 and March 2005 to increase awareness, national endorsement and tangible implementation of the Protocol in five target countries; Georgia, Mexico, Morocco, Sri Lanka and Uganda.

The resource materials presented here were developed as a source of practical reference for health and legal professionals during the trainings conducted as part of the project. The materials were widely disseminated to the 250 individual health professionals and 125 lawyers who participated in the trainings and were also distributed to relevant national institutions and government agencies in the five countries. It is hoped that these materials offer insights and create synergy between the two professions in the joint efforts to combat torture.

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# **Part 1: Overview of the Istanbul Protocol**

## **A. Introduction**

Recognising the prevalence of torture in the world and the need to take active steps to combat it, medical, legal and human rights experts from a range of countries drafted the “*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)*.” The Manual was finalised in August 1999 and has since been endorsed by the United Nations, regional organisations and other bodies.<sup>1</sup>

The Istanbul Protocol is intended to serve as a set of international guidelines for the assessment of torture or cruel, inhuman or degrading treatment or punishment, and for investigating such allegations, and reporting findings to the judiciary or other investigative bodies. The set of “*Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*” (*The Istanbul Principles*) annexed to the Istanbul Protocol was included in the Resolution on Torture unanimously adopted by the UN General Assembly in December 2000.<sup>2</sup> Subsequently, the United Nations Commission on Human Rights drew the attention of governments to these Principles and strongly encouraged them to reflect upon them as a useful tool in combating torture.<sup>3</sup>

Torture is defined in the Istanbul Protocol in the words of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

“Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”<sup>4</sup>

Accordingly, torture is the intentional infliction of severe pain or suffering, whether physical or mental, by or on behalf of a public official (such as the police or security forces) or with their consent. The calculated abuse of an individual’s physical and psychological integrity, in a way that is designed specifically to undermine their dignity, is horrible in any circumstance. But when this act is perpetrated by or on behalf of a public official (someone with the very responsibility to protect an individual’s rights) the crime becomes all the more reprehensible. Indeed torture is

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<sup>1</sup> Available at <http://www.unhchr.ch/pdf/8istprot.pdf>.

<sup>2</sup> UNGA Resolution 55/89 Annex, 4 December 2000.

<sup>3</sup> UN Commission on Human Rights Resolution 2003/33, *57th meeting, 23 April 2003* [E/CN.4/2003/L.11/Add.4].

<sup>4</sup> Article 1, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; UNGA resolution 39/46 of 10 December 1984, *entry into force* 26 June 1987.

typically perpetrated/condoned by the State officials who are responsible for upholding and enforcing the law.

Torture may cause physical injury such as broken bones and wounds that heal slowly, or can leave no physical scars. Often torture will lead to psychological scars such as an inability to trust, and a difficulty to relax in case the torture happens again, even in a safe environment. Torture survivors may experience difficulty in getting to sleep or may wake early, sometimes shouting or with nightmares. They may have difficulties with memory and concentration, experience irritability, persistent feelings of fear and anxiety, depression, and/or an inability to enjoy any aspect of life. Sometimes these symptoms meet the diagnostic criteria for post-traumatic stress disorder (PTSD) and/or major depression. Physical and psychological scars can last a lifetime. To someone who has no experience of torture, these symptoms might appear excessive or illogical, but they can be a normal response to trauma.

The word 'torture' will, to most people, invoke images of some of the most horrific forms of physical and psychological suffering - the pulling out of fingernails, electric shocks, mock executions, being forced to watch the torture of parents or children, rape. The variety and severity of the methods of torture and cruel, inhuman or degrading treatment or punishment may simply defy belief. But there is no exhaustive list of acts that constitute torture;<sup>5</sup> torturers continue to invent new ways to brutalise individuals. And there is no limit on who can be victimised – survivors of torture come from all walks of life, and from most countries around the world. Even children may be victims.<sup>6</sup> But most frequently, torture survivors are criminal suspects, or victims of discrimination on the grounds of race, ethnicity, religion, gender or sexual identity.<sup>7</sup>

As noted in the Istanbul Protocol, "torture is a profound concern for the world community. Its purpose is to deliberately destroy not only the physical and emotional well-being of individuals, but the dignity and will of entire communities. It concerns all members of the human family because it impugns the very meaning of our existence and our hopes for a brighter future."

In other words, torture is abhorrent not only for what it does to the tortured but for what it makes of the torturer and the system that condones it. The Istanbul Protocol explains: "Perpetrators often attempt to justify their acts of torture and ill-treatment by the need to gather information. Such conceptualizations obscure the purpose of torture and its intended consequences...By dehumanizing and breaking the will of their victims, torturers set horrific examples for those who later come in contact with the victim. In this way, torture can break or damage the will and coherence of entire communities...."

For this reason, torture is absolutely prohibited by every relevant human rights instrument since the Universal Declaration of Human Rights of 1948. The violation of this prohibition is considered so serious that no legal justification may ever be found, even in times of emergency or armed conflict.

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<sup>5</sup> In its General Comment on Article 7 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee considered that it is not desirable to draw up a list of prohibited acts or a precise distinction between them. Furthermore, Sir Nigel Rodley, former UN Special Rapporteur on Torture, considered that it is extremely difficult and indeed dangerous to establish a threshold to distinguish acts of torture from cruel, inhuman or degrading treatment.

<sup>6</sup> See *Hidden Scandal, Secret Shame* (AI Index ACT 40/38/00) for reports of torture perpetrated against children.

<sup>7</sup> See *Crimes of Hate, Conspiracy of Silence* (AI Index ACT 40/016/2001) for reports of torture perpetrated against sexual minorities; *Broken Bodies, Shattered Minds* (AI Index: ACT 40/001/2001) for reports of the torture of women; *Racism and the Administration of Justice* (AI Index: ACT 40/020/2001) for reports of torture and racial discrimination.

Despite the absolute prohibition of torture under international law, a glance at any of the reports of the United Nations Special Rapporteur on Torture, or of recent reports of the International Committee of the Red Cross (ICRC), or indeed many newspapers, makes it quite clear that torture is still commonplace in many countries around the world. This imbalance between the absolute prohibition on the one hand and the frequent practice of torture underscores the need to improve domestic implementation of international standards against torture and to improve the effectiveness of domestic remedies for torture survivors.

The Istanbul Protocol is an important instrument in the fight against torture - the effective investigation and documentation of torture helps to expose the problem of torture and to bring those responsible to account. The Principles contained in the Protocol reflect important international standards on the rights of torture survivors and States obligations to refrain from and prevent torture.

International law requires States to investigate allegations of torture and to punish those responsible. It also requires that victims of acts of torture obtain reparation and have an enforceable remedy to fair and adequate compensation, restitution of their rights and as full rehabilitation as possible. The Istanbul Protocol is a manual on *how* to make investigations and documentations of torture *effective* in order to punish those responsible, to afford adequate reparation to the victims and more generally, to prevent future acts of torture.

This Guide is aimed at lawyers in Uganda working with torture survivors. For each key international standard contained in the Istanbul Protocol it outlines the relevant domestic laws and practices and highlights discrepancies between domestic laws and international standards and procedural violations of international standards in domestic practices. This Guide examines domestic law and practice in light of these international standards and suggests practical ways that lawyers might improve the recognition and implementation of these international standards.

This Guide does not purport to be a comprehensive survey of domestic law and practice of torture in Uganda. It aims only to provide an outline of relevant legal provisions, case law and practice, in order to identify steps to ameliorate domestic implementation of applicable international standards.

Lawyers are key interlocutors for survivors of torture seeking justice and other forms of reparation. Equally, they may play a vital role in persuading governments to comply with their international obligations to refrain from acts of torture and to implement preventative measures. If lawyers are familiar with the applicable international standards, they may seek to interpret and apply domestic law in light of these standards, and may cite such standards in their legal argument, pleadings and complaints.

## **B. The importance of medical professionals in the documentation of torture and the need for lawyers to understand the medical symptoms of torture**

The Istanbul Protocol highlights the important role of medical professionals in the documentation of torture and sets out detailed guidelines on methodology for obtaining medical evidence, including the recommended content of medical reports.

It is important for lawyers working with torture survivors to know how torture can be medically documented and what are the physical and psychological symptoms of

torture. This will not only help them to better understand their clients and assist them but equally, such insight is extremely important when lawyers lodge complaints of torture or other forms of ill-treatment on the survivors' behalf. As recognised in the Istanbul Protocol lawyers and doctors need to work closely together to effectively investigate and document acts of torture. Medical evidence will help prove that torture has occurred. It will also assist lawyers to determine victims' claims for reparations (e.g., restitution, compensation and rehabilitation). Similarly, lawyers will need to assess whether the official investigation of the police or other competent body took into account proper medical evidence or whether they need to arrange for independent medical examinations to attest to the victim's version of the events.

The Istanbul Protocol states that lawyers have a duty, in carrying out their professional functions, to promote and protect human rights standards and to act diligently in accordance with law and recognised standards and ethics of the legal profession. Other human rights instruments, such as the "*UN Basic Principles on the Role of Lawyers*",<sup>8</sup> set out the duty of lawyers to assist clients "in every appropriate way" and to take legal action to protect their interests. The Istanbul Protocol also states that there is a duty on medical professionals to always act in the best interests of the patient, regardless of other pressures or contractual obligations. Similarly, under the "*UN Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*"<sup>9</sup> it is a "gross contravention of medical ethics" for doctors to engage in acts which constitute participation in, complicity in, incitement to, or attempts to commit torture.

### **C. Key International Standards in the Istanbul Protocol**

The Istanbul Protocol outlines international legal standards on protection against torture and sets out specific guidelines on how effective investigations into allegations of torture should be conducted. These guidelines (the Istanbul Principles) have been recognised by human rights bodies as a point of reference for measuring the effectiveness of investigations. The Istanbul Protocol identifies the following obligations on governments to ensure protection against torture:

1) To take effective legislative, administrative, judicial or other measures to prevent acts of torture, for example, by:

- Not expelling, returning or extraditing a person to a country when there are substantial grounds for believing that the person would be tortured (non-*refoulement*);
- Ensuring that any statement that is established to have been made as a result of torture is not invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;
- Ensuring that the prohibition of torture is included in training of law enforcement and medical personnel, public and other relevant officials;

2) To ensure that general safeguards against torture exist in places of detention such as:

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<sup>8</sup> See *UN Basic Principles on the Role of Lawyers*, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 27 August-7 September 1990.

<sup>9</sup> The *UN Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* were adopted by the UN General Assembly on 18 December 1982.

- Granting detainees prompt and unrestricted access to a lawyer and a doctor of their choice;
- Granting detainees access to family members;
- Ceasing the use of incommunicado detention ;

3) To effectively investigate allegations of torture, by:

- Ensuring that the relevant authorities undertake a prompt and impartial investigation whenever there are reasonable grounds to believe that torture has been committed;
- Guaranteeing that all allegations of torture are effectively investigated.

4) To ensure that alleged perpetrators are subject to criminal proceedings by:

- Criminalising acts of torture, including complicity or participation;
- Making torture an extraditable offence and providing assistance to other national governments seeking to investigate and/or prosecute persons accused of torture;
- Ensuring that the alleged perpetrators are subject to criminal proceedings if an investigation establishes that an act of torture appears to have been committed;

5) To ensure that victims of torture have the right to an effective remedy and adequate reparation by:

- Ensuring that victims of torture have effective procedural remedies to protect their right to be free from torture in law and practice;
- Guaranteeing that domestic law reflects the different forms of reparation recognised under international law and that the reparations afforded reflect the gravity of the violation(s).

## **Part 2: General legal framework and practice of torture in Uganda**

This Part outlines the legal framework and the practice of torture in Uganda. It gives the context in which lawyers in Uganda are currently working to assist torture survivors and to improve implementation of relevant international standards.

### **A. The practice of torture in Uganda**

In May 2004, the UN Human Rights Committee noted with concern the "widespread practice of torture and ill-treatment of persons detained by the military as well as by other law enforcement officials".<sup>10</sup> Reports by NGOs indicate a widespread use of torture especially in 'safe houses', the name given to unauthorized places of detention. Detainees commonly report severe beatings during interrogations as well as the use of psychological torture—including live threats as well as showing them other persons who have been previously tortured and have visible marks to instill fear and/or compliance. Survivors have also allegedly been held in incommunicado detention.<sup>11</sup>

In its initial report to the UN Human Rights Committee, the Ugandan Government refers to cases of torture in the local administration prisons and how financial constraints, together with the lack of a central authority for local administration prisons, made it difficult for the Uganda Human Rights Commission (UHRC) to effectively monitor the follow-up on each case. The report also states that "torture in police cells is a rampant problem".<sup>12</sup>

Torture methods reportedly used in Uganda include<sup>13</sup>:

- ◆ *kandoya* (tying hands and the feet behind the victim);
- ◆ Suspension from the ceiling while tied up;
- ◆ Water torture/"Liverpool" (forcing the victim to lie face up, mouth open while the tap is turned on into the mouth);
- ◆ Severe beatings with metal rods, pistols, fists, sticks with nails;
- ◆ Death threats including putting the nozzle of the pistol into the victim's mouth, showing him fresh graves, dead bodies or snakes;
- ◆ Putting the victim in the back of the vehicle where his captors sit or put their boots on him; abusive language and threats; and kicking with boots all parts of the body;
- ◆ Gang rape of female victims;
- ◆ Mutilating genitalia of male suspects through kicking, beating with sticks, puncturing with hypodermic needles and tying the penis with wire or weights;
- ◆ Forcing the victim to stand in red ants.

According to the former Acting Director General of the Chieftaincy of Military Organization (CMI), the small number of police officers (approximately 16,000 officers compared to a population of over 24 million) requires that other security

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<sup>10</sup> See Concluding Observations of the UN Human Rights Committee on the Initial Report of Uganda under Article 40 of the ICCPR, CCPR/CO/80/UGA, 4 May 2004.

<sup>11</sup> *Uganda: a situation of systematic violations of civil and political rights*, No. 380/2, February 2004, alternative report to the first periodic report of Uganda before the UN Human Rights Committee, by Foundation for Human Rights Initiative (FHRI) and International Federation for Human Rights (FIDH).

<sup>12</sup> UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, , 25 February 2003.

<sup>13</sup> For more information on the practice of torture in Uganda, see Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A).

organs undertake police functions, at least in the short-term.<sup>14</sup> However, the UHRC points in its 2002 annual report to Parliament, that the increasing involvement of security organs in police work is one of the principal reasons for the persistence of torture.<sup>15</sup>

The security agencies reported to have perpetrated torture include the army (Uganda Peoples Defence Forces (UPDF)), the police and intelligence agencies including the Internal Security Organisations (ISO), External Security Organization (ESO) and the CMI.<sup>16</sup> Other security agencies, such as the Local Defence Units (LDU) and the Directorate of Military Intelligence (DMI), have been accused for routinely carrying out arbitrary arrests, keeping suspects in detention without trial and using torture sometimes resulting in death as well as performing extra-judicial executions. Irregular forces and militias such as the Local Defence Units (LDUs), Joint Antiterrorism Task Force (JATF), Violent Crime Crack Unit (VCCU), Kalangala Action Plan (KAP) are also reported to have committed acts of torture.<sup>17</sup>

Although torture is practiced against people accused of ordinary crime, political opponents and terrorist suspects are said to be more at risk of torture than other detainees. The majority of cases reported to NGOs concern prisoners singled out for their actual or alleged political activities; other cases concern rebel groups and their supposed followers, but in many cases the individuals alleging torture are simply accused of treason or terrorism with no named allegiance to a particular group.<sup>18</sup>

In the period prior to the presidential elections there were various reports of police and security force intimidation of opposition supporters and at opposition rallies.<sup>19</sup> The Reform Agenda (RA), an opposition political pressure group, called for a commission of inquiry into the alleged torture of political detainees. However, a commission appointed in 2003 found that security forces had not committed acts of torture.<sup>20</sup>

Concerning human rights violations in the conflict area in Northern Uganda, there were reports that UPDF soldiers had raped persons in protected villages and refugee camps. In addition, in districts controlled by the Lord's Resistance Army (LRA), there were allegations that security forces failed to provide adequate protection for "night commuter" women and girls travelling from outlying camps and villages into towns seeking safety from the LRA. A local NGO reported that rapes committed against the night commuters had become so common that some parents sought cash payments from the perpetrators.<sup>21</sup>

Public officials usually deny the existence of torture and refer to the need to fight crime and to ensure national security. For example, Ugandan Government officials dismissed a recent report from Human Rights Watch (State of Pain: Torture in

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<sup>14</sup> See Human Rights Watch, Appendix A of *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A).

<sup>15</sup> See UHRC Annual Report January 2002 - September 2002.

<sup>16</sup> For more information on incidents of torture committed by security agencies, see The Uganda Human Rights Commission, *Torture, A Persistent Violation*, June 2003. See also, J.M, Aliro Omara, *The Uganda Human Rights Commission's Experience with the Intelligence Organs:-Cooperation and Challenges*, A paper presented at the ISO, ESO and CMI Human Rights Sensitisation Seminar at Hotel Equatoria, Kampala on 17 November, 1998.

<sup>17</sup> For an overview of the different security forces operating in Uganda, see Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), pages 19-20.

<sup>18</sup> The antiterrorism and treason laws and regulations have overly broad definitions that allow complete arbitrary enforcement. For more information see Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 15.

<sup>19</sup> *Uganda: a situation of systematic violations of civil and political rights*, No. 380/2, February 2004, alternative report to the first periodic report of Uganda before the UN Human Rights Committee, by Foundation for Human Rights Initiative (FHRI) and International Federation for Human Rights (FIDH).

<sup>20</sup> See US State Department, Human Rights Practices 2003, Bureau of Democracy, Human Rights, and Labor, February 25, 2004.

<sup>21</sup> *Ibid.*

Uganda) which claims that since 2001 there has been an escalation of human rights violations by security and intelligence agencies. The report further claimed that an informal survey at Kigo Prison near Kampala, where "political" prisoners are held, indicated in June 2003 that 90 percent of detainees had been tortured during their prior detention by state military and security agencies. Additionally, the Uganda Human Rights Commission have accused the HRW of "repackaging old information" and "marketing it to the world as fresh findings on torture by state security agencies". A UPDF spokesman said that the alleged torture victims cited in the (HRW) report were "not political opponents but criminals and terrorists".<sup>22</sup>

## **B. Prohibition and definition of torture in Uganda**

### **□ The Constitution**

Article 24 of the Constitution states that "No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment". Article 44 establishes that freedom from torture, cruel, inhuman or degrading treatment or punishment; the right to a fair hearing and the right to *habeas corpus* are non-derogable rights.

In *John Livingstone Okello Okello v. Attorney General*<sup>23</sup> the High Court held that notwithstanding the declared state of emergency by the President of the Republic of Uganda, the applicants were detained in military custody in Northern Uganda under conditions which amounted to torture contrary to Article 44 of the Constitution. According to the Court, under Article 23 of the Constitution, the applicants were to be detained in a place authorised by law, not the military barracks where they were held.

### **□ International treaties**

In the absence of implementing legislation, international human rights treaties to which Uganda is a State Party cannot be directly invoked or enforced through the Ugandan courts and the decisions and recommendations of international human rights bodies can only be used as persuasive authority by judges in Uganda.

Uganda has ratified the following treaties prohibiting torture:

- Geneva Conventions of 12 August 1949 (1964)
- UN Convention against Torture (1986)
- African Charter on Human and Peoples' Rights (1986)<sup>24</sup>
- International Covenant on Civil and Political Rights (1995)
- First Optional Protocol to the International Covenant on Civil and Political Rights (1995)<sup>25</sup>
- Rome Statute of the International Criminal Court (2002)

The State of Uganda has not enacted implementing legislation to give effect to the UN Convention against Torture, nor the International Covenant on Civil and Political Rights (ICCPR). The UN Human Rights Committee recently expressed concern

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<sup>22</sup> United Kingdom Home Office, Country Information and Policy Unit, Uganda Country Report, April 2004

<sup>23</sup> *John Livingstone Okello Okello v. Attorney General*, High Court of Uganda, HCT 02-CV-MA 063, 2002.

<sup>24</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, entered into force on 25 January 2004.

<sup>25</sup> Uganda made a reservation whereby it does not accept the competence of the UN Human Rights Committee to consider a communication under the provisions of Article 5(2) from an individual if the matter in question has already been considered under another procedure of international investigation or settlement.

about the "uncertain status" of the ICCPR in Ugandan law and recommended that the Ugandan Government clarify its status.<sup>26</sup>

#### ❑ **Criminal law**

Currently, there is no definition of torture in Ugandan law.<sup>27</sup> The Penal Code (Sections 216 -236) criminalises certain acts that may amount to torture: acts intended to cause grievous harm, causing grievous harm, wounding and similar acts, excess use of force, common assault and assault causing actual bodily harm.

Section 21(e) of the Anti Terrorism Act 2002, provides that "any authorised officer who - engages in torture, inhuman and degrading treatment, illegal detention...commits an offence and is liable on conviction, to imprisonment not exceeding five years or a fine not exceeding two hundred and fifty currency points, or both".

#### ❑ **Administrative law**

There are administrative regulations prohibiting torture by the police. Section 44 of the Police Act establishes a code of conduct, which is the basis for disciplinary control of all officers and other persons employed in the police force. Section 24 (b) of the Schedule to the Police Act provides that a police officer is guilty of unlawful or unnecessary exercise of authority if they use any unnecessary violence against any prisoner or any person in the execution of their duty. Section 28 of the Schedule to the Police Act stipulates penalties for disciplinary offences and these include: dismissal, discharge, demotion, stoppage, fine, imprisonment in police custody, confinement, severe reprimand, reprimand or communal labour.

### **C. Domestic remedial avenues/mechanisms available to torture survivors**

#### ❑ **Constitutional remedies**

Article 50 of the Constitution states that any person who claims that a fundamental or other right or freedom guaranteed by the Constitution has been infringed or threatened is entitled to apply to a competent court for reparation, which may include compensation. In *Joseph Tumushabe v Attorney General*,<sup>28</sup> the applicant brought a claim before the High Court under Article 50, on behalf of twenty-five people whose rights and freedoms had allegedly been infringed. The judge in this case made several orders, including the award of monetary damages.

Article 137(4) of the Constitution provides that: "Where upon determination of the petition under clause (3) of this article the Constitutional Court considers that there is need for redress in addition to the declaration sought, the Constitutional Court may-

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<sup>26</sup> See Concluding Observations of the UN Human Rights Committee on the Initial Report of Uganda under Article 40 of the ICCPR, CCPR/CO/80/UGA, 4 May 2004.

<sup>27</sup> Due to the lack of a legal definition of torture in domestic law, the Ugandan Human Rights Commission and the Ugandan courts have referred to the definition of torture given in international human rights instruments in their judgments. The UHRC refers to the definition contained in Article 1 of the UN Convention against Torture.

<sup>28</sup> Miscellaneous Application No.63 of 2003.

- (a) grant an order of redress; or refer the matter to the High Court to investigate and determine the appropriate redress.
- (b) refer the matter to the High Court to investigate and determine the Appropriate".<sup>29</sup>

Lawyers have submitted petitions to the Constitutional Court alleging violation of constitutional rights, including torture. For example, in *Adekur & Anor v. Opaja & Anor*, the petitioners claimed, *inter alia*, that their arrest, detention and prosecution were inconsistent with the Constitution.<sup>30</sup>

#### □ Criminal procedures

The authorities competent to open criminal investigations into torture allegations are the police and the courts (Magistrates Courts and the High Court).

Under the Magistrates Courts Act, criminal proceedings can be instituted either by the police bringing a person charged with a criminal offence before a magistrate, or by any individual (such as the relative of a torture victim) who has probable cause to believe that an offence has been committed. An individual can make a written or oral complaint to a magistrate.<sup>31</sup> With a few exceptions, which are stipulated in the Penal Code, there is no statute of limitations on bringing criminal prosecutions.

The main authority responsible for undertaking criminal investigations is the Ugandan Police Force, through its Criminal Investigation Division (CID).<sup>32</sup> Section 70 of the Police Act provides for the right of any individual to complain against the conduct of a police officer.<sup>33</sup> In practice, the Ugandan Police Force is ill-trained to perform effective investigations into torture allegations and generally lacks adequate resources, such as forensic doctors and pathologists.<sup>34</sup>

Most criminal cases, including those involving acts of torture, are tried in the Magistrates Courts. The criminal jurisdiction of magistrates is provided for under Section 161 of the Magistrates Courts Act.<sup>35</sup> Under Section 209 of the Magistrates Courts Act, in addition to any other punishment, the court has discretion to order a convicted person to pay compensation if it appears on the evidence that the aggrieved party has suffered material loss, which would be substantially recoverable in a civil suit.

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<sup>29</sup> Article 137 (3) (b) of the Constitution provided that "A person who alleges that any act or omission by any person or authority is inconsistent with or in contravention of a provision of this Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate".

<sup>30</sup> Constitutional Petition No1/97, unreported.

<sup>31</sup> Section 42 of the Magistrates Courts Act, Chapter 16 of the Laws of Uganda.

<sup>32</sup> The Criminal Procedure Code Act, Chapter 116 of the Laws of Uganda, regulates the procedures followed in criminal cases. The investigation process is triggered when a complaint or report of the alleged crime is made to the police. The complaint may be made either orally or in writing. The complaint may be lodged by the victim or another person, such as their lawyer or relative. This report is known as "First Information" and it is normally recorded on Police Form 86. The crime report is then passed on to the CID officer in charge of a particular police station who will then decide whether or not a case file should be opened and on what charges.

<sup>33</sup> A complaint can be filed concerning allegations of bribery, corruption, oppression or intimidation by a police officer; any neglect or non-performance of duties by a police officer and any other misconduct.

<sup>34</sup> In July 2003, the US Department of Justice undertook a six-month law enforcement project in Uganda. The project was designed to improve the training, infrastructure and investigative skills capacity of the Uganda Police Force Criminal Investigation Division (CID).

<sup>35</sup> A Chief Magistrate has jurisdiction to try offences other than those carrying the death penalty. A Magistrate Grade I may try any offence other than an offence in respect of which the maximum penalty is death or imprisonment for life and a Magistrate Grade II may try any offence other than offences provided for in the First Schedule of the Penal Code.

Under Section 17 of the Judicature Act, the High Court exercises general powers of supervision over Magistrates Courts. Under Section 204 of the Magistrates Courts Act, criminal appeals go to the High Court where the accused has been convicted or acquitted by the Chief Magistrate or Magistrate Grade I. The High Court can also issue writs of habeas corpus. There are a limited number and locations of High Courts in Uganda.<sup>36</sup>

Under Section 10 of the Judicature Act, a High Court decision can be appealed to the Court of Appeal.<sup>37</sup> The final appeal lies to the Supreme Court, which is established by Article 130 of the Constitution. Under Section 5 of the Judicature Act, decisions of the Court of Appeal involving offences punishable by death can be appealed to the Supreme Court. However, under Section 5(5) of the Judicature Act where an appeal originates from the Magistrates Court, it can only be heard by the Supreme Court if accompanied by the certificate of the Court of Appeal stating that the matter raises a question of great public importance, or that the Court of Appeal considers that such a hearing is in the interests of justice.

#### □ **Civil procedures**

Tort claims can be made against public officials alleged to have committed acts of torture as well as against the State when the individual public official(s) cannot be identified.

Under the Government Proceedings Act, Sections 3 and 11, if a person suffers damage by a person who is an employee of the Government, the aggrieved person can institute proceedings against the Attorney General.

In civil appeals, both parties to proceedings can seek review of a decision of a Chief Magistrate on a question of law to the High Court. The High Court can also try civil cases where the amount at issue exceeds the jurisdiction of the Magistrates Courts. In at least one High Court case (Gulu), damages were awarded to torture survivors.<sup>38</sup>

Under Rule 2 of the Court Fees Rules,<sup>39</sup> court fees can be levied in several matters and proceedings in court.<sup>40</sup> However, under Rule 3 of the Court Fees Rules, the court may inquire into a claim that a person cannot afford to pay (in whole or in part) any fee prescribed. Upon such an inquiry, a court can direct that any application for variation of fees prescribed shall be heard and determined in accordance with Order 30 of the Civil Procedure Rules. As a result, a "pauper" may file a suit with the court fees waived, provided the individual offers a written statement that they are unable to pay the court fees.

#### □ **Administrative procedures**

##### **a. Internal police complaints mechanisms**

The police in Uganda have instituted a procedure called the Human Rights and Public Complaints Management System. This procedure enables members of the public to report complaints about the conduct of officers to the police management.

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<sup>36</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 63.

<sup>37</sup> The Court of Appeal is established under Article 134 of the Constitution.

<sup>38</sup> Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 73.

<sup>39</sup> The Court Fees Rules are contained in the Judicature Act, Statutory Instrument No. 65 of 1987.

<sup>40</sup> *Unta Exports Ltd v. Customs* [1970] E.A 648, at page 649 Goudie, J stated that "I have no doubt whatsoever that both as a matter of practice and also as a matter of law documents cannot validly be filed in the civil registry until fees have either been paid or provided for by a general deposit from the filing advocate from which authority has been given to deduct court fees."

This system is established in all police units.<sup>41</sup> In its initial report to the UN Human Rights Committee, the Ugandan Government submitted data on the number of complaints received by the Human Rights and Public Complaints Management System (a total of 1917 complaints between 1998 and 2001).<sup>42</sup> However, no comprehensive information is readily available on the investigations into torture allegations subsequently undertaken by the police or on the results of such investigations.<sup>43</sup>

Additionally, lawyers can petition the Inspector General of Police concerning torture allegations against the police. In June 2003, a local human rights organisation petitioned the Inspector General of Police to order the Violent Crime Crack Unit (VCCU) to stop torturing suspects in Mbale District. However, by the end of 2003, no action had been taken in this case.<sup>44</sup>

#### **b. Inspector General of Government<sup>45</sup>**

Article 225 of the Constitution and the Inspectorate of Government Act 2002 stipulate the functions of the Inspector General of Government (IGG). The IGG is competent to receive complaints from individuals in respect of abuses perpetrated by public officials, for example, cases of "victimisation/oppression" and non-payment of salaries. In practice, the IGG determines its jurisdiction on a case-by-case basis i.e., whether or not the human rights violation has its root in corruption or abuse of office and it can also award reparations.

#### **□ National human rights commission<sup>46</sup>**

Article 51 of the Constitution and the Uganda Human Rights Commission Act No. 4 (1997) establishes the Uganda Human Rights Commission. Article 52 of the Constitution stipulates the functions of the Commission, including, the authority to investigate, at its own initiative or on the basis of a complaint made by any person or group of persons, the violation of any human right. Article 53 specifies the extent of the Commission's quasi-judicial jurisdiction, and Article 54 of the Constitution provides that the Commission shall be independent and shall not, in the performance of its duty, be subject to the direction or control of any person or authority. Torture survivors can represent themselves before the tribunal of the UHRC and the Commission can award reparations.

### **D. International remedial avenues available to torture survivors**

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<sup>41</sup> UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, CCPR/C/UGA/2003/1, 25 February 2003.

<sup>42</sup> See UN Human Rights Committee, Initial Report of Uganda under Article 40 of the Covenant, CCPR/C/UGA/2003/1, 25 February 2003.

<sup>43</sup> Article 41 (1) of the Constitution states that: "Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State, except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person." In February 2003, the Director of Information (within the President's Office) informed journalists that a Freedom of Information Act would be enacted by the end of 2003, however, to date, this legislation has not entered into force in Uganda. See, New Vision (Ugandan newspaper) *Freedom of Information Act out soon*, 7 February 2003, available online at [www.newvision.co.ug](http://www.newvision.co.ug).

<sup>44</sup> US State Department, Human Rights Practices 2003, Bureau of Democracy, Human Rights, and Labor, 25 February, 2004.

<sup>45</sup> For more information on the Inspector General of Government, including the Inspectorate of Government Act 2002, see [www.igg.go.ug](http://www.igg.go.ug).

<sup>46</sup> The Operational Guidelines and annual reports of the Ugandan Human Rights Commission are available online at [www.uhrc.org](http://www.uhrc.org).

When domestic remedies fail to provide prompt and adequate redress, torture survivors and their families, directly or through their lawyers, can bring claims before international human rights bodies.

Since international law considers that States should have an opportunity to repair any human rights violation for which they are responsible before the international bodies intervene<sup>47</sup>-- international procedures for individual complaints generally require domestic remedies to have been "exhausted" before accepting to examine the complaint. However, there is no need to exhaust domestic remedies when they are ineffective or cannot provide fair and adequate reparation. In such cases torture victims, their families or/and their lawyers can seek recourse through the most appropriate individual complaints procedure at the international level.<sup>48</sup>

In Uganda, victims of torture can bring individual claims against the Ugandan State for the failure to provide effective remedies and adequate reparation before the African Commission on Human and Peoples' Rights and the UN Human Rights Committee (*individual complaints procedures*).

It is also possible to send information on the general failure of the Ugandan State to prevent and punish torture and to afford effective remedies and adequate reparation for victims (*reporting procedures*) to the African Commission on Human and Peoples' Rights, the UN Committee Against Torture and the UN Special Rapporteur on Torture (the latter also admits information on individual cases but can only refer them to the government in question).

## **1. International Human Rights Complaints Procedures**

### **□ African Commission on Human and Peoples' Rights**

In accordance with Article 30 of the African Charter of Human and Peoples' Rights, the African Commission on Human and Peoples' Rights was established in 1987 to promote human and peoples' rights and ensure their protection in Africa. Under Article 55 of the African Charter, a torture victim or their lawyer can submit a complaint to the African Commission regarding acts of torture as defined in Article 5 of the African Charter (after exhausting domestic remedies).<sup>49</sup>

### **□ UN Human Rights Committee**

The UN Human Rights Committee was established pursuant to Article 28 of the International Covenant on Civil and Political Rights (ICCPR) in order to monitor State Parties' implementation of the ICCPR. As Uganda has ratified the first Optional Protocol to the ICCPR, torture victims directly or through their lawyers may submit an individual communication to the Committee complaining that their rights under the ICCPR have been violated. If found admissible, the Committee issues a decision with

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<sup>47</sup> This principle does not apply for systematic or gross violations of human rights. For more information see *Reparation - A Sourcebook For Victims Of Torture And Other Violations Of Human Rights And International Humanitarian Law*, REDRESS, March 2003, available at <http://www.redress.org/publications/SourceBook.pdf> (REDRESS' Sourcebook on Reparation).

<sup>48</sup> *Idem*.

<sup>49</sup> Information Sheet No. 3, "Communication Procedures", produced by the African Commission on Human and Peoples' Rights explains the procedure for submitting an individual complaint to the African Commission. Information Sheet No. 3 is available online at [www.achpr.org](http://www.achpr.org). The communication will be deemed inadmissible if it has been settled in accordance with the principles of the UN Charter, i.e., if the same communication was submitted to the UN Human Rights Committee and the Committee decided in favour of the applicant.

its views on the merits and, if appropriate, on the forms of reparation due to the petitioners/victims. The Committee's decisions are not binding but are sent as recommendations to the State Party and are made public in its annual report.

## **2. International Human Rights Reporting Procedures**

### **□ African Commission on Human and Peoples' Rights**

Torture victims, or those working on their behalf, can also submit information to mechanisms established by the African Commission, such as: the Special Rapporteur on Prisons and Conditions of Detention<sup>50</sup> (see Part 2B of *Action against Torture: A Practical Guide to the Istanbul Protocol for Lawyers* for contact details), the Special Mechanism on the Prohibition and Prevention of Torture in Africa<sup>51</sup> and the Special Rapporteur on Women's Rights.

### **□ UN Committee against Torture**

Under Article 20 of the UN Convention against Torture, if the Committee receives reliable information that appears to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee must invite that State party to cooperate in the examination of the information and submit observations with regard to the information concerned. In agreement with the State Party, the inquiry may include a visit to its territory. The Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the inquiry in its annual report to the other States parties and to the UN General Assembly.

### **□ UN Special Rapporteur on Torture**

The Special Rapporteur's remit to provide the UN Commission on Human Rights with information on governments' legislative and administrative actions in relation to torture extends to all UN Member States. Torture victims, their families or lawyers may submit a communication to the Special Rapporteur, who may transmit an urgent appeal (to prevent possible incidents of torture) or raise the allegation in a standard communication with the Ugandan Government.<sup>52</sup>

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<sup>50</sup> The Special Rapporteur on Prisons and Conditions of Detention in Africa is mandated to assess prison conditions through country visits and, on the basis of its observations, to make specific recommendations in order to improve prisons and conditions of detention in Africa. The Special Rapporteur can intervene directly with governments in cases of urgent appeals, although as a general rule, it does not raise individual cases of detainees. The Special Rapporteur also seeks implementation of the Declaration of Kampala on Prison Conditions in Africa, adopted by the UN Economic and Social Council on 21 July 1997, Resolution 1997/36.

<sup>51</sup> At its 35<sup>th</sup> Ordinary Session, 21 May to 4 June 2004, the African Commission on Human and Peoples' Rights nominated experts as members of a "Follow Up Committee" on the implementation of the Robben Island Guidelines (the Special Mechanism on the Prohibition and Prevention of Torture in Africa). This mechanism is mandated, *inter alia*, to promote and facilitate the implementation of the Robben Island Guidelines within member states. For more information on this mechanism is available online at [www.apt.ch/africa/rig\\_committee](http://www.apt.ch/africa/rig_committee).

<sup>52</sup> For more information and contact details, see Part 2B of REDRESS' *Action against Torture: A Practical Guide to the Istanbul Protocol for Lawyers*, IPIP, August 2004.

### **Part 3: International standards contained in the Istanbul Protocol**

This Part describes Uganda's obligations in accordance with the international standards reflected in the Istanbul Protocol. It examines how lawyers can advocate for implementation of these international standards, through general advocacy work or by invoking domestic and international remedies on behalf of torture victims in specific cases. This Part will address the following international standards:

- A General preventative measures
- B Specific safeguards in places of detention
- C Investigating allegations of torture effectively
- D Prosecution of alleged perpetrators and punishment of those responsible; and
- E Guaranteeing effective remedies and adequate forms of reparation for victims

#### **A. General preventative measures in Uganda**

The Istanbul Protocol recognises the obligations on States to take legislative, administrative and judicial measures to prevent torture. Through their general advocacy work and litigation, lawyers can advocate for the implementation of specific, positive measures to be implemented by their government.

For example, in July 2004 the Uganda Human Rights Commission (UHRC), the Director of Public Prosecutions, the Army Commander and other top security officials resolved to launch a joint offensive against torture. Amongst the issues to be tackled by this joint offensive are the reporting of torture cases at Kigo Prison and Makindye military police barracks, where victims are allegedly taken by CMI and VCCU members, as well as reporting corruption in the court martial system. The Army Commander publicly stated that periodic reports about torture and other human rights abuses should be sent by the UHRC to the army on a regular basis. He also stated the need for a definition of torture in Ugandan legislation.<sup>53</sup>

In May 2001, the Constitutional Review Commission (CRC) began holding public hearings on amending the 1995 Constitution. The CRC was set up to examine the constitutional provisions relating to sovereignty, political systems, democracy and good governance. In September 2004 the National Political Commissar informed journalists that the White Paper on the report of CRC, would be presented to Parliament shortly.<sup>54</sup>

In December 2003, the Ugandan President, Yoweri Museveni, requested the Office of the Prosecutor of the International Criminal Court (ICC) to formally investigate whether potential crimes against humanity and war crimes have been committed during the conflict in northern Uganda. In February 2002, the ICC confirmed that it would announce the initiation of its investigation of crimes committed in Uganda after July 2002.<sup>55</sup>

#### **Advocacy by lawyers for policy initiatives**

<sup>53</sup> See, Press Release *Joint Offensive Against Torture*, Uganda Human Rights Commission, 7 July 2004 available online at [www.uhrc.org](http://www.uhrc.org).

<sup>54</sup> See Press Release *White Paper Omits Federo*, New Vision (Ugandan newspaper), 7 September 2004, available online at [www.newvision.co.ug](http://www.newvision.co.ug).

<sup>55</sup> See International Criminal Court, Press Release, *Statement by the Prosecutor related to Crimes committed in Barlonya Camp in Uganda*, 23 February 2004, available online at [www.icc-cpi.int](http://www.icc-cpi.int).

Generally, lawyers working with/for victims of torture should submit through NGOs or other organisations, "shadow" reports to the African Commission on Human and Peoples' Rights, the UN Committee Against Torture and the Human Rights Committee. The intention of this type of reports is to describe the deficiencies of governments in implementing its obligations under these international agreements.

As well, in the course of their work, lawyers may gain the opportunity to influence future policy initiatives, such as the following:

- ❑ Establishment of attainable benchmarks for the "Joint Offensive against Torture" launched by the UHRC, the army and the Director of Public Prosecutions and establish reporting obligations, whereby the reports are published publicly, on how these benchmarks are being implemented;
- ❑ Ratification of the Optional Protocol to the UN Convention against Torture and making a declaration under Article 22 of the CAT allowing the UN Committee against Torture to consider individual complaints;
- ❑ Enactment of implementing legislation to make the UN Convention against Torture and the International Covenant on Civil and Political Rights directly applicable in domestic legislation;
- ❑ Adoption of a definition of torture in Ugandan law that covers all elements contained in Article 1 of the UN Convention against Torture and making torture a specific criminal offence;
- ❑ Submission of the State Party report to the UN Committee against Torture, due since 1988;
- ❑ Ensuring that detainees are held in officially recognised places of detention by making detention records obligatory and abolishing the use of so-called "safe houses";
- ❑ Incorporating human rights components, including training on the prohibition and prevention of torture into the syllabus of bar schools;
- ❑ Establishment of incentive schemes for commercial lawyers to take on cases of torture victims on a *pro bono* basis;
- ❑ Raising awareness of the mandate and activities of the Uganda Human Rights Commission, especially in areas where access to justice is problematic;
- ❑ Increasing funding for legal aid schemes allowing legal representation for detainees that cannot afford to retain a private lawyer;
- ❑ Publishing the report of the Parliamentary Committee on Defence and Internal Affairs (PCDIA) investigation into safe houses, torture and related abuses;
- ❑ Reform of prison conditions, including improvement of the working conditions and training for law enforcement personnel, in accordance with the Kampala Declaration and international human rights standards.

### **B. Specific safeguards in places of detention and rights of persons deprived of their liberty**

In light of the obligation on States to take measures to prevent torture, international human rights mechanisms have developed standards on specific measures that can

be taken to minimise the risk of torture, such as implementing "custodial safeguards" in places of detention.<sup>56</sup>

This section highlights some of the key safeguards to protect detainees from the risk of torture:

- ❑ *National preventative mechanisms*: independent bodies, consisting of legal and medical professionals, making periodic visits to any place of detention and with access to all detainees.
- ❑ *Right to communicate with and notify a third person of detention*: this includes granting detainees the possibility to immediately notify relatives or a third person of their detention and to communicate with the outside world.
- ❑ *Right to access a doctor*: this includes a prompt and independent medical examination upon a person's admission to a place of detention, health of detainees should be ensured during the whole period of detention and detainees should have the right to an independent medical examination of a doctor of their own choice.
- ❑ *Right to access a lawyer of their own choice*: granting detainees prompt access to a lawyer of their own choice.
- ❑ *Right to challenge the lawfulness of detention*: a person who has been detained is entitled to have the lawfulness of their detention subject to prompt review by a judicial authority.

In 2002, the African Commission on Human and People's Rights adopted a Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (hereinafter referred to as "the Robben Island Guidelines").<sup>57</sup> The Robben Island Guidelines are contained in Annexe 1 of this Guide. Part II (Section B) of the Robben Island Guidelines sets out several "safeguards during the pre-trial process" which include that "all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members". Also, States are urged to "encourage legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture".

### **Legal framework and practice in Uganda**

Article 23 of the Constitution stipulates rights afforded to detainees in Uganda:

- A person arrested, restricted or detained shall be informed immediately, in a language that the person understands, of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice.
- A person arrested or detained shall, if not earlier released, be brought to court as soon as possible but in any case not later than 48 hours from the time of his or her arrest.<sup>58</sup>
- A person arrested, restricted or detained shall be kept in a place "authorised by law".

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<sup>56</sup> International standards containing detailed safeguards for detainees include the UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>57</sup> The African Commission on Human and Peoples' Rights adopted a Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa at its 32<sup>nd</sup> session, in October 2002.

<sup>58</sup> However, the police can make an application to the court requesting an extension of the period of detention, based on the gravity of the offence.

- Where a person is restricted or detained the next-of-kin of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention and the next-of-kin, lawyer and personal doctor of that person shall be allowed reasonable access to that person; and that person shall be allowed access to medical treatment including, at the request and at the cost of that person, access to private medical treatment.

The police regularly issue administrative circulars concerning the international prohibition against torture. The Prisons Policy Document (2000 and Beyond) makes reference to the UN Convention against Torture and gives guidelines on humane treatment of prisoners. Furthermore, through administrative instructions, the Commissioner for Prisons informed all prison officers on the State obligations under CAT, warning them against the use of force in the line of duty. Administrative instructions in 1995, 1996 and 1998 specifically address the issue of torture. The Police Inspectorate Department regularly checks on compliance with the administrative regulations relating to torture. The police have also opened up its detention facilities to NGOs who wish to check them.<sup>59</sup>

However, lawyers have reported that the maximum period of 48 hours stipulated in the Constitution is exceeded regularly. For example, the police are known to intentionally carry out arrests on Fridays, so that they can justify detentions through the weekend, on grounds that courts are not available to review the grounds for detention. Additionally, most courts rarely observe the constitutionally prescribed limits on pre-trial detention and the average time is reportedly two to three years.<sup>60</sup>

Under the Anti-Terrorism Act 2002, terrorists' suspects are charged in the magistrates' court, after which the accused is transferred from police custody (or another arresting authority) to prison. Suspects can be detained for up to 360 days from the time of arrest, before the case is sent to the High Court for trial. The 360 days time limit is exceeded in practice, for example, when pending further investigation by the DPP.<sup>61</sup>

In *Courson v. Equatorial Guinea*, the African Commission on Human and Peoples' Rights confirmed the international standard that a detainee's right to a lawyer should be exercised whilst in detention and not just during their trial.<sup>62</sup>

#### □ National preventative mechanisms

Article 52 of the Constitution gives the UHRC the right to visit prisons and places of detention or related facilities with a view to inspecting the conditions and making recommendations.<sup>63</sup> The UHRC usually informs the prison authorities before conducting its visits. However, the UHRC has failed to visit the majority of detention centres in the country, among other reasons, for its lack of financial and human resources.<sup>64</sup> Some Ugandan NGOs undertake visits to prisons and police stations to

<sup>59</sup> UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, CCPR/C/UGA/2003/1, 25 February 2003.

<sup>60</sup> See United Kingdom Home Office, Country Information and Policy Unit, Uganda Country Report, April 2004.

<sup>61</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 16.

<sup>62</sup> Communication No 144/95, the African Commission on Human and Peoples' Rights, 11 November 1997.

<sup>63</sup> Section 7 of the Uganda Human Rights Commission Act.

<sup>64</sup> UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, CCPR/C/UGA/2003/1, 25 February 2003.

make assessments of the human rights conditions therein and present these assessments to the Uganda Prisons Service for review and action.<sup>65</sup>

A Prisons Bill, presented to Parliament on 11 May 2004, provides for, *inter alia*, regular inspection of prisons by magistrates, judges, the UHRC and human rights groups, with the aim of assessing prison conditions and making recommendations to relevant authorities.<sup>66</sup>

### **What practical and legal steps can lawyers take?**

- As well as supporting calls for ratification of the Optional Protocol to the UN Convention against Torture, lawyers should take steps to make the procedures followed by the UHRC closer to the requirements of national preventative mechanisms, as stipulated in the Optional Protocol and the Istanbul Protocol;
- Where a detainee is at risk of torture, request judges and magistrates to fulfil their obligations under the current Prison Act<sup>67</sup> and the Prisons Bill to visit the detention facility where the detainee is held;
- Where a detainee at risk of torture is held in a "safe house" or other unauthorised place of detention, apply to the High Court for an order of *habeas corpus* or apply for a production warrant in the magistrates courts to ensure that the detainee is brought before a judicial authority and thereafter detained in an authorised place of detention;
- Systematically document instances showing the failure of detaining authorities to comply with domestic law and regulations that protect the right of detainees and to expose patterns of institutional failures in specific detention facilities;
- Submit information on detainees at risk of torture to relevant international preventative mechanisms, such as the African Commission's Special Rapporteur on Prisons in Africa and its "Focal Point" on Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, as well as to the UN Special Rapporteur on Torture;

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<sup>65</sup> For example, the Foundation for Human Rights Initiative (FHRI) runs a Police and Prison Reform Project. See [www.fhri.org.ug](http://www.fhri.org.ug) for further details.

<sup>66</sup> See, Press Release *Judges, Magistrates to Inspect Prisons*, Tuesday 11 May 2004, available online at [www.parliament.go.ug](http://www.parliament.go.ug).

<sup>67</sup> Section 73 of the Prisons Act, Chapter 304 of the Laws of Uganda.

□ **Right to communicate with and notify a third person of detention**

Article 23 of the Constitution provides the right of the detainee to have their relatives advised of their detention "as soon as practicable" and the family member has a right to "reasonable access" to the detainee. In practice, ignorance of this right and fear of prison authorities often limits family visits. Detainees charged with treason complained that security officers harassed their visitors. The UHRC has reported on allegations that officers in charge of police cells sometimes demanded bribes to allow relatives to visit detainees.<sup>68</sup>

**What legal and practical steps can lawyers take?**

- As a non-litigation measure, lawyers can determine the possibility of instituting a register in offices of the UHRC. In these offices, detaining authorities are obliged to register the arrest of an individual within 24 hours;
- Lawyers can also assess the possibility of setting up a "detention hotline" between major detention centres and the closest UHRC office, to ensure detaining authorities have the means to use the registration system;
- Lawyers should systematically document instances where law enforcement officials obstruct the right of detainees to communicate with a third person, including demanding bribes. At the same time, lawyers should seek sanctions against individual law enforcement officials and the head of the detention facility through the Inspector General of Government and, where police officers are implicated, through the Human Rights and Public Complaints Management System;
- In submissions to international preventative and complaint mechanisms, such as the Special Rapporteur on Prisons and Conditions of Detention in Africa or the African Commission on Human and Peoples' Rights, include instances where authorities have denied detainees' rights to communicate with a third person as evidence of how the Government fails to implement measures to prevent torture.

□ **Right to access a doctor**

Article 23 of the Constitution provides that where a person is detained, a doctor of the detainee's choice shall be allowed "reasonable access" to the detainee and that the detainee shall have access to medical treatment. Under Section 28 of the Prisons Act, all prison should have a medical officer. Such medical officers are responsible for the health of all prisoners and should ensure that all prisoners are medically examined "at such times as shall be prescribed". In practice, whether or not detainees can exercise their right to a medical examination depends on where they are detained. The likelihood of obtaining access to a doctor or to medical treatment in an unauthorised "safe house" or military barracks is limited or non-existent.

<sup>68</sup> US State Department, Human Rights Practices 2003, Bureau of Democracy, Human Rights, and Labor, 25 February, 2004.

In *Mika Miha v. Equatorial Guinea*, the applicant was allegedly denied drink and food and then, having been tortured for two days, denied medical assistance for over a month. The UN Human Rights Committee held that the denial of medical attention after his ill-treatment amounted to cruel and inhuman treatment in violation of Articles 7 and 10 of the ICCPR.<sup>69</sup>

In Uganda, it has been reported that torture victims frequently receive no medical treatment during their period of pre-trial detention and that the first medical attention they receive is once they had been transferred from police custody to a prison, or upon release.<sup>70</sup>

Additionally, torture survivors have reported attempts by detaining authorities to cover up acts of torture by releasing detainees with warnings to keep quiet. In the same manner, inaccurate medical statements by military doctors have been recorded.<sup>71</sup> Although under Ugandan law, doctors who perform deficient medical examinations of torture victims or prepare false medical reports can be criminally prosecuted under Section 228 or Section 229 of the Penal Code,<sup>72</sup> to date, there have been no such prosecutions or application of disciplinary sanctions.

### **What legal and practical steps can lawyers take?**

- Request the transfer of a detainee at risk of torture from police custody to a prison facility on the grounds that the detainee's right to access a doctor is infringed during their detention in police custody;
- Seek criminal prosecution of doctors who falsify medical report denying the occurrence/traces of torture. Cite jurisprudence from other Commonwealth countries recognising the obligation on medical professionals in torture cases;
- When submitting petitions on behalf of torture victims before Ugandan courts, highlight the importance of ensuring the right of detainees to access an independent doctor by citing the UHCR rulings showing the evidentiary weight given to medical evidence in torture cases.

### **□ Right to access a lawyer of their own choice**

Under Article 23 of the Constitution, a detainee has the right to access a lawyer of their choice (meaning an advocate)<sup>73</sup>. Under Article 28 of the Constitution, a person

<sup>69</sup> UN Human Rights Committee, Communication No.414/1990, 8 July 1994.

<sup>70</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A).

<sup>71</sup> *Ibid*, page 65.

<sup>72</sup> Section 228 (e) & (f) of the Penal Code provide that "any person who, in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person gives medical or surgical treatment to any person whom he or she has undertaken to treat or dispenses, supplies, sells, administers or gives away any medicine or poisonous or dangerous matter commits a misdemeanor". Section 229 provides that "any person who unlawfully does any act or omits to do any act which it is his or her duty to do, not being an act or omission specified in sections 227 and 228, by which act or omission harm is caused to any person, commits a misdemeanor and is liable to imprisonment for six months".

<sup>73</sup> In Uganda, a distinction is made between lawyers and advocates. The term "lawyer" denotes an individual with a law degree from a university recognised by the Law Council. To become an "advocate" requires a law degree from an officially recognised university; a postgraduate diploma from the Law Development Centre; and to be duly entered on the Roll of Advocates. The Law Council is a department within the Ministry of Justice and Constitutional Affairs,

charged with a criminal offence is permitted to appear before a court in person, or, at his or her own expense, to be represented by a lawyer of their choice. Article 28 also provides that in a capital offence or one that carries a sentence of life imprisonment, a person is entitled to state-appointed legal representation. But in practice, there rarely are enough state funds to retain adequate counsel. Additionally, suspects detained in unauthorised facilities have no access to legal representation.

The UN Human Rights Committee has noted the lack of legal assistance provided to individuals accused of non-capital offences.<sup>74</sup> Besides state-appointed defence lawyers for life imprisonment or capital punishment offences, the only free legal aid schemes are through the Legal Aid Project of the Ugandan Law Society and Public Defenders Association.

Lawyers who work on behalf of torture victims are supported in their work through informal associations, like the Legal Aid Project of the Ugandan Law Society. Certain associations and NGOs, such as Uganda Women Lawyers Association and the Foundation for Human Rights Initiative (FHRI), also practice public interest law from offices in Kampala. The Law Development Centre and the Public Defenders Association of Uganda have also established a legal aid clinic.<sup>75</sup> The Institute for Human Rights and Development in Africa runs a litigation programme that assists and advises victims of human rights violations.<sup>76</sup>

Lawyers have been denied access to people deprived of their liberty on national security grounds and even where there is a court judgement ordering that the detainee should be granted access to a lawyer, law enforcement officials can remain obstructive. Where detainees are held in unauthorised detention facilities or military barracks, or in centres run by security agencies, lawyers need to seek permission before gaining access to detainees. Similarly, the UHRC has found it difficult to access military detention centres because access is only possible with advance notice and after prior permission of the Army Commander.<sup>77</sup>

In *John Livingstone Okello Okello v. Attorney General*, the application was brought before the High Court under the provisions of Articles 50 and 273 of the Constitution. The applicants were seeking, *inter alia*, an order to be permitted access to their next of kin, lawyers and personal doctors in accordance with Article 28 of the Constitution. The judge stated that such a denial of access constituted evidence that "relates to the conditions under which the prisoners were detained" and found such conditions "cruel, inhuman or degrading treatment or punishment in violation of Article 24 of the Constitution".<sup>78</sup> The High Court awarded the applicant damages, without issuing an order to the detaining authorities to permit the detainee access to a lawyer.

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established under the Advocates Act, and its functions include exercising disciplinary control over advocates through its Disciplinary Committee, approving persons eligible to practice as advocates in Uganda and exercising general supervision and control over the provision of legal aid. The Disciplinary Committee of the Law Council can hear complaints against advocates by individual members of the public. For more information on the Law Council see the website of the government of Uganda at [www.justice.go.ug](http://www.justice.go.ug).

<sup>74</sup> Concluding Observations of the UN Human Rights Committee on the Initial Report of Uganda under Article 40 of the ICCPR, CCPR/CO/80/UGA, 4 May 2004.

<sup>75</sup> *Uganda: a situation of systematic violations of civil and political rights*, No. 380/2, February 2004, alternative report to the first periodic report of Uganda before the UN Human Rights Committee, by Foundation for Human Rights Initiative (FHRI) and International Federation for Human Rights (FIDH).

<sup>76</sup> More information on how the Institute for Human Rights and Development in Africa can support victims of human rights violations is available online at [www.africaninstitute.org](http://www.africaninstitute.org).

<sup>77</sup> UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, CCPR/C/UGA/2003/1, 25 February 2003.

<sup>78</sup> *John Livingstone Okello Okello v. Attorney General*, High Court of Uganda, HCT 02-CV-MA 063, 2002.

In *Joseph Tumushabe v. Attorney General*, the High Court, before determining the award of damages, expressly ordered authorisation for the detainees to contact their lawyer and relatives "no matter where the detainees are being held".<sup>79</sup>

### What legal and practical steps can lawyers take?

- Where access to a detainee is denied, submit a *habeas corpus* application to the High Court and/or apply for a production warrant in the lower courts to ensure that the detainee is brought before a judicial authority;
- Where the High Court finds a violation of the constitutional right to access a lawyer, specifically petition the judge to order the detaining authorities to permit unhindered access to the detainee.

#### □ Challenging the lawfulness of detention

Lawyers in Uganda can challenge the lawfulness of their client's detention by (a) an application of habeas corpus to the High Court or (b) a complaint to the UHRC.

The right to challenge the lawfulness of a detention is a non-derogable right under Article 44 of the Constitution. Under Section 36 of the Judicature Act, the High Court may, where a person is deprived of their liberty and upon complaint, order the person in whose custody the detainee is to produce them at court and inquire into the reasons for their detention. The UHRC also has the authority to order the release of a detainee from a detention facility.

In practice, the capacity to produce habeas corpus applications depends on the detainee's access to a lawyer.<sup>80</sup> As mentioned above, where detainees are held in incommunicado detention in "safe houses" or other unauthorised places of detention, the likelihood of them gaining access to legal assistance is very limited.

In *Captain Ronald Nyanzi*, the High Court issued a writ of habeas corpus directing the commanding officer of the military police to produce the detainee for purposes of inquiry into the circumstances of their detention.<sup>81</sup> However, in the period between the issuing of the High Court's writ of habeas corpus, the detainee (who was being held in a military prison) was criminally charged by an internal military disciplinary committee. The defence counsel cited Article 23 of the Constitution and contended that bringing the detainee before the military disciplinary committee was in bad faith, with the intention to defeat the habeas corpus application. The High Court reasoned that the fact that the proceedings of habeas corpus had commenced did not preclude the detaining authorities from taking further steps before the High Court concluded the application. The Court further held that the remedy of habeas corpus was no longer available to the detainee.

<sup>79</sup> *Joseph Tumushabe v. Attorney General*, Misc. Application No. 63 of 2003, High Court of Uganda, 6 November 2003.

<sup>80</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 64.

<sup>81</sup> In the case of *Captain Ronald Nyanzi*, Uganda High Court, Miscellaneous Cause No. 100 of 2002.

## What legal and practical steps can lawyers take?

- Where the detaining authorities fail to return a writ of habeas corpus and produce a detainee at court, apply for a writ of mandamus<sup>82</sup> requiring the detaining authority to comply and produce the detainee in court;
- Where the detaining authorities fail to comply with an order of the UHRC to release a detainee, submit relevant documentation to international preventative mechanisms, such as the UN Special Rapporteur on Torture.

### **C. Obligation to effectively investigate torture allegations**

The obligation on governments to carry out effective investigations is firmly established in international law. Whenever there are indications that torture might have been committed, states are obliged to undertake an effective investigation, even without a formal complaint triggering it. Accordingly, the Istanbul Protocol provides that, "even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred". For an investigation to be "effective" under international human rights law, it must be:

- ◆ **Prompt:** investigations should be commenced and conducted expeditiously;
- ◆ **Impartial:** investigations should be free from undue bias and the investigation should be in the hands of an authority without links to the alleged perpetrators;
- ◆ **Thorough:** the nature and scope of investigations must ensure that all relevant facts and the identity of the perpetrators are ascertained;

Amongst the key principles highlighted in the Istanbul Protocol for investigations to be effective:

- ◆ Investigators must be competent, impartial and independent of suspected perpetrators and the national authority for which the investigators work;
- ◆ Methods used to carry out investigations should meet the highest professional standards and findings shall be made *public*;
- ◆ Investigators should have be obliged to obtain all information necessary to the inquiry and should effectively question witnesses;
- ◆ The investigative mechanism should have access to independent legal advice to ensure that the investigation produces admissible evidence for criminal proceedings;
- ◆ Torture victims, their lawyer and other interested parties should have access to hearings and any information relevant to the investigation and must be entitled to present evidence and allowed to submit written questions;
- ◆ Detainees should have the right to obtain an alternate medical evaluation by a qualified health professional and this alternate evaluation should be accepted as admissible evidence by national courts.

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<sup>82</sup> A writ which orders a public agency or governmental body to perform an act required by law when it has neglected or refused to do so.

## Legal framework and practice in Uganda

Lawyers can lodge complaints alleging torture by the police through the internal police complaints mechanism, or by the Inspector General of Police, through a petition to the High Court or through a complaint to the UHRC.

Lawyers have reported that magistrates have, in the past, inquired into instances of torture but details on the nature of these inquiries are not readily available. Fundamental factors, such as the failure of victims to report allegations of torture due to intimidation or fear of reprisals or lack of faith in the justice system; difficulties in identifying perpetrators; lack of accountability of members of *ad hoc* security agencies; the use of unauthorised detention facilities and the culture of impunity within the army and security agencies, all hinder the effective legal and medical investigation of torture allegations. For example, it has been observed that the Ugandan police force is reluctant to investigate allegations of torture or abuse against the security agencies (such as CMI) that undertake some of the police's law enforcement activities.<sup>83</sup>

Concerning medical examinations in the course of police investigations into torture allegations, the standard reporting form used by police doctors (Form 3) does not allow the doctor to provide sufficient information on the observations made during the medical examination. See Annex 2 of this Guide for an example Form 3. Under Ugandan law, lawyers could request that doctors appear as witnesses during investigation proceedings but in practice, this is usually not done. Among other reasons, although medical evidence of torture (psychological and physical) is admissible in court proceedings, such evidence is deemed to be an opinion within Section 43 of the Evidence Act. And under Section 44 of this Act, evidence that is inconsistent with such medical examination is also relevant. Thus, the weight placed on medical evidence is at the discretion of the presiding judge.

The best chance for torture victims to obtain an investigation into torture allegations is through the UHRC. The UHRC has investigated many cases of torture and illegal detention by the police, army and other security organs and has made its findings public in its annual report and occasionally through press releases. During 2001, the UHRC investigated 311 complaints.<sup>84</sup> According to the UHRC chair, it receives between 20 to 30 complaints per week either in writing, in person, or referred from the IGG.<sup>85</sup>

In light of Commonwealth jurisprudence, a case could be brought before the High Court on the basis of Article 21 of the Constitution, which provides that everyone is entitled to protection of the law, and seek an order that the police should conduct an effective investigation of torture allegations against members of the security agencies. In *Chavunduka & Anor v The Commissioner of Police & Anor*, the Supreme Court in Zimbabwe held that the constitutional right to protection of the law includes the right to require the police to perform investigations of an alleged crime. The Court ordered the Commissioner of Police to institute a comprehensive and diligent investigation of the alleged offence of torture with a view to prosecute persons against whom there is a reasonable suspicion.<sup>86</sup>

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<sup>83</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A).

<sup>84</sup> See UHRC Annual Report January 2002 - September 2002, available online at [www.uhrc.org](http://www.uhrc.org).

<sup>85</sup> See Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa*, 2001, available online at [www.hrw.org/reports/2001/africa/uganda](http://www.hrw.org/reports/2001/africa/uganda).

<sup>86</sup> *Chavunduka & Anor v The Commissioner of Police & Anor*, Supreme Court of Zimbabwe, [2000] ZLR 418.

□ **Investigating torture allegations "promptly"**

Under Article 28 of the Constitution, individuals have the constitutional right of having their case heard and determined within a reasonable time. Accordingly, there is an obligation on the police and the Directorate of Public Prosecutions to open and conduct investigations within a reasonable time.

The UHRC, in practice, cannot undertake prompt investigations into torture allegations due to obstructions in obtaining evidence, through denial of access to detention centres and lack of co-operation by security agencies in providing information. The promptness with which the UHRC conducts investigations has been criticised as a result. For example, a detainee's lawyer wrote to the UHRC to express concern at the lack of progress in an investigation into torture committed by a member of the CMI. In response to allegations put forward by the UHRC, it took one year for the CMI to merely deny those allegations in writing.<sup>87</sup>

□ **Investigating torture allegations "impartially" and the independence of investigating bodies**

The UHRC constitutes a functional investigative body to examine cases falling within its jurisdiction. Although the UHRC is a government-established institution, it has a degree of independence from the executive branch of government and, under Article 54 of the Constitution, the UHRC is not subject to any formal control by any authority. Moreover the UHRC prescribes its own procedures for investigations and procedural rules for its quasi-judicial tribunal.

Where the police fails to open an investigation or where the police investigation is stalled, a complaint to the UHRC will trigger a review of the investigation. However, the jurisdiction of the UHRC is limited by the fact that, under the Constitution, it cannot investigate any matters pending at court. Additionally, the rulings of the UHRC tribunal are not final and binding— although, to date, no appeals have been lodged to the High Court. The absence of a medical department in the UHRC has been noted as another factor making it more difficult for detainees to prove allegations of torture.

□ **Investigating torture allegations "thoroughly"**

If a complaint is not dealt with through mediation, in the course of its investigations, the UHRC endeavours to physically contact and interview the complainants, respondents and witnesses. The UHRC writes to various governmental departments asking them to respond to the allegations. However, the UHRC lacks the capacity to arrest and prosecute individuals. Rather, it only has the power to issue summons and to recommend prosecution of an individual to the Department of Public Prosecutions. Making the UHRC's powers as an investigative body insufficient.<sup>88</sup>

The UHRC Tribunal has taken into account official medical reports and other evidence of the complainant's injuries sustained through torture, including, for

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<sup>87</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 49.

<sup>88</sup> In contrast, the Inspector General of Government has the power to arrest and prosecute individuals. See "Uganda: Human Rights Protection by the State in Uganda" in *National Human Rights Institutions Articles and Working Papers*, Birgit Lindsnaes et al. (ed.), Danish Centre for Human Rights, 2001.

example, photographs taken by complainants after their release from detention.<sup>89</sup> The Commissioner in *Stephen Gidudu v. Attorney General*<sup>90</sup> stated that the presentation by the two doctors as expert witnesses corroborated the complainant's testimony and, together with the photographs submitted, constituted conclusive evidence of torture.

#### **What legal and practical steps can lawyers take?**

- Where it is impossible to obtain an independent medical examination of a detainee, lawyers should try to obtain any type of evidence proving that the detainee was in good health before entering the detention facility in contrast to their physical and psychological condition after their release or/and whilst still in detention. Such evidence includes prison medical records, medical records before the arrest and after being released, photographs, testimonies of witnesses including relatives that visited the detainee, etc;
- Using the Istanbul Protocol as guidance, lawyers should work with medical professionals to improve methodology in obtaining psychological and physical medical evidence during investigations;
- Send written interventions, at all levels within the police force, including the Inspector General of Police, demanding an investigation into torture allegations raised by detainees in the course of criminal investigations. Citing both, domestic and international standards;
- Support initiatives pressing the Inspector General of Police to issue instructions to all levels of hierarchy within the police force, and binding on all security agents undertaking police actions, on how to conduct investigations in accordance with international standards;
- Revise standard report forms (to replace Form 3 currently used by police) to ensure that all forensic medical examiners record all relevant medical details needed to medically prove an offence of torture before a court;
- Intervene with the Inspector General of the Police to make public the findings of previous criminal investigations and the results of complaints against police misconduct lodged with its Human Rights Desk.

#### **D. Prosecution of alleged perpetrators of torture and punishment of those responsible**

International law clearly establishes the obligation on governments to prosecute, when sufficient evidence exists, persons accused of torture. This obligation exists regardless of where the crime was committed, the nationality of the victim or the alleged perpetrator. As established in the Istanbul Protocol, "States are required under international law to investigate reported incidents of torture promptly and impartially. Where evidence warrants it, a State in whose territory a person alleged to have committed or participated in torture is present, must either extradite the alleged perpetrator to another State that has competent jurisdiction or submit the case to its own competent authorities for the purpose of prosecution under national or local criminal laws." Article 7(2) of the UN Convention against Torture determines that a prosecuting authority must take a decision to prosecute an offence of torture in the same way as any other crime of a serious nature.

<sup>89</sup> See *Stephen Gidudu v. Attorney General*, UHRC Complaint No. 210 of 1999, 26 February 2000.

<sup>90</sup> Complaint No. 210 of 1999.

## Legal framework and practice in Uganda

### □ Prosecutions

Under Ugandan law, all prosecutions, whether private or public are State prosecutions. The Director of Public Prosecutions controls all criminal prosecutions on behalf of the State. He/she directs the police to undertake criminal investigations and institutes criminal proceedings other than a court martial.<sup>91</sup> The prosecution of certain offences can only be undertaken with the consent of the Director of Public Prosecutions. The Director or the Resident State Attorney must endorse a charge sheet before criminal charges can be laid against an individual.

The powers of the Director of Public Prosecutions are mainly contained in the Constitution. Under Article 120(3)(d), he/she has the power to discontinue criminal proceedings undertaken by any person or authority at any stage before a judgement is delivered. Under the law, a prosecutor may withdraw a case either with the consent of the court or on the instructions of the Director of Public Prosecutions.

As noted by the UN Human Rights Committee, the DPP understaffing contributes to delays in the administration of justice and a low prosecution rate in Uganda. Delays are compounded by irregular High Court sessions in spite of the Judicature (Amendment) Act, that gave the High Court powers to limit and stay delayed prosecutions with the objective of curtailing delays.<sup>92</sup> Additionally, there is no readily available information on the number of prosecutions of alleged perpetrators of torture.

As explained in Part 2C above, there are no legal provisions in the Ugandan Penal Code criminalizing torture, but Sections 216 -236 criminalize certain acts that may amount to torture. Disciplinary sanctions (such as suspension from duty) are also applicable to those found guilty of perpetrating torture, including health professionals. Such sanctions could include suspension from practice for medical professionals or withdrawal of their practitioner's certificate and a warning. The UHRC has recognised the need to criminally prosecute those accused of torture and recommends that they should also be demoted or dismissed, instead of the current practice of transferring the alleged perpetrator to other police stations or detention facilities.<sup>93</sup>

Under Article 221 of the Constitution, it is the duty of the UPDF "and any other armed force" in Uganda to respect human rights in the performance of their functions. Section 46 of the Uganda Peoples' Defence Forces<sup>94</sup> makes it a criminal offence for a person subject to military law to unlawfully detain any other person or to fail to bring that person's case before the competent investigative authority.

When a decision not to press charges is taken by the authorities, torture victims, through their lawyers can bring a private prosecution against an alleged perpetrator. However, whether lawyers are seeking a public prosecution (through the DPP) or private prosecution, they face major obstacles, such as the Amnesty Act, procedural inefficiency by the DPP and problems identifying offenders due to security agencies

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<sup>91</sup> See Article 120 of the Constitution. For more information on the functions of the Director of Public Prosecutions, see the website of the government of Uganda, available online at [www.dpp.go.ug](http://www.dpp.go.ug).

<sup>92</sup> UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, CCPR/C/UGA/2003/1, 25 February 2003.

<sup>93</sup> See UHRC Annual Report January 2002 - September 2002, available online at [www.uhrc.org](http://www.uhrc.org).

<sup>94</sup> Chapter 307 of the Laws of Uganda.

shielding perpetrators.<sup>95</sup> Under Section 43 of the Amnesty Act, the DPP may take over and continue criminal proceedings at any stage, regardless of the interests of the individual bringing the private prosecution. The DPP can also discontinue the prosecution without necessarily justifying the grounds for taking the decision to discontinue. Where the DPP takes this course of action, the perpetrator is acquitted in accordance with Section 121 of the Magistrates Courts Act.<sup>96</sup>

Section 3 of the Amnesty Act passed by the Ugandan parliament in 2000, provides that any person who has at any time since 26 January 1986 acted against the government of Uganda by actual participation in combat, collaborating with perpetrators of the war or armed rebellion or committing any other crime in the furtherance of war or armed rebellion or assisting or aiding the conduct or the prosecution of the war or armed rebellion shall not be prosecuted. The Amnesty Act does not constitute a general amnesty but is only granted pursuant to a determination by the Director of Public Prosecutions.<sup>97</sup> Where an amnesty is granted by the Director of Public Prosecutions, that person should not be prosecuted or subjected to any form of punishment...for any crime committed in the cause of war or armed rebellion".<sup>98</sup>

Under Section 24 of the Evidence Act, confessions obtained through torture are inadmissible. The case *F. Asenwa and Anor v. Uganda* before the Supreme Court set a judicial precedent that information obtained through torture is inadmissible. Nevertheless, in practice, most of the evidence gathered by the UPDF, CMI and ISO is derived from confessions.<sup>99</sup> Under international standards, when prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, they should refuse to use such evidence and also, take all necessary steps to ensure that those responsible for using such methods are brought to justice.<sup>100</sup>

#### ❑ Punishment/Penalties

Under international law, all forms of torture and ill treatment should be punishable as a serious crime under domestic legislation.<sup>101</sup> However in Uganda, since there is no crime of torture under the Penal Code, perpetrators are only charged with a lesser criminal offence such as assault or abuse of power. The Penal Code Act Section 236

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<sup>95</sup> These different factors hindering prosecutions are identified in Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A).

<sup>96</sup> Section 121 of the Magistrates Courts Act provides that in any proceedings before a Magistrates Court the prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgement is pronounced, withdraw from the prosecution of any person; and upon that withdrawal (a) if it is made before the accused person is called upon to make their defence, he or she shall be discharged, but the discharge of an accused person shall not operate as a bar to subsequent proceedings against him or her on account of the same facts and (b) if it is made after the accused person is called upon to make his or her defence, he or she shall be acquitted.

<sup>97</sup> Between July 2000 and January 2002, 1671 rebels had reportedly surrendered under the Amnesty Act and were issued certificates by the Amnesty Commission established by the Director of Public Prosecutions. See United Kingdom Home Office, Country Information and Policy Unit, Uganda Country Report, April 2004.

<sup>98</sup> For more information on amnesties and international law, see REDRESS, Amicus Brief on the Legality of Amnesties under International Law before the Special Court of Sierra Leone, available online at [www.redress.org](http://www.redress.org).

<sup>99</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 66.

<sup>100</sup> See Guideline 16 of the *UN Guidelines on the Role of Prosecutors*, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990.

<sup>101</sup> The UN Human Rights Committee, for example, has recommended that State Parties should ensure that all forms of torture are punishable as serious crimes under domestic legislation, in accordance with Article 7 of ICCPR. See Concluding Observations of the UN Human Rights Committee on the Second periodic report of Georgia, CCPR/CO/74/GEO, 19 April 2002.

states, "any person who commits an assault occasioning bodily harm is guilty of a misdemeanour and is liable to imprisonment for 5 years".<sup>102</sup>

Consequently, as noted by the UN Human Rights Committee, torture survivors are often left in a position where they feel that the perpetrator has not received a punishment fitting the severity of the offence.<sup>103</sup>

### What legal and practical steps can lawyers take?

- Challenge the failure of the Directorate of Public Prosecutions (DPP) to prosecute alleged perpetrators by filing a notice of motion seeking the order of mandamus<sup>104</sup> under section 36 of the Judicature Act, submitting that the right to protection before the law includes the enforcement of the duty of the DPP to prosecute human rights offenders;
- In pleadings before the High Court, present medical evidence and refer to the evidentiary value placed on such evidence by the Evidence Act and under international standards;
- Where a confession obtained through torture is admitted in court proceedings, petition the presiding judge, citing the Supreme Court ruling in *F. Asenwa and Anor v. Uganda* as well as international standards on the non-admissibility of evidence obtained through torture<sup>105</sup>

### **E. Right to an effective remedy and reparations**

The right to an effective (procedural) remedy to guarantee the substantive right to adequate reparations for torture survivors is clearly established under international law (see Section E, *Action Against Torture: A Practical Guide to the Istanbul Protocol for Lawyers*). The right to reparation is a fundamental principle of general international law (the breach of an international obligation entails the duty to afford reparation).<sup>106</sup> The prohibition of torture is an obligation of all States under general international law, and therefore, if breached, a new international obligation to afford reparation arises. According to the UN Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law,<sup>107</sup> the forms that reparation may take include: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The Robben Island Guidelines make clear that the obligation on States to afford reparation to victims of torture exists irrespective of whether a successful criminal prosecution can or has been brought, so that all States should ensure that all victims of torture and their dependents are:

- a. offered appropriate medical care

<sup>102</sup> Under the Ugandan Penal Code, the death penalty is applicable as punishment for fifteen offences and a mandatory punishment for the offences of defilement, rape, aggravated robbery, aggravated kidnapping, murder and treason.

<sup>103</sup> UN Human Rights Committee, Initial Report of Uganda under Article 40 of the ICCPR, CCPR/C/UGA/2003/1, 25 February 2003.

<sup>104</sup> A writ which orders a public agency or governmental body to perform an act required by law when it has neglected or refused to do so.

<sup>105</sup> For an overview of international standards on the non-admissibility of evidence obtained through torture, see Conor Foley, *Combating Torture: A Manual for Judges and Prosecutors*, University of Essex, March 2003, page 50.

<sup>106</sup> See Permanent Court of Arbitration, *Chorzow Factory Case* (Ger. V. Pol.), (1928) P.C.I.J., Sr. A, No.17, at 47 (September 13).

<sup>107</sup> Annex, E/CN.4/2000/62. The revised version of 15 August 2003 can be found at <http://www.unhcr.ch/html/menu2/revistedrestitution.doc>.

- b. have access to appropriate social and medical rehabilitation
- c. provided with appropriate levels of compensation and support

and that there should be recognition that families which have also been affected by the torture of one of its members can also be considered victims.

Recently, the UN Human Rights Committee recommended that the Ugandan Government thoroughly investigate any alleged case of torture, prosecute those held responsible and ensure that full reparation is granted, including fair and adequate compensation.<sup>108</sup>

## **Legal framework and domestic practice in Uganda**

### **□ Effectiveness of remedies**

Article 28 of the Constitution provides that in the determination of a criminal charge, a person shall be entitled to a "fair, speedy and public hearing before an independent and impartial court".

However, under the Statutory Instrument No. 26 of 1992 The Fundamental Rights and Freedoms (Enforcement Procedure) Rules, Rule 4 provides that an application under Article 50 of the Constitution cannot be made without prior notice to the Attorney General and any other party affected by the application. Thus, applications can take a considerable amount of time.

On the other hand, as highlighted above, the UHRC has important limitations on its investigative powers. However, the UHRC's 2002 Annual Report notes that "mediation is the first preferred method of resolution of a complaint" and has been the preferred means through which parties reach an amicable solution.<sup>109</sup> The UHRC issues summonses to the relevant government departments, but where there is no response, the UHRC's tribunal can hear a complaint against the Attorney General in his absence.<sup>110</sup> But reports from NGOs indicate that security agencies implicated in torture ostensibly following UHRC's mediation procedures, are actually using this remedy to assist them in pinpointing the location of the torture survivor.<sup>111</sup>

Finally, military jurisdiction in Uganda may cover cases involving civilians found to be in association with the military in the commission of crimes. Thus, a case of torture allegedly committed by the military together with civilian or civilian officials, can be tried by court martial. The UN Committee against Torture has emphasised that State Parties should return jurisdiction from military courts to civil courts in all matters concerning civilians.<sup>112</sup> Similarly, the Human Rights Committee asserts that the jurisdiction of military courts should be restricted to offences which are strictly military in nature and which have been committed by military personnel.<sup>113</sup>

<sup>108</sup> Concluding Observations of the UN Human Rights Committee on the Initial Report of Uganda under Article 40 of the ICCPR, CCPR/CO/80/UGA, 4 May 2004.

<sup>109</sup> See UHRC Annual Report January 2002 - September 2002, available online at [www.uhrc.org](http://www.uhrc.org).

<sup>110</sup> *Violations of Human Rights by Government Agencies*, Speech by Chairperson of Uganda Human Rights Commission at a conference organised by the Ministry of Justice and Constitutional Affairs, 12 May 2004.

<sup>111</sup> See Human Rights Watch, *State of Pain: Torture in Uganda*, March 2004, Vol. 16 No. 4(A), page 49.

<sup>112</sup> UN Committee against Torture, Concluding Observations on the periodic report of Peru A/55/44, 16 November 1999.

<sup>113</sup> As an example, in its concluding observations on the periodic report of Egypt, it considered that "military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties". See UN Human Rights Committee, Concluding Observations on the periodic report of Egypt, CCPR/C/79/Add.23, 9 August 1993.

## □ Adequate reparations

The specific right of torture victims to reparation is not explicitly recognised in domestic law. Torture survivors can claim reparations through administrative and civil proceedings. Lawyers can seek redress for torture victims under tort law in civil proceedings. The High Court, the magistrates court (Grade 1 and Chief Magistrate), the High Court and the UHRC are competent to award reparations to torture survivors. However, contrary to international standards, reparation (when awarded) has been only in the form of symbolic monetary compensation.

In 1987, the Uganda Law Review Commission was reportedly working on a project to introduce compensation for victims of crime.<sup>114</sup> Rehabilitation services for victims are generally lacking in Uganda. Some NGOs, such as the African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) exist but are under-resourced.

Approximately 50 complainants have been awarded damages against the Attorney General for violations of the right to life, right to liberty and freedom from torture. The total amount awarded against the Attorney General in all the complaints is approximately seven hundred million Ugandan shillings but the Government has not yet paid most of that sum.<sup>115</sup> More recently, torture victims are referred by the UHRC to the ACTV, to receive medical attention. The UN Human Rights Committee has recommended that the Ugandan Government to ensure the full independence of the UHRC and to guarantee that decisions of the Commission are fully implemented, in particular those concerning awards of compensation to victims of human rights violations and prosecution of human rights offenders.<sup>116</sup>

### **What legal and practical steps can lawyers take?**

- Under Article 55 of the African Charter, submit a communication on behalf of torture survivors to the African Commission concerning the failure of the Ugandan government to provide effective remedies and adequate reparations (i.e. through lack of effective investigations and prosecutions of perpetrators of torture);
- Consider strategic litigation, for example, by claiming reparations for torture victims that have a strong case under civil proceedings and thereby establish a judicial precedent on the award of reparations to torture victims;
- Consider feasible proposals to obtain enforcement of orders made by the UHRC tribunal, such as judicial enforcement of UHRC orders.

<sup>114</sup> See UN Core Document on Uganda, HRI/CORE/1/Add.69, 7 March 1996.

<sup>115</sup> *Violations of Human Rights by Government Agencies*, Speech by Chairperson of Uganda Human Rights Commission at a conference organised by the Uganda Ministry of Justice and Constitutional Affairs, 12 May 2004.

<sup>116</sup> Concluding Observations of the UN Human Rights Committee on the Initial Report of Uganda under Article 40 of the ICCPR, CCPR/CO/80/UGA, 4 May 2004.

## **Annex 1**

### **Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman OR Degrading Treatment or Punishment in Africa**

The African Commission on Human and Peoples' Rights, meeting at its 32nd ordinary session, held in Banjul, The Gambia, from 17th to 23<sup>rd</sup> October 2002;

Recalling the provisions of:

Article 5 of the African Charter on Human and Peoples' Rights that prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;

Article 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation;

Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

**Recalling** further its Resolution on the Right to Recourse Procedure and Fair Trial adopted during its 11th ordinary session, held in Tunis, Tunisia, from 2nd to 9th March 1992;

**Noting** the commitment of African States to ensure better promotion and respect of human rights on the continent as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa;

**Recognising** the need to take concrete measures to further the implementation of existing provisions on the prohibition of torture and cruel, inhuman or degrading treatment or punishment;

**Mindful** of the need to assist African States to meet their international obligations in this regard;

**Recalling** the recommendations of the Workshop on the Prohibition and the Prevention of Torture and Ill-treatment, organised jointly by the African Commission and the Association for the Prevention of Torture, on Robben Island, South Africa, from 12th to 14th February 2002;

1. Adopts the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

2. Establishes a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.

**3. Assigns** the following mandate to the Follow-up Committee:

- To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders;

- To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels;
- To promote and facilitate the implementation of the Robben Island Guidelines within Member States;
- To make a progress report to the African Commission at each ordinary session;

**4. Urges** Special Rapporteurs and Members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate;

**5. Encourages** States parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines;

**6. Invites** NGOs and other relevant actors to widely disseminate and utilize the Robben Island Guidelines in the course of their work.

*Done in Banjul, The Gambia, 23rd October 2002*

## **GUIDELINES AND MEASURES FOR THE PROHIBITION AND PREVENTION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN AFRICA**

### **THE ROBBEN ISLAND GUIDELINES**

#### ***Preamble***

**Recalling** the universal condemnation and prohibition of torture, cruel, inhuman and degrading treatment and punishment;

**Deeply** concerned about the continued prevalence of such acts;

**Convinced** of the urgency of addressing the problem in all its dimensions;

**Recognising** the need to take positive steps to further the implementation of existing provisions on the prohibition of torture, cruel, inhuman and degrading treatment and punishment;

**Recognising** the importance of preventive measures in the furtherance of these aims;

**Recognising** the special needs of victims of such acts;

**Recalling** the provisions of:

- Art. 5 of the African Charter on Human and Peoples' Rights which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;

- Art. 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;

- Arts. 3 and 4 of the Constitutive Act of the African Union by which States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

**Recalling** further the international obligations of States under:

- Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;

- Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;

- Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

**Declaration** and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa to ensure better promotion and respect of human rights on the continent;

**Desiring** the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard;

The “**Robben Island Workshop on the Prevention of Torture**”, held from 12 to 14 February 2002, has adopted the following guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment and recommends that they are adopted, promoted and implemented within Africa.

## **PART I: PROHIBITION OF TORTURE**

### **A. Ratification of Regional and International Instruments**

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:

- a) Ratification of the Protocol to the African Charter of Human and Peoples' Rights establishing an African Court of Human and Peoples' Rights;
- b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognizing the competency of the Committee to conduct inquiries pursuant to Article 20;
- c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;
- d) Ratification of or accession to the Rome Statute establishing the International Criminal Court.

### **B. Promote and Support Co-operation with International Mechanisms**

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.

3. States should co-operate with the United Nations Human Rights Treaty Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

### **C. Criminalization of Torture**

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.
5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.
6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.
7. Torture should be made an extraditable offence.
8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.
9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
10. Notions such as “necessity”, “national emergency”, “public order”, and “ordre public” shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.
11. Superior orders shall never provide a justification or lawful excuse for acts of torture, cruel, inhuman or degrading treatment or punishment.
12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.
13. No one shall be punished for disobeying an order that they commit acts amounting to torture, cruel, inhuman or degrading treatment or punishment.
14. States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.

#### **D. Non-Refoulement**

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

#### **E. Combating Impunity**

16. In order to combat impunity States should:
  - a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process;
  - b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law;
  - c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards;
  - d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody;
  - e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

#### **F. Complaints and Investigation Procedures**

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.

18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.

19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).

## **PART II: PREVENTION OF TORTURE**

### **A. Basic Procedural Safeguards for those Deprived of their Liberty**

20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:

- a) The right that a relative or other appropriate third person is notified of the detention;
- b) The right to an independent medical examination;
- c) The right of access to a lawyer;
- d) Notification of the above rights in a language, which the person deprived of their liberty understands;

### **B. Safeguards during the Pre-trial Process**

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.

23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

24. Prohibit the use of incommunicado detention;

25. Ensure that all detained persons are informed immediately of the reason for their detention.

26. Ensure that all persons arrested are promptly informed of any charges against them.

27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.

28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.

29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.

30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.

31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

### **C. Conditions of Detention**

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners;
34. Take steps to improve conditions in places of detention, which do not conform to international standards.
35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.
36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.
37. Take steps to reduce overcrowding in places of detention by, inter alia, encouraging the use of non-custodial sentences for minor crimes.

### **D. Mechanisms of Oversight**

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary;
39. Encourage professional legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.
40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.
41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights;
42. Encourage and facilitate visits by NGOs to places of detention.
43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.
44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

### **D. Training and Empowerment**

States should:

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups;
46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

#### **F. Civil Society Education and Empowerment**

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.
48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

#### **PART III: RESPONDING TO THE NEEDS OF VICTIMS**

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.
50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:
- a) Offered appropriate medical care;
  - b) Have access to appropriate social and medical rehabilitation;
  - c) Provided with appropriate levels of compensation and support;
- In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

ORIGINAL.

POLICE FORM 3

UGANDA POLICE

**MEDICAL EXAMINATION REPORT**

TO:

C.F.No. \_\_\_\_\_

THE MEDICAL OFFICER,  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Police Station

**20**

Please examine \_\_\_\_\_

who is the accused/complainant \*in a \_\_\_\_\_ case and has been

sent to you on the \_\_\_\_\_ **20** Please furnish a report as soon as possible  
using the reverse side of this form. The duplicate should be retained.

It is particularly requested that you should distinguish between the degrees of injury which are quoted from the Penal Code (Cap. 22 section 4) as a footnote overleaf. A note as to the kind of weapon by which any injury (or injuries) may have been inflicted should be made; in the case of suspected alcoholism reasons for the conclusions reached should also be given under "Remarks".

Signature \_\_\_\_\_

Rank \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_

Delete whichever is not applicable.

(P.T.O.)

Nature of each injury, whether cut, wound or bruise	On what part of the body inflicted	Size of each injury in inches (length, breadth and depth)	Classification

REMARKS:

Date \_\_\_\_\_

Signature \_\_\_\_\_

Designation \_\_\_\_\_

**Notes**—"Harm" means any bodily hurt, disease or disorder, whether Permanent or temporary.  
 "Grievous Harm" means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely so to injure health or which extends to permanent disfigurement or to any permanent injury to any internal or external organ, membrane or sense.  
 "Dangerous Harm" means harm endangering life.  
 "Maim" means the destruction or permanent disabling of any external organ, membrane or sense.

Printed by Q.M. D.M.

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
MISC. CAUSE (H ABEAS CORPUS) 8/91  
IN THE MATTER OF S.33 OF THE JUD. ACT. 1967  
A N D  
IN THE MATTER OF ROBERT KATO AND STEPHEN KULUBYA

R U L I N G

This application is brought under the provision of Sec.33 of the Judicature Act. of 1967 read together with the Judicature (Habeas Corpus) Rules 1972. The application is by way of Motion on Notice provided for under Rule 1(b) of the Judicature Habeas Corpus Rules, 1972.

The application is supported by an affidavit sworn to by Joseph Saku, Managing Director of Kinafe United Millers of Kampala, employers of the applicants dated 26/6/91.

The Learned Counsel for the applicants submitted that the facts disclosed in the affidavit show a *prima facie* case to justify the Court to grant the application for a Writ of Habeas Corpus ad Subjiciendum to issue directing the officer, i/c Bombo Police Station in Luwero District to produce the bodies and persons of the applicants Robert Kato and Stephen Kulubya to the Court on a date and time to be determined by the Court.

He also prayed the Court to direct that a return be made by the said officer showing the circumstances the applicants are being detained and restrained at Bombo Police Station.

...../2

Having heard the Learned Counsel and reading through the affidavit in support of the Notice of Motion made ex-parte; a prima facie case has been disclosed to justify granting of this application for a Writ of Habeas Corpus ad Subjiciendum to the officer i/c Bombo Police Station in Luwero District.

The said officer is to produce the bodies and persons of Robert Kato and Stephen Kulubye on the 22nd of July, 1991.

The said officer is also directed to make a return to show under what circumstances the said Robert Kato and Stephen Kulubye are being held and detained.

Costs in the cause.

Order accordingly.

A. R. SOLUADE

AG. J U D G E

9/7/91

Mr. G. O. Emesu for Applicants

**Annex 4**

**PETITION AGAINST TORTURE IN SAFE HOUSES**  
**THE UGANDAN CIVIL SOCIETY DECRY TORTURE IN SAFE HOUSES**

**To: The Speaker,  
The 7<sup>th</sup> Parliament.**

The African Center for Treatment and Rehabilitation of Torture Victims in conjunction with other human rights organizations in Uganda are organizing activities to mark the 7<sup>th</sup> UN International Day in Support of Victims of Torture to take place on 26 June 2004.

We the civil society in Uganda are concerned about the continued existence of torture in Uganda that exerts physical, psychological and emotional pain to the victims and their relatives leaving them traumatized, degraded and helpless.

Uganda is one of the countries where torture still takes place notwithstanding the fact that Uganda has been a signatory to the UN Convention Against Torture since November 1986 and also the fact that the Constitution of Uganda expressly prohibits torture. Most of the cases of torture take place in safe houses.

**Your signature on this petition will demonstrate your support for the eradication of torture in safe houses.**

NO:	NAME	DISTRICT	SEX-m/f	SIGNATURE
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