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AFRICAN CENTRE FOR TREATMENT AND REHABILITATION OF TORTURE VICTIMS

TORTURE PREVENTION AND ACCOUNTABILITY IN UGANDA

JOINT ALTERNATIVE REPORT

**Submitted in application to Article 19 of the UN Committee Against
Torture and Cruel, Inhuman or Degrading Treatment or Punishment**

At the 75th session of the UN Committee Against Torture for the
examination of Uganda

UGANDA

2022

CIVIL SOCIETY ORGANIZATIONS PRESENTING THE REPORT

THE AFRICAN CENTRE FOR TREATMENT AND REHABILITATION OF TORTURE VICTIMS (ACTV)

African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) was established in 1993 and is the pioneer provider of rehabilitation services to survivors and victims of torture in Uganda. It is licensed by the Ministry of Health to operate a medical referral centre that provides physical and psychological care that supports the process of rehabilitation of survivors and victims of torture by state and non-state actors. ACTV is currently the Chair of the Coalition Against Torture in Uganda which was instrumental in the passing of the Prevention and Prohibition of Torture Act or Anti-Torture law through a Private members bill in 2012, and the passing of the Prevention and Prohibition of Torture Regulations of 2017 by the Ministry of Justice and Constitutional Affairs. ACTV is also accredited to the International Rehabilitation Council for Torture Victims (IRCT), a grouping of 160 torture treatment centres in 76 countries around the world. Besides, ACTV has been given the mandate to train the police, the military and prison staff, and it plays an important role in training relevant people, mainly legal and medical officers, on the Istanbul Protocol guidelines, the internationally agreed set of best-practice standards that States must follow in investigating torture and by which health and legal professionals should evaluate allegations of torture, document the cases of survivors and produce quality evidence. We also train health workers, the media and the general public, the latter by way of outreach in communities. ACTV has a holistic approach to rehabilitation because torture has both physical and psychological effects. We combine various disciplines including physical and psychological support, medical treatment, social work and legal redress. We operate two medical centres, one in Kampala and one in Gulu, with highly specialised clinical staff, M&E units and a programme management team. We also have a field office in Kasese and in the Karamoja sub-region, in particular Kaabong district,

ACTV Vision: *A world free from torture.*

ACTV Mission: *To advocate against torture, gender-based violence and other forms of violence, and provide holistic care to survivors.*

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INTERNATIONAL ORGANIZATIONS ASSISTING THE PRODUCTION AND ENDORSING THE REPORT

INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS (IRCT):

As a network of some 160 torture rehabilitation centers across 76 countries, we are the world's largest membership-based civil society organization providing rehabilitation to victims, preventing torture, increasing access to justice and fighting impunity. Our membership supports more than 50,000 torture victims each year to rebuild their lives through holistic medical, psychological, socio-economic and legal rehabilitation.

We help victims tell their stories whether through forensic evidence or by documenting patterns and practices of torture in society, providing an evidence-base for legal, judicial, public and social advocacy. Our network is diverse, but we have a common commitment. Every member is rooted in civil society; each provides services to at least 50 torture victims annually; and each is dedicated to sharing its experiences with others. Together, we are a movement working in solidarity to advocate for the rights of victims, to shine a light on torture wherever it occurs and to end it.



WORLD ORGANIZATION AGAINST TORTURE (OMCT):

OMCT is the main coalition of NGOs fighting against torture and ill-treatment. Its movement has more than 200 local organizations, members of the SOS-Torture Network and active in more than 90 countries around the world. Motivated by the needs of its members, OMCT works in all areas of work against torture - prevention, fight against impunity, direct assistance, rehabilitation, reparation and protection - for victims and their families, for human rights defenders so that everyone can live in a world free from torture. OMCT is an independent, non-political and non-denominational international NGO, founded in Geneva in 1985. Its international secretariat is based in Switzerland, and it has offices in Tunisia and Belgium. OMCT is also a member of the European Mechanism for the Protection of Human Rights Defenders at Risk and enjoys consultative status with the United Nations Economic and Social Council (ECOSOC) and the African Commission on human and people's rights (ACHPR).



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LEGISLATIVE FRAMEWORK AGAINST TORTURE AND ILL-TREATMENT

Uganda has an elaborate and comprehensive legal framework against torture.

International Level

The 1948 Universal Declaration of Human Rights (UDHR) under Article 5 and the 1966 International Covenant on Civil and Political Rights (ICCPR) under Article 7 stipulate that no one shall be subjected to cruel, inhuman or degrading treatment or punishment. Uganda ratified the 1984 Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) in 1987.

Regional Level

The 1981 African Charter on Human and Peoples' Rights under Article 5 prohibits all forms of torture, cruel, inhuman and degrading treatment against any individual. Similarly, the 1989 Convention on the Rights of the Child (CRC) (Art. 37(a) requires state parties to ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

National Law;

Article 24 of the 1995 Constitution of the Republic of Uganda provides that no person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment and Article 44 stipulates that there shall be no derogation from enjoyment of the right to freedom from torture, cruel, inhuman or degrading treatment or punishment. This is also provided for under the Prevention and Prohibition of Torture Act (PPTA) 2012 (and the PPTA Regulations 2017) and the Human Rights Enforcement Act 2019. The national laws are comprehensive and comply with the standards enshrined in the UNCAT. PPTA expands the definition of torture to include persons acting in private capacity as perpetrators of torture. However, there is a gap in giving effect to UNCAT Article 10 into the PPTA. The State does not have structured trainings and information sharing that are specific to torture among law enforcement officers, medical personnel or public officials.

The Anti-Terrorism Act, 2002 (Section 21(e) also criminalizes the engagement in torture, inhuman and degrading treatment, illegal detention or intentionally causing harm or loss to property, by any authorized officer.

PATTERNS OF TORTURE AND ILL-TREATMENT IN UGANDA

Despite a robust legal framework, prohibiting torture and providing for prevention and reparation measures, torture continues to be frequently practiced in Uganda. The following overview of torture and ill-treatment practices is based on data collected by:

1. ACTV, through its rehabilitation clinic for torture survivors where more than 1,000 survivors are supported each year.
2. The Uganda Human Rights Commission, through its ongoing human rights monitoring and its mandate to receive individual complaints of human rights violations.

While this data does not capture all persons who are tortured and ill-treated in Uganda, it does provide a useful indication of what are the main patterns in terms of perpetrators, motives, specific torture practices and the damage caused.

According to the 24th Annual Report of the Uganda Human Rights Commission, the right to Freedom from Torture and Cruel, Inhuman, Degrading Treatment or Punishment remains the most violated human right in Uganda. Torture accounted for 37% of the total cases registered by the Commission in 2021.

Who are the perpetrators?

According to the UHRC 24th Annual Report, 2021, security agencies had the highest number of complaints lodged against them, with a substantial increase in 2021 as compared to 2020. The highest number of complaints registered against the Uganda Police Force (UPF) involved the alleged violation of the right to personal liberty with 200 complaints, up from 111 in 2020, followed by the alleged violation of the right to freedom from torture with 107 complaints. The highest number of complaints reported against the Ugandan Army (UPDF) involved the violation of the right to freedom from torture (80), followed by the alleged violation of the right to personal liberty (33).¹

In 2021, ACTV registered 1,032 torture allegations from Ugandans seeking health and legal assistance. The data collected by ACTV confirms that the main State perpetrators are the Ugandan army and police force. In addition, there is a significant number of cases where the perpetrator is a private individual. These include cases of mob “justice” and land disputes.

	Main perpetrator groups				
Category	2018	2019	2020	2021	TOTAL
Army (UPDF)	257	569	426	370	1,622
Uganda Police	327	451	170	126	1,074
Persons acting in Private capacity	103	394	104	166	767

¹<https://www.uhrc.ug/download/24th-annual-report/?wpdmdl=1696&refresh=6311b11a7fb981662103834>

Perceived motives for torture?

When asked what survivors believed to be the perpetrators' motivation for torturing them, the most common explanations presented by survivors were intimidation (194), punishment (188), election-related violence (162) and forced confession (78), while a very high number were also tortured by the Uganda Army in the context of the disarmament process (196). The disarmament process is a UPDF-led operation in the Karamoja region to remove illegal guns from civilians. In this context, ACTV has documented a high number of incidents where persons suspected to have guns are arrested and tortured for them to surrender the guns².

What practices were used?

In general, a wide range of torture practices were used. 90% of survivors reported to have experienced physical torture including blunt trauma, hereunder beating, kicking and slapping ('telephone slapping', a jargon used to imply slapping towards both ears). Survivors also reported having suffered gunshots, nail plucking, exposure to burns, being tied and fixed in stressful positions, exposed to poor conditions of detention (unhygienic, overcrowded, and lack of toilet facilities). Some allegations also included sexual torture methods as, for example, genital manipulation, forced nakedness, and sexual violence.

There were also survivors who allege to have experienced psychological torture. The common forms reported were being held incommunicado detention for days, blindfolding, continuous threats and intimidation, denial of sleep, public humiliation, being put in solitary confinement, behavioral coercion (forced to perform taboos, forced to do violence against another person) and threats of loss of loved ones.

Many of the survivors suffered more than one form of torture method, as one of the survivors said: *"During my torture I was told to lie down and was beaten 15 strokes on the buttocks so as to accept the allegations made. When I refused to accept, I was hit with a stick on the back by a soldier while the other got hold of my testicles and pressed hard. I screamed but he covered my mouth with his palm and I was immediately blindfolded. I was then hit with a gun butt to my head then picked up and taken to a pickup vehicle where the fold was removed and I was driven away."*

What were the consequences of torture?

There were also a big number of survivors that presented with chest pain and abdominal pain, all related to traumatic beating. Furthermore, some survivors who had been long in prison, and others whose torture incidences had happened a month and above by the time of documentation, had developed scars resulting from lesions and wounds that had been sustained during torture.

² <https://www.independent.co.ug/karamojong-women-decry-torture-by-security-forces-rustlers/>

In addition, some survivors presented with very severe effects of torture that were physical trauma such as one who had an amputated limb after a burn by a tear gas canister, fractures as a result of continued beating and kicking, dislocations, dental injuries (broken teeth), traumatic injuries to the ears with suspected ear drum perforations, which were in line with allegations of having been slapped on both ears at the same time, and sexual dysfunction in form of erectile dysfunction which was reported in those that alleged genital manipulation. The physical effects were coupled with long term psychological effects that included; Post-Traumatic Stress Disorder, Major Depression including suicidal tendencies, Anxiety Disorders, and behavioral changes. Further, victims suffered social economic effects that included; loss of livelihood, unemployment, discrimination and stigmatization, and family breakdown.

In 2021, 1,032 survivors presented with physical effects and were offered medical treatment, 175 presented with psychological effects, and 227 with social effects and were offered mental health services and social support respectively.

COVID-19 pandemic and enforcement of the measures and guidelines

The enforcement of the COVID-19 Standard Operating Procedures and enforcement of the presidential directives by security agencies resulted in high levels of allegations of torture and ill-treatment. ACTV between 2020 and 2021 documented 166 cases arising from torture and ill-treatment during the enforcement of these guidelines and, similarly, the UHRC received 124 complaints of torture out of the 164 cases registered in 2020. The victims included activists and politicians who demanded social equality during the pandemic³, and those persons in the general community that were found breaching the guidelines. Law enforcement, that included Uganda Police Force, Local Defence Units (LDU), and Army used brutal means like beating, shooting, and other cruel acts like rolling persons in mud while enforcing the COVID-19 guidelines⁴.

The 2021 General Elections

The 2021 National General Elections came at a time when the country was still experiencing the COVID-19 pandemic and its effects. This posed a challenge to the State and political actors as they had to ensure that campaigns and elections were conducted amidst the requirement to observe the COVID-19 guidelines in order to curb the spread of the pandemic. This resulted in reports of alleged rampant brutalities and often alleged torture incidents. The General Elections were therefore characterized by numerous incidences of alleged torture and ill-treatment. From January 2021 to May 2022, ACTV offered rehabilitation services to 279 cases of torture arising from election-related violence. The main alleged perpetrators were the Army (UPDF), Police, and political leaders. The most affected with torture during

³ <https://www.monitor.co.ug/uganda/news/national/dr-stella-nyanzi-bajjo-and-several-others-arrested-over-food-protest-1890628>

⁴ <https://monitor.civicus.org/updates/2020/08/31/continued-rights-violations-reported-throughout-covid-19-lockdown-and-run-national-elections/>

elections were the youths aged between 19 and 35 years, and mainly those who were supporters of opposition political parties. Journalists were also targeted as they covered political activities; for example a number of journalists were brutally beaten as the National Unit Presidential Candidate delivered a petition to the OHCHR in Uganda.

ARTICLE 11: MONITORING PLACES OF DETENTION

In Uganda, persons are deprived of liberty in prison facilities, police stations, police posts, remanded at home, military detention facilities and a number of ungazetted places of detention.

By December, 2021, the Uganda Prisons Service (UPS) had 259 prison facilities, grouped in 19 regions across the country, with a population of 67,318 prisoners against a holding capacity of 19,986. According to UHRC's 24th Annual report, the high prison population has resulted in limited access to bedding and sleeping space, poor health care with most of the prison health facilities having drug stock shortages⁵. Similarly, ACTV during its prison visits in 2018 and 2019, were informed that prisoners were sleeping in shifts, and others had to only use one side of their body to sleep an entire night. Further the prison medical facilities lacked drugs to treat sick inmates. Taken collectively, such conditions and treatment can amount to acts of ill treatment contrary to the UNCAT and international standards on treatment of detainees. The problem of overcrowding in prisons is primarily attributed to high numbers of prisoners in pre-trial detention. By December 2021, 34,847 inmates were on remand compared to 32,246 convicted prisoners. This is partly due to a tendencies to execute arrests and detention before the conclusion of criminal investigations. An example is the case of two Members of Parliament i.e. Hon. Seggirinya Muhamad and Hon. Sewanyana Allan whose cases have been adjourned several times because the State needs more time to prepare evidence and witnesses. This has led them to spend over one year on remand. Another reason is delays in the court system due to back logs.

From January 2016 to March 2020⁶, ACTV registered 2,334 survivors of torture during prison visits, most of whom had been tortured during arrests and interrogations by other security forces. The Uganda Prison Services have instituted some measures to prevent torture of inmates in its custody and these have significantly reduced torture incidence within prisons. However, there still existed a case of ill-treatment; specially beating of inmates by Katikiros (leader appointed among inmates) during manual work. This is more pronounced at Prison farms like Muinaina Prison, Loro Prison Farm among others. Further, prison warders use acts like isolation and caning as disciplinary measures for inmates who are believed to have violated the prison rules.

Uganda continues to use illegal, ungazetted, and unsafe detention places. According to the November 2019 Report of the Committee of Parliament on Human Rights on

⁵ 24th Annual Report Uganda Human Rights Commission 2021

⁶ Since March 2020, ACTV has been granted permission in August 2022 to access places of detention

Alleged Torture in ungazetted Detention Centres in the Country, several victims testified before the Committee to having been tortured in these centres, commonly known as 'safe houses', that were operated by the Internal Security Organisation (ISO). Between the years 2018 – 2020, ACTV registered 33 survivors alleged to have been tortured in various ungazetted places of detention. Furthermore, in the aftermath of the 2021 General Elections, several citizens came out to declare that their family members had gone missing and could not be traced in any of the legal, gazetted and known places of detention. Some of these persons have later resurfaced and eventually gave account of having been held and detained in some unknown and unusual places.

Research conducted by ACTV in 2022 on Prevention of Torture and Ill-Treatment in Places of Detention (police cells and prisons) found that these detention places have mechanisms that would help in identification of torture. The Prison Act and its regulations prohibit prison officers from using acts of torture. Human rights committees are supposed to identify and report human rights violations including torture to prison authorities. Initial medical assessments are meant to screen all incoming prisoners for signs of torture, and orientation of prisoners and feedback sessions between the inmates and prison warders are intended to create a less violent environment in prisons. However, personnel in these places lacked the capacity in terms of knowledge, skills and human resource to effectively implement these mechanisms. ACTV research indicated that most of the human rights committees were nonfunctional because of limited knowledge and skills of members on identification of human rights violations. It was noted that initial medical assessment of prisoners was not done in some prisons, and in prisons with low level cadres of health workers e.g. enrolled nurses, they lacked the necessary rigor to identify signs of torture. This limited the intended preventive effects of these initiatives.

The 1995 Constitution under Article 52(b) gives a mandate to the UHRC to visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations. It is currently the only body with such a mandate and other institutions, including NGOs such as ACTV that carry out detention monitoring, have to first seek permission from the Uganda Prisons Services. This makes the monitoring much less effective because it gives an opportunity for perpetrators to control access and hide evidence of torture and ill-treatment.

In 2021, the UHRC conducted 611 inspection visits to places of detention which included 312 Police stations, 200 Police Posts, three remand homes and three military detention facilities, and 93 Prison facilities (out of the 259). While this is overall a high number of visits, it means that only 36% of prisons were inspected that year leaving a very large part of the prison population without the crucial protection provided by the UHRC monitoring visits.

While the UHRC has a robust detention monitoring mandate, Uganda has still not ratified the Optional Protocol to Convention Against Torture (OPCAT) or established a National Preventive Mechanism (NPM). This presents a number of concrete problems in preventing torture and ill-treatment in places of detention. First, the absence of OPCAT ratification means that there is no complementary international monitoring and guidance on preventing torture in places of detention. This is an important element in ensuring quality and consistency in national detention monitoring. Second, the absence of a NPM means that in practice the UHRC detention monitoring is insufficient in ensuring continued and effective monitoring of all detention places in the country. The authors of this report believe that a dedicated NPM would provide a more robust structure and process for ensuring that there are sufficient resources and specialized staff to regularly monitor all places of detention in Uganda.

Recommendations

1. Ratify the Optional Protocol to the Convention Against Torture and other forms of cruel, inhuman, degrading treatment (OPCAT) in order to ensure that monitoring of places of detention is conducted in accordance with international standards and best practice.
2. Establish a National Preventive Mechanism in accordance with the standards in the OPCAT and ensure that it has the necessary mandate, budget and technical expertise to effectively monitor all places of detention in Uganda.
3. Reduce overcrowding by 1) limiting the use of detention on remand in criminal investigations by investing into modern investigation and criminal intelligence technology and methods so that substantial evidence is collected before instituting criminal charges on a person; 2) reducing the time between arrest and conduct of criminal trials; 3) respect the constitutional time of a maximum of 180 days a person can be on remand, and 4) increasing the budget for the Uganda Prisons Service and the Uganda Police Force to build better detention structures that have the necessary capacity and conditions suitable for human habitation; and strengthen alternative dispute resolution mechanisms including mediations, arbitration, negotiation, and plea bargains-
4. Abolish all secret ungazetted detention facilities and ensure that all detainees are held in gazetted places of detention by making detention records obligatory.
5. Train health workers in all places of detention on initial medical examination and identification of signs of torture and put in place proper guidelines on treatment and rehabilitation of survivors.
6. Promote the effective functioning of human rights committees within prison facilities by ensuring that they are fully constituted, trained in identification of human rights violations including torture and ill-treatment, and have available an alternative reporting channel apart from the officer in charge of a given prison.

ARTICLES 12-13: DOCUMENTATION, INVESTIGATION AND PROSECUTION OF TORTURE

The 1995 Uganda Constitution provides for the establishment of the Office of the Director of Public Prosecutions (ODPP) aimed at directing the police to investigate any information of a criminal and to institute criminal proceedings against any person or authority in any court with competent jurisdiction. In addition, the Constitution also establishes the Uganda Human Rights Commission under Article 51 with the duty to investigate, at its own initiative or on a complaint made by any person or group of person against the violation of any human right under Article 52 (a).

Section 4 of the Prevention and Prohibition of Torture Act, 2012 criminalizes torture and is operationalized by the PPTA Regulations of 2017. Part II of the regulation provides a detailed procedure for how to investigate allegations, complaints or other indications that torture or ill-treatment has taken place.

In 2019, ACTV conducted field investigations and collected evidence in the six cases of torture listed below, and these were referred to the ODPP for prosecution, but to date, no action has been taken.

1. Uganda Vs A1 Mugondi William & A2 Kasirye Raphiel KST-CR-CA-49/2019 CRB 690/2019
2. Criminal Case No. JJA CRB 249/2016 Uganda Vs Katetei Kenneth and others
3. KMP/GEF/32/2018 Case filed by Lutaaya Mohammed (ACTV/K/2191/2019)
4. Uganda Vs ASP Mukubwa Kenneth D/ASP & Namulondo Eva Criminal Case 0363/2018 (ACTV/K/1872/2019)
5. CRB 526/2018 arising from SD 02/27/05/2018 - Katumba Richard (now deceased)
6. SD 56/12/4/2019 Kira Road Police Station (Okodi Collins)

Furthermore, two cases were lodged for an opposition Member of Parliament who was tortured for allegedly violating the COVID-19 guidelines when he distributed food supplies to members of his constituency (as determined in the civil matter)⁷. However, the criminal case⁸, which was instituted by ACTV, was taken over by the ODPP, in accordance with Article 120 (c) and subsequently discontinued as under Article 120 (d) of the Uganda Constitution⁹. Although the Member of Parliament was awarded compensation for being tortured in the civil case, the criminal case was not pursued.

In general, torture cases brought as civil cases are more likely to reach the courts and be seriously considered by judges.

⁷ Hon. Zaake Francis Vs A.G & 7 Others HCCS Miscellaneous Cause No.85 /2020 (Plaintiff awarded UGX 75M)

⁸ Uganda Vs Kagarura Bob, Mwine Alex Mukono, Twesigye Hamdan, Elly Womanya, Walugembe Musa and Oketcho Isaac. Criminal Case No. 2020 of 2020 (Complainant Hon. Zaake Francis)

⁹ Application by ODPP granted on 18th August, 2020.

In **Behangana and Another v the Attorney General**¹⁰ court held that the assault on the petitioners during arrest and while in police custody contravened Article 24 of the Constitution.

In **Issa Wazembe Vs Attorney General**¹¹, the court held that freedom from torture is a non-derogable right under the constitution and awarded UGX 50,000,000/= (Fifty million Uganda Shillings / EUR 13,000) for the illegal detention and UGX 15,000,000 (Fifteen million Uganda Shillings / EUR 4,000) as punitive damages against the defendant for the gross violation of human rights under the Constitution.

In **Bikyahaga-Namata V Attorney General**¹², the Court held that the Constitution under Article 22 and 24 respectively guarantees and protects the life of every citizen in this country as well as the right against torture, degrading and inhumane treatment.

And finally, in **George Kiggundu V Attorney General**¹³; the court held that the plaintiff proved to court that he suffered physical injuries due to torture and was awarded UGX 50,000,000/=.

These and many more cases demonstrates the inability of the ODPP to effectively investigate and criminally prosecute torture cases. Below are the key challenges as experienced by ACTV and its civil society partners.

The PPTA regulations are not implemented

The PPTA Regulations 2017, which provide guidelines for effective investigations and documentation of torture cases, are systematically not utilized by the respective State agencies. The Uganda Police still uses the Penal Code Act Cap 120 to record cases of torture as assault and documents the same using Police Form 3, which is designed to record assault cases. The PPTA regulation includes Form 4, which is specifically designed to document cases of torture based on the guidance provided by the Istanbul Protocol. The PPTA Regulations under Form 4 require a thorough and comprehensive examination including methods used both physical and psychological; it provide for the documentation of physical and psychological evidence of torture which is not provided for in Form 3 that used for documentation of assault. The police Form 3 continues to be used, it limits effective gathering of evidence for acts of torture and its effects (physical, psychological and social effects) which hinders access to justice for victims as it leaves prosecutors and judges with insufficient evidence to prove case of torture and award appropriate reparation and compensation awards.

¹⁰ (CONSTITUTIONAL PETITION NO. 53 OF 2010) (2015) UGCA 6 (12 October) 2015

¹¹ (Civil Suit No. 154 of 2016 [2019] UGHCCD

¹² (Civil Suit No 228 of 2008) [2019] UGHCCD

¹³ (CIVIL SUIT NO. 386 OF 2014) [2019] UGHCCD 189 (19 August 2019)

In addition to the flawed documentation, the use of Penal Code Act Cap 120 and Form 3 means that torture allegations are combined with the other approximately 30,000 assault cases each year making data collection on torture investigations impossible. This affects long term efforts to monitor the prevalence and root causes of torture in order to effectively end it.

Limited capacity to investigate

The relevant State authorities do not have the necessary capacity and training to investigate torture allegations in accordance with the standards in the PPTA Regulations 2017 and the Istanbul Protocol. Although ACTV has trained some State agencies including police, army, prisons, it has only reached out to a small number of those who should have this knowledge and expertise. The health workers recruited by police, army and prisons are general practitioners who do not have sufficient skills to investigate and document cases of torture. In the experience of ACTV, it is very rare that these health professionals deal with torture cases. According to the Directorate of Police Health Services 2021 Annual Report, medical legal services were offered in cases of postmortem and sexual and gender-based violence but there is no mentioning of torture cases¹⁴.

When they are faced with torture allegations, they generally fail to document according to national and international standards. For example, in the case of Mr. Kakwenza Rukirabasaija, on 13th January 2022, a court ordered a medical examination to be carried out by the prison authorities to determine the allegation of torture that had been put forward by his lawyer. The prison authority submitted a report on 20th January 2022, which was not comprehensive as the examiner never followed either Form 4 of the PPTA regulations or the Istanbul Protocol guidelines¹⁵.

Finally, the ODPP does not have the relevant health expertise to document the physical and psychological consequences of torture, which is crucial to proving that the crime took place and to determining reparations.

Protection of victims and witnesses

One of the main obstacles to investigation and prosecution is the reluctance of victims and witnesses to come forward and report torture to the authorities. While the Section 21 of PPTA provides for protection of victims and witnesses and there are separate guidelines on the topic, this has not reduced the fear of reporting abuses. Survivors of torture who report complaints whether through criminal or civil channels are required to present witnesses who record personal statements as part of evidence in support of the complaint. However, witnesses fear reprisals by perpetrators, and others fear to

¹⁴ <https://www.upf.go.ug/download/police-annual-medical-report-2021/>

¹⁵ <https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.exposeduganda.com%2Ffailed-author-kakwenza-was-tortured-uganda-prisons-medical-report%2F&psig=AOvVaw1syIWtNvbU00qZDklOt1r0&ust=1664527850052000&source=images&cd=vfe&ved=0CAwQjRxqFwoTCJiBgtTPufoCFQAAAAAdAAAAABAD>

associate with victims of torture as they are labeled criminals or antigovernment. Some potential witnesses are reluctant to take part in these processes for worry of their own security and their families especially if the perpetrators are high ranking government officers. Currently, the ODPP uses the Witness Protection guidelines in addressing some of the challenges brought by the absence of the law but the guidelines by themselves are not sufficient and are not available in the public domain for potential beneficiaries to know when and how they can effectively utilise them. The enactment of the Witness Protection Bill would greatly improve on the quality of evidence and chances of successful prosecution in cases of torture since in most cases, the survivors' narrations or torture allegations need to be corroborated or supported to prove the existence of torture.

The incidents of election violence and torture during the electoral period was coupled with fear among the victims to report cases of torture because of stigma and fear of reprisal from the perpetrators¹⁶. During the documentation of torture arising from the 2021 general election, ACTV engaged with more than 20 persons in the districts of Masaka, Mukona, Kampala, Gomba, and Mityana who alleged to have been tortured but refused to share their stories due to fear of reprisals.

Recommendations

1. The Uganda Police Force should adopt and effectively utilize the PPTA Regulations 2017 for effective documentation of all torture allegations to inform effective investigation. This must include the systematic use of Form 4 of the PPTA regulation in all instances where there are allegations or other indications that a person has been tortured.
2. The ODPP should exercise her mandate under article 120 of the 1995 Constitution of Uganda to institute prompt criminal prosecutions of all cases of torture in the country.
3. The State should train Criminal Justice Actors on the effective implementation of the PPTA 2012 and sanction official who do not follow the PPTA regulations when receiving complaints of torture.
4. The State should roll out the standards in the 2022 Istanbul Protocol in police training schools and medical schools to fill the gaps in effective documentation of torture by the Police Force and health workers.
5. The Ministry of Health should train health workers in effective documentation of torture using the 2022 Istanbul Protocol to increase accessibility and availability of documentation services for survivors of torture.
6. The State should enact the Witness Protection Bill into Law.

¹⁶<https://actvuganda.org/download/Publications/Awareness-on-documentation-of-torture-and-violence-during-the-general-elections.pdf>

ARTICLE 14: REPARATION AND REHABILITATION

Article 14 of the UN Convention Against Torture provides for the right to redress including rehabilitation for torture victims. General Comment 3¹⁷ by the UN Committee against Torture provides for the guidelines for the implementation of Article 14 of the UNCAT and defines the States' obligation in ensuring that all victims of torture are provided with the right to rehabilitation within the frame of international human rights law. In addition, General Comment 4 of the African Charter also provides for the right to reparation, which includes restitution, compensation, rehabilitation, satisfaction¹⁸, as also emphasized by Part III of the Robben Island Guidelines¹⁹ adopted by the African Commission in 2002.

Section 6 of the Prevention and Prohibition of Torture Act 2012 provides for the right to compensation, rehabilitation and restitution to all victims of torture as determined by a court of competent jurisdiction.

ACTV supports approximately 1,000 victims per year but based on our experience and outreach in communities this is only a small proportion of the total number of victims in the country. As outlined in the introduction, most victims suffer from a combination of serious physical injuries and long-term psychological trauma, which has devastating effects on their wellbeing, the socio-economic situation and on their relation with family and community.

A small proportion of victims manage to secure compensation awards through civil cases or complaints to the UHRC. Since 2015, the government through the Ministry of Justice and Constitutional Affairs, decentralized the payment of court/tribunal awards and compensation to line Ministries Departments and Agencies of governments (MDAs)²⁰. The MDAs are now charged with the payment of court/tribunal awards against them from their respective budgets. Complainants have to follow up on the payment of their compensation awards with the institutions against which the Commission's Tribunal made the compensation orders. As has been reported in the past three years by the UHRC, victims of human rights violations are still facing challenges claiming their compensation awards from institutions that the Courts and Tribunal ordered to pay. It has been noted that the major challenge is the long time (average of seven years) it takes for the victims to actually receive these awards. These undue delays in this regard have led to severe frustrations, psychological relapses and limited justice among the victims as envisioned under General Comment 3 of the UNCAT.

¹⁷ General Comment No. 3 (2012): Implementation of article 14 by State parties, CAT/C/GC/3, 12 December 2012

¹⁸ The Right to the truth and Guarantees of non-repetition.

¹⁹ Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), adopted at the 32nd ordinary session of the African Commission, Banjul, The Gambia, October 2002.

²⁰ Ministries, Departments and Agencies

With specific regard to torture victims, the Ministry of Justice and Constitutional Affairs paid UGX 640,221,000 (approximately 175,000 EUR) to 69 victims during the F/Y 2020/2021, and from the F/Y 2017/2018 to the F/Y 2020/2021, the Ministry of Justice and Constitutional Affairs has paid compensation awards to 518 victims of torture to a total of UGX 4,991,755,000 (approximately 1,350,000 EUR)²¹.

The State has not established any rehabilitation programme for torture survivors nor does it fund private institutions to provide this much needed support. This has left ACTV as the only organization in Uganda that provides comprehensive rehabilitation services. In 2017, the High Court in Kampala Uganda ruled that the 22 suspects in the case of Murder of AIGP Kaweesi were tortured in detention during interrogation and each was awarded 80 Million and ordered for rehabilitation. Even in this case of court ordered rehabilitation, the authorities requested that this be provided by ACTV without compensation. Although ACTV is doing her best with the resources available, it is far from able to support all torture victims in need of rehabilitation in the country.

Right to rehabilitation for refugees and asylum seekers

According to the UNCAT General Comment 3, para 22, “The Committee considers that the application of article 14 is not limited to victims who were harmed in the territory of the State party or by or against nationals of the State party. States therefore have an obligation to ensure that all victims/survivors of torture have access to rehabilitation services and programmes without discrimination and regardless of their identity or status, including asylum-seekers and refugees.”²²

Uganda is the largest refugee hosting country in Africa and the third in the world. According to UNHCR²³, as of 31 July 2022, there were 1,528,057 refugees in the country. Most refugees live in the districts of; Adjumani, Madi Okollo and Terego, Isingiro, Obongi, Kikuube, Kampala, Kyegegwa, Kamwenge, Kiryandongo, Arua, Koboko, Lawmo and Yumbe.

In a joint study with OMCT conducted in 2020 within the migration and torture working group in Africa, ACTV documented the experiences of torture and other ill-treatment amongst South Sudanese refugees in Bidi Bidi. It is estimated by service providers in the camp that between 80% and 90% of refugees living in the camp were survivors of torture. Migrants are screened upon arrival in reception centres, however, this screening is focused on the identification of individual’s “special needs” a category which does not specifically mention torture. Reception centre staff often lack adequate

²¹ <https://www.uhrc.ug/download/24th-annual-report/?wpdmdl=1696&refresh=6311b11a7fb981662103834>

²² Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 3 (2012), CAT/C/GC/3, at para 15.

²³ Data.unhcr.org accessed on 22 August 2022, Country – Uganda – UNHCR Data Portal

training and thus fail to categorise torture and its effects as ‘special needs’²⁴. Challenges were reported around information provision, with many migrants unaware that they were entitled to rehabilitative services and where these could be accessed.

There is also a lack of clear and well-designated referral pathway and communication systems, which would allow for cases of torture to be expertly and urgently referred and managed; and existing structures do not have the human resource capacity to respond to the needs of the sizeable population of tortured migrants. Respondents within government structures noted that reporting pathways exist, however only for forms of torture which fall within the Sexual and Gender-Based Violence Register issued by the Ministry of Health²⁵. Several research participants confirmed that the State provides migrant survivors of torture with only basic healthcare services, and the majority of the non-governmental actors who interact with migrants do not provide torture-specific assessments or services. Tailored, long-term rehabilitation services are not accessible to the vast majority of torture survivors. Whereas a handful of civil society actors provide specialised rehabilitation services to torture survivors, such as psychosocial support, these do not have the resources to meet the needs of all migrant survivors of torture, nor are they always able to attend to survivors promptly²⁶.

Recommendations

1. The Ministry of Justice should set up a victims’ compensation fund to ensure timely payment of compensation awards to all victims of torture and other human rights violations.
2. The State should enact a policy on comprehensive rehabilitation of survivors of torture in accordance with UNCAT General Comment 3 and ACHPR General Comment Number 4. This should include the establishment of a country wide rehabilitation programme with an adequate budget, availability to all victims of torture and continuous monitoring of its accessibility and effectiveness.
3. The State should introduce a curriculum on the identification and proper treatment of survivors of torture in all health providers trainings and put in place mechanisms for the early identification of torture survivors to ensure timely provision of rehabilitation services.
4. Uganda should fully observe Principle 5 of the UN Migration Principles and Guideline on Border Governance to ensure that all border governance measures protect human rights including freedom from torture and ill treatment and provision of adequate immediate assistance for victims of torture²⁷.

²⁴ The Torture Roads: The Cycle of Abuse against People on the Move in Africa at page 34. <https://www.omct.org/site-resources/files/The-Torture-Roads.pdf>

²⁵ The SGBV reporting pathway was developed by UNHCR, the Office of the Prime Minister and nongovernmental organisations which support victims of SGBV. The Ministry of Health has incorporated a register into its information system in order to track cases of SGBV and to provide appropriate care.

²⁶ UNHCR (2020) “‘On this journey, no one cares if you live or die’ – Abuse, protection and justice along routes between East and West Africa and Africa’s Mediterranean Coast” p.13

²⁷

https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Princip

ARTICLE 16: PREVENTION, REDRESS AND REHABILITATION OF HUMAN TRAFFICKING

As well as being a significant host country for refugees, Uganda is a source, destination and transit country for trafficking in persons. People are trafficked into Uganda (including under the premise of receiving refugee status); trafficking occurs within Uganda, victimizing both refugee and local communities; and Uganda is also a corridor for transit of trafficked persons to other East African countries - such as Kenya - and outside Africa to Persian Gulf States and elsewhere. There is an issue of identification, documentation and prevention of trafficking in persons in the context of forced displacement, and particularly in refugees and asylum seekers in Uganda. Uganda has comprehensive laws and policies in place to address human-trafficking. The Ministry of Internal Affairs manages coordination of anti-trafficking response within its Coordination Office for the Prevention of Trafficking in Persons (COPTIP). There is a lack of clarity, however, regarding who holds the responsibility in documentation of trafficking in refugee populations, what information is gathered, or how it is shared. Some cases of trafficking do come to the Office of Prime Minister in charge of managing refugee status determination and documentation, particularly as Uganda's refugee acceptance policy provides some opportunity for trafficked people to be moved across borders under the guise of seeking asylum. When such cases are identified in refugee screenings, they are referred to legal authorities to proceed with investigation and prosecution.

The 2009 Prevention of Trafficking in Persons Act is described as both progressive and comprehensive in terms of its provisions, but duty bearers and front-line responders charged with its implementation lack comprehension and knowledge. The Office of the Directorate of Public Prosecutions (ODPP) has taken on an increasingly active role in investigations of trafficking cases and has found that approach to generate better cooperation and evidence, leading to more successful prosecution. ODPP has experienced documentation challenges where identification takes place through investigation of sexual crimes, or when cases are referred to the Department of Sexual Crimes because it is better capacitated to prosecute cases. As with the international humanitarian context described above, this probably results in an undercount of trafficking cases.

Lack of capacitation creates challenges for CSOs as well as government actors to effectively coordinate, including coordination across borders. Insufficient shelters and survivor support systems cause people who have experienced trafficking to drift away from participation in documentation, investigation and prosecution processes. Men may be particularly likely to disappear from documentation and justice processes, as there are fewer shelters or support services available to them, and few options for a family to receive support together. These capacity issues worsen in remote areas, meaning that trafficking is likely to be unevenly identified and documented across

Uganda.

The Uganda Ministry of Internal Affairs adopted National Referral Guidelines for Management of Victims of Trafficking with the launch of its second National Action Plan in July 2020. Despite progress in training and capacity building for identification and referrals, documentation of cases of trafficking among refugees and asylum seekers in Uganda is an ongoing challenge, due to a variety of factors. One has been the difficulty of screening in mass displacement contexts, where the responsible agents have limited screening capacity. Victims are frequently coached on evading detection through the screening system, which is particularly effective when they are not aware they are being trafficked or do not consider themselves to be victims of trafficking.

Additionally, the varied experiences of people on the move may include trafficking as well as smuggling; an experience of trafficking can lead to asylum seeking, and a person who has been granted refugee status may then be trafficked. This can complicate the screening and documentation process.

Recommendations:

1. Ongoing education and training of duty-bearers is necessary to properly identify and prevent trafficking. This includes training on identification of all acts of trafficking, including recruitment, transport, and harboring of victims. Duty-bearers may not be aware that family members and friends of the victim may be culpable in trafficking.
2. All duty bearers who interact with refugee communities require specialized training on how trafficking presents itself in local contexts.
3. Establish a victim-centred Data collection system that allows investigators to respect the agency of the person they are surveying and take care to avoid unnecessary or repetitive questioning that may risk re-traumatization.
4. Coordination between refugee protection systems and anti-trafficking authorities would improve identification and prevention of trafficking in Uganda.