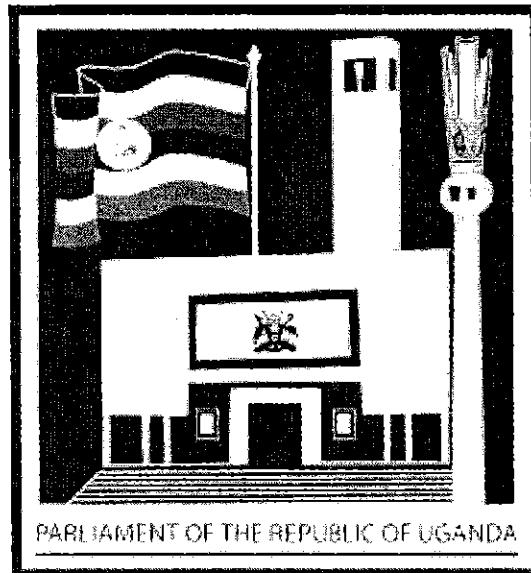


THE REPUBLIC OF UGANDA



REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE PREVENTION AND PROHIBITION OF TORTURE BILL, 2010

Office of the Clerk to Parliament
Parliament of Uganda
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KAMPALA

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REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE PREVENTION AND PROHIBITION OF TORTURE BILL, 2010

1.0 Introduction

The Prohibition and Prevention of Torture Bill, 2010 was read for the first time on 8th February 2012 and it was referred to the Committee of Legal and Parliamentary Affairs in accordance with Rules 112 and 113 of the Rules of Procedure of Parliament. This Bill was saved by the motion moved in this Parliament on the 28th October 2011 to save and retain bills which had been introduced in the 8th Parliament.

2.0 Methodology

In the process of analysing the Bill, the Committee discussed the Bill and received memoranda from the following stakeholders:

1. Attorney General
2. Ministry of Internal Affairs/Uganda Police Force/Uganda Prison Service
3. Ministry of Security/ISO/ESO
4. Uganda Human Rights Commission
5. Uganda Law Society
6. Uganda Law Reform Commission
7. Foundation for Human Rights Initiative
8. Representative of the United Nations Office of the High Commissioner for Human Rights
9. Coalition against Torture comprising Avocats San Frontiers, Kumi Human Rights Initiative, Refuge Law Project, Uganda Discharged

Prisoners Aid Society, African Centre for Treatment and Rehabilitation of Torture Victims, Associations of Human Rights Organisations in the Rwenzori Region, Human Rights Network Uganda and Human Rights Focus

The Committee also conducted study tours to the Republic of Burundi and Republic of the Philippines where the law on torture has been enacted and is being implemented.

3.0 Underlying Policy of the Bill

Uganda is a state party to several Regional and International Human Rights Instruments which prohibit torture. These instruments include among others the Universal Declaration of Human Rights 1948, the African Charter on Human and People's Rights, as well as the International Covenant on Civil and Political Rights. Specifically, Uganda ratified the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading treatment or Punishment in 1986.

Further to the accession to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading treatment or punishment, the 1995 Constitution of the Republic of Uganda under Article 24 provides for freedom from torture, cruel, inhuman and degrading treatment or punishment. This right is made non derogable under Article 44 of the Constitution.

4.0 Object of the Bill

The Object of the Bill is to bring into effect the obligation of Uganda as a state party to the various human rights instruments and particularly the United Nations Convention against Torture or Punishment. The bill seeks to provide a comprehensive definition of torture, make torture a criminal offence, provide sanctions including reparation for the offence of torture, regulate the use of information obtained by means of torture, provide for

compensation of victims of torture and provide for individual criminal and civil responsibility for the offence of torture.

5.0 General observations

The Committee observed that:

- (i) Torture is a prevalent vice in Uganda as evidenced in the reports of the Uganda Human Rights Commission. In its past Annual Reports, torture has remained the leading reported case of human rights violation. The Commission 314 cases in 2009 and 276 in 2010 accounting for 28.3% of the complaints received. The Commission also reported that of the top five complaints registered in the last four years torture has remained the lead violation of human rights. It has accounted for 23.65% in 2007, 29.6% in 2008, 31.0% in 2009 and 28.3% in 2010.
- (ii) Uganda is a state party to several International and Regional Rights Instruments among which are; the Universal Declaration for Human Rights, 1948; International Covenant on Civil and Political Rights 1966; African Charter on Human and Peoples' Rights, 1986. All these Instruments prohibit torture. Uganda has not yet ratified the Optional Protocol. The Optional Protocol provides for among other the training of state parties in the prevention of torture.
- (iii) Although the Constitution guarantees freedom from torture as a non-derogable right, the obtaining legal framework does not make torture a criminal offence. Persons who would have otherwise been charged and punished for the grave and heinous crime of torture end up being charged, if at all, with common crimes such as assault. These provisions do not address the complex and serious nature the crime of torture is. Criminalisation of torture will enable the realisation of the absolute prohibition of torture under the

Constitution and distinguish the offence of torture as a more serious offence. These together it clear to the perpetrators that the practice is punishable, thereby providing an important deterrent as well as provide for reparation.

(iv) The penal law regime in Uganda does not precisely define the nature of the act that would amount to torture. This has led to the perception that domestic violence or corporal punishment for instance is torture. Besides, the Constitution requires under article 28(12) that no one shall be charged or convicted of any offence unless the offence is defined and the penalty prescribed by law.

The definition on torture provided under the UN Convention against Torture is limited to public officials. It makes torture an offence that can be committed only by agents of the state. This definition has now been overtaken by developments in international criminal law like the Rome Statute and the International Criminal Court Act, 2010 as well as the finding of Uganda Human Rights Commission which stated in *Tumuramye Fred v Bwete Gerald* UHRC No. 264/1999 which stated that both state and non state actors can commit torture. This is the progressive definition of the offence of torture. In the Republic of Philippines for instance, acts of torture committed by private individuals have been criminalised under the International Humanitarian Act.

(v) Perpetrators of torture often times find solace in the defence that they were executing “*orders from above*” a defence in criminal law referred to as **superior orders**. This in many cases has led to perpetrators not being held accountable even when the order is unlawful. The Bill also makes superiors whose junior officers have committed the offence of torture equally responsible if he or she

knew, or consciously disregarded information which clearly indicated that the subordinate was committing or about to commit torture.

Taxpayers are left to shoulder the burden arising from these actions since the officials claim to be on official duty. This is based on the principle of vicarious liability. The bill seeks to provide an exception to the principle of vicarious liability and make the defence of superior orders inapplicable in case of torture.

- (vi) The Bill seeks to make all actors responsible for the offence of torture whether it is through direct support, incitement, aiding or abetting, soliciting or procurement. The Bill makes all the parties to the offence of torture equally responsible as long as they knowingly or had reason to know that their support would be applied or used for or in connection with the preparation or commission or instigation of torture.
- (vii) Torture is usually committed for the sake of obtaining information from the victim. Although the Evidence Act of Uganda provides that confession obtained by means of coercion is not admissible as against an accused person in courts of law, it is only a procedural prohibition without sanction for the acts. The Bill provides that the confession is irrelevant if it has been obtained by cause of violence, force, threat, inducement or promise, calculated in the opinion of the court to cause an untrue confession to be made. However, there is no penalty against such a person who uses torture to extract the confession. A penalty should be introduced for a person that uses information well knowing that such information was obtained by way of torture in the prosecution of the persons tortured so as to ensure that the reasons often used to justify heinous acts of torture are curtailed. This will also dissuade people

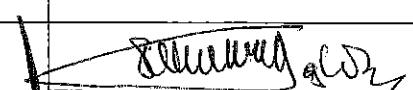
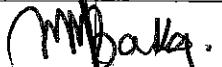
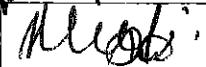
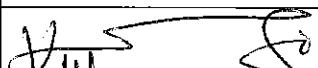
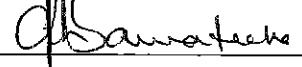
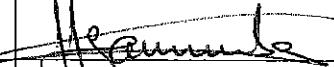
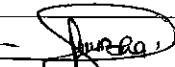
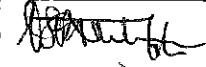
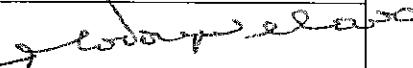
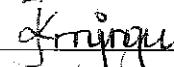
from using information that is obtained through torture; rendering one of the primary aims of torture redundant.

- (viii) The Bill grants exclusive jurisdiction to try offences committed under the Act to be tried in Magistrate Courts only.
- (ix) The bill provides for right of any member of society to complain if anybody has committed torture or intends to commit torture. This is not effective enough to stop torture. The law should make it a duty to report and an offence not to report to the authorities if a member of a community knows that any person has committed or intends to commit torture.
- (x) Some of the people who are involved in the acts of torture hold positions of influence. This enables them to conceal or destroy evidence of torture. The law should make it an offence for any person who conceals or intends to conceal torture or frustrate the investigation of a suspected offence of torture under this Act or who destroys or tries to destroy, alter, mutilate or falsify any evidence related to the offence of torture.
- (xi) The Bill envisages payment of compensation by the state or the employer but does not include payment of reparation by the person who perpetrated the act of torture. The bill should provide for payment of compensation out of resources of the person convicted for torture where the victim has suffered loss as a result of his or her commission of the offence.

6.0 Recommendation

The Committee recommends that the Prevention and Prohibition of Torture Bill, 2010 be passed into law subject to the proposed amendments.

REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON
THE PROHIBITION AND PREVENTION OF TORTURE BILL, 2010

NO.	NAME	Signature
1.	Hon. Stephen Tashobya (CP)	
2.	Baka Stephen Mugabi (D/CP)	
3.	Amoding Monicah	
4.	Niwagaba Wilfred	
5.	Achia Remigio	
6.	Karungi Elizabeth	
7.	Kamateeka Jovah	
8.	Obua Denis Hamson	
9.	Ndeezi Alex	
10.	Lugolobi Amos	
11.	Timbigamba Lindah	
12.	Katuntu Abdu	
13.	Lubega Medard Sseggonna	
14.	Odonga Otto	
15.	Balikuddembe Joseph	
16.	Ayena Chris	
17.	Mpabwa Sarah	
18.	Odoi Oywelowo Fox	
19.	Mujungu Jeniffer	
20.	Otada Amooti	

PROPOSED AMENDMENTS BY THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS TO THE PREVENTION AND PROHIBITION OF TORTURE BILL, 2010

1. In the long title: Page 3

(a) By inserting the words "and preventing" before the word "prohibiting".

Justification: to put it in tandem with the short title of the bill.

2. Clause 1: Page 4: Interpretation

(a) Immediately after the definition of the word "currency point", by inserting a definition for the word "Deadly Weapon" to read as follows-
"Deadly weapon" includes any instrument made or adapted for shooting, stabbing or cutting and any instrument which, when used for offensive purposes, is likely to cause death.

Justification: to provide a definition for deadly weapon.

(b) Immediately after the definition of the word "Spouse", by inserting a definition for the word "Superior Officer" to read as follows-
"Superior Officer" means a person in a higher position of authority than the officer alleged to have committed.

Justification: to provide for a definition of a superior officer for purposes of clause 10.

3. Clause 4: Page 6: Criminalisation of torture

(a) By inserting a new sub clause (2) reading as follows-
"(2) A person shall not be punished for disobeying an order to undertake actions amounting to torture, cruel or inhuman treatment"

Justification: to provide protection for subordinates who decline to execute orders that would result into torture.

(b) By renumbering the sub clauses under clause 4 in light of the insertion.

4. Clause 5: Page 6: circumstances aggravating torture

By substituting for the words "section 5" the word "section 4"

Justification: to address the typographical error.

5. Clause 6: Page 7: Compensation, rehabilitation or restitution

(a) In sub clause (1), by redrafting the entire sub clause to read as follows-

"The court may, in addition to any other penalty under this Act, order for reparations, which may include"

Justification: to align the clause with Article 14 of the Convention against Torture.

(b) In sub clause (1) (b) (v), by deletion

Justification: enforceability is difficult.

(c) In sub clause (3), by deleting the entire sub clause

Justification: it is against the bill since it is trying to water down the personal liability that is provided for under Clause 3 (2) (d). Liability in criminal matters is personal and as such you cannot hold government criminally liable when it has not been afforded a chance to be heard.

6. Clause 9: Page 10: Accessory after the fact to the offence of torture

In sub clause (3), by deletion.

Justification: the sub clause insinuates that a spouse cannot aid and abet torture.

7. Clause 10: Page 10: responsibility of superior over actions of a subordinate

(a) In the introductory provision, by substituting for the entire clause the following-

"A superior officer is liable for any act or omission of torture or cruel, inhuman and degrading treatment and punishment by a subordinate under his or her effective authority and control, as a result of his or her failure to exercise control over such a subordinate where"

Justification: for clarity

8. Clause 11: Page 11: Right to complain

(a) In sub clause (3), by deletion

Justification: it is catered for in other laws of the land.

9. Clause 12: Page 11: Institution of criminal proceedings

By deletion.

Justification: the provision is already catered for under section 42 of the Magistrates Courts Act, Cap 16 of the Laws of Uganda and section 10 of the Criminal Procedure Code Act.

10. Clause 13: Page 13: Control over private prosecutions

By deletion

Justification: the provision is already catered for under section 43 of the Magistrates Courts Act

11. Clause 16: Page 14: No transfer of persons where likelihood of torture exist

(a) Immediately after sub clause (1) (a), by inserting a new paragraph
(b) reading as follows-

“(b) transfer, detain or order the transfer or detention of a prisoner or detainee to a non-gazetted place of detention; or”

Justification: to reflect and uphold the Constitutional guarantee in article 23 (2) of the Constitution of the Republic of Uganda.

(b) In paragraph (1) (a), by deleting the word “or”

Justification: for clarity

(c) By renumbering the paragraphs.

12. Clause 17: Page 15: Jurisdiction of Uganda courts

By inserting immediately after paragraph (f) a new sub clause (2) reading as follows-

“(2) Notwithstanding the provisions of any other law, all persons charged with offences under this Act shall be tried in a Chief Magistrates Court”

Justification: to permit the impartiality of the courts mostly where the accused persons are members of the armed forces.

13. Clause 18: Page 15: Torture bailable by the Chief Magistrates Court

By deletion of the entire clause

Justification: bail is adequately addressed under section 75 of the Magistrates Courts Act, Cap 16 of the Laws of Uganda and sections 14 and 15 of the Trial on Indictments Act, Cap 23 of the Laws of Uganda.

14. Clause 24: Page 17: Regulations

In sub clause (2),

(a) by substituting for the word “after” the word “before” and for the words “laid before” the words “tabled in”

(b) by inserting the words “for approval” after the word “Parliament”.

Justification: to provide for the statutory instrument to be tabled for approval by Parliament.

15. Cross References: Page 21

Immediately after the Amnesty Act, by inserting the Constitution of the Republic of Uganda, Domestic Violence Act.