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Bill No. 23 Prohibition And Prevention of Torture Bill

2010

THE PROHIBITION AND PREVENTION OF TORTURE BILL, 2010

MEMORANDUM

1. 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 Nation's Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1986.

Further to the accession to the United Nation's Convention Against Torture and other Cruel, Inhuman or 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 a non-derogable right under Article 44 of the Constitution

The policy objective of this bill is therefore to bring into effect the obligation of Uganda as a State party to the various human rights instruments and particularly the United Nation's Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The bill seeks to provide a comprehensive definition of torture, make torture a criminal offence, provide sanctions for the offence of torture, regulate the use of information obtained by means of torture and provide for individual criminal and civil responsibility for the offence of torture.

2. Defects in existing laws

Although the Constitution guarantees freedom from torture, cruel, inhuman and degrading treatment or punishments and makes this freedom a non-derogable right, there is no comprehensive definition of what amounts to torture, cruel, inhuman or degrading treatment or punishment. Further, there is no specific offence of torture under the Penal Code Act, thus no individual responsibility for acts of torture rather this responsibility is placed on the Government which has had to pay damages to the victims of torture.

This Bill seeks to address these policy issues and the gaps in the existing legal framework.

3. Provisions of the Bill.

Part I of the Bill (incorporating clause 1), deals with interpretation of the words and expressions used in the Bill.

Part II of the Bill, in clauses 2 to 7 seeks to provide; a comprehensive definition of torture, make torture a criminal offence, provide sanctions for the offence of torture and provide for individual criminal and civil responsibility for the offence of torture. This part also provides for compensation, rehabilitation or restitution to be ordered by court.

Part III of the Bill, incorporating clauses 8 to 13, makes provisions for the responsibility and liability of third parties and also deals with institution of criminal proceedings and control over private prosecutions.

Part IV of the Bill, clauses 14 and 15 provides for; the use of information, and admissibility of evidence, obtained through torture.

Part V of the Bill, in clause 16 prohibits the transfer of a prisoner to a place where the prisoner may be tortured.

Part VI of the Bill, in clauses 17 and 18, gives the Chief Magistrates Court jurisdiction to try cases of torture.

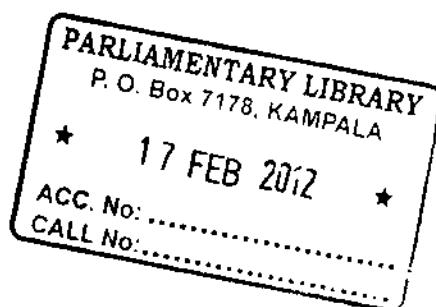
Part VII of the Bill, incorporating clauses 19 to 23 makes general provision for; prosecution of non citizens; duty and protection of persons reporting torture; restriction on extradition or deportation; this part also prohibits the grant of amnesty to a person accused of torture.

Part VIII of the Bill, in clauses 24 and 25 deals with miscellaneous provisions relating to the power of the Minister to make regulations and amend schedules.

Schedule 1 of the Bill, gives the value of the currency point.

Schedule 2 of the Bill, states out the acts constituting torture.

HON. NIWAGABA WILFRED (MP),
Ndorwa County East.



THE PROHIBITION AND PREVENTION OF TORTURE BILL, 2010.

ARRANGEMENT OF CLAUSES

Clause

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24. Regulations.
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SCHEDULES

First Schedule—Currency point.

Second Schedule—Acts constituting torture.

A Bill for an Act

Entitled

**THE PREVENTION AND PROHIBITION OF TORTURE
ACT, 2010**

An Act to give effect, in accordance with Articles 24 and 44(a) of the Constitution, to the respect of human dignity and protection from inhuman treatment by prohibiting any form of torture or cruel, inhuman or degrading treatment or punishment; to provide for the crime of torture; to give effect to the obligations of Uganda as a State Party to the United Nation's Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other related matters.

WHEREAS Article 24 of the Constitution provides that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment;

AND WHEREAS Article 44(a) of the Constitution provides that notwithstanding anything in the Constitution, there shall be no derogation from the enjoyment of the freedom from torture and cruel, inhuman or degrading treatment or punishment;

AND WHEREAS it is necessary to give effect in Uganda to the Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10th December, 1984 and ratified by the Republic of Uganda on 26th June, 1987;

BE IT ENACTED by the Parliament as follows:

PART I—PRELIMINARY

1. Interpretation.

In this Act unless the context otherwise requires—

“commission” means the Uganda Human Rights Commission established by article 51 of the Constitution;

“Convention” means the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984 and ratified by the Republic of Uganda on 26th, June, 1987;

“currency point” has the meaning assigned to it in the First Schedule;

“Minister” means the Minister responsible for justice;

“offender”, means a person who performs an act of torture.

“public official” means a person whether a public officer or not, employed by the government or local government or any Government agency or any other person paid out of public funds;

“spouse” means a husband or wife by a lawful marriage;

“victim” means a person who suffers an act of torture.

PART II—PROHIBITION AND CRIMINALISATION OF TORTURE

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2. Definition of torture.

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

- (a) obtaining information or a confession from the person or any other person;
- (b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or
- (c) intimidating or coercing the person or any other person to do, or to refrain from doing, any act.

(2) For purposes of this Act, “severe pain or suffering” means the prolonged harm caused by or resulting from—

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

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

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

3. Prohibition of torture.

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

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

- (a) a state of war or a threat of war;
- (b) internal political instability;
- (c) public emergency; or
- (d) an order from a superior officer or a public authority.

4. Criminalisation of torture.

A person who performs any act of torture as defined in section 3 commits an offence and is liable on conviction to imprisonment for fifteen years or to a fine of three hundred and sixty currency points or both.

5. Circumstances aggravating torture.

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

- (a) offender uses or threatens to use or used a deadly weapon;
- (b) offender uses or used sex as a means of torture;
- (c) victim was a person with a disability;
- (d) victim was pregnant or becomes pregnant;
- (e) offender causes death;

- (f) the victim was subjected to medical experiments;
- (g) victim acquires HIV/AIDS;
- (h) victim was under the age of 18 years;
- (i) the victim is incapacitated;
- (j) the act of torture is recurring;
- (k) offender commits any act which court considers aggravating;

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

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

(1) In addition to the penalty a court may impose under this Act, the court may, on conviction of a person for the offence of torture make all or any of the following orders—

- (a) restitution of the victim, his or her family or dependents to the greatest extent possible and such restitution may include—
 - (i) the return of any property confiscated;
 - (ii) payment for harm or loss suffered;
 - (iii) payment for the provision of services and restoration of rights; or
 - (iv) reimbursement of expenses incurred as a result of victimisation.
- (b) compensation for any economically assessable damage resulting from torture such as—
 - (i) physical or mental harm, including pain, suffering and emotional distress;

- (ii) lost opportunities, including employment, education and social benefits;
- (iii) material damage and loss of earnings, including loss of potential earnings;
- (iv) costs required for legal or expert assistance, medicines, medical services, and psychological and social services; and
- (v) moral damage;

(c) rehabilitation including—

- (i) medical and psychological care; or
- (ii) legal and psycho-social services to the victim in case of trauma.

(2) Restitution, compensation, rehabilitation or any payment ordered by the court under subsection (1) may be satisfied by the property of the person convicted of torture.

(3) Where the person in subsection (2)—

- (i) is a public official or a person acting in an official capacity, the order shall be made against the State.
- (ii) was acting in the course of his or her employment, or upon the orders of his or her institution, whether lawful or not, then the order shall be made against the property of the employer or the institution respectively.

7. Cruel, inhuman or degrading treatment or punishment

(1) Cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official or private capacity, which does not amount to torture as defined in section 3, is a criminal offence and shall be liable on conviction to imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

(2) For the purposes of determining what amounts to cruel, inhuman or degrading treatment or punishment, the court or any other body considering the matter shall have regard to the definition of torture as set out in section 3 and the circumstances of the case.

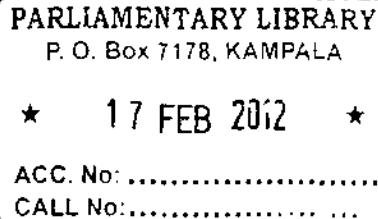
(3) In a trial of a person for the offence of torture the court may, in its discretion, convict the person for cruel, inhuman or degrading treatment or punishment, where the court is of the opinion that the act complained of does not amount to torture.

PART III—OTHER PARTIES TO THE OFFENCE OF TORTURE

8. Other parties to offence of torture.

(1) A person who, whether directly or indirectly—

- (a) procures;
- (b) aids or abets;
- (c) finances;
- (d) solicits;
- (e) incites;
- (f) recommends;
- (g) encourages;
- (h) harbours;
- (i) orders; or
- (j) renders support to;



any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of torture commits an offence and is liable on conviction, to imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

9. Accessory after the fact to the offence of torture.

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

(2) A person who is or becomes an accessory after the fact to the offence of torture commits an offence and is liable on conviction, to imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

(3) Not notwithstanding subsections (1) and (2) a spouse shall not be an accessory after the fact to torture.

10. Responsibility of a superior over actions of a subordinate.

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

- (a) the superior knew, or consciously disregarded information which clearly indicated, that the subordinate was committing or about to commit an act of torture;
- (b) the acts committed by the subordinate concerned activities that were within the responsibility and control of the superior; and
- (c) the superior failed to promptly investigate, diligently pursue administrative and disciplinary measures to prevent re-occurrence, and cooperate with judicial authorities to prosecute the offence.

PART IV—USE OF INFORMATION OBTAINED BY TORTURE

11. Right to complain.

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

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

(3) If the person arrested and detained under subsection (2), is not a citizen of Uganda, then the person shall be assisted in communicating as soon as legally possible with the nearest appropriate representative of the state of which he or she is a national or if the person is a stateless person, with the representative of the state where the person ordinarily resides.

12. Institution of criminal proceedings.

(1) Criminal proceedings under this Act, may be instituted in one of the following ways—

- (a) by a police officer bringing a person arrested with or without a warrant before a magistrate upon a charge;
- (b) by a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant or a summons; or
- (c) by any person, other than a public prosecutor or a police officer, making a complaint.

(2) The validity of any proceedings instituted or purported to be instituted under subsection (1) shall not be affected by any defect in the charge or complaint or by the fact that a summons or warrant was issued without any complaint or charge or, in the case of a warrant, without a complaint on oath.

(3) Any person, other than a public prosecutor or a police officer, who has reasonable and probable cause to believe that an offence has been committed by any person under this Act, may make a complaint of the alleged offence to a magistrate who has jurisdiction to try or inquire into the alleged offence, or within the local limits of whose jurisdiction the accused person is alleged to reside or be.

(4) A complaint made under subsection (3) may be made orally or in writing signed by the complainant, but if made orally shall be reduced into writing by the magistrate and when so reduced shall be signed by the complainant.

(5) Upon receiving a complaint under subsection (3), the magistrate shall consult the local authority of the area in which the complaint arose and put on record the gist of that consultation; but where the complaint is supported by a letter from the local authority, the magistrate may dispense with the consultation and thereafter put that letter on record.

(6) After satisfying himself or herself that *prima facie* the commission of an offence has been disclosed and that the complaint is not frivolous or vexatious, the magistrate shall draw up and shall sign a formal charge containing a statement of the offence or offences alleged to have been committed by the accused.

(7) Where a charge has been—

- (a) laid under the provisions of subsection (1)(b); or
- (b) drawn up under the provisions of subsection (9), the magistrate shall issue either a summons or a warrant, as he or she shall deem fit, to compel the attendance of the accused person before the court over which he or she presides, or if the offence alleged appears to be one which the magistrate is not empowered to try or inquire into, before a competent court having jurisdiction; except that a warrant shall not be issued in the first instance unless the charge is supported by evidence on oath, either oral or by affidavit.

(8) Notwithstanding subsection (7), a magistrate receiving any charge or complaint may, if he or she thinks fit for reasons to be recorded in writing, postpone the issuing of a summons or warrant and may direct an investigation, or further investigation, to be made by the police into that charge or complaint; and a police officer receiving such a direction shall investigate or further investigate the charge or complaint and report to the court issuing the direction.

(9) Without prejudice, nothing in subsection (7) shall authorise a police officer to make an arrest without a warrant for an offence other than a cognisable offence.

(10) A summons or warrant may be issued on a Sunday.

(11) Nothing in this section shall be so construed as to affect the powers conferred upon justices of the peace by the Justices of the Peace Act.

13. Control over private prosecutions.

(1) Where criminal proceedings under this Act have been instituted, the Director of Public Prosecutions may—

- (a) take over and continue the conduct of those proceedings at any stage before the conclusion of the proceedings;
- (b) discontinue the prosecution of the proceedings at any stage; and
- (c) require the victim or the person reporting the offence—
 - (i) to give him or her all reasonable information and assistance; and
 - (ii) to furnish him or her with any documents or other matters.

(2) For the avoidance of doubt, any person other than a public prosecutor or a police officer, may institute criminal proceedings for any offence committed under this Act.

(3) This section shall not prejudice the mandate of the Uganda Human Rights Commission to entertain matters under this Act as cases of human rights abuse, and in such cases, the Commission shall deal with the cases as it ordinarily deals with human rights cases.

14. Inadmissibility of evidence obtained by torture.

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

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

15. Prohibition of Use of information obtained by torture.

A person who uses information which he or she knows or ought to have reasonably known to have been obtained by means of torture in the prosecution of the person tortured, commits an offence and is liable on conviction to imprisonment not exceeding two years or a fine not exceeding forty eight currency points or both.

PART V—TRANSFER OF DETAINEES**16. No transfer of persons where likelihood of torture exists.**

(1) A person shall not—

- (a) release, transfer or order the release or transfer of a prisoner or detainee into the custody or control of another person or group of persons or government entity; or
- (b) intentionally or recklessly abandon a prisoner or detainee, in any place where there are reasonable grounds to believe that the prisoner or detainee is likely to be tortured.

(2) Subsection (1) applies to any prisoner or detainee in the custody of any public official irrespective of the—

- (a) citizenship of the prisoner or the detainee;
- (b) location in which the prisoner or detainee is being held in custody or control; or
- (c) location in which or to which the transfer or release is to take place or has taken place.

PART VI—JURISDICTION OVER THE OFFENCE OF TORTURE.

17. Jurisdiction of Uganda courts in relation to the offence of torture.

(1) The Chief Magistrates Court of Uganda shall have jurisdiction to try the offences prescribed by this Act, wherever committed, if the offence is committed—

(a) in Uganda;

(b) outside Uganda—

(i) in any territory under the control or jurisdiction of Uganda;

(ii) on board a vessel flying the Uganda flag or an aircraft which is registered under the laws of Uganda at the time the offence is committed;

(iii) on board an aircraft, which is operated by the Government of Uganda, or by a body in which the government of Uganda holds a controlling interest, or which is owned by a company incorporated in Uganda;

(c) by a citizen of Uganda or by a person ordinarily resident in Uganda;

(d) against a citizen of Uganda;

(e) by a stateless person who has his or her habitual residence in Uganda; or

(f) by any person who is for the time being present in Uganda or in any territory under the control or jurisdiction of Uganda.

18. Torture bailable by the Chief Magistrates Court.

Bail in respect of the offence of torture may be granted by a Chief Magistrate.

PART VII—GENERAL

19. Consent of DPP required for prosecution of non citizen.

A person who is not a citizen of Uganda shall not be prosecuted for an offence under this Act except with the consent of the Director of Public Prosecutions.

20. Duty to report torture.

A person who suspects or has reasonable grounds to suspect that torture is being committed by a public official, person acting in official capacity or private capacity, has a duty to report to the police, the commission, of his or her suspicion of torture.

21. Protection of victim, witnesses and persons reporting torture.

It shall be the responsibility of the State to ensure that any person including the—

- (a) complainant;
- (b) witnesses; or
- (c) person making a complaint, whether the victim or not;

is protected against all manner of ill-treatment or intimidation as a consequence of his or her complaint or any evidence given.

22. Restriction on extradition or deportation where person is likely to be tortured.

(1) Torture is an extraditable offence.

(2) Notwithstanding subsection (1) and the provisions of the Extradition Act, a person shall not be extradited or deported from Uganda to another state if there are substantial grounds to believe that that person is likely to be in danger of being subjected to torture.

(3) For the purposes of subsection (2), it shall be the responsibility of the person alleging the likelihood of being tortured to prove to the court the justification of that belief.

(4) In determining whether there are substantial grounds for believing that a person is likely to be tortured or in danger of being subjected to torture under subsection (2), the court shall take into account all factors including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the state seeking extradition or deportation of the person.

(5) Where a person is not extradited or deported as a consequence of the provisions of this section, that person shall be tried in Uganda.

23. No amnesty for offence of torture.

Notwithstanding the provisions of the Amnesty Act, a person accused of torture shall not be granted amnesty.

PART VIII—MISCELLANEOUS

24. Regulations

(1) The Minister may, by statutory instrument, make regulations for better carrying into effect the provisions of this Act.

(2) The Minister shall, as soon as practicable after the publication of a statutory instrument under this section, cause the instrument to be laid before Parliament.

(3) Notwithstanding the Interpretation Act, the Minister may, while exercising his or her powers under subsection (1), by statutory instrument, prescribe such fines and imprisonment as may be appropriate in the circumstances which may be in excess of the penalties prescribed by section 38 of the Interpretation Act

25. Amendment of Schedules

The Minister may, by statutory instrument, and with the approval of the Cabinet, amend the First and Second Schedules to this Act.

SECOND SCHEDULE**Section 3****Acts constituting torture****1. Physical torture including—**

- (a) systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach;
- (b) food deprivation or forcible feeding with spoiled food, animal or human excreta;
- (c) electric shocks;
- (d) cigarette burning, burning by electrically heated rods, hot oil, acid, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices;
- (e) the submersion of the victim's head in water or water polluted with excrement, urine, vomit or blood;
- (f) being tied or forced to assume a fixed and stressful body position;
- (g) rape and sexual abuse, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals;
- (h) mutilation, such as amputation of the essential parts of the body such as the genitalia, ears, tongue;
- (i) dental torture or the forced extraction of the teeth;
- (j) harmful exposure to the elements such as sunlight and extreme cold; or
- (k) the use of plastic bags and other materials placed over the victim's head with the intention to asphyxiate.

2. Mental or psychological torture including—

- (a) blindfolding;
- (b) threatening the victim or his or her family with bodily harm, execution or other wrongful acts;
- (c) confining a victim incommunicado, in a secret detention place or other form of detention;
- (d) confining the victim in a solitary cell or in a cell put up in a public place;
- (e) confining the victim in a solitary cell against his or her will or without prejudice to his or her security;
- (f) prolonged interrogation of the victim so as to deny him or her normal length of sleep or rest;
- (g) maltreating a member of the victim's family;
- (h) witnessing the torture sessions by the victim's family or relatives;
- (i) denial of sleep or rest;
- (j) shame infliction such as stripping the victim naked, parading the victim in a public place, shaving the head of the victim, or putting a mark on the body of the victim against his or her will;

3. Pharmacological torture including—

- (a) administration of drugs to induce confession or reduce mental competence;
- (b) the use of drugs to induce extreme pain or certain symptoms of diseases; and
- (c) other forms of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.

Cross References

1. Amnesty Act, Cap. 294
2. Extradition Act, Cap. 117
3. Uganda Human Rights Commission Act, Cap. 24
4. Justices of the Peace Act, Cap 15

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