



association for  
the prevention  
of torture



**25 Question & Answers about the  
Prevention and Prohibition of  
Torture Act**

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**“All Human Beings are Born Free and Equal in Dignity and Rights. They are Endowed with Reason and Conscience and should act towards one another in a Spirit of Brotherhood.”**

**UNIVERSAL DECLARATION OF HUMAN RIGHTS (ARTICLE 1)**

## **25 Questions & Answers about the Prevention and Prohibition of Torture Act**

# PREFACE

Under international law, States have the obligation to prevent torture and to criminalize it under their respective national legislation. Indeed, article 4 of the United Nations Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (UNCAT) provides that “each State Party shall ensure that all acts of torture are offences under its criminal law” whereas article 4 of the Robben Island Guidelines for the Prohibition and Prevention of torture in Africa states that “States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems”. This obligation derives from the absolute prohibition of torture and the duty to fight impunity by prosecuting and punishing authors of torture.

In 2012, Uganda made an important step forward with the adoption of the Prevention and Prohibition of Torture Act, which entered into force on 18 September 2012. The Act aims to reinforce respect to human dignity by giving effect to the provisions of the UNCAT, which was ratified by Uganda on 26 June 1987. The Act also gives effect to the articles 24 and 44 (a) of the Constitution of Uganda, which reaffirm the right of all persons to enjoy the freedom from torture and cruel, inhuman or degrading treatment or punishment.

In this regard therefore, in order to give effect to the provisions of the Convention against torture and to contribute significantly to the eradication of torture, the Act needs to be promoted and implemented in practice. The implementation of the Act requires joint efforts, endeavours and commitment from all key partners under the Justice Law and Order Sector as well as Civil society organisations and development partners. All relevant actors need to have substantive knowledge of the Act and to be more enlightened on the whole issue of torture prevention and prohibition for a better promotion and effective implementation of the Act. It is in this context that the UHRC in partnership with the APT have developed 25 frequently asked questions with answers about the Act.

This booklet with 25 key questions and answers is presented in simple and user friendly language, with limited use of legal terms. It is our sincere hope that this booklet will go a long way in contributing to the clear understanding about the provisions of the Act and facilitate its implementation.



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# INTRODUCTION

Uganda ratified the United Nations Convention against Torture (UNCAT) and Articles 24 and 44(a) of the Uganda Constitution require the respect for human dignity and protection from ill-treatment by prohibiting any form of torture, cruel, inhuman or degrading treatment or punishment. In July 2012, Uganda passed a law on the Prevention and Prohibition of Torture criminalising torture. The objective of this legislation is to bring into effect the obligation of Uganda as a State party to the various human rights instruments and particularly the UNCAT. The Act also provides a comprehensive definition of torture, makes torture a criminal offence, provides sanctions for the offence of torture, regulates the use of information obtained by means of torture and provides for individual criminal responsibility for the offence of torture. With the new law in place, there is a need to ensure its implementation and the process involves answering key questions commonly asked about torture and the new law.

The FAQs cover various aspects of the Act including the definition of the offence of torture, criminalization of torture, the duty to report and where to report acts of torture, remedies available for victims and other commonly asked questions related to the Anti-torture Act. All the questions are responded to in a simple and clear language.

These frequently asked questions (FAQs) are therefore designed to provide a better understanding and guidance to the readers on the Prevention and Prohibition of Torture Act, which is also commonly referred to as the Anti-Torture Act. The FAQs also provide qualitative information to the general public and actors in the prevention against torture, on fairly complex issues related to the prevention and prohibition of torture.

# QUESTIONS AND ANSWERS

## **Q.1. What is the relevance of the Prevention and Prohibition of Torture Act?**

The Act gives effect to the Articles 24 and 44 (a) of the Constitution of Uganda, and Uganda's obligation under the UNCAT which reaffirm the right of all persons to enjoy the freedom from torture, and cruel, inhuman, degrading treatment or punishment. It provides a comprehensive definition of torture, makes torture a criminal offence, provides sanctions for the offence of torture, prohibits the use of information obtained by means of torture and provides for individual liability for the offence of torture.

## **Q.2. Who can use the Prevention and Prohibition of Torture Act?**

The Act may be used by any one including judges, lawyers, prosecutors, police officers or any member of the public in bringing perpetrators to justice, in finding redress for victims and in the fight against acts of torture and ill-treatment.

## **Q.3. What is torture?**

Torture is the intentional infliction of physical or mental pain or suffering to obtain information or confession, to punish someone or to intimidate or coerce. This definition comprises three main cumulative elements:

1. The act causes severe pain or suffering, physical or mental;
2. The act is intentionally inflicted;
3. The act has a specific purpose (to obtain information or a confession; to punish someone; to intimidate or coerce someone e.t.c)

The detailed definition of the torture under the Act is similar and derived from that stipulated under the UNCAT, with the only difference being that the Act broadens the definition to

include private individuals, while the UNCAT limits acts of torture to be committed by public officials or persons acting in official capacity. *(Section 2 of the Act)*

#### **Q.4. What is cruel, inhuman or degrading treatment and punishment**

Courts in Uganda have the discretion to determine what amounts to cruel, inhuman or degrading treatment or punishment. The Law provides that any act that falls short of the definition of torture because it lacks one or more of the criteria may be defined as cruel, inhuman or degrading treatment or punishment. For instance, if the pain inflicted is not so “severe”, or if an act lacks a specific purpose, or if the act is not intentionally inflicted, the court may conclude that the act should be qualified as cruel, inhuman or degrading treatment or punishment. *(Section 7 of the Act)*

#### **Q.5. Why is torture wrong?**

Torture is one of the most horrendous violations of a person’s human rights. It is an attack on the very essence of a person’s dignity. Applying torture or ill-treatment to anyone dehumanizes and desensitizes the individuals and population that apply, condone or tolerate acts of torture. In addition, every act of torture is a grave offence against human dignity, which is not only the right of every human being but also the foundation of just and human society.





### **Q.6. What are the effects of torture?**

Torture can lead to multiple disabling conditions that interfere with even the most basic functions of daily life. Consequences can be either physical or psychological or both and may include:-death, permanent disabilities, chronic pain in muscles and joints, impotence, insanity, epilepsy, headaches, incessant nightmares and other sleep disorders, stomach pain and nausea, severe depression and anxiety, guilt, self-hatred, the inability to concentrate, thoughts of suicide and posttraumatic stress disorder. Other Psychological effects include Insomnia, depression, anxiety, forgetfulness, affected perception, broken families, low self-esteem, sexual problems, dis-trustfulness, chronic fatigue or chronic pain syndromes, multiple personality disorders, etc.



### **Q.7. Is torture ever acceptable?**

No. Torture is absolutely prohibited and can never be justified under any circumstances. *(Section 3 of the Act)* The Constitution of Uganda provides for this absolute prohibition under Article 44, as well as Article 2.2 of the UNCAT which states that: “No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture”

### **Q.8. Can torture be used to interrogate hardcore criminals?**

No. Torture is never justifiable against even notorious or hardcore criminals or terrorists. It is not an effective means of interrogation and does not yield useful or truthful information. *(Section 3 of the Act)*

**Q.9. Is torture a criminal or civil offence?**

Under the Act, torture is a criminal offence. However, it can be handled in parallel as a civil matter in any court of law or judicial tribunal such as the Uganda Human Rights Commission which has quasi judicial powers to receive, investigate and hear complaints on human rights violations. *(Sections 4,12 and 13(3) of the Act)*

**Q. 10. What is the penalty for torture?**

The severity of the crime of torture justifies a very serious penalty. Any person who commits torture may be imprisoned for 15 years, receive a fine, and have their property confiscated to provide compensation and rehabilitation to the victim. *(Section 4 of the Act)*

**Q. 11. Who can commit torture?**

Both agents of the State and private individuals can commit torture. There are also a number of people around the torturer who might also be found guilty. For instance, anyone who helps, finances, incites or orders torture to be committed may also be found guilty. *(Sections 2, 8 and 9 of the Act)*



**Q.12. Can people be sent to another country or place where they could be tortured?**

No. The Act prohibits any transfer, release, abandonment, deportation or extradition of any person or detainee to a place or country where there is a likelihood of such person being tortured. *[Section 16 and 22 of the Act]*



**Q.13. What if the victim suffers serious injuries or dies?**

Sometimes, the torture may be so severe, that a higher penalty is justified. The list below describes aggravating circumstances in which a person convicted of torture may be sentenced to life imprisonment:

- The offender uses a deadly weapon;
- The offender uses sex as a means of torture;
- The victim was a person with disabilities, pregnant or becomes pregnant as a result;
- The offender causes death to the victim;
- The victim acquires HIV / AIDS; or
- The victim was below 18 years of age.

*(Section 5 of the Act)*

**Q.14. What if a person is ordered by a superior to torture?**

The duty of an individual, and in particular a public officer, is to uphold the absolute prohibition against torture. Any order to torture is unlawful and must be rejected. The law prohibits any punishment for disobeying an order to torture or give cruel or inhuman treatment. *(Section 10 of the Act)*



**Q.15. Who should report torture?**

Any person can report torture. You do not need to be a victim. The Act provides that any person, who suspects or has reasonable grounds to suspect that torture is being or has been committed, has a duty to report. *(Section 11 of the Act)*

**Q.16. Where can a person report cases of torture?**

A person may report to any police officer or police unit, the Uganda Human Rights Commission or to any other relevant institution such as a Court of law or the Directorate of Public Prosecutions. *(Sections 12,13 and 20 of the Act)*

**Q. 17. What institutions can hear cases of torture?**

The Chief Magistrates Court may hear criminal cases of torture, and the Uganda Human Rights Commission may hear human rights violations related to acts of torture. *(Sections 12, 13 and 17 of the Act)*



**Q.18. Is information obtained through torture admissible in courts of law?**

No. Any information, confession or admission obtained from a person through torture is inherently unreliable and may not be used in courts of law or judicial tribunals as evidence. *(Section 14 of the Act)*

Such information can only be used against the person alleged to have tortured as evidence that she/he committed torture. *(Section 14(2)of the Act)*

**Q.19. What happens if information obtained through torture is used?**

The person who knowingly uses information obtained through torture commits an offence and may face imprisonment. *(Sections 14(2) and 15 of the Act)*



**Q.20. What if the information obtained through torture is true and reliable?**

Such information is still inadmissible in court as evidence. The court may only use other evidence supporting the case that is untainted by the effects of torture. There may be no justification for torture to be used, even if it might produce true information. *(Section 14 of the Act)*

**Q.21. What are the possible remedies available for victims of torture?**

The remedies include compensation for any economically assessable damage resulting from torture; restitution involving the return of any property, payment for harm or loss suffered or reimbursement of expenses incurred as a result of victimisation; and rehabilitation such as medical and psychological care or legal and psycho-social services to the victim in case of trauma. *(Section 6 of the Act)*



**Q.22. Are perpetrators of torture entitled to Amnesty?**

No. Considering the grave nature of the crime of torture, a person accused of torture shall not be granted amnesty. *(Section 23 of the Act)*

**Q.23. Can the courts in Uganda try a person for acts of torture committed outside the country?**

Yes. The Ugandan courts have jurisdiction to try offences of torture committed outside Uganda, provided the offence was committed within Uganda's territory or jurisdiction, on board a vessel or aircraft registered under the laws of Uganda or flying the Uganda flag, or where the offender is a citizen of Uganda, a stateless person living in Uganda, a resident in Uganda or any person within Uganda's territory, or where the offence was committed against a citizen of Uganda. *(Section 17 of the Act)*

**Q.24. Can a foreigner be prosecuted and tried for acts of torture committed outside Uganda?**

Yes. Any person including a foreigner who is present in Uganda or in any of its territory or jurisdiction may be tried for acts torture committed outside Uganda. This is referred to as Universal Jurisdiction. *(Section 17(1) (f) of the Act)*

**Q.25. How are victims and witnesses protected from intimidation and reprisals?**

Victims should not be afraid to complain. The state has the duty and responsibility to ensure that victims and witnesses are protected from intimidation or ill-treatment due to their complaints or evidence given. For instance, the person's name and details may be withheld from public records so that they may not be identified, or in court, the judge may choose to protect the victim from public view. In extreme cases, a person may even be offered physical protection. *(Section 21 of the Act)*

## ANNEX I



THE REPUBLIC OF UGANDA

## THE PREVENTION AND PROHIBITION OF TORTURE ACT, 2012



# **THE PROHIBITION AND PREVENTION OF TORTURE ACT, 2012**

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- First Schedule - Currency point.  
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# THE PREVENTION AND PROHIBITION OF TORTURE ACT, 2012

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 and preventing any form of torture or cruel, inhuman or degrading treatment or punishment; to provide for the crime of torture; to give effect to the obligation 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 so 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;

## 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; “deadly weapon” includes;

- (a) (i) An instrument made or adapted for shooting, stabbing or cutting, and any imitation of such an instrument;
  - (ii) Any substance, which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person that it is likely to cause death or grievous bodily harm; and
- (b) Any substance intended to render the victim of the offence unconscious.”

**“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 person paid out of public funds;

**“Spouse”** means a husband or wife by a lawful marriage;

**“Superior officer”** means a person in a higher position of authority than the officer alleged to have committed torture;

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

## **PART II - PROHIBITION AND CRIMINALISATION OF TORTURE**

### **2. Definition of torture.**

- (1) In this Act torture means any act or mission, 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 an 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 constitution 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 defense 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.**

- (1) 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.
- (2) A person shall not be punished for disobeying an order to undertake actions amounting to torture, cruel or inhuman treatment.

#### **5. Circumstances, aggravating torture.**

Notwithstanding section 4, 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) The court may, in addition to any other penalty under this Act, order for reparations, which may include-
  - (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
- (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
- (3) May be satisfied by the property of the person convicted of torture.

## **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 2, 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 2

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 OR TORTURE**

#### **8. Other parties to offence of torture.**

- (1) A person who, whether directly or indirectly-
  - (a) Procures;
  - (b) Kicks 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) A wife does not become an accessory after the fact to an



offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment by receiving or assisting in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part in order to enable that other person to escape punishment offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

#### **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

#### **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) Any person arrested and detained under subsection (2), 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 provision of a 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 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 any 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 authorize 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.

## **PART IV - USE OF INFORMATION OBTAINED BY TORTURE**

### **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 where there are reasonable grounds to believe that a prisoner or detainee is likely to be tortured
  - (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;
  - (b) Transfer, detain or order the transfer or detention of a prisoner or detainee to a non-gazetted place of detention; or
  - (c) 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 Magistrate 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;
- (ii) 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 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 thi 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 provision 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 Ministry may, by statutory instrument, and with the approval of the Cabinet, amend the First and Second Schedules to this Act.

## **FIRST SCHEDULE**

### **Section 2**

A currency point is equivalent to twenty thousand shillings.

## **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 forcibly 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 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 the 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-**

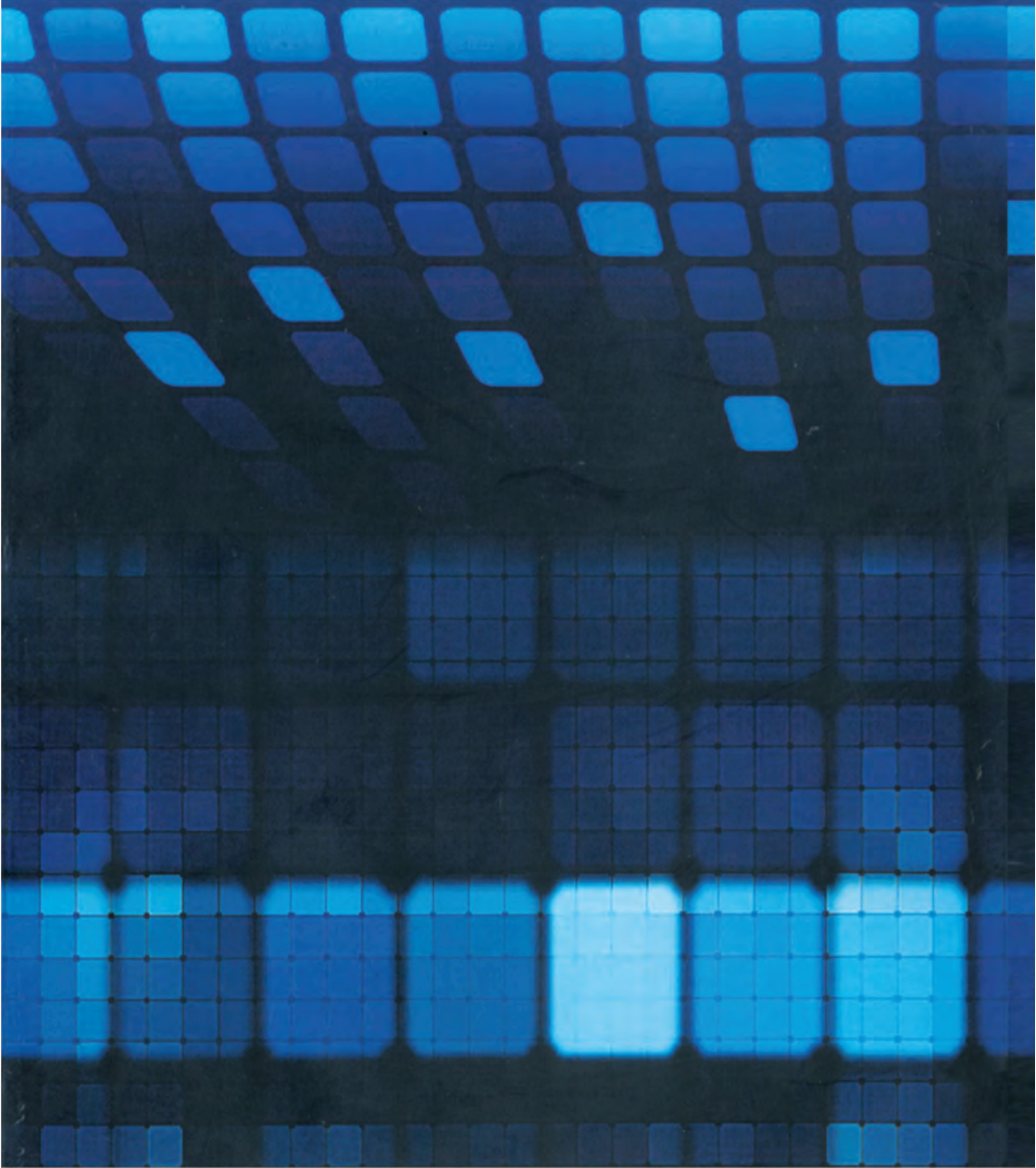
- (a) Administration of drugs to induce confession or reduce mental competence;
- (b) The use of drugs to induce extreme pain or certain symptoms of diseases; and
- (c) Other form of deliberate and aggravated cruel, inhuman or degrading pharmacological treatment or punishment.

**ANNEXE II**

**RELEVANT PROVISIONS UNDER INTERNATIONAL LAW**

1. Universal Declaration of Human Rights of 1948; (Art. 5)
2. International Covenant on Civil and Political Rights of 1966; (Art. 7)
3. U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984;
4. Optional Protocol to the Convention against Torture (OPCAT), 2002
5. Convention on the Rights of the Child, (Art. 37)
6. Rome statute of the international criminal court (1998) Articles 7+8
7. Geneva Convention relative to the protection of Civilians persons in time of war (1949) Article 31
8. Geneva Convention relative to the Treatment of Prisoners of War (1949) Articles 12 - 14 - 17 - 130
9. Protocol Additional to the Geneva Conventions, and relating to the protections of victims of international armed conflicts (Protocol 1) (1977) Article 75
10. African Charter for Human and People's Rights. Article 5
11. Guidelines and Measures for the prohibition and prevention of Torture Cruel, Inhuman or Degrading Treatment or Punishment (Robben Island Guidelines)

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the prevention  
of torture



Federal Foreign Office

