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PROHIBITION AND PREVENTION OF TORTURE BILL, 2009

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MEMORANDUM

POLICY AND PRINCIPLES OF THE BILL

Uganda is a State party to several regional and international human rights instruments/treaties which prohibits torture. These instruments include among others the Universal Declaration of Human Rights 1948, The African Charter on Human and People's Rights, the International Covenants 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 the freedom from torture, cruel, inhuman and degrading treatment or punishment. The right is made a non-derogable right under article 44 of the Constitution

The policy objective of the 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.

DEFECTS IN THE EXISTING LAW

Although the Constitution guarantees the freedom from torture, cruel, inhuman and degrading treatment or punishments and makes it a non-derogable right, there is no comprehensive definition of what would amounts to torture, cruel, inhuman or degrading treatment or punishment. There is also not specific crime of torture under the penal law. Individuals who commit acts of torture do not face the responsibility themselves but rather this responsibility is placed on the State which has had to pay reparations and court awards.

This bill therefore will address the policy issues and the gaps in the law mentioned above

HON. STEPHEN TASBOYA
Chairperson of the Sessional Committee on Legal and Parliamentary Affairs
The Parliament of Uganda

THE PROHIBITION AND PREVENTION OF TORTURE BILL, 2009

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SCHEDULES

- | | | |
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A Bill for an Act

Entitled

THE PREVENTION AND PROHIBITION OF TORTURE ACT, 2009

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 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 acceded ratified by the Republic of Uganda on 26th June, 1987;

BE IT ENACTED THEREFORE by the Parliament of the Republic of Uganda as follows-

PART I – PRELIMINARY

1. Commencement

This Act shall come into effect on the date of assent by the President of the Republic of Uganda.

2. 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;

"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;

PART II – PROHIBITION AND CRIMINALISATION OF TORTURE

3. 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 of or acquiescence of any person whether a public official or other person acting in an official capacity 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; or
- (d) for any reason based on discrimination of any kind of the person.

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

(3) 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.

4. Absolute prohibition of torture

(1) Notwithstanding anything in this Act there shall, in accordance with article 44(a) of the Constitution, be no derogation from the enjoyment of the right to freedom from torture.

(2) For the avoidance of doubt, no exceptional circumstances including-

- (a) a state of war or a threat of war;
- (b) internal political instability; or
- (c) public emergency,

may be invoked as justification of torture

(3) An order from a superior officer or a public authority may not be invoked as justification for torture.

5. Criminalisation of torture

(1) It is an offence for a person to commit any act of torture.

(2) The criminalisation of torture by subsection (1) does not prejudice the right of the victim to institute a civil action for infringement of his or her human rights, and for the avoidance of doubt torture is a violation of a person's human rights.

(3) A person who commits any act of torture shall on conviction be liable to imprisonment for fifteen years or a fine of three hundred and sixty currency points or both.

6. 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 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 are recurring;
- (k) offender commits any act which court considers aggravating;

the offender and any other person jointly concerned in committing the torture shall be liable, on conviction to life imprisonment.

7. Compensation, rehabilitation or restitution to be made by court in certain cases
- (1) In addition to the penalty a court may impose under sections 4 or 5, the court may, on conviction of a person of torture make all or any of the orders specified in this section—
 - (a) restitution of the victim, his or her family or dependents to the greatest extent possible and the such restitution may include-
 - (i) the return of any property;
 - (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 the property of the person.
- (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.

8. 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 capacity 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 of 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

9. Other parties to offence of torture

(1) Any person who -

(a) procures;

(b) aids or abets;

(c) finances;

(d) solicits;

(e) incites;

(f) recommends;

(g) encourages

(h) harbours; or

(i) 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 on conviction, liable to imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

10. Accessory after the fact to torture

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

(2) A person who is an accessory after the fact to 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) Notwithstanding subsections (1) and (2) a spouse shall not be an accessory after the fact to torture.

11. Attempts to commit torture

(1) When a person attempts to commit an offence under this Act by taking action that commences its execution by means of a substantial step, but the offence does not occur because of circumstances independent of the person's intentions, that person is taken to attempt to commit the offence.

12. Responsibility of superior public official for offence of subordinate

A superior public official is liable for any act of torture committed 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-

(a) the superior either knew, or consciously disregarded information which clearly indicated, that the subordinate was committing or about to commit torture;

(b) the acts concerned activities that were within the effective responsibility and control of the superior; and

(c) the superior failed to take steps after the commission of the act of torture to promptly investigate, diligently pursue administrative and disciplinary measures to prevent re-occurrence, and cooperate with judicial authorities to prosecute the offence;

PART IV – RIGHT TO COMPLAIN AND THE USE OF
INFORMATION OBTAINED BY TORTURE

13. Right to complain

(1) Any 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 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.

Institution of criminal proceedings

(4) 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

(5) The validity of any proceedings instituted or purported to be instituted under subsection (4) 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.

(6) 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. Every such complaint 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.

(7) Upon receiving a complaint under subsection (6), the magistrate shall consult the local chief 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 chief, the magistrate may dispense with the consultation and thereafter put that letter on record.

(8) 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.

(9) Where a charge has been—

(a) laid under the provisions of subsection (4)(b); or

(b) drawn up under the provisions of subsection (8), 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.

(10) Notwithstanding subsection (9), 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.

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

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

(13) 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

Control over private prosecutions.

(14) Where criminal proceedings under this section 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 and things.

(15) 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.

(16) This section shall not prejudice the mandate of the Uganda Human Rights Commission to entertain offences under this Act as cases of human rights abuse, and in such a case the Commission shall deal with case 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. Use of information obtained by torture.

A person who uses information where he or she knows or ought reasonably to know has been obtained by 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. Torture triable by the Chief Magistrate's Court.

Subject to the Constitution and this Act, torture is triable by the Chief Magistrate's court.

18. Torture bailable by the Chief Magistrate's Court.

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

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

The jurisdiction over the offence of torture under this Act shall be vested in the Magistrate's Courts of Uganda, in accordance with this Act, if the person alleged to have tortured is ordinarily resident in Uganda.

PART VII - GENERAL

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

A person who is not a citizen of Uganda as in article 18 section (1) (b) (vi) shall not be prosecuted for an offence under this Act except with the consent of the Director of Public Prosecutions.

21. Duty to report torture

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

22. 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 ill-treatment or intimidation as a consequence of his complaint or any evidence given.

23. 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 for believing 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.

24. 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

25. 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

26. Amendment of Schedules

(1) The Minister 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 forcible feeding with spoiled food, animal or human excreta or other food not normally eaten by the victim;
- (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 a 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;

- (l) inculcation of generalised fear in the population;

3. Pharmacological torture including-

- (a) administration of drugs to induce confession or reduce mental competency;

- (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.