

# PREVENTION OF TORTURE BILL 2014

## FREQUENTLY ASKED QUESTIONS

### WHY IS THE ENACTMENT OF THE PREVENTION OF TORTURE BILL IMPORTANT TO THE KENYAN PEOPLE?

Torture, Cruel, Inhuman and Degrading Treatment and Punishment have been described as constituting the worst forms of human rights violations in Kenya since independence. Torture and related violation of human rights and historical injustices were well investigated and documented by the Truth, Justice and Reconciliation Commission (TJRC). The Commission identified 12,756 victims of widespread and systematic torture and 6095 victims of unlawful detention during the Shifta War (1963-1967); the 1982 attempted coup; the clamour for multiparty democracy in the 90's; the crackdown on Mwakenya; the Operation Okoa Maisha in Mt. Elgon in 2008 among many other incidences.

Torture is still prevalent in Kenya today. Extra-judicial executions, murders, harassments by law enforcement agents, mob justice, among many other forms of human rights violations have been reported across the country. Although article 25(a) of the Constitution is clear that the right to freedom from Torture and Inhuman, Cruel and Degrading Treatment(ill-treatment) is an unlimited, the provision falls far short of defining what constitutes torture nor are mechanisms for reparations for victims of torture established.

Efforts to define the crime of torture in law must conform to international standards, with appropriate penalties. The Prevention of Torture Bill, 2014 attempts to address this gap. The bill when enacted will provide for the prevention, prohibition and punishment of acts of torture and ill-treatment. It will further create mechanisms for reparations for victims of torture and their families.

### HOW IS TORTURE AND CRUEL INHUMAN AND DEGRADING TREATMENT DEFINED IN THE PROPOSED LAW?

Kenya acceded to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on 21 February 1997. Kenya is also a State party to many international human rights treaties that are relevant to the prohibition of torture and ill-treatment. Article 1 of the UNCAT defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.

Article 2 of the Convention provides that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and that no exceptional circumstances whatsoever, may be invoked as a justification of torture.

"Torture" includes any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes of:

- (i) Obtaining from the person or from a third person information or a confession;
- (ii) Punishing the person for an act which that person or a third person has committed or is suspected of having committed;
- (iii) Intimidating or coercing the person or a third person; or
- (iv) For any reason based on discrimination of any kind.

The Prevention of Torture Bill seeks to define torture against these international standards.

### **ACTS CONSTITUTING TORTURE INCLUDE BUT ARE NOT LIMITED TO:**

Physical Torture including: beating, gunshots, electric shocks, drowning, rape and sexual abuse, strangling, use of drugs to induce pain etc.

Mental or psychological torture including: threats to victim or his/her family, denial of sleep or rest, secret detention, unnecessary solitary confinement, stripping the victim, simulation of killing among other degrading acts.

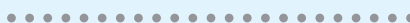
"Cruel, inhuman and degrading treatment or punishment" includes a deliberate and aggravated treatment or punishment not amounting to torture, inflicted by a person in authority or the agent of the person in authority against a person under his custody, causing suffering, gross humiliation or debasement to the person.

### **WHAT IS THE PUNISHMENT FOR THE CRIME OF TORTURE AND RELATED OFFENCES?**

A person who commits the offence of torture is liable on conviction to a term of imprisonment not exceeding twenty five years. If the act or omission results in death, the offender is upon conviction liable to imprisonment for life. A person who commits an offence of cruel, inhuman or degrading treatment or punishment is liable on conviction to a term of imprisonment not exceeding fifteen years or a fine of one million shillings , or both. In sentencing a person convicted for an offence under this Act, the court shall take into consideration the severity of the act of torture or ill-treatment.

### **WHAT IS THE PROCEDURE FOR REPORTING TORTURE AND RELATED OFFENCES?**

A person alleging that an offence has been committed, may complain to the police, the Kenya National Commission on Human Rights or any other relevant institution or body having jurisdiction over the offence. Whenever a complaint of torture and ill-treatment is received, the person receiving the complaint, must register the complaint in writing and the offence investigated promptly by the Directorate of Criminal Investigation.



## **WHAT ARE VICTIM IMPACT STATEMENTS AND WHY ARE THEY IMPORTANT TO VICTIMS OF TORTURE?**

The person most directly affected by the crime is allowed to address the court during the criminal proceedings. The victim(s) gives what is regarded as an impact statement that personalizes the crime and helps the court in determining perpetrators liability. Victims Impact statements could also contribute to the process of healing and overall rehabilitation. By definition a victim impact statement means a statement by the victim, or where incapacitated, the victim's representative, on the psychological, emotional, physical, economic or social impact of the offence committed against the victim and includes any recording, summary, transcript or copy thereof. Through the statement the victim could further provide the court with details on descriptions of medical treatment or psychological services he or she requires as a result of the crime; victims safety concerns, the need for reparations and the victim's opinion of an appropriate punishment for the offender.

## **WHAT RIGHTS DO VICTIMS OF TORTURE HAVE UNDER THE PREVENTION OF TORTURE BILL?**

The victim of an act of torture shall obtain redress and has an enforceable right to adequate reparation including restitution, adequate compensation, rehabilitation satisfaction and guarantees of non-repetition. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to necessary reparation. The state shall ensure that specialised/holistic services for the victim of torture or ill- treatment are available, appropriate and promptly accessible including:

- (a) Psychological support;
- (b) Appropriate medical assistance;
- (c) Legal assistance or legal information on relevant judicial and administrative procedures; or
- (d) Any other necessary assistance that a victim may require.

Victims of torture have a right to rehabilitation that shall include Psychosocial interventions, medical treatment, legal aid and social services designed to assist victims recover from loss, injury or damage suffered as a consequence of the offence. The expenses incurred for the medical treatment or professional counselling of a victim shall be charged on the Victims Trust Fund.

Where the court finds it appropriate, the victim shall be compensated for economic or emotional loss, damage of property or physical injury or harm as a result of torture and related offences. Compensation shall be effected from the Victims Trust Fund.

## **WHAT IS THE USE OF THE VICTIMS TRUST FUND?**

There is established the Victims Trust Fund through the Victims Protection Act 2014 to be used to afford reparations to victims of torture in Kenya. The Fund's aim is to help victims and their families to rebuild their lives and to seek redress for the human rights violations they have suffered.

## HOW WILL WITNESSES BE PROTECTED UNDER THE PROPOSED LAW?

To protect vulnerable witnesses during criminal proceedings, the courts will put in place support structures such as protection covers for such witnesses, giving evidence through intermediaries, camera court sessions etc.

A vulnerable witness is a person who due to age, gender, disability or other special characteristics needs support and protection from a threat or risk which exists on account of his/her being a crucial witness before a court, commission or tribunal.

## WHAT RIGHTS DOES AN OFFENDER HAVE UNDER THE PROPOSED LAW?

A person shall not be expelled, returned or extradited to another country where there is reason to believe that such person is in danger of being subjected to torture or other cruel, inhuman or degrading treatment. A person who is in custody in respect of an offence that is alleged to have been committed under this Act, must be assisted by the detaining authority to communicate with a family member, the nearest representative of the person or State of which he or she is a national. Any information, confession or admission obtained from a person by means of torture or cruel, inhuman or degrading treatment or punishment is inadmissible evidence against that person. A person who knowingly uses information which is obtained through torture or other cruel, inhuman or degrading treatment or punishment commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years, or to a fine not exceeding five hundred thousand shillings, or both.

## CAN THERE REALLY BE A JUST WORLD FREE FROM TORTURE?

To enforce the right of victims to reparations, States are obligated under article 2 of the UNCAT to enact effective legislative, administrative, judicial or other measures to criminalise torture and facilitate the victim to access and enjoy his or her rights. It is this obligation that the prevention of Torture Bill seeks to address. As such, the bill defines and criminalises torture and other cruel, inhuman or degrading treatment and provides for appropriate punishment. The bill further seeks to contribute to the implementation of the TJRC report through the establishment of the necessary institutional mechanisms for the support and protection of victims of torture to ensure appropriate reparations. We hope the enactment of the Prevention of Torture Bill will herald a new dawn by providing for a comprehensive legal framework to address reparations for victims of torture.



EUROPEAN UNION



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A Just World Free From Torture

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