

African Mechanisms of Dealing with Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

The *Human Rights Bulletin* number 42 of 2009, focused on ending torture in Zimbabwe - what torture is, its forms and consequences. This issue of the Bulletin takes a closer look at ways in which Africa seeks to combat the practice of torture, cruel, inhuman and degrading treatment and focuses on the *Robben Island Guidelines (RIG) and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa*, commonly referred to as the *Robben Island Guidelines (RIG)*. The RIG were adopted by the *African Commission on Human and People's Rights (the African Commission)* during its 32nd Ordinary Session in Banjul, the Gambia. These guidelines outline the minimum measures that governments should take in regard to the prevention and prohibition of torture, cruel, inhuman or degrading treatment or punishment. They also outline how states are expected to respond to such cases.

Background to the Robben Island Guidelines

Realising that there was a need to develop a specific legal document on torture in Africa and that the prevention of torture was complicated, the Association for the Prevention of Torture (APT) proposed a workshop on Robben Island in South Africa from 12 to 14 February 2002. At the close of the workshop, the *Resolution on Guidelines and Measures for the*

Prohibition of Torture, Cruel, Inhuman, or Degrading Treatment or Punishment in Africa was adopted. These guidelines lay down practical steps of dealing with torture, the victims, their families and those at risk of torture. They also guide states on how to create conditions that reduce the risks of torture.

Legal Basis

The RIG are aimed at simplifying and speeding up the implementation of Article 5 of the *African Charter* which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment. *The African Charter* gives a duty to the *African Commission* to, among other things, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples rights and fundamental freedoms upon which African Governments may base their legislation. The *Act* that establishes the *African Union* also calls for state parties to take measures to promote and respect the sanctity of human life, the rule of law, good governance and democratic principles.

How the RIG Approach Torture

The RIG approach the question of torture in three ways, namely prohibition, prevention and responding to the needs of victims. Each measure states in detail the steps that should be taken in that regard.

How do the RIG Prohibit Torture?

The RIG outline measures, which states should take to outlaw torture, which include the following;

- ? *Ratification¹ of regional and international instruments* – this is whereby a state indicates its consent to be bound to regional and international treaties that prohibit the practice of torture,

This is to ensure that all possible means of fighting torture are made available to the states and their subjects.

- *Criminalization of torture* - states should ensure that acts, which are classified as torture under the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* are offences that are recognised within their national legal systems. Notions such as “necessity”, “national emergency” and “public order” shall not be invoked as grounds for torture, cruel, inhuman or degrading treatment or punishment. This means the room for exceptions must be narrowed as much as possible. In other words, the law must weigh heavily in favour of the victims of torture by preventing the state or any other actor involved from resorting to the listed exceptions. This is in line with the sanctity of life given by the Constitutive Act of the African Union.
- *Non-Refoulement* - no one should be expelled or extradited to a country where he or she is at the risk of being subject to torture.

The RIG further require states to combat impunity for both nationals and non-nationals who commit acts of torture and to establish complaints and investigation procedures to which all persons can bring their allegations. This places an obligation upon the state to do their best to ensure

accountability. The state, for example cannot, under this requirement, pardon or offer protection to anyone who commits torture.

How do the RIG Prevent Torture?

Conditions of arrest and detention often create fertile grounds for torture therefore there is need to put in place measures to regulate and monitor conditions in places of detention.

Under the RIG, states are required to establish;

- *Basic procedural safeguards for those deprived of their liberty* - for instance, the right that a relative or third party is notified of any detention; the right to an independent medical examination; the right of access to a lawyer.
- *Safeguards during the Pre-trial process* - prohibit the use of unauthorized places for detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. This safeguard ensures that the pre-trial process of detention is as transparent and open as possible. By opening up the process, the risks and opportunities for torture are reduced.
- *Conditions of detention* – states should take steps to improve the conditions in places of detention, which do not conform to international standards. Issues such as overcrowding, poor sanitation, poor ventilation and lack of access to medical facilities are common in African prisons. There is therefore a need to take steps towards improving the conditions of these places.
- States are also required to train and empower the civil society so that they disseminate information relating to the prohibition of torture. This guideline embodies the African value of community effort and

¹Ratification is making a treaty valid by approving and expressing official agreement, responsibility, or obligation, usually by enacting the necessary legislation to give domestic effect to that treaty.

encourages the states to partner with non-state actors to fight torture.

What about the Victims?

It is important to realize that the victims remain at the centre of the fight against torture. Under the RIG states are required to ensure that all the victims of torture and their dependants are offered appropriate medical care, have access to appropriate social and medical rehabilitation and are provided with appropriate levels of compensation and support. In addition, families and communities of victims should also be considered as torture victims.

Zimbabwe and the RIG

- **What Zimbabwe is required to do**

Zimbabwe signed and ratified the African Charter in 1986 and is legally bound by its provisions. *The African Charter* places a duty on the *African Commission* to create and lay down principles and rules aimed at solving legal problems relating to human and peoples rights and fundamental freedoms upon which African Governments may base their legislation.

- **The Government's Domestic Responsibilities**

Section 15 (1) of the Constitution of Zimbabwe states that *no person shall be subjected to torture or to inhuman or degrading punishment or other such treatment*. The Constitution does not define what torture is. However, Zimbabwean courts have closed the gap and defined torture to mean actions that result in severe mental and physical suffering, *see Blanchard & Ors v Minister of Justice 1999 (2) ZLR 24 (S)*

The Government of Zimbabwe has generally been indifferent in its approach as regards to torture. This is

mainly because it has been the main perpetrator of torture against its perceived enemies. Even after the signing of the GPA, torture has continued to be used by state agents and the militia.

- **Failure to Criminalize Torture in Domestic Law**

The government has not ratified *the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* as required by Part 1 of the RIG.

Despite having signed and ratified the African Charter, which is the foundation of the RIG, the Government of Zimbabwe has not yet criminalized torture in its domestic law. The effect of this is that those who commit torture in Zimbabwe may be sentenced only for offences such as assault, assault with intent to cause grievous bodily harm, rape, administering poison or other noxious substances, murder and attempted murder. The sentencing, being at the discretion of the sentencing judicial officer, does not usually correspond with the gravity of the offence.

- **Failure to Combat a Culture of Impunity**

In Zimbabwe, many perpetrators of torture continue to enjoy protection from facing justice. This is contrary to provisions of the RIG, which require that, in order to combat impunity for crimes of torture or ill-treatment, states should ensure that all perpetrators are subject to legal process. The responsible legal and security institutions in Zimbabwe have largely been unable to bring the perpetrators of torture to justice either due to partisan allegiances or due to fear of victimization by the perpetrators who in many cases are aligned to influential government officials. This has resulted in the loss of

confidence in public institutions, especially those that are supposed to protect ordinary citizens. Cases of torture, cruel, inhuman and degrading treatment, that have been brought before the judicial system have taken an unusually long period to be concluded, hence denying the victims true justice. It has taken an average of three years for many of the Zimbabwe Human Rights NGO Forum's cases to be concluded.

- **Failure to Improve the Conditions of Detention**

No safeguards have been put in place to ensure that the rights of all persons in lawful detention are protected and that they are safe from torture. Prison conditions in Zimbabwe, which already fall far short of the international standards, continue to deteriorate.

- **Failure to Respond to the Needs of the Victims**

Through a reluctance to admit the existence of torture within Zimbabwe, the government has not responded to the needs of the victims of torture. The collapsing health delivery system has also meant the inaccessibility of treatment for the victims. This duty laid down by the RIG

has thus fallen on the non-state actors whose impact has been greatly reduced by the hostility of the state and its media.

Conclusion

The *Robben Island Guidelines* are a measure of Africa's commitment to eliminating torture, cruel, inhuman or degrading treatment or punishment. Zimbabwe, as a member of the African Union, is bound by this commitment. Ratifying the *CAT* would be the first step towards the prohibition and prevention of torture. For the government to be able to respond to the needs of the victims, there is need to first acknowledge that such a problem does exist. This will enable the government to work with non-state actors currently involved in assisting the victims to provide appropriate medical care, rehabilitation, compensation and support. Without this commitment, Zimbabwe remains an ugly spot for African Human Rights, even at a time when the continent ought to be celebrating its progress in human rights. The RIG give Zimbabwe a clear path to take in joining the community of nations as a country that respects the rights of all its citizens.

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