

UGANDA / JUDGMENT

Hakyiri Peter v Attorney General (Complaint UHRC 51 of 2014) [2022] UGHRC 5 (14 March 2022) [2022] UGHRC 5

COURT

Uganda Human Rights Commission

BEFORE

Shifrah Lukwago - Commissioner

CASE / FILE NUMBER

Complaint UHRC 51 of 2014

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**THE REPUBLIC OF UGANDA THE UGANDA HUMAN RIGHTS COMMISSION
TRIBUNAL HOLDEN AT HOIMA COMPLAINT NO UHRC/HMA/51/2014 HAKYIRI
PETER:..... \$-AND\$ ATTORNEY GENERAL:.....**

BEFORE: HON. COMMISSIONER SHIFRAH LUKWAGO

DECISION

Background

The Complainant Hakyiri Peter alleged that on 4/09/2014 while he was at his home sleeping, two Policemen attached to Mpasana Police Post forcefully broke into his house. That the said policemen sprayed teargas on him and forcibly dragged him out of his house naked. That he was bundled onto a waiting motorcycle and taken to Mpasana Police Post and charged with obtaining money by false pretence. That while at the Police post he was beaten on the hands, legs, waist and chest by Policemen while forcing him to pay money to one Sanyu Darlison. That on 9/09/2014 he was taken to Kakumiro Police Station and detained until 11/09/2014 when he was taken to Court. He claimed a violated of his right to freedom from torture.

The following Issues were framed for determination;

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, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

Considering National Instruments, the Prevention and Prohibition of Torture Act, 2012 under section 3 defines 'torture' as;

"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 obtaining information or a confession from the person or any other person, 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 intimidating or coercing the person or any other person to do, or to refrain from doing, any act".

The Constitution of the Republic of Uganda under Article 24 clearly prohibits the violation of an individual's right to freedom from torture or cruel, inhuman or degrading treatment or punishment.

The International Covenant on Civil and Political Rights (ICCPR) 1996, which prohibits torture or cruel, inhuman and degrading treatment or punishment under Article 7, which states; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Convention Against Torture is widely referenced by international bodies and has been deemed the de facto "first port of call" for those seeking a definition of torture."

The Uganda Human Rights Commission Tribunal has subsequently adopted an evolving standard for determining when acts constitute torture, a standard that takes into account present-day conditions and human rights norms. This Tribunal emphasizes that the prohibition against torture enshrines one of the most fundamental values of democratic societies that must be respected even in the most difficult circumstances, the Tribunal was established to protect human rights and fundamental liberties, which "correspondingly and inevitably requires greater firmness in addressing breaches of the fundamental values of democratic societies." I observe that the 1995 Constitution of the republic of Uganda is a "living document," and I would like to express that "certain acts which were classified in the past as 'inhuman and degrading treatment' as opposed to 'torture' could be classified differently in the future." In making a determination regarding whether torture or cruel, inhuman, or degrading treatment has occurred, the Tribunal has considered;

- a) The nature of the act or acts involved;
- b) The severity of the physical and/or mental harm suffered as a result of the acts;

- c) The purpose of the actor, evidence on the purpose and Intent of torture.
- d) The official status and/or individual responsibility of the actor.

International human rights scholars have also analyzed these elements and have offered commentary on how they should be applied to distinguish torture and inhuman or degrading conduct. These four elements, and the jurisprudence that has interpreted them, are discussed more below in the evaluation of evidence.

Evaluation of the evidence adduced is aimed at determining whether the allegations by the complainant amounted to the level of severity that constitutes torture and then taken to Mpasana Police Post where he was detained. While in detention, a policeman who was using sticks and a baton would beat him all over the body but mainly on the head, right arm, around the stomach and pelvic area. He was beaten in order to make him pay money which he owed to a soldier's wife. He was visited in detention by C. W.1 and a Church of Uganda Lay reader. He was transferred to Kakumiro Police Station where he was detained for one day before being taken to Court and granted bail. Upon getting bail he sought medical attention from Mulago Hospital. He still has pain in the eyes, abdomen, legs, arms and chest. He usually gets eye pains when it is shining and has to wear a cap to cover his eyes from sunshine. He has no medical problem but his left shoulder bone, but feels pain in his leg and chest. He used to dig but can now no longer dig the way he used to. He spent about 200,000 on transport and drugs but failed to complete the treatment due to lack of money. He prayed for compensation.

In cross examination he stated that he was the only one who was affected by the tear gas. Although his eyes had been teargassed he was able to recognise one of the policemen as a one Moses. He maintained that it was the police attached to Mpasana Police Post who inflicted pain on him. He did not seek medical treatment from Kisita Health Centre III neither did he get a police medical examination form.

C. W.1 Tukamuhebwa Betty testimony on oath is that the Complainant is her husband. The Complainant was arrested from their home at around 5 am by policemen. During arrest, the Complainant was forcefully dragged out of their bed and taken out of the house. She was able to recognise the persons as policemen because she was using the light of her phone. When the complainant refused to go out of the house, a struggle ensued between the policemen and the complainant. The policemen teargassed the Complainant and put the complainant The Constitution of the Republic of Uganda, 1995 under Article 24 guarantees freedom from torture or cruel, inhuman and degrading treatment or punishment. Article 44 (a) of the Constitution and also under Section 3 of the Prevention and Prohibition of Torture Act of 2012 state that this right is non-derogable. Torture is extreme physical pain caused by someone or something, especially as a punishment or as a way to make someone say something. There are three essential elements;

The intentional infliction of severe mental or physical pain or suffering; $\mathbf{i}$ \$.

The purpose of the action or treatment meted out was to obtain information ii. or a confession, or for punishment, intimidation, coercion, or for any reason based on discriminating the victim;

By or with the consent or acquiescence of the state authorities; iii.

The Complainant bears the burden to prove the allegations against the Respondent as per Sections 101 (1), 102 Evidence Act Cap 6 [see; Kailash Mine Limited vs B4S High stone Limited HCCS No.139 of 2012].

(b) Evidence on the Nature of the Act

The UN Special Rapporteur's 1986 report describes the conditions under which torture often occurs, including practices such as incommunicado detention and states of emergency, where "preventative detention" or detention without procedural safeguards to protect the rights of detainees has led to circumstances where torture can become psychologically and institutionally accepted." The Special Rapporteur's report includes a listing of the types of actions that constitute torture. Some of the acts on the list are acts of commission, such as beating, burning, suspension, suffocation, such as by near-drowning in water, and exposure to excessive light or noise. There are also acts of omission, such as

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legitimate if the appropriate means are used to achieve the purpose. Nonetheless, the purpose requirement sets torture apart from other forms of ill treatment.

In considering whether the evidence is sufficient to establish a prohibited purpose, international bodies do not require proof that a prohibited purpose is the exclusive or even predominant motivation. "It is sufficient that a prohibited purpose is one of the results sought to be achieved." In addition, although the list of purposes in the Convention Against Torture is "meant to be indicative rather than exhaustive, it is likely that not every purpose is sufficient to constitute torture, but only a purpose which has something in common with the purposes expressly listed. In cases where the evidence fails to show that an act was committed to achieve any particular purpose, the treatment may be deemed cruel or inhuman, but it will not constitute torture.

According to Nowak & Macarthur, the intent or purpose requirement for torture sets torture apart from other prohibited ill-treatment and, for some, should constitute the "dominant element distinguishing torture from cruel or inhuman treatment." The complainant stated that he was beaten in order to make him pay money which he owed to a soldier's wife. This is evidence of purposeful intent on the side of the government agents who meted out the beating. The beating was intentional and calculated to cause pain to the complainant to coerce him to pay back money owed.

d) Evidence on the responsibility of the individual and public official

The Convention Against Torture in Article 1 provides that to constitute torture, an act must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." According to the Inter-American Report on Terrorism and Human Rights, in applying these standards, international bodies have held that for acts to constitute Constitution. The complainant testified that two policemen attached to Mpasana Police Post knocked down the door to his house. The policemen entered his bedroom, found him in his bed and begun beating him with batons and sticks. He was able to recognise them as policemen because they were wearing police uniform, there was some light inside his house and the policemen were using torches.

Based on the complainant's testimony and the consistency of his witnesses' evidence, all the ingredients required to prove whether the Complainant's freedom from torture, or cruel inhuman or degrading treatment or punishment was violated by the respondent's agents/servants are satisfactorily proved in this case. I find that all the elements constituting an allegation of torture are proved in this case.

The Complainant enjoyed a right of freedom from torture. As seen from the evidence given by CW 1, CW 2 and CW 3 before this Tribunal, it is clear that the complainant was a victim of torture at the hands of the Respondent's agents. The complainant testified that as a result of the beatings he sustained injuries on his body. The perpetrators acted contrary to Article 221 of the Constitution which demands that in the performance of their duties, security agents must respect human rights at all times.

From all indications, the respondent failed to uphold these standards and the Tribunal finds as a consequence that there was a violation of Article 24 of the Constitution.

On the balance of probabilities, it is established that the respondent's agents violated the complainant's right to freedom from torture or cruel, inhuman or degrading treatment or punishment. This issue is resolved in the affirmative.

Issue II: Whether the Respondent is vicariously liable?

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because his leg swells and gets paralyzed. CW II testified that the Complainant had a degree of temporary incapacity of 80% from 29/12/2008 to 20/01/2009. CW III who examined the Complainant did not see any external injuries. I accordingly award the Complainant a sum of UGX 7,000,000/= (Uganda Shillings Seven million only) as general damages for the violation of his right to freedom from torture as protected under Articles 24 and 44 (a) of the Constitution of the Republic of Uganda 1995. Accordingly the Complainant's case succeeds with the following orders:

Orders $\frac{1}{2}$

- 1. The complaint is allowed.
- 2. The Respondent is ordered to pay the Complainant Hakyiri Peter a total sum of UGX 7,000,000/= (Uganda shillings Seven million only) as general damages for the violation of his right to freedom from torture.
- 3. Each party shall bear its own costs.

Either party not satisfied with this decision has the right to appeal to the High Court of Uganda within 30 days from the date hereof.

Dated at HOIMA this

SHIFRAH LUKWAGO PRESIDING COMMISSIONER

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