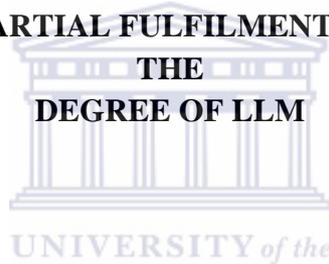


**SAFEGUARDING THE RIGHT TO FREEDOM FROM TORTURE IN CAMEROON**

**BY**

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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY  
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**2012**

## DECLARATION

I, Christopher Mba Weregwe, hereby declare that this thesis is originally mine and has never been submitted in any other academic institution. I also declare that all secondary information used has been acknowledged accordingly.

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## DEDICATION

This work is dedicated to all torture victims, my mother Mrs Timah Ngum Mary and to my late father, Pa Timah Emmanuel Weregwe, who died on 18 June 2011 while I was in the middle of this project.



## ACKNOWLEDGEMENT

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## **KEY WORDS**

African Charter on Human and Peoples' Rights

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Criminal Procedure Code of Cameroon

International Covenant on Civil and Political Rights

National Commission on Human Rights and Freedoms

Penal Code of Cameroon

People deprived of their liberty

The 1972 Cameroon Constitution (as amended by Law No. 2008/001 of 14 April 2008).

Torture

Universal Declaration of Human Rights



## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
ECHR	European Court of Human Rights
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
NCHRF	National Commission on Human Rights and Freedoms
OPCAT	Optional Protocol to the Convention against Torture
PICAM	Progressive initiative group for Cameroon
RIG	Robben Island Guidelines
SDF	Social Democratic Front
SODP	Special Oversight Division for the Control of Police Services
UDHR	Universal Declaration on Human Rights
UNO	United Nations Organisation
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNGA	United Nations General Assembly

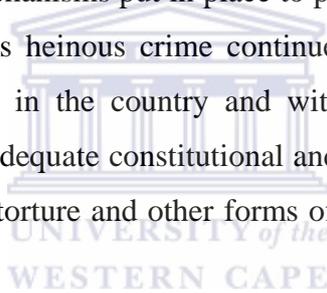
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## ABSTRACT

The international community saw the need to completely eradicate the use of torture and, as a result, adopted the 1984 Convention against Torture. The Convention obliges states to take effective legislative, judicial, and administrative and any other measures necessary to prevent acts of torture and other forms of ill-treatment within their jurisdictions. Cameroon, following the preamble of its Constitution, which prohibits torture in all its form, ratified the Convention in 1986 and other international treaties that deal with the prohibition of the use of torture. According to article 45 of the Constitution, duly ratified international treaties and conventions enter into force following their publication into the national territory. Cameroon has amended its Constitution and incorporated into its domestic laws, provisions which prohibit the use of torture and other forms of ill-treatment. It goes further to prescribe appropriate penalties for public officials and other persons working in official capacity, who subject detainees and prison inmates to torture and other forms of ill-treatment. Despite all these instruments and mechanisms put in place to prevent and eradicate the use of torture and other forms of ill-treatment, this heinous crime continues to be widespread and is practiced systematically in almost all regions in the country and with impunity. This study will analyse whether Cameroon has put in place adequate constitutional and legal framework and mechanisms to guarantee the right to freedom from torture and other forms of ill-treatment for persons deprived of their liberty.



# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the study

Torture is a universally condemned practice and no country has publicly opposed its eradication. The Convention against Torture (UNCAT)<sup>1</sup> prohibits all forms of torture and other cruel, inhuman or degrading treatment or punishment. The adoption of the UNCAT is an important achievement in the international fight against torture.<sup>2</sup> State parties to the UNCAT have the duty to incorporate the Convention into their domestic laws and judicial systems<sup>3</sup> and have to take effective legislative, administrative, judicial and/or all other practical measures to prevent acts of torture and put to an end all practices that violate these rules.<sup>4</sup> In addition to UNCAT, article 5 of the Universal Declaration of Human Rights (UDHR)<sup>5</sup> and article 7 of the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup> expressly prohibit the use of torture by state parties.

The prohibition against torture is also codified in regional human rights instruments, including the European Convention for the Protection of Human Rights<sup>7</sup> and the American Convention on Human Rights.<sup>8</sup> The African Charter on Human and Peoples' Rights (ACHPR),<sup>9</sup> another regional human rights instrument, guarantees, under its article 5, the right to freedom from torture.

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<sup>1</sup>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention against Torture (UNCAT), G.A. Res.39/46, UN Doc.A/39/51(1984). For more, see Holmstrom L *Conclusions and recommendations on the UN committee against torture* (2000) xiii ; Ratner S R & Abrams J S *Accountability for human rights atrocities in international law: Beyond the Nuremberg legacy* (2001) 117.

<sup>2</sup>The enforcement mechanism of the UNCAT is the Committee against Torture, which is responsible for ensuring that state parties comply with the Convention. The Committee employs several methods to scrutinise states parties' compliance to the Convention, including the examination of state party reports, individual communication and state party complaints as well as a further inquiry procedure.

<sup>3</sup>Article 4 of the UNCAT.

<sup>4</sup>Article 2 (1) of the UNCAT.

<sup>5</sup>Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948). For more, see Amstrong A, Lloyd L & Redmond J *International organisation in world politics* (2004) 242.

<sup>6</sup>The ICCPR was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entered into force 23 March 1976, in accordance with article 49. UN Doc. A/6316 (1966), 999 U.N.T.S. 171.

<sup>7</sup>The European Convention for the Protection of Human Rights and Fundamental Freedoms signed 4 November 1950, entered into force 3 September 1953, (E.T.S. 5), Rome 4.XI.1950. For more, see Rodley N *The treatment of prisoners under international law* (1987) 54.

<sup>8</sup>American Convention on Human Rights, O.A.S. Treaty Series No.36.

The central problem to be addressed in this study is whether Cameroon has put in place adequate legal and institutional framework to safeguard the right to freedom from torture in the country. The preamble to the Constitution<sup>10</sup> explicitly declares that '[u]nder no circumstances shall any person be subjected to torture, to cruel, inhuman or degrading treatment'. In addition, Cameroon has acceded to the UNCAT.<sup>11</sup> Parliament Cameroon passed two new laws, namely Act No. 97/007 of 10 January 1997, which incorporated the UNCAT into the Cameroon Penal Code<sup>12</sup> and Act No. 97/009 that outlawed the use of torture by state officials and also specified sanctions for torture perpetrators.<sup>13</sup> Furthermore, section 122 (2) and 315 (2) of the recently enacted Criminal Procedure Code provides further safeguards to freedom from torture. In terms of institutional mechanisms for enforcing the promotion and protection of human rights, Cameroon has established the National Commission on Human Rights and Freedoms (NCHRF).<sup>14</sup>

Despite its international and domestic commitments, Cameroon is famous for the violations of human rights. The use of torture and other forms of ill-treatment still persist in the country. The annual United States Department report 2011, in its 2010 Human Rights Report on Cameroon,<sup>15</sup> documented various acts of torture carried out by government officials, security forces and prison authorities. Amnesty International's Country Report 2009 indicates clearly that the practice of torture and other forms of ill-treatment in Cameroon is not only used to extract information from alleged

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<sup>9</sup>The ACHPR was adopted 21 June 1981 by the Organization of African Unity Heads of State, and entered into force on 21 October 1986, OAU Doc. CA/LEG/67/3 rev.5, 21 I.L.M. 58 (1982). For more, see Umzurike U O *The African Charter on Human and Peoples' Rights* (1997) ; Bassiouni M C & Motala Z *The protection of human rights in African criminal proceedings* (1995) 23.

<sup>10</sup>Constitution of Cameroon 1972 (as amended by Law No. 2008/001 of 14 April 2008).

<sup>11</sup>Cameroon acceded to the UNCAT on 19 December 1986. Cameroon has also ratified or acceded to other international treaties, including the ICCPR and its first Optional Protocol 1984, the Convention on the Elimination of all Forms of Discrimination against Women and its first Optional Protocol (in 1994 and 2004 respectively), the Convention on the Rights of the Child (1993), the International Convention on the Elimination of all Forms of Racial discrimination 1971. In addition, Cameroon is a party to the United Nations Charter, the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights, among others, which all goes a long way to prohibit the use of torture. Article 45 of the Cameroon Constitution states that the treaties or international agreements that have been ratified by the state enter into force from the moment they are published.

<sup>12</sup>Mbi J T 'Torture as a human rights violation in Cameroon' (2007) 1 No. 1 *Cameroon Journal on Democracy and Human Rights* 29.

<sup>13</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon' (2002) 8, available at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

<sup>14</sup>The NCHRF was initially established by presidential Decree No. 90/149 of 8 November 1990. Today, the NCHRF is governed by Law No. 2004/016 of 22 July 2004 and its implementing Decree No 2005/254 of 7 July 2005; amended and supplemented by Law No. 2010/004 of 13 April 2010.

<sup>15</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State (2009) Human Rights report for Cameroon, available at <<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm>> [Accessed 8 August 2011].

criminals but it is also, as a matter of fact, state policy.<sup>16</sup> Many have observed that the practice of torture and other forms of ill-treatment in Cameroon is a normalcy.<sup>17</sup> Again, the celebrated case of *Albert Womah Mukong v Cameroon*,<sup>18</sup> one of Cameroon's renowned politician, human rights activist and journalist, who was repeatedly arrested and subjected to torture by Cameroon state public officials on grounds that he insulted the president's wife, demonstrated that the use of torture continues in the country with impunity.

## 1.2 Statement of the problem

The continued practice of torture despite laws that prohibit the use of torture in Cameroon and its international commitments raises the question whether Cameroon has put in place adequate legal mechanisms to guarantee the rights to freedom from torture in all regions of the country. The question is also whether Cameroon has complied with its international obligations of effectively implementing and enforcing the substantive provisions of the UNCAT. This is the question that this study seeks to address.

With the view to achieve the above mentioned objective, the study seeks to answer the following questions:

- What are the international legal framework and mechanisms that are relevant in safeguarding the right to freedom from torture?
- What is the place of international treaties in Cameroon's domestic legal system?
- What are the constitutional and legal framework that have been put in place to safeguard the right to freedom from torture in Cameroon?
- What are the constraints to effective application, implementation, and enforcement of international legal standards relating to the rights to freedom from torture in Cameroon?

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<sup>16</sup>Amnesty International, 'A catalogue of human rights abuses in Cameroon 2009', available at <<http://www.amnesty.org/en/for-media/press-release/Cameroon-cat>> [Accessed 4 May 2011].

<sup>17</sup>Richard Holt, 'Scars of torture from Cameroon' The Telegraph 28 May 2010, available at <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/cameroon/7766554/Scars-of-torture-from-Cameroon.html>> [Accessed 1 May 2011]

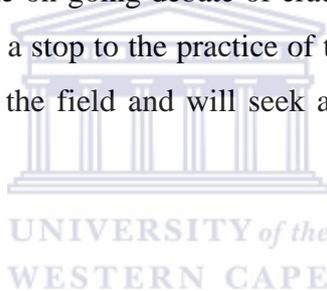
<sup>18</sup>*Albert Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994) para 6.2. For more, see De Than C & Shorts E *International criminal law and human rights* (2003) 219.

### **1.3 Objectives of the study**

This study aims to analyse the international human rights regime and its approach to address the problem of torture. It will, in particular, examine the role of the UNCAT in safeguarding the right to freedom from torture. More particularly, it will access the Constitution and legal framework that are put in place for the prohibition of torture in Cameroon.

### **1.4 Significance of the study**

This study aims to examine the effectiveness of the protection provided for by the Constitution and the law to safeguard the right to freedom from torture in Cameroon. This study is particularly significant as it seeks to explore and outline the big challenge which faces Cameroon, namely the reason for the prevalence of torture in the country despite all the efforts made to eradicate it. This research, it is believed, will add to the on-going debate of eradicating torture and the prosecution of torture perpetrators and, thus, putting a stop to the practice of torture with impunity. It will also take into account recent developments in the field and will seek avenues for safeguarding the rights to freedom from torture in the country.



### **1.5 Methodology**

This research study will take the form of the study of relevant literature on the prohibition of torture, including books, case law, articles and other relevant materials. International treaties, court judgements, statutes and international conventions, reports from international bodies will also be used. Legislation, governmental reports and other relevant documents will also be used.

### **1.6 Literature review**

A lot has been written on the subject of the right to freedom from torture. But little has been written on the topic in the context of Cameroon. Holt observes that torture perpetrators do not only inflict pain by beating and chaining, but also through sexual harassments and multiple rape of female detainees in detention centres and prisons. He notes that, as a result of these harassments, rape, torture and other forms of degrading treatment and punishment, some Cameroonians have fled the

country to seek political asylum abroad.<sup>19</sup> Ball wrote on human rights abuses in Cameroon where she explores the arbitrary arrest, detention and torture of detainees and prison inmates in the country.<sup>20</sup> She argues that the use of torture in Cameroon is widespread and systematic. She further observed that torture victims do not even know the complaint procedure or are too frightened to initiate legal criminal proceedings against torture perpetrators to vindicate their rights and receive adequate compensation and rehabilitation. The author further notes that torture is still a cause for concern to human rights sympathisers and activist in Cameroon since the practice continues unabated and with impunity.

Mbi examines the obligation of Cameroon under international law in ratifying international treaties and conventions.<sup>21</sup> He observes that international treaties and conventions, once ratified, become part of domestic law of the land and that its provisions are binding on Cameroon. He observes that UNCAT became part of Cameroon's domestic law as from 19th December 1986, the day Cameroon acceded to the Convention. He argues that despite the ratification of the UNCAT into the Cameroon Penal Code, the use of torture by the police; gendarmerie and prison warders continue and torture perpetrators go unpunished.

Njungwe examines the effectiveness of the NCHRF in promoting and protecting human rights values and the prohibition of torture in all regions of the country.<sup>22</sup> He compares the functioning of the NCHRF to its South Africa counterpart. The author argues that though the two bodies have similar objectives (i.e. the promotion and protection of citizen's rights against human rights abuses), the NCHRF does not have adequate autonomy and powers to investigate human rights abuses and torture, in particular. Its reports are not published since it submits a confidential report to the head of state to whom it is accountable. He concludes that with such a weak and unreliable mechanism to protect human rights, torture perpetrators continue to commit the crime without any fear of prosecution. The Progressive initiative group for Cameroon (PICAM),<sup>23</sup> a non-governmental

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<sup>19</sup>Richard Holt, 'Scars of torture from Cameroon' The Telegraph 28 May 2010, available at <<http://www.telegraph.co.uk/news/worldnews/africaindianocan/cameroon/7766554>> [Accessed 5 March 2011].

<sup>20</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon', (2002) available, at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

<sup>21</sup>Mbi J T 'Torture as a human rights violation in Cameroon' (2007) 1 No. 1 *Cameroon Journal on Democracy and Human Rights* 29.

<sup>22</sup>Njungwe E N 'A brief comparison between the South African and Cameroon national human rights commissions' (2007) 1 No. 1 *Cameroon Journal on Democracy and Human Rights* 24-27.

<sup>23</sup>Progressive initiative group for Cameroon (PICAM) 'The National Commission on Human Rights and Freedom of Cameroon: An epitome of government's contempt for human rights' 2009, available at <[http://www.picam.org/press-releases/2009/08-20-humanrights\\_commissiom.htn](http://www.picam.org/press-releases/2009/08-20-humanrights_commissiom.htn)> [Accessed 28 April 2011].

organisation working on the promotion and protection of human rights and the prohibition of torture, investigated into the ineffectiveness of the NCHRF in protecting citizen's rights from human rights abuses including torture. It argues that the NCHRF does not have adequate autonomy and powers to investigate human rights abuses and the use of torture, and, as a result, will not carry out its duties and responsibilities judiciously. It calls for the reform of the body or the creation of a new one.

As indicated earlier, although a lot has been written on the subject of the rights to freedom from torture, the focus has generally been on the prevalence of torture in Cameroon. Little has been written on the effectiveness of the constitutional and legal framework in protecting the right to freedom of torture in the country. This study seeks to fill this gap.

### **1.7 Structure**

Chapter Two of this study will focus on the international instruments and mechanisms put in place to combat the use of torture.

Chapter Three will focus on safeguards against torture for persons deprived of their liberty in Cameroon. It will also examine the situation of special categories of detainees including women, children and people with mental health problems.

Chapter Four will conclude the study and make suggestions in the form of recommendations.

## CHAPTER TWO

### INTERNATIONAL INSTRUMENTS AND MECHANISMS PUT IN PLACE TO COMBAT TORTURE

#### 2.1 Introduction

Torture is a heinous practice that has and is still causing untold pain, suffering and degradation to mankind. On the 26 June 2000, while commemorating the international day in support of victims of torture, the former United Nations Secretary-General, Kofi Annan, observes that:

[T]orture is not only one of the vilest acts that one human being can inflict on another, it is also among the most insidious of all human rights violations. All too often, it is veiled in secrecy- except for those who, covering in nearby cells, might be its next victims. Victims are often too shamed or traumatised to speak out, or face further peril if they do; often, they die of their wounds. Perpetrators meanwhile are shielded by conspiracies of silence and by the legal and political machinery of states that results to torture.<sup>24</sup>

The international community saw the need for the complete eradication of torture and has put in place a number of instruments and mechanisms covering different areas in an attempt to prevent the use of torture by state parties. Principles, rules, codes of conduct and guidelines have also been adopted to safeguard the dignity of persons deprived of their liberty as human beings and shelter them from torture and other cruel, inhuman or degrading treatment or punishment.<sup>25</sup>

The main key human rights treaties that provide safeguard measures against torture, are the (ICCPR)<sup>26</sup> and the (UNCAT).<sup>27</sup> Both treaties incorporate the commitment of state parties to promote and protect the rights and freedoms of individuals under their jurisdiction from torture. Some treaties

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<sup>24</sup>De than C & Shorts E *International criminal law and human rights* (2003) 181.

<sup>25</sup>The list includes, among others, Standard Minimum Rules for the Treatment of Prisoners, Principles on the Prevention of Arbitrary Arrest and Detention, Code of Conduct for Law Enforcement Officials, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles on the Role of Lawyers among others. For more, see United Nations 'Human Rights in the Administration of Justice: A Manual on human rights for judges, prosecutors and lawyers' (2003) Volume 1: Series 9, New York, p 318.

<sup>26</sup>The ICCPR was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 entered into force 23 March 1976, in accordance with article 49, UN Doc. A/6316 (1966), 999 U.N.T.S. 171.

<sup>27</sup>Also referred to as the Convention against Torture, it was adopted and opened for signature, ratification and accession by UNGA Resolution 39/46 of 10 December 1984, and it entered into force on 26 June 1987, in accordance with article 27 (1). For more, see Holmstrom L *Conclusions and recommendations of the UN committee against torture* (2000) xiii; Ratner S R & Abrams J S *Accountability for human rights atrocities in international law: Beyond the Nuremberg legacy* (2001) 117.

specifically prohibit torture of certain category of persons. For example, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>28</sup> prohibits torture of women under its General Recommendation No.19.<sup>29</sup> The Convention on the Rights of the Child (CRC)<sup>30</sup> specifically prohibits torture and other forms of ill-treatment on children. Article 37 (a) of the CRC prohibit its state parties from subjecting children to torture and other forms of ill-treatment.

Upon ratification of these human rights treaties, states are obliged to comply by the norms set by them.<sup>31</sup> States are also obliged to account for their measures to implement the standards set by these treaties and to account for any violations.<sup>32</sup> It is worth noting that states that have not ratified treaties that are geared towards preventing and eradicating the practice of torture are still bound to respect the provisions because of the fundamental nature of the prohibition of torture.<sup>33</sup>

This chapter aims at exploring the international instruments, particularly the UNCAT and the ICCPR, and their monitoring/supervisory mechanisms geared towards the complete prohibition of torture. Further, it will examine the role of the African Human Rights system in safeguarding the right to freedom from torture within the African continent. Moreover, the study will equally show that the prohibition of torture has attained the status of *jus cogens*,<sup>34</sup> and that the obligation of state parties to prohibit its occurrence is considered as an *erga omnes* obligation.<sup>35</sup>

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<sup>28</sup>Convention on the Elimination of all Forms of Discrimination against Women adopted by United Nations General Assembly on the 18 December 1979 and it entered into force on the 3 September 1981, UN Doc. A/34/46, at 193 (1979), 1249 U.N.T.S 14. For more, see Wallace Rebecca M M & Dale-Risk K *International human rights: Text and materials* 2 (ed) (2001) 20-34.

<sup>29</sup>Office of the High Commissioner for Human Rights (CEDAW) General Recommendation No. 19, A/47/38 at its 11 session (General Comments) Violence against Women, 1992 at para 7.

<sup>30</sup>United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989 and it entered into force 2 September 1990, in accordance with article 49.

<sup>31</sup>See Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties, adopted 23 May 1969, entered into force 27 January 1980. United Nations Treaty Series, Vol. 1155, p. 331.

<sup>32</sup>The Redress Trust 'Seeking reparation for torture victims: Bringing the international prohibition of torture home' (2006) 13, available <<http://www.redress.org/downloads/publications/CAT%20Implementation%20paper%2013%20Feb%202006%203.pdf>> [Accessed 23 May 2011].

<sup>33</sup>Foley C 'Combating torture: A manual for judges and prosecutors' (2003) 8, para 1.7, available at <[http://www.essex.ac.uk/combatingtorturehandbook/english/combating\\_torture.pdf](http://www.essex.ac.uk/combatingtorturehandbook/english/combating_torture.pdf)> [Accessed 11 August 2011].

<sup>34</sup>These are bodies of peremptory principles or norms from which no derogation is permitted; those norms recognized by the international community as a whole as being fundamental to the maintenance of an international legal order.

<sup>35</sup>An *erga omnes* obligation exists because of the universal and undeniable stand of states to protect against all rights that are considered to be degrading to man. For more, see *Belgium v Spain*, Second phase [judgement of 5 February 1970] I.C.J Reports 3, 32, paras. 33-34.

## 2.2 The Universal Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Since the prohibition of torture has attained the status of *jus cogens*, its prohibition is universal, implying that states are bound to prohibit the practice under all circumstances. The prohibition of torture is found in major human rights treaties, resolutions, and guidelines as well as in the law of war documents.<sup>36</sup> Article 5 of the UDHR provides that, as a matter of necessity, ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’. Other international and regional treaties have also provided for the complete prohibition of torture. Article 7 of the ICCPR prohibit its state parties from subjecting persons to torture and other forms of ill-treatment, while article 10 (1) of the same Covenant goes further to prohibit torture of persons deprived of their liberty.

The prohibition of torture has also been recognised by international criminal tribunals. Under article 7(1)(f) of the Rome Statute of the International Criminal Court (ICC), ‘torture is considered as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.<sup>37</sup> Article 8(2)(a)(ii) of the ICC further provides that ‘torture and other cruel, inhuman or degrading treatment or punishment carried out with the use of biological experiments also constitutes war crimes and grave breaches of the 1949 Geneva Conventions for the purpose of the same Statute’. The International Criminal Tribunal for the Former Yugoslavia also recognised the universal jurisdiction nature of the prohibition against torture in the land mark case of *The Prosecutor v Anto Furundzija*.<sup>38</sup> In that case, the court stated that:

[The prohibition of torture] has evolved into a peremptory norm or *jus cogens*, that is a norm that enjoys a higher rank in the international hierarchy than treaty law or even ‘ordinary customary rules’ ... Clearly the *jus cogens* nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. Furthermore, this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate.

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<sup>36</sup>Foley C (2003) 8.

<sup>37</sup>Rome Statute of the International Criminal Court, Rome (17 July 1998) (Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002).

<sup>38</sup>*The Prosecutor v Anto Furundzija* IT-95-17/I-T. For more, see Redress Trust (2006) 42.

Some regional human rights systems such as the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>39</sup> (article 3) and the American Convention of Human Rights<sup>40</sup> (article 5(2)) have also stressed for the complete eradication of torture, meanwhile other treaties such as the European Convention for the Prevention of Torture and Inhuman Degrading treatment or punishment (1987)<sup>41</sup> and the Inter-American Convention to Prevent and Punish Torture<sup>42</sup> have also been adopted to specifically combat torture within their various regions. The prohibition of torture and other forms of ill-treatment is also adequately guaranteed under the African human rights system. Article 5 of the (ACHPR)<sup>43</sup> specifically provides that:

[E]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

The ACHPR, like the ICCPR, does not distinguish between torture and other forms of ill-treatment. However, the African Commission on Human and Peoples' Rights (the African Commission) held, in *International Pen and Others v Nigeria*,<sup>44</sup> that 'article 5 prohibits not only torture, but also cruel, inhuman or degrading treatment, [including] not only actions which cause serious physical or psychological suffering, but which humiliate the individual or force him or her to act against his will or conscience'. A number of treaties and guidelines have also been adopted in the African continent, which expressly prohibit torture of specific category of persons. These include the African Charter on the Rights and Welfare of the Child (ACRWC),<sup>45</sup> Protocol to the African Charter on Human and

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<sup>39</sup>European Convention for the Protection of Human Rights and Fundamental Freedoms, (E.T.S. 5), Rome 4.XI.1950.

<sup>40</sup>American Convention of Human Rights, O.A.S. Treaty Series No.36.

<sup>41</sup>European Convention for the Prevention of Torture and Inhuman Degrading treatment or punishment Strasbourg, 26.XI. 1987.

<sup>42</sup>Inter-American Convention to Prevent and Punish Torture, O.A.S. Treaty Series, No. 36 (1985).

<sup>43</sup>African Charter on Human and Peoples' Rights, (Banjul Charter) adopted June 27, 1981, OAU Doc. CA/LEG/67/3 rev.5, 21 I.L.M. 58 (1982).

<sup>44</sup>*International Pen and Others, International Pen, Constitutional Rights Project, Interights on behalf of Ken-Saro-Wiwa Jr. and Civil Liberties Organisation/Nigeria v Nigeria*, African Commission on Human and Peoples' Rights, Communication Nos. 137/94, 139/94, 154/96 and 161/97 para79.

<sup>45</sup>The ACRWC was adopted by the Organisation of African Unity in 1990 and it entered into force 29 November 1999. OAU Doc.CAB/LEG/24.9/49(1990). The ACRWC was adopted to promote and protect children's rights in Africa. Article 16 (1) provides that 'state parties to the Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child'. This prohibition of torture under the ACRWC extends to children under any form of detention. Article 17 (2) calls on all state parties within the African Union to ensure that all children deprived of their liberty are not subjected to torture.

Peoples' Rights on the Rights of Women in Africa, also known as the African Women's Rights Protocol, or the Maputo Protocol<sup>46</sup> and the Robben Island Guidelines (RIG).<sup>47</sup>

Under international law, the prohibition of torture is absolute and non-derogable. The prohibition of torture is absolute under article 2(2) of the UNCAT in that, there can be no exceptional periods, such as, periods of public emergency, state of war, during the fight against terrorism, where by acts of torture can be justified.<sup>48</sup> Furthermore, article 2(3) of the UNCAT provides that, public officials or other persons, acting in official capacity, cannot carry out acts of torture and other forms of ill-treatment and escape liability, claiming that they acted on the basis of superior orders. The Human Rights Committee, in its General Comment No. 20 has further elaborated on these two points. It specifically provides that, 'the text of article 7 allows for no limitation. The Committee also reaffirms that even in situations of public emergency, such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee, likewise, observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order, from a superior officer or public authority'.<sup>49</sup>

Furthermore, the prohibition of torture is non-derogable in that states that ratify treaties that prohibit torture, like the ICCPR,<sup>50</sup> the European Convention for the Protection of Human Rights and fundamental Freedoms,<sup>51</sup> American Convention on Human Rights,<sup>52</sup> the UNCAT,<sup>53</sup> cannot include

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<sup>46</sup>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, entered into force November 25, 2005.

The African Women's Rights Protocol prohibits torture and other forms of ill-treatment of women in Africa. Article 4 (1) calls on all state parties to ensure that, 'every woman shall be entitled to respect for her life and the integrity of and the security of her person. All forms of exploitation, cruel inhuman or degrading punishment and treatment shall be prohibited'. It further provides that 'state parties shall take appropriate and effective measures to enact and enforce laws prohibiting all forms of violence against women including unwanted or forced sex whether in private or public places'.<sup>46</sup>

<sup>47</sup>The RIG was adopted at the African Charter on Human and Peoples' Rights meeting, 32<sup>nd</sup> ordinary session, held in Banjul, the Gambia from 17-23 October 2002. The RIG was adopted specifically for the prohibition and prevention of torture in the African continent. It calls on all African states to prohibit torture and other forms of ill-treatment. Under the RIG, the prohibition of torture is absolute and non-derogable. Paragraph 9 of the RIG provides that 'circumstances or national emergency such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification for torture, cruel, inhuman or degrading treatment or punishment'.

<sup>48</sup>Article 2 (2) of the UNCAT provides that there can be no exceptional periods, be they periods of public emergency, state of war, during the fight against terrorism, whereby acts of torture can be justified.

<sup>49</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 3.

<sup>50</sup>Article 4 (2) of the ICCPR.

<sup>51</sup>Article 15 (2) of the ECHR.

derogation clauses that can breed the practice of torture.<sup>54</sup> The Committee against Torture has stated in its General Comment No. 2 that the prohibition against torture is absolute and non-derogable. It went further to emphasize that states cannot invoke exceptional circumstances, be they state of war, internal political instability, terrorist acts, violent crimes, non-international or international armed conflicts to justify acts of torture in any area within their jurisdiction.<sup>55</sup> Foley observes that a short coming in the universal prohibition of torture, in so far as the African continent is concerned, is that the ACHPR does not prohibit the practice of torture during emergency periods and as a result, the Charter does not contain a derogation clause or clauses for the prohibition of torture in times of emergency.<sup>56</sup> However, as Mujuzi convincingly argues, the prohibition of torture is absolute and non derogable under the African human rights system as the ACHPR has rated torture in the same stand as other *jus cogens* crimes (slavery and slave trade) and considered it as a form of exploitation and degradation to mankind.<sup>57</sup>

### 2.3 Definition of Torture

There is an agreement that a definition of torture helps to bound states to protect against the prohibited conduct, enable public officials to refrain from carrying out the prohibited acts and, for the international community, to hold states accountable for acts of torture carried out within their jurisdictions.<sup>58</sup> In addition, while most states have openly accepted that torture is an evil practice that must be condemned, prevented and prohibited, the so called ‘war on terror’ has shown that many states define torture differently.<sup>59</sup> As a result, the definition of torture is a major legal concern. If torture is to be universally eradicated, a common definition must be adopted and accepted by the international community.<sup>60</sup> Conspicuously, the ICCPR, the major international human rights treaty which promotes and protects human rights and also prohibits torture, does not provide a definition of

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<sup>52</sup>Article 27 (2) of the ACHR.

<sup>53</sup> Article 2 (3) of the UNCAT.

<sup>54</sup> United Nations Human Rights Committee (HRC) CCPR General Comments No. 29: Article 4 (States of Emergency) U.N Doc. CCPR/C/21/Rev. 1/Add 11 (2001) para. 7.

<sup>55</sup>United Nations Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2 para 5.

<sup>56</sup>Foley C (2003) 8.

<sup>57</sup>Mujuzi J D ‘An analysis of the approach to the right to freedom from torture adopted by the African Commission on Human and Peoples’ Rights’ (2006) 6 *African Human Rights Law Journal* 429.

<sup>58</sup>Miller G H ‘Defining torture’ (2005) 1, available at<[www.cardozo.yu.edu/floersh/index.asp](http://www.cardozo.yu.edu/floersh/index.asp)> [Accessed 7 August 2011].

<sup>59</sup>Miller G H ‘Defining torture’ (2005) 1, available at<[www.cardozo.yu.edu/floersh/index.asp](http://www.cardozo.yu.edu/floersh/index.asp)> [Accessed 7 August 2011].

<sup>60</sup>Miller G H ‘Defining torture’ (2005) 1, available at<[www.cardozo.yu.edu/floersh/index.asp](http://www.cardozo.yu.edu/floersh/index.asp)> [Accessed 7 August 2011].

torture.<sup>61</sup> This lack of a definition of torture under the ICCPR was, however, short lived. A comprehensive and universal definition was adopted in 1984 under article 1 of the UNCAT, which defines the term ‘torture’ to mean:

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, 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.<sup>62</sup>

The above definition of torture identifies some key elements that must be present for an act to amount to torture. From the foregoing, acts of torture must, first of all, involve the infliction of severe pain and suffering. The pain and suffering must be extremely high. The pain can either be mental or physical. In 1997, the European Court of Human Rights (ECHR) in *Aydin v Turkey*<sup>63</sup> reported that rape and other forms of ill-treatment could constitute torture. The court went further to elaborate in the above mentioned case that:

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally.<sup>64</sup>

Further, the ECHR, in *Selmouni v France*<sup>65</sup> and *Ireland v United Kingdom*,<sup>66</sup> held that for an act to amount to torture, ‘the duration of the treatment, its physical or mental effects and on the sex, age and state of health of the victim’ and the level of severity<sup>67</sup> must be taken into consideration.

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<sup>61</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992. Para 4 provides that ‘the Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied’.

<sup>62</sup>UNCAT adopted and opened for signature, ratification and accession by UNGA Resolution 39/46 of 10 December 1984, and it entered into force on 26 June 1997, in accordance with article 27 (1). For more, see Mujuzi J D ‘An analysis of the approach to the right to freedom from torture adopted by the African Commission on Human and Peoples’ Rights’ (2006) 6 *African Human Rights Law Journal* 425.

<sup>63</sup>*Aydin v Turkey* (1998) 25 E.H.R.R. 251 para 83.

<sup>64</sup>*Aydin v Turkey* (1998) 25 E.H.R.R. 251 para 83. See also McGlynn C ‘Rape, torture and the European Commission on Human Rights (2009) Vol. 58 *International and Comparative Law Quarterly* 567-568.

<sup>65</sup>*Selmouni v France*, (1999) 29 E.H.R.R. 403, para 101.

It is often difficult to distinguish an act of torture from a cruel, inhuman or degrading treatment. It is, however, often held that cruel, inhuman or degrading treatment or punishment may involve pain or suffering of a lower magnitude than that which will amount to torture although it will usually lead to the humiliation and downgrading of the victim.<sup>68</sup> The ECHR, in *Ireland v United Kingdom*,<sup>69</sup> held that treatments such as ‘hooding detainees, subjecting them to constant and intense noise, sleep deprivation, giving them insufficient food and drink and making them stand for long periods in a painful posture’ amounted to other forms of ill-treatment rather than torture.<sup>70</sup> Furthermore, some authors, like De than and Shorts, have also drawn a distinctive line between torture and other cruel inhuman degrading treatment or punishment in relation to the element of pain and suffering. They are of the opinion that bodily harm which is not severe will not constitute torture, but will rather constitute other cruel inhuman degrading treatment or punishment. It must be noted that not all harsh treatments amount to torture, as torture can only be established for the restricted purposes set out under article 1 of the UNCAT.<sup>71</sup>

Secondly, for an act to amount to torture, it must be intentionally inflicted for a particular purpose or purposes during interrogation, as a means of punishing the victim or third party for a crime committed,<sup>72</sup> intimidation, discrimination, to extract information or for other purposes intended to down grade the personality and moral of the victim.<sup>73</sup> Some authors, like De Than and Shorts, are of the opinion that public officials or other persons acting in official capacity who merely violates procedural rules of interrogation will not be guilty of torture.<sup>74</sup>

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<sup>66</sup>*Ireland v United Kingdom* (1979-80) 2 EHRR 25, para 162.

<sup>67</sup>Redress Trust (2006) 39.

<sup>68</sup>Foley C (2003) 12.

<sup>69</sup>*Ireland v United Kingdom* (1979-80) 2 EHRR 25, para 167.

<sup>70</sup>Joseph S, Schultz J & Castan M *The International Covenant on Civil and Political Rights: Cases, materials and commentary* (2004) 196.

<sup>71</sup>De Than C & Shorts E (2003) 187.

<sup>72</sup>*Hajrizi Dzemajl et al. v Yugoslavia*, CAT/C/29/D/161/2000, UN Committee against Torture (CAT), 2 December 2002, para 8.13. In this case, the Committee against Torture agreed with the complainants that ‘they were indeed subjected to acts of community violence inflicting on them great physical and mental suffering amounting to torture and/or cruel, inhuman and degrading treatment or punishment’. They further stated that ‘this happened for the purpose of punishing them for an act committed by a third person’. See also Joseph S, Schultz J & Castan M *The International Covenant on Civil and Political Rights: Cases, materials and commentary* (2004) 202.

<sup>73</sup>*Ilhan v. Turkey* (2002) 34 E.H.R.R.36, para 85.

<sup>74</sup>De Than C & Shorts E (2003) 187.

Thirdly, the act must be committed with the direct or indirect involvement of a public official. Acts of torture can only be perpetrated or authorised by public officials or other persons acting in official capacity.<sup>75</sup> According to the UNCAT private actors, who carry out acts of torture, will not be held liable for a breach of the Convention. But, in *Osman v United Kingdom*,<sup>76</sup> the ECHR held that states shall be accountable for acts of torture perpetrated by private actors within their jurisdiction if they fail to take adequate measures to prevent such acts. In *Sadiq Shek Elmi v Australia*<sup>77</sup> the Committee against Torture held that non-state actors in states with no central governments controlling territories are considered to be public officials and will be held liable for acts of torture committed within their jurisdiction. The ACHPR is also of the opinion that non-state actors should be considered to be public officials, and that states would be liable for acts of torture committed by non-state actors within its jurisdiction if it fails to prevent such acts. In *Commission Nationale des Droits de l'Homme et des Libertes v Chad*<sup>78</sup> the African Commission held that the Chadian government violated article 5 of the Charter as it neither protected its citizens nor investigated into acts of torture and other forms of ill-treatment carried out by non-state actors within its jurisdiction during the bloody civil war that raged the country during the mid-1990s.

As it is clearly stated in article 1 of the UNCAT, torture 'does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions'. Some authors like De Than and Shorts are of the opinion that the words 'inherent and incidental to lawful sanctions' will go a long way to undermine the absolute and non-derogable nature of the prohibition of torture and, in certain circumstances, may shelter perpetrators from liability and thus give rise to impunity.<sup>79</sup> Boulesbaa also observes that, the words 'inherent and incidental to lawful sanctions' are vague and very broad, and that without a proper clarification there is the danger that an extensive interpretation of these words will undermine the provisions of the Convention.<sup>80</sup>

## 2.4 States' obligation to prevent torture

Under International law and some regional treaties, states are expected to take all necessary measures to protect persons under their jurisdiction against torture. This is the case, for example, with article 2

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<sup>75</sup>Article 1 of the UNCAT.

<sup>76</sup>*Osman v United Kingdom* (2000) 29 EHRR 163.

<sup>77</sup>*Sadiq Shek Elmi v Australia*, CAT/C/22/D/120/1998, UN Committee against Torture (CAT), 25 May 1999, para 6.5.

<sup>78</sup>*Commission Nationale des Droits de l'Homme et des Libertes v Chad*, (2000) AHRLR 66 (ACHPR 1995) para 20 & 22.

<sup>79</sup>De Than C & Shorts E (2003) 188.

<sup>80</sup>Boulesbaa A *The U.N. convention on torture and the prospect for enforcement* (1999) 28.

(1) of the UNCAT,<sup>81</sup> article 2 (2) of the ICCPR<sup>82</sup> and article 1 of the ACHPR.<sup>83</sup> States are not only expected to implement legislation that seeks to prevent torture, but they are also expected to take all necessary measures to ensure that torture does not occur in practice; that torture perpetrators are held accountable, and that torture victims are adequately compensated.<sup>84</sup> The question is, what are the measures that states are expected to take to prevent torture.

#### **2.4.1. Duty to implement legislation to criminalise and punish torture**

An efficient way to safeguard against torture is for states to implement and enforce legislations making torture a specific crime under their domestic criminal law and, at the same time, prescribing appropriate penalties for torture perpetrators. The UNCAT calls on all state parties to criminalise torture and provide appropriate punishment for torture perpetrators. Article 4 (1) of the UNCAT requires all states to ensure that all acts of torture are made offences under their various criminal law. States are expected to go further and criminalise attempt and participation in torture. The same article, under its sub-section 2, goes further to provide that state parties shall also provide appropriate punishment for torture perpetrators taking into account the gravity of the offence.

Even though, the ICCPR does not provide for the criminalisation of torture, the Human Rights Committee, in its General Comment No. 20, provides that ‘state parties should indicate, when presenting their reports, the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the state, or by private persons’.<sup>85</sup> The Human Rights Committee went further to state that criminalising torture is not enough in preventing the crime. Persons who perpetrate acts of torture or participate in any way in committing torture must be apprehended and prosecuted.

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<sup>81</sup>Article 2 (1) of the UNCAT provides that states are expected to ‘take effective legislative, administrative, judicial or other measures to prevent acts of torture’.

<sup>82</sup>Article 2 (2) of the ICCPR provides that ‘where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant’.

<sup>83</sup>Article 1 of the ACHPR provides that member states shall adopt legislative or other measures necessary to give effect to the rights and freedoms enshrined in the Charter.

<sup>84</sup>Redress Trust (2006) 45.

<sup>85</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 13.

The obligation of African states to criminalise torture is underlined under the RIG. It specifically provides that ‘states should ensure that acts, which fall within the definition of torture, and other forms of ill-treatment contained in article 1 of the UNCAT are made criminal offences within their national legal systems’<sup>86</sup> and ‘national courts should have the jurisdictional competence to hear cases of allegations of torture in accordance with article 5 (2) of the UN Convention against Torture’.<sup>87</sup>

#### **2.4.2 Training of custody personnel**

Since torture occurs mostly in detention centres, states are expected to take appropriate measures to train and educate custody personnel against the practice of torture. The UNCAT requires that all persons charged with the administration of detention facilities and penitentiary establishment be adequately trained against subjecting detainees and prison inmate to torture and other forms of ill-treatment. Article 10 (1) of the UNCAT provides that ‘each state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment’. Article 10 (2) of the UNCAT goes further to provide that state parties shall also include rules and instructions that are meant to prohibit torture in the function sheet of all persons administering detention facilities.

Although no provision exist under the ICCPR for the training of custody personnel against torture, the Human Rights Committee recognises that training and educating custody personnel will go a long way to safeguard against torture and other forms of ill-treatment. The Committee, in its General Comments No. 20 on article 7, provides that ‘enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training’.<sup>88</sup> Based on this, it requires state parties to inform it of ‘the instruction and training given and the way in which the prohibition of article 7 forms an integral part of the operational rules and ethical standards to be followed by such persons’.<sup>89</sup>

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<sup>86</sup>Paragraph 4 of the RIG.

<sup>87</sup>Paragraph 6 of the RIG.

<sup>88</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 10.

<sup>89</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 10.

According to the Office of the United Nations High Commissioner for Human Rights, training and educating custody personnel will go a long way to prevent torture. Based on this, it has ‘adopted a series of practical guidelines, rules of conduct and principles that interpret state’s international law obligations [that] should be disseminated widely to officials coming into contact with persons deprived of their liberty’.<sup>90</sup> It also advice that medical practitioners and other medical staffs serving in detention centres must be versed with instructions on the protection of detainees and prison inmates against torture and other forms of ill-treatment, as provided for by the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>91</sup>

The ACHPR does not provide for training of custody personnel as a means of preventing torture. However, the RIG, which was adopted specifically for the prohibition and prevention of torture in Africa, provides that states should ‘[d]evise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel’.<sup>92</sup>

### **2.4.3 Avoiding incommunicado detention**

Another way to safeguard against torture is for states to prevent incommunicado detention. Incommunicado detention is a situation where detainees and prison inmates are incarcerated in solitary prison cells without access to the outside world, including legal counsel and close family members.<sup>93</sup> Safeguards against incommunicado detention are addressed by the Human Rights Committee, other United Nations Principles and guidelines and the ACHPR. Although not binding, the Basic Principles for the Treatment of Prisoners, for example, discourages states from detaining persons incommunicado. Its Principle 7 call on states to do all in their power to abolish incommunicado detention as a means to punish persons deprived of their liberty or better still discourage or restrict its use.

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<sup>90</sup>These include the Standard Minimum Rules for the Treatment of Prisoners; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. See Redress Trust (2006) 53.

<sup>91</sup>Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly resolution 37/194 of 18 December 1982.

<sup>92</sup>Paragraph 46 of the RIG.

<sup>93</sup>Joseph S, Schultz J & Castan M *The International Covenant on Civil and Political Rights: Cases, materials and commentary* (2004) 253.

However, the Human Rights Committee has stated in its General Comments No. 20 that, incommunicado detention is a violation of both articles 7 and 10 of the ICCPR, which prohibit torture and other cruel, inhuman degrading treatment or punishment, and guarantee safeguards to freedom from torture for people deprived of their liberty.<sup>94</sup> According to the Committee, incommunicado detention amounts to torture irrespective of the duration of detention. This is clear from the cases decided by the Committee. In *Yong-Joo Kang v Korea*,<sup>95</sup> the Committee held that in confining the victim to a solitary cell for thirteen years amounted to a violation of article 10 (1) of the Covenant. In *Karina Arutyunyan v Uzbekistan*,<sup>96</sup> the Human Rights Committee held that detaining the victim for two weeks incommunicado equally violated articles 7 and 10 (1) of the Covenant. The Human Rights Committee has also called on all state parties to make provisions to prohibit incommunicado detention in all areas within their jurisdiction.<sup>97</sup>

Furthermore, The United Nations Commission on Human Rights has stated that prolonged solitary confinement of a detainee may breed torture and can amount to cruel, inhuman or degrading treatment, and urges all states to desist from the practice.<sup>98</sup> The United Nations Special Rapporteur on Torture also reported that torture is most frequently practised during solitary confinement and called on all states to outlaw the practice, and persons deprived of their liberty in solitary cells be released without delay.<sup>99</sup>

The ACHPR has no provision against the practice of detaining people incommunicado. However, the ACHPR is of the opinion that the practice of incommunicado detention violates article 5 of the Charter. The African Commission observes that incommunicado detention, especially if prolonged,

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<sup>94</sup>Human Rights Committee, provides that 'keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends... Provisions should also be made against incommunicado detention'. See para 11.

<sup>95</sup>*Yong-Joo Kang v. Republic of Korea*, CCPR/C/78/D/878/1999, UN Human Rights Committee (HRC), 16 July 2003, para 7.3. See also *Albert Womah Mukong v Cameroon*, Communication No. 458/1991, CCPR/C/51/D/458/1991.

<sup>96</sup>*Karina Arutyunyan v Uzbekistan*, Communication No. 917/2000, U.N Doc. CCPR /C/80/D/917/2000 (2004) para 6.2.

<sup>97</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 6 and 11.

<sup>98</sup>United Nations Commission on Human Rights, Commission on Human Rights resolution 2000/43 Torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/RES/2000/43, 20 April 2000, para 7.

<sup>99</sup>Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, para. 39 (f).

can breed grounds for both torture and other forms ill-treatment. In *Liesberth Zegveld and Messie Ephrem v Eritrea*,<sup>100</sup> the African Commission held that:

[I]ncommunicado detention is a gross human rights violation that can lead to other violations such as torture or ill-treatment or interrogation without due process safeguards. Of itself, prolonged incommunicado detention and/or solitary confinement could be held to be a form of cruel, inhuman or degrading punishment and treatment. The African Commission is of the view that all detentions must be subject to basic human rights standards. There should be no secret detentions and States must disclose the fact that someone is being detained as well as the place of detention. (...).<sup>101</sup>

In *Article 19 v Eritrea*,<sup>102</sup> the African Commission held that the state of Eritrea violated article 5 of the Charter, by detaining journalists and political dissidents incommunicado without access to their families, friends and counsel. The RIG prohibits incommunicado detention within the African Continent.<sup>103</sup> It further calls on all African states to take all measures necessary to ban the incarceration of persons in centres that are not authorised by law, and also to punish public officials who engage themselves in such practices.<sup>104</sup>

#### 2.4.4 Exclusion of evidence obtained through torture

An efficient way to prevent torture is for states to ensure that statements extracted by way of torture are inadmissible in evidence in criminal proceedings against a suspect. It is often considered that these statements or confessions made under torture are unreliable and their use in criminal proceedings only encourages interrogation techniques that result in torture.<sup>105</sup> Although the ICCPR does not contain any provision for the exclusion of evidence extracted through torture, its article 14(3) (g) provides that no one shall be forced to testify or to confess guilt against his or her self. The Human Rights Committee also recognises that ‘it is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment’.<sup>106</sup> In *Singarasa v*

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<sup>100</sup>*Zegveld and Ephrem v Eritrea* (2003) (AHRLR 84 (ACHPR 2003) para 55.

<sup>101</sup>*Liesberth Zegveld and Messie Ephrem v Eritrea* (2003) (AHRLR 84 (ACHPR 2003) para 55.

<sup>102</sup>*Article 19 v Eritrea* (2007) AHRLR 73 (ACHPR 2007) para 102.

<sup>103</sup>Paragraph 24 of the RIG.

<sup>104</sup>Paragraph 23 of the RIG.

<sup>105</sup>Redress Trust (2006) 62.

<sup>106</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 12.

*Sri Lanka*,<sup>107</sup> the Committee held that in criminal proceedings evidence should not be extracted from a suspect by way of torture.

The UNCAT has adequately guaranteed that evidence obtained from a suspect by way of torture be inadmissible in evidence in criminal proceedings. Article 15 of the UNCAT provides that ‘each state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made’. In *P.E. v France*<sup>108</sup> and *G.K. v Switzerland*,<sup>109</sup> the Committee against Torture held that in criminal proceedings, evidence shall not be extracted from suspects by way of torture. In cases where suspects alleged that they confessed through torture, the state in question has the responsibility of proving the contrary.

Exclusion of evidence extracted by way of torture is not guaranteed under the ACHPR. It should however, be noted that judgements delivered by the African Commission has proved that statements extracted from suspects through torture are inadmissible in evidence. For example, in *Egypt Initiative for Personal Rights and Interights v Arab Republic of Egypt*<sup>110</sup> the African Commission held that Egypt was in violation of article 7 of the Charter as it was proved that the supreme state security court in Egypt relied on statements extracted by way of torture to convict the suspects. However, the RIG calls on state parties of the ACHPR to ensure that any statements extracted from suspects by way of torture to be inadmissible in evidence in any proceedings. Such statements can, however, be admissible in evidence against alleged torture perpetrators.<sup>111</sup>

#### **2.4.5 Prohibition of refoulement**

States are not only obliged to prevent acts of torture within their jurisdictions, but also to ensure that persons facing deportation or extradition shall not be forced to return to states or areas where they are likely to be subjected to torture. Although the ICCPR does not specifically guarantee against refoulement, the Human Rights Committee, in General Comment No. 20, provides that ‘state parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or

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<sup>107</sup>*Singarasa v Sri Lanka*, Human Rights Committee, Communication No. 1033/2001, 21 July 2004, para.7.4.

<sup>108</sup>*P.E v France*, CAT Communication No. 193/01(2002) para 6.3.

<sup>109</sup>*G.K v Switzerland*, CAT Communication No. 219/2002 (2003) para 6.10.

<sup>110</sup>*Egypt Initiative for Personal Rights and Interights v Arab Republic of Egypt*, Communication No. 334/06, para 8 and 214.

<sup>111</sup>Paragraph 29 of the RIG.

punishment upon return to another country by way of their extradition, expulsion or refoulement, and should indicate in their reports what measures they have adopted to that end'.<sup>112</sup>

In addition, safeguards against refoulement are adequately provided for under the UNCAT. Article 3 (1) of the UNCAT prohibit state parties from expelling, returning (“refouler”) or extraditing persons to states or areas where there are substantial grounds for believing that they will be in danger of being subjected to torture. Furthermore, states are obliged to determine whether persons facing deportation will be subjected to torture in the receiving states. Article 3 (2) of the Convention provides that ‘for the purposes of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights’. In *Sadiq Shek Elmi v Australia*,<sup>113</sup> the Committee against Torture objected the deportation of the author to his native land. It held ‘that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Somalia’. Similarly, in *Ismail Alan v Switzerland*<sup>114</sup> and *Mutombo v Switzerland*<sup>115</sup> the Committee held that there were substantial grounds to believe that the applicants were likely to be subjected to torture if returned to Turkey and former Zaire respectively. But in *HD v Switzerland*<sup>116</sup>, the Committee decided the opposite. It held that substantial grounds did not exist for believing that the applicant will be subjected to torture if returned to Turkey, and that Switzerland will not be in violation of article 3 if the applicant is repatriated to Turkey.

The ECHR has also, in a number of cases, prohibited the refoulment of persons to states where they are likely to be subjected to torture, irrespective of how undesirable or dangerous such individuals can be. In *Chahal v the United Kingdom*<sup>117</sup> the ECHR held that:

The proposition that, in deciding whether the deportation of an individual would be in the public good, the Secretary of State should wholly ignore the fact that the individual has established a well-founded fear of persecution in the country to which he is to be sent seems to me to be surprising and unacceptable. Of course there may very well be occasions when the individual poses such a threat to this country and its inhabitants that considerations of his personal safety and well-being become virtually irrelevant. Nonetheless, one would expect

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<sup>112</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 9.

<sup>113</sup>*Sadiq Shek Elmi v. Australia*, CAT/C/22/D/120/1998, UN Committee against Torture (CAT), 25 May 1999, para 6.9.

<sup>114</sup>*Ismail Alan v. Switzerland*, Communication No. 21/1995, U.N. Doc. CAT/C/16/D/21/1995 (1996) para 11.6 and 12.

<sup>115</sup>*Mutombo v Switzerland*, Communication No. 13/1993, U.N. Doc.A/49/44 at 45 (1994) para 9.7 and 10.

<sup>116</sup>*H.D. v. Switzerland*, CAT/C/22/D/112/1998, UN Committee Against Torture (CAT), 3 June 1999, para. 6.7.

<sup>117</sup>*Chahal v The United Kingdom*, 70/1995/576/662, Council of Europe: European Court of Human Rights, 15 November 1996, para 41.

that the Secretary of State would balance the risks to this country against the risks to the individual, albeit that the scales might properly be weighted in favour of the former.

Some states have insisted that it will extradite or return persons to states or areas where they may be subjected to torture if their security concerns are at stake. For example in *Suresh v Canada (Minister of immigration and citizenship)*,<sup>118</sup> Canada insisted that if its security concerns were at stake, it would, and it did extradite persons to states where they are likely of being subjected to torture.

The ACHPR has also prohibited its state parties from returning persons to states or areas where they may be subjected to torture or other forms of ill-treatment. Article 12 (5) of the ACHPR prohibits state parties to carry out mass expulsion, repatriation or extradition of foreign nationals on racial, ethnic and religious grounds to countries where it is likely that they will be subjected to torture and other forms of cruel inhuman and degrading treatment. Therefore, foreign nationals with genuine fear of being persecuted will have the right to seek asylum in third countries.<sup>119</sup> The ACHPR goes further to prohibit the mass expulsion of refugees into states or areas where they may face torture.<sup>120</sup> In *Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia*<sup>121</sup> the African Commission held that the mass expulsion of refugees by the Zambian government to countries like Senegal, Mali and Guinea Conakry, where they were likely to face torture, specifically threatens human rights.<sup>122</sup>

The Commission further stated that:

It will not dispute that the Zambian state has the right to bring legal action against all persons illegally residing in Zambia, and to deport them if the results of such legal action justify it. However, the mass deportation of the individuals in question here, including their arbitrary detention and deprivation of the right to have their cause heard, constitutes a flagrant violation of the Charter.<sup>123</sup>

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<sup>118</sup>*Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R.3 (Judgment of 11 January 2002) at pages 4-6. In the above mentioned case it was stated that 'in exercising the discretion conferred by s. 53(1)(b) of the *Immigration Act*, the Minister must conform to the principles of fundamental justice under section 7. In so far as, the Act leaves open the possibility of deportation to torture (a possibility which is not here excluded), the Minister should generally decline to deport refugees where on the evidence there is a substantial risk of torture. Applying these principles, section 53(1)(b) does not violate section 7 of the *Charter*'.

<sup>119</sup>This right is guaranteed under section 12 (3) of the ACHPR which provides that 'every individual shall have the right when persecuted to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions'.

<sup>120</sup> Article 12 (5) of the ACHPR provides that 'the mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups'.

<sup>121</sup>*Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia* (2000) AHRLR 321 (ACHPR1996).

<sup>122</sup>*Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia* (2000) AHRLR 321 (ACHPR1996), para 20 and 24.

<sup>123</sup>*Rencontre Africaine pour la Defense des Droits de l'Homme v Zambia* (2000) AHRLR 321 (ACHPR1996), para 29.

Further, safeguard against the refoulement of persons, where they may be subjected to torture in the African continent, is guaranteed under the Organisation of African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, and the RIG. Article 2(3) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa provides that ‘no person shall be subjected by a member state to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2’. Similarly, paragraph 15 of the RIG also discourages African states from expelling or extraditing persons to countries or areas where they may be subjected to torture.

#### **2.4.6 States’ obligation to investigate acts of torture**

An efficient way to prevent torture is for states to ensure that all allegations of torture are investigated promptly, impartially and efficiently. The obligation of states to investigate acts of torture is adequately guaranteed under the UNCAT, ICCPR and the ACHPR.

Article 12 of the UNCAT compel its state parties to ensure that competent authorities shall carry out prompt and impartial investigation, wherever there is reasonable grounds to believe that an act of torture has been committed in any area within their jurisdictions. Article 13 of the same Convention goes further to oblige states to make sure that complaint mechanisms are available to torture victims to present their case. Moreover, states shall also ensure that complainants and witness are adequately protected from further abuse as a result of the complaints or evidence given. Although the ICCPR does not contain a provision requiring states to investigate into allegations of torture, the issue has been addressed by the Human Rights Committee in its General Comment No. 20. According to the Committee, states are expected to ensure that competent authorities carry out prompt and impartial investigations into all allegations of torture within their various jurisdictions.<sup>124</sup>

For investigations to be successful, states must commence investigations promptly. In *Blanco Abad v Spain*,<sup>125</sup> the Committee against Torture held that, prompt investigations into allegations of torture are important in that it guarantees that the victim will not be subjected to further torture. Furthermore, investigations into allegations of torture must commences as soon as complaints are

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<sup>124</sup> United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 14.

<sup>125</sup> *Blanco Abad v Spain*, CAT Communication No. 59/1996, 14 May 1998, para 8.2.

made, and whenever there are grounds to believe that acts of torture have been committed. In *Mohammed Alzery v Sweden*,<sup>126</sup> the Human Rights Committee held that the Swedish government breached article 7 of the Covenant, as it commence investigations into allegations of torture suffered by the victim two years after the victim made his complain. Investigations into allegations of torture must also be conducted impartially. In *Ilhan v Turkey*,<sup>127</sup> it was held that the body conducting investigations must be autonomous from state control, and it must also ensure that there is no bias or discrimination of any kind. Again, investigations must be effective and thorough. In *Hajrizi Dzemajl v Yugoslavia*,<sup>128</sup> it was held that for investigations into allegations of torture to be effective, it must be carried out by qualified personnel who have to base their findings on evidence from witness, autopsy and medical reports and, if possible, on exhumation of mortal remains.

The duty to investigate into allegations of torture is imposed on states by the ACHPR and the RIG. The ACHPR obliges states parties to ensure that all allegations of torture are investigated. The African Commission urges states to be serious when conducting investigations into allegations of torture. For example, in *Zimbabwe Human Rights NGO Forum v Zimbabwe*,<sup>129</sup> it held that:

Just one investigation with an ineffective result does not establish a lack of due diligence by a state. Rather, the test is whether the state undertakes its duties seriously. Such seriousness can be evaluated through the actions of both state agencies and private actors on a case-by-case basis.

The African Commission further held in the same case that states will be guilty of violations if it were aware that acts of torture have been committed but fail to carry out investigations.<sup>130</sup> The RIG adds more impetus to obligation of African states to investigate allegations into all acts of torture. It calls on all states within the African Union to ensure that prompt and impartial investigations must automatically be conducted into all allegations of torture,<sup>131</sup> guided by the United Nations Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).<sup>132</sup> It also call on state parties to ‘ensure that alleged victims of torture, witnesses, those conducting the investigation, other human rights

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<sup>126</sup>*Mohammed Alzery v Sweden*, CCPR/C/88/D/1416/2005, UN Human Rights Committee (HRC), 10 November 2006, para 11.7.

<sup>127</sup>*Ilhan v Turkey*, (2002) 34 E.H.R.R. para.101.

<sup>128</sup>*Hajrizi Dzemajl v Yugoslavia*, CAT 161/00, para.9.4, see also Redress Trust (2006) 68.

<sup>129</sup>*Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 58.

<sup>130</sup>*Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 159.

<sup>131</sup>Paragraph 19 of the RIG.

<sup>132</sup>The Istanbul Protocol contains international recognised standards and procedures on how to recognise and document symptoms of torture so that it may serve as valid evidence in court, See Office of the United Nations High Commissioner for Human Rights, Professional Training Series No.8.Rev.1.

defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation'.<sup>133</sup>

#### 2.4.7 Duty to compensate victims of torture

Torture victims and their families have the right to adequate compensation. This right is guaranteed under the UNCAT and the ICCPR. Article 14 (1) of the UNCAT provides that 'each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. The same article goes further to suggest that in the eventual death of the torture victim, the compensation shall pass over to his/her descendants.

It has always been argued that torture victims deserve more than monetary compensation. The Committee against Torture, in *Keppa Urra Guridi v Spain*,<sup>134</sup> held that 'monetary compensation is not sufficient for a crime as serious as torture as the term of compensation should cover all the damages suffered by the victim, including restitution, compensation and the rehabilitation of the victim as well as the guarantee of non-repetition, depending on the circumstances of the case'.<sup>135</sup> Some regional human rights tribunals such as the Inter-American Court of Human Rights guarantees the right to reparation in a broader context than that provided for under article 14 (1) of the UNCAT. For instance, the court, in *Vargas Areco v Paraguay*,<sup>136</sup> held that, in addition to monetary compensation, the state party 'should organize an official public act to acknowledge its international liability and to apologize to the victim's relatives and to name a street after the victim'.<sup>137</sup>

Article 2(3)(a) of the ICCPR provides that state parties shall take all measures necessary to 'ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity'. Sub section (b) of the same article further call on states to 'ensure that any person claiming

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<sup>133</sup>Paragraph 49 of the RIG.

<sup>134</sup>*Keppa Urra Guridi v Spain*, Communication No. 212/2002, U.N. Doc. CAT/C/34/D/212/2002 (2005) para 6.8.

<sup>135</sup>Boltzman Institute of Human Rights 'Atlas of torture, Observing the situation of torture worldwide: Right of torture victims to adequate remedy and reparation' (2009) available <<http://www.univie.ac.at/bimtor/rightofvictimsoftorturetoaremedyandreparation/497>>[Accessed 20 June 2012].

<sup>136</sup>*Vargas Areco v Paraguay*, Inter-American Court of Human Rights, Judgement of 26 September 2006 (merits, reparation and cost).

<sup>137</sup>Boltzman Institute of Human Rights 'Atlas of torture, Observing the situation of torture worldwide: Right of torture victims to adequate remedy and reparation' (2009) available <<http://www.univie.ac.at/bimtor/rightofvictimsoftorturetoaremedyandreparation/497>>[Accessed 20 June 2012].

such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy', and sub-section 2 (3)(c) goes further to compel the competent authorities to ensure that such remedies are awarded to victims.

Although no express provision exist for compensating torture victims under the ACHPR, article 1 of the ACHPR can be interpreted to mean that victims of torture shall be adequately compensated. Article 1 of the ACHPR requires states to ensure that effective and enforceable remedies are available to individuals or groups of persons whose rights have been violated. In *Zimbabwe Human Rights NGO Forum v Zimbabwe*,<sup>138</sup> the African Commission held that 'to fulfil the rights means that any person whose rights are violated would have an effective remedy as rights without remedies have little value'. The RIG further complements the obligation of states within the African continent to adequately compensate torture victims. It provides that it is compulsory for state parties to make certain that adequate reparation or compensation are provided to victims of torture irrespective of whether a successful criminal prosecution can or has been brought.<sup>139</sup> It is in this respect that the RIG advocates that states should ensure that all torture victims and their dependents have access to available and appropriate medical facilities,<sup>140</sup> appropriate social and medical rehabilitation<sup>141</sup> and appropriate support and compensation at all levels.<sup>142</sup> The RIG went further to suggest that families and communities where one member has been subjected to torture be considered as victims.<sup>143</sup>

#### **2.4.8 Universal jurisdiction over torture perpetrators**

An effective way to eradicate the practice of torture is for all states parties to ensure that all alleged torture perpetrator are arrested and prosecuted anywhere in the world irrespective of where the alleged torture perpetrator committed the offence. Universal jurisdiction is 'a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim'.<sup>144</sup>

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<sup>138</sup>*Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006) para 171.

<sup>139</sup>Paragraph 50 of the RIG.

<sup>140</sup>Paragraph 50 (a) of the RIG.

<sup>141</sup>Paragraph 50 (b) of the RIG.

<sup>142</sup>Paragraph 50 (c) of the RIG.

<sup>143</sup>Paragraph 50 (c) of the RIG.

<sup>144</sup>Gumedze S 'The African Union and the responsibility to protect' (2010) 10 No.1 *African Human Rights Law Journal*, 152.

The obligation of states to either prosecute or extradite perpetrators of torture in its jurisdiction regardless of where the crime was committed is guaranteed under the UNCAT. Article 5 (2) of the UNCAT provides that ‘each state party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article’. In the exercise of this universal jurisdiction states must take suspected torture perpetrators into custody, conduct inquiries, prosecute and extradite suspected torturers to the prosecuting authorities of third states if they are unwilling to prosecute.<sup>145</sup> In *Suleymane Guengueng et al. v Senegal*,<sup>146</sup> the Committee against Torture held that the principle of universal jurisdiction is an appropriate way of holding torture perpetrators accountable for their crimes and that, by refusing to prosecute the former Chadian dictator Hissène Habré, or extradite him to Belgium to face trial for torture, Senegal was in violation of articles 5 and 7 of the UNCAT.

The principle of universal jurisdiction of torture is also adequately protected under the African human rights system. The Assembly of the African Union, in its 11<sup>th</sup> ordinary session, held in Sharm El-Sheikh Egypt, between the 30 June and 1 July 2008 recognised that ‘universal jurisdiction is a principle of international law which purpose is to ensure that individuals who commit grave offences such as war crimes and crimes against humanity do not do so with impunity and are brought to justice, which is in line with article 4 (h) of the Constitutive Act of the African Union’.<sup>147</sup> Since torture is considered under the ICC both as a war crime<sup>148</sup> and crime against humanity,<sup>149</sup> it is definitely covered under article 4 (h) of the Constitutive Act of the African Union.

## 2.5 Conclusion

This chapter has specifically examined the international and African regional human rights treaties and their monitoring mechanisms that aim at prohibiting torture and other forms of ill-treatment. It has shown that state parties that have ratified international and regional treaties are bound by the provisions of these treaties, and that states have a duty to prohibit and protect people from certain forms of human rights violations, especially torture, slavery and slave trade, genocide, apartheid and

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<sup>145</sup> Article 6, 7 and 8 of the UNCAT.

<sup>146</sup> *Suleymane Guengueng et al. v Senegal*, Communication No. 181/2001, U.N. Doc. CAT/C/36/D/181/2001 (2006), para 8.11.

<sup>147</sup> Gumedze S ‘The African Union and the responsibility to protect’ (2010) 10 No.1 *African Human Rights Law Journal*, 152.

<sup>148</sup> Article 8 (2) (a) (ii) of the ICC.

<sup>149</sup> Article 7 (2) (f) of the ICC.

piracy among others, irrespective of whether they are parties to the treaties that prohibit such acts. Chapter three of this research will focus on the measures put in place by Cameroon to safeguard against torture for persons deprived of their liberty. It will also examine the situation of special categories of detainees including women, children and people with mental health problems.



## CHAPTER THREE

### SAFEGUARDS AGAINST TORTURE FOR PERSONS DEPRIVED OF THEIR LIBERTY IN CAMEROON

#### 3.1 Introduction

Cameroon has signed and ratified the UNCAT, the ICCPR and a number of other international conventions that are geared towards the prevention and complete eradication of torture in the country. This chapter seeks to discuss the practice of torture in Cameroon and the legal framework that the country has put in place to prevent and prohibit the practice. It will particularly seek to find out whether Cameroon has taken effective legislative, administrative, judicial and other measures necessary to prevent and prohibit acts of torture. It also seeks to verify whether the country has put in place general safeguards against torture in places of detention. It also seeks to determine whether torture perpetrators are held accountable in Cameroon.

#### 3.2 The prevalence of torture

Between 1999 and 2000, Amnesty International and the United Nations Special Rapporteur for Torture noted with concern the systematic nature of torture of persons deprived of their liberty in Cameroon.<sup>150</sup> According to the reports, this heinous practice is carried out in Cameroon by state agents like penitentiary administrators, the operational command force, the anti-gang brigade force, the police force, the gendarmerie, the secret police force and other state actors administering detention centres.<sup>151</sup>

Torture is widely practiced in most of Cameroon's penitentiary centres. In most of the country's maximum and minimum detention centres, prison wardens torture, beat, chain and abuse prisoners.<sup>152</sup> Victims of torture are beaten all over their bodies, on the soles of their feet and on the

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<sup>150</sup>Amnesty International 'United Nations expert confirms that torture is wide spread and systematic in Cameroon' available at <<http://www-secure.amnesty.org/en/library/asset/AFR17/004/2000/en/c9c3ec30-df79-11dd-8abb-118b2e919ec0/afr170042000en.html>>[Accessed 31January 2013].

<sup>151</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon' (2002) 27 available at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

<sup>152</sup>Winslow Robert, 'Crime and society: A comparative criminology tour of the world, Africa and Cameroon' available at <<http://www-rohan.sdsu.edu/faculty/rwinslow/africa/cameroon.html>> [Accessed 12 April 2011].

genitals. In most cases, these acts are politically motivated.<sup>153</sup> The Yaoundé Kondenqui Central Prison, meant mostly for political prisoners, is one of Cameroon's torture chambers. In his 2006 visit to this maximum security detention centre, Dr Divine Chemuta Banda, chairman of the NCHRF in Cameroon, learned that many of the Social Democratic Front (SDF)<sup>154</sup> militants, incarcerated in connection with the death of Gregoire Diboule,<sup>155</sup> had been subjected to torture and other forms of inhuman treatment.<sup>156</sup> Similarly, detainees and prison inmates incarcerated at the Baffoussam central prison are often subjected to torture and other forms of ill-treatment.<sup>157</sup> Ball also observed that detainees incarcerated at the Yabassi prison were being subjected to torture and other forms of ill-treatment like 'being forced to balance on one foot with one finger on the ground, made to carry heavy rocks in arms outstretched on either side, forced to crawl on their knees over sharp stones, and confounded in crowded, filthy cells, with only a shared bucket for a toilet'.<sup>158</sup>

Acts of torture in Cameroon are not only carried out by prison wardens in penitentiary centres. The 'Operational Command', a special force set up to curb rising urban crime waves in the country, is also famous for carrying out acts of torture on suspected criminals and other persons deprived of their liberty, including children.<sup>159</sup> It is estimated that over a thousand Cameroonians have been tortured and summarily executed by this command force for minor offences like possession and smoking of marijuana.<sup>160</sup> Some elements of the Command Force tortured and brutally executed nine young men in Bepanda (Douala) on the pretext that they stole a gas bottle and cooker.<sup>161</sup>

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<sup>153</sup>Winslow Robert 'Crime and society: A comparative criminology tour of the world, Africa and Cameroon' available at <<http://www-rohan.sdsu.edu/faculty/rwinslow/africa/cameroon.html>> [Accessed 12 April 2011].

<sup>154</sup>The SDF is the leading opposition political party in Cameroon.

<sup>155</sup>Gregoire Diboule, a former member of the SDF, was killed in a faction opposition rally march in 2006 in Yaoundé, and some SDF militants were arrested and prosecuted for the murder.

<sup>156</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State (2009); Human Rights report for Cameroon also available at <<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm>> [Accessed 8 August 2011].

<sup>157</sup>Human Rights Committee: Fourth periodic report on Cameroon ninety-seventh session, October 2010, at page 3, available at <http://www.fiacat.org/IMG/pdf/CDHCameroonEN-3.pdf> [Accessed 23 March 2011].

<sup>158</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon' (2002) 18, available at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

<sup>159</sup>Winslow Robert, 'Crime and society: A comparative criminology tour of the world, Africa and Cameroon' available at <<http://www-rohan.sdsu.edu/faculty/rwinslow/africa/cameroon.html>> [Accessed 12 April 2011].

<sup>160</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State (2009) Human Rights report for Cameroon, available at <<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm>> [Accessed 8 August 2011].

<sup>161</sup>Douala Military Tribunal Judgement, decision No. 139-02 of 6 July 2002. For more, see, Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 158-159 page 59.

The 'Anti-Gang Brigade', a secret force set up to combat banditry, is also famous for committing acts of torture and other forms of ill-treatment in Cameroon. Its officers are dressed in plain clothes and often arrest, torture and execute citizens summarily with impunity.<sup>162</sup> On visiting the Yaoundé criminal investigation service unit (Anti-gang Brigade detention cells), the Special Rapporteur on torture noted that the vast majority of those in detention had been subjected to torture in order to extract information from them.<sup>163</sup> It was further proven that elements of the 'Anti-gang Brigade' tortured and summarily executed thousands of people in the Far North Province between the years 1998 and 2000.<sup>164</sup>

Police officers have also played a leading role in committing acts of torture in the country. Elements of the police force continuously arrest, detain and torture countless number of civilians in Douala and Yaoundé and other major detention centres in the country.<sup>165</sup> It has been reported that torture of detainees in police detention cells in Cameroon warranted the United Nations to appeal to the government to 'take firm measures to limit the use of force by the police, to investigate all complaints regarding the use of force by the police and take appropriate action when the use is in violation of the relevant regulations' as stipulated by articles 6 and 7 of the ICCPR.<sup>166</sup>

The fact that the practice of torture continues to be 'wide spread and systematic' in the country, cast doubts as to whether Cameroon has fully implemented the provisions of the UNCAT in the country as stipulated by the treaty for the prevention and absolute prohibition of the practice. In the following sections, the thesis seeks to verify whether Cameroon has actually put in place safeguard measures to prevent torture of persons deprived of their liberty.

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<sup>162</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon' (2002) 28, available at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

<sup>163</sup>Report of the Special Rapporteur, Sir Nigel Rodney, submitted pursuant to Commission on Human Rights Resolution 1998/38 (Visit by Special Rapporteur to Cameroon) E/CN.4/2000/9/Add.2, 11 November 1999.

<sup>164</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon' (2002) 28, available at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

<sup>165</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State's 2003 Human Rights report for Cameroon, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm> [Accessed 8 May 2011].

<sup>166</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon' (2002) 28-29, available at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

### 3.3 The status of international treaties in Cameroon

Ratification of international treaties and conventions that are geared towards the prohibition of torture is an efficient way of preventing the practice of torture by states. Upon ratification of human rights treaties, states are obliged to abide by the rules set down in them,<sup>167</sup> and they are also obliged to account for their measures to implement the standards set by these treaties and to account for any violations.<sup>168</sup>

Cameroon has ratified a number of international treaties and conventions meant for the promotion and protection of the human and fundamental rights of its citizens. It has particularly ratified a number of international and regional treaties and conventions geared towards safeguarding the right to freedom from torture in the country. At the international level, Cameroon has ratified the ICCPR and its first Optional Protocol.<sup>169</sup> It has ratified the main treaty meant for the absolute prevention and prohibition of torture, namely, the UNCAT,<sup>170</sup> but it has not ratified its Optional Protocol (OPCAT).<sup>171</sup> This is unfortunate as state parties that ratify the OPCAT have a duty to set up national preventive mechanisms to prevent the practice of torture in detention centres within their various jurisdictions.<sup>172</sup> Cameroon has also signed the Rome Statute of the International Criminal Court<sup>173</sup> but has not ratified it.<sup>174</sup>

Cameroon has equally ratified human rights treaties that are geared towards safeguarding the right to freedom from torture of specific category of people in the country. In this regard, it ratified the Convention on the Rights of the Child (CRC)<sup>175</sup> and the Convention on the Elimination of All Forms of Discrimination against Women, also known as the international bill of rights for women,

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<sup>167</sup>See Article 26 and 27 of the 1969 Vienna Convention on the Law of Treaties, adopted 23 May 1969, entered into force 27 January 1980. United Nations Treaty Series, Vol. 1155, p. 331.

<sup>168</sup>Redress Trust (2006) 13.

<sup>169</sup>Since 27 June 1984.

<sup>170</sup>Since 19 December 1986.

<sup>171</sup>African Commission on Human and Peoples' Rights, Intersession activity report of the committee for the prevention of torture in Africa: Report presented by Commissioner Catherine Dupe Atoki to the 51 ordinary session of the ACHPR, April 18-2 May 2012, available at <[www.achpr.org](http://www.achpr.org)> [Accessed 25 May 2012].

<sup>172</sup>Office of the United Nations High Commissioner for Human Rights. Optional Protocol to the Convention against Torture: Subcommittee on Prevention of Torture, available

At <<http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>> [Accessed on 5 May 2012].

<sup>173</sup>Signed since 17 July 1998.

<sup>174</sup>Eyembe Elias Ebai, 'Cameroon should ratify the Rome Statute of the International Criminal Court' at page 2, available at <<http://allafrica.com/stories/200810100990>> [Accessed 23 February 2012].

<sup>175</sup>Since 11 January 1993.

(CEDAW)<sup>176</sup> and its Optional Protocol.<sup>177</sup> At the regional level, it ratified the ACHPR,<sup>178</sup> the African Charter on the Rights and Welfare of the Child (ACRWC),<sup>179</sup> the African Youth Charter,<sup>180</sup> and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the African Women Protocol or the Maputo Protocol.<sup>181</sup>

It should also be worth noting that in Cameroon, international treaties and conventions that are duly ratified by the State are automatically considered to be part of domestic law.<sup>182</sup> Article 45 of the 1996 Cameroon Constitution provides that 'duly approved or ratified treaties and international agreements shall, following their publication, override national laws...' This implies that international treaties that are duly signed and ratified by Cameroon are so important that, they shall always have the pride of place above domestic laws whenever they come in conflict. By ratifying all these international human rights treaties geared towards the prevention and prohibition of torture, Cameroon has therefore committed to prevent torture and to hold torture perpetrators accountable in all areas within its jurisdiction. In the remaining pages, the thesis analyses the safeguard measures that Cameroon has put in place to achieve its international obligations to prohibit and prevent torture.

### **3.4 The legal framework safeguarding the right to freedom from torture**

As discussed earlier, an efficient way to safeguard the prohibition against torture is for states to put in place elaborate legal framework that will make it difficult for torture perpetrators to commit acts of torture with impunity. This section presents a comprehensive outline of the legal framework put in place by the State of Cameroon to safeguard the right to freedom from torture for persons deprived of their liberty in the country. It will specifically focus on the Constitution of Cameroon, the Penal Code and the Criminal Procedure Code and seek to determine whether they provide adequate safeguards against the practice of torture in the country. It will equally examine other legislation that are specifically enacted to prevent and prohibit acts of torture in the country.

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<sup>176</sup>Since 23 August 1994.

<sup>177</sup>Since 1 November 2004.

<sup>178</sup>Since 21 October 1986.

<sup>179</sup>Since 5 September 1997.

<sup>180</sup>Since 15 December 2009.

<sup>181</sup>Signed, since 20 May 2009.

<sup>182</sup>Committee against Torture, consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations on violence against women in Cameroon, 31<sup>st</sup> session, 10-21 November 2003, at page 122.

### 3.4.1 Constitutional protection

The Constitution of Cameroon has outlawed the practice of torture in the country, and the safeguards contained therein are intended to protect the physical and moral integrity of detainees and prison inmates.<sup>183</sup> Its preamble provides that ‘every person has the right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment’. It is very important to note that the preamble to the 1996 Cameroon Constitution is considered to be part and parcel of the Constitution and has the force of law. Article 65 of the Cameroon Constitution provides that the preamble shall be part and parcel of the Constitution. This means that all the rights provided for in the preamble of the Cameroon Constitution are enforceable.

### 3.4.2 Legislative protection

The state of Cameroon has enacted legislation that are meant to prevent and prohibit the practice of torture in all regions of the country.

#### 3.4.2.1 General prohibition of torture

Article 2(1) of the UNCAT imposes the obligation on Cameroon to take effective legislative, administrative, judicial and other measures that may be necessary to ensure that acts of torture are not carried out within its jurisdiction. Cameroon has passed two laws that seek to protect its citizens from torture. Law No. 97/007 of 10 January 1997 incorporated the UNCAT into the Cameroon Penal Code, while Law No. 97/009 of 10 January 1997 criminalises torture and provide specific sanctions for torture perpetrators. The Criminal Procedure Code prohibits torture and other forms of ill-treatment of persons under arrest. Section 30 (4) of the Code provides that persons under any form of arrest shall not be subjected to any ‘bodily or psychological harm’.

Cameroon legislators made certain that the prohibition of torture in the country is absolute and non-derogable as recommended by the ICCPR<sup>184</sup> and the UNCAT.<sup>185</sup> This means that the practice of torture is prohibited even during periods of exceptional circumstances. Section 132 (a) (6) of the

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<sup>183</sup>Constitution of Cameroon 1972 (as amended by Law No. 2008/001 of 14 April 2008).

<sup>184</sup>Article 4 (2) and 7 of the ICCPR.

<sup>185</sup>Article 2 (2) of the UNCAT.

Cameroon Penal Code (herein after referred to as the Penal Code) provides that adverse or difficult situations such as periods of armed conflict, civil or internal rebellions and other periods, like a state of emergency, state of curfew, or state of siege, may not be invoked as a justification for committing acts of torture by public officials or other persons acting in official capacity. Furthermore, the absolute and non-derogable nature of the prohibition of torture is underlined under section 132 (a) (7) of the Penal Code. The Penal Code provides that public officials and other personnel administering detention facilities in the country cannot carry out acts of torture and escape liability, claiming that they acted on the basis of superior orders. In *The People v Housseini & five Ors.*,<sup>186</sup> the Gendarmerie Company Commander of Poli and five of his elements were convicted and sentenced to ten and fifteen years imprisonment for ordering the torture and murder of seven suspects.

### 3.4.2.2 Definition of torture

As indicated earlier, the most effective way to ensure that all acts of torture are prohibited is for state parties to insert a definition of torture in their domestic legislations in line with what is provided under Article 1 of the UNCAT.<sup>187</sup> It is often argued that ‘inserting a clear definition of torture into the relevant national law minimises the possibility that courts will fail to interpret the crime in line with international requirements’.<sup>188</sup> The Penal Code provides for a definition of torture. Section 132 (5) of the Code defines the term ‘torture’ to mean:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the investigation of a public official or with his express or tacit consent on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or putting pressure on him or a third person, or for any other motive based on any form of discrimination whatsoever. Torture shall not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Two authors, Mbi and Mujuzi, advance different opinions with regard to the definition of torture as provided for under the Penal Code. Mbi is of the opinion that the definition of torture provided for under section 132 (5) of the Cameroon Penal Code is an exact replica of that provided under article 1 of the UNCAT.<sup>189</sup> On the other hand, Mujuzi argues that the definition is narrower than that provided for by the UNCAT, and can create avenues for impunity. First, Mujuzi observes that the definition of

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<sup>186</sup>*The People v Housseini & five Ors*, Judgment No. 297-97 of 26 August 1997.

<sup>187</sup>Redress Trust (2006) 38.

<sup>188</sup>Redress Trust (2006) 38.

<sup>189</sup>Mbi J T ‘Torture as a human rights violation in Cameroon’ (2007) 1 No. 1 *Cameroon Journal on Democracy and Human Rights* 29.

torture under the UNCAT provides that acts of torture should have been 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’. While section 132(5) of the Penal Code provides that acts of torture must have been inflicted ‘by or at the instigation of a public official or with his express or tacit consent’, Mujuzi argues that ‘a public official in Cameroon cannot be convicted and prosecuted for committing acts of torture unless it is proved that he consented to the commission of such acts although this consent could be express or tacit’.<sup>190</sup> Mujuzi further argues that this requirement under section 132(5) of the Penal Code falls short of the one under article 1 of the UNCAT, which requires not only the proof of consent but a conviction could also be based on acquiescence. He, then, states that ‘a public official who turns a blind eye when his subordinates commit acts of torture to obtain information that he later relies on to discover an exhibit in a criminal trial cannot be convicted of torture although he acquiesced but did not consent’.<sup>191</sup> Second, Mujuzi observes that under the UNCAT, acts of torture can be committed by public officials and other persons acting in official capacity, while within the meaning of section 132(5) of the Penal Code, torture can only be committed by public officials.<sup>192</sup> Third, Mujuzi observes differences in wordings. He observed that the words ‘coercing him’ under the UNCAT are replaced with ‘putting pressure on him’ under section 132 (5) of the Penal Code; the words ‘for any reason based on discrimination of any kind’ as provided for under UNCAT are substituted with ‘for any other motive based on any form of discrimination whatsoever’ under the Penal Code and finally that while the UNCAT provides that ‘it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions’ section 132(5) of the Penal Code omit the word ‘does’ and replace it with ‘shall’ to read as follows: ‘torture shall not include pain or suffering arising only from, inherent in or incidental to lawful sanctions’.<sup>193</sup> It is submitted that this discrepancies in the definition of torture under section 132(5) of the Penal Code will enable public officials and other persons acting in official capacity to carry out acts of torture and escape liability. In this regard, Cameroon authorities should redefine torture as recommended by the UNCAT, so as to eliminate any avenues for impunity.

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<sup>190</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 48.

<sup>191</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 48-49.

<sup>192</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 49.

<sup>193</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 48-50.

### 3.4.2.3 Criminalisation and punishment for acts of torture

As highlighted earlier, article 4 of the UNCAT imposes the positive obligation on Cameroon to criminalise torture and also provide appropriate penalties taking into consideration the grave nature of the offence. The State of Cameroon has made torture a specific crime and has also prescribed appropriate penalties for acts of torture under section 132 (a) of the Penal Code that range from monetary fines to imprisonment terms depending on the gravity of the crime. Section 132 (a) (1) of the Penal Code provides that in the event of the unintentional death of a torture victim, the torture perpetrator or perpetrators shall be punished with a life imprisonment term. The Penal Code punishes torture perpetrators with a prison term of ten to twenty years ‘where torture results in the loss or permanent deprivation of the victim’s use of any part of a limb, organ or sense’.<sup>194</sup> The Penal Code also provides that in cases where torture results in illness or industrial incapacity of the victim for more than thirty days, the perpetrator shall be punished with an imprisonment term for from five to ten years and a fine of from 100,000 to 1,000,000 francs.<sup>195</sup> In situations ‘where torture results in illness or industrial disablement for up to thirty days or in mental or moral pain and suffering’, perpetrators shall be punished with imprisonment from two to five years and a fine of from 50,000 to 200,000 francs.<sup>196</sup>

Even though Cameroon has put in place penalties for torture under sections 132 (a) (1) and (2) of the Penal Code, it seems that the penalties are not appropriate enough to sanction the crime.<sup>197</sup> This is particularly in the case of the death or the permanent incapacity of a victim of torture, in which case monetary compensation ought to have been awarded to the dependents of the victim because he/she might have been the bread winner in the family.<sup>198</sup> It is submitted that the state should compensate the family of the incapacitated or deceased torture victim, with reparation so heavy, that it will see the need to prevent future acts of torture in its detention facilities.

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<sup>194</sup>Section 132 (a)(2) of the Penal Code.

<sup>195</sup>Section 132 (a)(3) of the Penal Code.

<sup>196</sup> Section 132 (a)(4) of the Penal Code.

<sup>197</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 53.

<sup>198</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 53.

Regrettably, it has been reported that the courts in Cameroon have often failed to punish torture perpetrators according to the grave nature of the offence committed.<sup>199</sup> In *The People v Police Constable Mpacko Dikoume*,<sup>200</sup> the Wouri High Court convicted the culprit for torture and unintentional killing and sentenced him to three years imprisonment, suspended for three years, and to pay damages amounting to FCFA 12,000,000. Similarly, in *The People v Ndiwa Joseph*,<sup>201</sup> the Wouri High Court found the alleged torture perpetrator guilty of torture and unintentional killing and passed a more lenient sentence. The court sentenced the culprit to three years imprisonment suspended for three years, and a fine of FCFA 400,000 and damages of CFA 8,000,000. It is submitted that the above sentences for acts of torture that resulted to the death of the victims are very lenient in terms of what is required by the UNCAT. Although the UNCAT has not provided any minimum sanction for torture, it makes it absolutely clear that states should sanction torture perpetrators according to the gravity of the offence committed.

#### 3.4.2.4 Exclusion of evidence obtained through torture

As established in the preceding chapter, it is generally agreed that an efficient way to combat the practice of torture is for state parties to ensure that all evidence extracted through torture are inadmissible in evidence.<sup>202</sup> As a signatory to the UNCAT, Cameroon has the obligation to ensure that ‘any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made’.

In Cameroon, confessions extracted through torture are inadmissible in evidence. Decree No. 92/052 (1992) prohibits police officers from using whips and batons to torture suspects in order to extract evidence from them during criminal investigations.<sup>203</sup> Furthermore, Section 315 (2) of the Criminal Procedure Code provides that ‘a confession shall not be admissible in evidence if it is obtained through duress, violence, or intimidation or in exchange of a promise for any benefit whatsoever or

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<sup>199</sup>Human Rights Committee: Fourth periodic report on Cameroon ninety-seventh session, October 2010, page 4, available at <<http://www.fiacat.org/IMG/pdf/CDHCCameroonEN-3.pdf>> [Accessed 23 March 2011].

<sup>200</sup>*The People v Police Constable Mpacko Dikoume*, Judgement of 12 December 2006.

<sup>201</sup>*The People v Ndiwa Joseph*, Judgement of 12 December 2012.

<sup>202</sup>United Nations Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 12.

<sup>203</sup>NGO (Non-Governmental Organisation) (2010); report on the implementation of the ICCPR in Cameroon, CCPR/C/CMR/Q4, at page 20, also available at <[http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GeED\\_Cameroon\\_HRC99.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GeED_Cameroon_HRC99.pdf)> [Accessed 9 September 2011].

by any other means contrary to the free will of the maker of the confession'. Courts in Cameroon have, in few cases, annulled proceedings where it was proven that evidence was extracted by way of torture. For example, in *The People v Tonfact J and Kandem R*<sup>204</sup> it was held that the victim's statements were extracted by way of torture. The court went further to state that such actions violated the victim's fundamental and human rights. The court annulled the proceedings and ordered the immediate release of the accused. Similarly, in *The People v Mengue J and Djessa J*<sup>205</sup> the Abong-Mbang Court of First Instance basing their ruling on the state party's commitment to exclude evidence extracted by means of torture annulled the proceedings. Despite these few exceptional cases, confessions extracted by way of torture during preliminary investigations, continue to be admissible in evidence in criminal proceedings.<sup>206</sup>

#### 3.4.2.5 Extradition under Cameroon's domestic law

As mentioned earlier, Article 3 (1) of the UNCAT obliges state parties to implement legislation that prohibit the expulsion, returning or extradition of persons to states or areas where it is certain that they will be subjected to torture. Cameroon has taken appropriate measures to prohibit the extradition of persons to countries or areas where they will be subjected to torture. In line with article 3(1) of the UNCAT, Cameroon enacted Law No. 97/010 of 10 January 1997 to amend and supplement certain provisions of Law No. 64-LF-13 of 26 June 1964 to fix the system of extradition in Cameroon. It specifically amended article 29 of the above mentioned law to read thus: 'no one shall be extradited to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture'.<sup>207</sup>

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<sup>204</sup>*The People v Tonfact J and Kandem R*, Judgement No. 69/00 of 21 September 2000. The 'evidence adduced in the course of the trial established that Djutio Richard subjected Kandem Robert to inhuman treatment because of his relationship with Mrs Tonfack Julienne. He was remanded in custody for twenty (20) days, which exceeds the legal time-limit, and beaten several times to force him to confess. He sustained injuries as a result of this treatment and finally confessed', see Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 292-294 page 88,

<sup>205</sup>*The People v Mengue J and Djessa J* Judgement No. 182/COR of 24 February 2005 'the accused were remanded in custody for 8 days for theft. During the remand, Mrs Mengue was tortured and she confessed that she committed the offence'. For more, see Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 295 page 89.

<sup>206</sup>Committee against Torture, consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations on violence against women in Cameroon, 31<sup>st</sup> session, 10-21 November 2003, at page 130.

<sup>207</sup>Committee against Torture, consideration of reports submitted by states parties under article 19 of the Convention: Cameroon, third periodic report Cameroon, 21 May 2003, CAT/C/34/Add.17, para 146, page 31.

Further protection against torture for persons facing extradition is guaranteed under the Cameroon Procedure Code. Section 645 (d) of the Code provides that ‘extradition shall not be applicable where there are reasons for the country requested to believe that the person concerned shall be subjected to torture and other punishment or treatment which is cruel, inhuman and humiliating, in the requesting state’. The State of Cameroon has also enacted legislation aimed at prohibiting the extradition of refugees to areas or countries where they can be subjected to torture and other forms of ill-treatment.<sup>208</sup> Section 7 (1) and 15 of Law No. 2005/006 of 27 July 2005 provides that it is unlawful to extradite a refugee or force him or her to take abode in a country where he/she is likely to be subjected to torture. Mujuzi points out some differences between section 645 (d) of the Criminal Procedure Code and article 3(1) of the UNCAT. He observes that section 645 (d) does not contain the term ‘substantial grounds’ for believing that persons facing refoulement might be subjected to torture as provided for by the UNCAT. This implies that, persons facing extradition will have the burden to prove that they will be subjected to torture if they are extradited. He further observes that section 645 (d) goes further than article 3(1) of UNCAT in that it prohibits the extradition of persons not only to states or areas where they will be subjected to torture, but also to states or areas where they will be subjected to other forms of ill-treatment.<sup>209</sup> He further observes that the threshold of the protection of refoulement under section 645 (d) of the Criminal Procedure Code is higher than that under article 3(1) of the UNCAT in that 645(d) uses the word ‘shall’ which is more authoritative than the word ‘would’ used under article 3(1) of the UNCAT.<sup>210</sup>

Although legislation in Cameroon protects refugees from refoulement to states where they may be subjected to torture, unfortunately the decree that ought to implement Law No. 2005/006 of 27 July regulating the status of refugees in Cameroon has not yet been adopted.<sup>211</sup> This has, in some cases, led to the illegal extradition of persons by Cameroon’s immigration officers to third countries without considering whether they will be subjected to torture.<sup>212</sup> The illegality in this case is manifested by the fact that judges and not immigration officers have the right to order for extradition in Cameroon. However, such illegal actions are not always taken for granted in Cameroon. For

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<sup>208</sup>Law No. 2005/006 of 27 July 2005 relating to the status of refugees in Cameroon.

<sup>209</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 56-58.

<sup>210</sup>Mujuzi J D ‘Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us’ (2009) 2 No.2 *Journal of African and International Law* 60.

<sup>211</sup>Committee against Torture, consideration of reports submitted by states parties under article 19 of the Convention: Concluding observations on Cameroon, forty-fourth session, 26 April -14 May 2010, CAT/C/CMR/CO/4/, para 28, page 9.

<sup>212</sup>Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, page 100.

example, by decisions No. 0000348/DGSN/CAB and No. 0000349/DGSN/CAB of 17 October 2008, the delegate general of national security suspended two police officers Ndam Ibrahim and Ndam Amadou for three months, for illegally arresting and returning an Equatorial Guinea refugee to his country.<sup>213</sup>

In some cases, Cameroon has refused to extradite persons to states where it is likely that they will be subjected to torture. For example in the case of *The Bagosora and Other Rwandans*,<sup>214</sup> the Yaoundé Court of Appeal refused to hand over eight Rwandan nationals to the Kigali government on grounds that, they will be subjected to torture and possibly sentenced to death.<sup>215</sup> In its reasoned judgement, the Court held that ‘whereas ... new article 29 of the Act regulating extradition provides that no one shall be extradited to a country where there are substantial grounds for believing that he would be in danger of being subjected to torture; whereas, in the international media, the present Government in Kigali makes no secret of its determination, before any trial has taken place, to impose the death penalty on the suspects ... The court therefore finds the extradition request inadmissible under the law’.<sup>216</sup> However, by Judgement No. 615/COR of 31 May 1996, the court considered it more appropriate to hand over the eight suspects to the International Criminal Tribunal for Rwanda.

### **3.5 The obligation to prevent torture of persons deprived of their liberty in Cameroon**

Most international and regional human rights treaties oblige all their state parties to prevent all acts of torture in all territories under their jurisdictions. As a signatory to the UNCAT, Cameroon is obliged under article 2(1) to put in place effective legislative, administrative, judicial or other measures to prevent acts of torture in all areas within its national jurisdiction. This safeguard measures to protect against torture must be extended to detention centres, since torture is a common practice in places of incarceration. Cameroon therefore, has to implement a number of international standards meant to prevent torture in detention facilities.<sup>217</sup> The following pages will discuss the

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<sup>213</sup>Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, page 100.

<sup>214</sup>Judgement No. 433/COR of 15 March 1996. See also, Committee against Torture, consideration of reports submitted by states parties under article 19 of the Convention: Cameroon, first periodic report on Cameroon, 19 June 2000, CAT/C/17/Add.22, para 43.

<sup>215</sup>Judgement No. 337-Cor of 21 February 1997. For more, see Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 361, page 99.

<sup>216</sup>Committee against Torture, consideration of reports submitted by states parties under article 19 of the Convention: Cameroon, third periodic report Cameroon, 21 May 2003, CAT/C/34/Add.17, para 148, page 31.

<sup>217</sup>The Standard Minimum Rules for the Treatment of Prisoners, Code of Conduct for Law Enforcement Officials, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have recommended

initiative put in place by Cameroon to implement measures intended to prevent torture of detainees and prison inmates.

### **3.5.1 Safeguards against torture during arrest and awaiting trial**

The state of Cameroon has implemented measures intended to prevent torture against detainees and prison inmates in the country from the time of arrest, to remand in custody, interrogation and deprivation of liberty, as recommended for under article 11 of the UNCAT. The Preamble to the Cameroon Constitution provides that ‘no person may be prosecuted, arrested or detained except in the cases and according to the manner determined by law’. Article 615 of Law No. 67/Lf/1 of 12 June 1967<sup>218</sup> provides that ‘the use of force in the process of arrest, detention or execution of a sentence is a crime except where authorized by law’. Section 119 (4) of the same Code, goes further to provide that arrest and detention of suspects shall be authorized by the State Prosecutor, and such remand shall not be carried out on weekend days and public holidays.

Additional guarantees against torture for persons awaiting trial are provided for under the Criminal Procedure Code. Section 122 (2) of the Code provides that ‘the suspect shall not be subjected to any physical or mental duress, to torture, violence, threats or any other pressure, trickery or insidious actions, fallacious suggestions, lengthy questioning, hypnosis or have any drugs administered or undergo any other procedure that could compromise or limit his ability to act or take decisions or could impair his memory or his judgment’. Guarantees against lengthy detentions are provided for under the Criminal Procedure Code. Section 119 of the Code provides that custody period must not exceed forty-eight hours, and can only be extended once on the authorisation of the State Prosecutor. The same Code goes further to provide in its sub section 4 that the State Prosecutor shall not order the arrest and detention of suspects on weekends and public holidays. Furthermore, Section 53 of the Code provides that ‘the duration of custody awaiting trial shall be fully deducted from the computation of an imprisonment sentence and where the sentence of the trial court is for a fine only, it may relieve him fully or partially of the said fine’.

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standards that will go a long way to minimise the risk of torture in places of detention. Such custodial standards include the right of detainees to be briefed by legal counsel, the right to notify family members or third persons of detention, the right to challenge the lawfulness of detention, the right to access to medical examination and medical doctor, the right to moral and physical integrity of detainees during arrest and interrogation.

<sup>218</sup>Law No. 67/Lf/1 of 12 June 1967.

Unfortunately, suspects in Cameroon have been held in custody for several months and even years without notifying the State Prosecutor or the Examining Magistrate of their detention.<sup>219</sup> Even though the law provides that custody period shall not exceed forty eight hours without the notification of the State Counsel, it has been reported that the police and gendarmerie officers have often violated this law by extending custody periods<sup>220</sup> and effecting Fridays and week end arrest<sup>221</sup> so as to extort money from detainees. This state of affairs is very likely to breed torture since the fundamental human rights of suspects are being undermined.

### **3.5.2 Rights of persons deprived of their liberty to be briefed by legal counsel**

As a signatory to the ICCPR, Cameroon is obliged to ensure that all persons under any form of detention should have access to legal counsel. This is especially important in safeguarding against torture in that when legal counsels lodge complaints alleging torture, prosecutors will have reasonable grounds to believe that such abuses have occurred and will help to stop further torture of the victim.

The right of detainees to be briefed by legal counsel is guaranteed under Cameroon law. Law No. 58/203 of December 1958 on the adoption and simplification of the criminal procedure in Cameroon provides that all detainees accused of felony standing trial before high courts, appeal courts and the Supreme Court must be briefed by legal counsel. Section 58 of the same law provides that if the accused person cannot afford the services of a lawyer, it shall be the court's responsibility to provide him with one. Furthermore, the right of detainees to consult with a legal counsel in Cameroon is guaranteed under the Criminal Procedure Code. Article 122(3) of the Code provides that 'an individual held in custody may at any moment during working hours, receive visits from his lawyer or from a member of his family or from any other person who takes an interest in his treatment during his period in custody'. Furthermore, article 116 (3) of the Code states that 'the Senior Police Officer is obliged from the moment the preliminary enquiry is opened and in order for it to be valid to inform the suspect of his right to be assisted by a legal counsel and to remain silent'.

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<sup>219</sup>Winslow Robert 'Crime and society: A comparative criminology tour of the world, Africa and Cameroon' available at <<http://www-rohan.sdsu.edu/faculty/rwinslow/africa/cameroon.html>> [Accessed 12 April 2011].

<sup>220</sup>Human Rights Committee: Fourth periodic report on Cameroon ninety-seventh session, October 2010, at page 5, available at <<http://www.fiacat.org/IMG/pdf/CDHCCameroonEN-3.pdf>> [Accessed 23 March 2011].

<sup>221</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State (2009) Human Rights report for Cameroon also available at <<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm>> [Accessed 8 August 2011]

Unfortunately, police officers in Cameroon have often failed to inform suspects of their rights to legal assistance.<sup>222</sup> Moreover, during preliminary investigations, senior police officers do not allow legal counsels to brief their clients or to make comments in relation to their case<sup>223</sup> and in some cases detainees are denied the right to consult with legal counsel.<sup>224</sup>

### 3.5.3 Right to medical examination and access to a doctor

All persons deprived of their liberty have the right to medical examination and to consult with a doctor of their choice. The right of detainees and prison inmates to have access to medical examination and to consult with a doctor is important in safeguarding against torture and other forms of ill-treatment. This is true because acts of torture can only be proved in court with medical examination documents confirming that the victim was actually subjected to torture.

The State of Cameroon has taken necessary measures to enable detainees and prison inmates the right to medical examination and to consult with a medical practitioner. Section 123 (3) of the Criminal Procedure Code provides that it shall be mandatory for persons deprived of their liberty to be examined by a medical practitioner if they so requests. Despite the measure put in place to improve the health conditions of detainees and prison inmates, medical services and access to medical doctors are lacking in the country's detention centres and prisons.<sup>225</sup> This is particularly pathetic because without access to a medical practitioner, and improper and unavailable medical facilities, it would be difficult to prove allegations of torture and culprits will escape prosecution.

### 3.5.4 The right to challenge the lawfulness of detention in Cameroon

All detainees and other persons under any form of detention have the right to appear promptly before a judicial authority to challenge the legality of their detention. Foley argues that the right to challenge the lawfulness of detention goes a long way to safeguard against arbitrary arrest and illegal

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<sup>222</sup>NGO (Non Governmental Organisation) (2010) report on the implementation of the ICCPR in Cameroon, CCPR/C/CMR/Q4, para 24 at page 26 available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GeED\\_Cameroon\\_HRC99.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GeED_Cameroon_HRC99.pdf) [Accessed 9 September 2011].

<sup>223</sup>Human Rights Committee: Fourth periodic report on Cameroon ninety-seventh session, October 2010, page 6, available at <http://www.fiacat.org/IMG/pdf/CDHCameroonEN-3.pdf> [Accessed 23 March 2011].

<sup>224</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State (2009) Human Rights report for Cameroon available at <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm> [Accessed 8 August 2011].

<sup>225</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State (2009) Human Rights report for Cameroon also available at <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm> [Accessed 8 August 2011].

detention, as well as other rights including the prevention of torture. He further maintains that ‘while *habeas corpus*, or *amparo*, procedures are designed mainly to protect the derogable right to liberty, they are also an essential instrument for the protection of prisoners’ non-derogable rights to life and to freedom from torture’.<sup>226</sup>

As a state that has ratified the ICCPR, Cameroon is obliged to ensure that all persons arrested and detained preferring a criminal charge must appear promptly before a competent judicial officer designated by law, to trial the suspect within reasonable time or to release the suspect if his innocence is established. Challenging the legality of detention is a safeguard measure against torture in Cameroon. Legal counsel in Cameroon can challenge their client’s detention by way of an application of a Writ of Habeas Corpus.<sup>227</sup> Habeas Corpus is guaranteed under the Criminal Procedure Code. Section 584 (1) of the Code provides that detainees or their legal representatives can petition the Presidents of High Courts, or any other Judge of the said Court to hear applications for the immediate release on bail of persons that have been arbitrarily arrested, or other persons that have been deprived of their liberty by administrative authorities for any reasons. In *Retired Chief Justice Nyo Wakai and 172 Ors v The State of Cameroon*,<sup>228</sup> responding to an application by way of Habeas Corpus for the release of the applicants, the Mezam High Court granted bail to the applicants that were arrested arbitrarily and detained. In its reasoned judgement, the Court held that ‘the action of the administration was a gross violation of the fundamental rights of the person and could be likened to an administrative assault’.<sup>229</sup> The advantage of challenging detention by way of a writ of Habeas Corpus is that the suspect has the right to appear physically in court and will therefore have the opportunity to report any allegations of torture on his person.

Further guarantees against arbitrary arrest and illegal detention to prevent torture of detainees are provided for under the Penal Code. Section 291(1) of the Penal Code specifically provides that ‘whoever in any manner deprives another of his liberty shall be punished with imprisonment from

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<sup>226</sup>Foley C ‘Combating torture: A manual for judges and prosecutors’ (2003) page 31, para 2.40, available at <[http://www.essex.ac.uk/combatingtorturehandbook/english/combating\\_torture.pdf](http://www.essex.ac.uk/combatingtorturehandbook/english/combating_torture.pdf)> [Accessed 11 August 2011].

<sup>227</sup>‘Habeas Corpus is a special and speedy procedure before the competent High Court to hear applications for the immediate release of persons illegally arrested or detained’. See Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 308 page 91.

<sup>228</sup>*Retired Chief Justice Nyo Wakai and 172 Ors v The State of Cameroon*, judgement No. HCB/19 CMR/921of 23 December 1992.

<sup>229</sup>Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 309 page 91.

five to ten years and with fine of from twenty thousand to one million francs'. Section 291(2) of the Penal Code further provides that where a suspect is arbitrarily arrested and detained for more than one month, and subjected to mental or physical torture, the culprit will be punished with imprisonment for from ten to twenty years.<sup>230</sup>

Unfortunately the remedy of Habeas Corpus is effective only with the availability of a lawyer. Access to courts and the high cost involved in initiating proceedings in courts has seriously hampered the use of the writ of Habeas Corpus in Cameroon. The Human Rights Committee observed that, 'a person held in administrative detention, under article 2 of Law No. 90/024 (19 December 1990), may have his detention extended indefinitely with the authorisation of the Provincial Governor or the Minister for Territorial Administration, and that such persons has no remedy by way of appeal or application of Habeas Corpus.'<sup>231</sup>

### **3.5.5 Training and educating custody personnel against the practice of torture in Cameroon**

As indicated earlier, training and educating custody personnel are an effective way to prevent acts of torture for persons deprived of their liberty.<sup>232</sup> Cameroon has made efforts in providing training and education against torture to persons charged with the administration of detainees and other persons deprived of their liberty in the country. It has trained and educated members of the police force, penitentiary administrators, law enforcement personnel and judges on measures to better promote and protect the human and fundamental rights of its citizens.<sup>233</sup> Most recently, Cameroon organised a seminar from the 24 to 26 of January 2012, on the prevention and repression of torture in Cameroon. Participants were sensitized on the 'prohibition and prevention of torture, with particular emphasis on the RIG, implications of ratifying the OPCAT, the challenges of investigating cases of torture and the protection of victims of torture'.<sup>234</sup>

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<sup>230</sup>Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 171-2 page 61.

<sup>231</sup>Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 160, page 59.

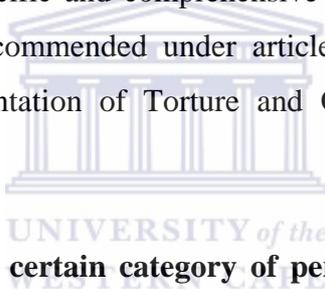
<sup>232</sup>Article 10 (1) of the UNCAT.

<sup>233</sup>Human Rights Council, Cameroon: Report of the working group on the universal periodic review, eleventh session, agenda 6, A/HRC/11/21, 3 March 2009, para 29, page 9.

<sup>234</sup>African Commission on Human and Peoples' Rights, Intersession activity report of the committee for the prevention of torture in Africa: Report presented by Commissioner Catherine Dupe Atoki to the 51 ordinary session of the ACHPR, April 18-2 May 2012, available at <[www.achpr.org](http://www.achpr.org)>[Accessed 25 May 2012].

The NCHRF have also been playing a leading role in providing education and training programmes meant to prevent and prohibit the practice of torture and other forms of ill-treatment in the country. It carries out public awareness campaigns in detention centres, so as to educate people deprived of their liberty on the safeguards available against torture and other forms of ill-treatment. It does so by distributing free leaflets, booklets and pocket cards on the rights of prisoners. It also educates torture victims on the means of rehabilitation and compensation available to them.<sup>235</sup>

However, the Committee Against Torture has observed that, ‘the information, education and training provided to law enforcement officials, prison staff, army personnel, judges and prosecutors are inadequate and do not cover all the provisions of the Convention, particularly the non-derogable nature of the prohibition of torture and the prevention of cruel, inhuman or degrading treatment or punishment’.<sup>236</sup> It has equally been observed that, medical staff working in detention centres and prisons in Cameroon receive no specific and comprehensive training to detect signs of torture on detainees and prison inmates as recommended under articles 10 and 15 of the Manual on the effective Investigation and documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>237</sup>



### **3.6 Safeguards against torture for certain category of persons: Women, people with mental health problems and children**

As a signatory to the CRC and the CEDAW treaties, Cameroon is under obligation to ensure that children, women and people with medical health problems are protected against torture. Cameroon guarantees the protection of vulnerable category of persons such as women, children and mentally sick patients under any form of detention from torture and other forms of ill-treatment.<sup>238</sup> Article 20 of decree No. 92/052 of 27 March 1992 provides that female detainees and prison inmates must be

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<sup>235</sup>National Commission on Human Rights and Freedoms Cameroon: Permanent Secretariat: Contributions of the NCHRF to the challenge millennium account: Some indicators for improved performance June 2011, at page 12, available at <[www.cndhl.cm](http://www.cndhl.cm)> [Accessed 10 march 2012].

<sup>236</sup>Committee against Torture, consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations on Cameroon forty-fourth session 26 April-14 May 2010, CAT/C/CMR/CO/4, para 27, page 9.

<sup>237</sup>Committee against Torture, consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations on Cameroon forty-fourth session 26 April-14 May 2010, CAT/C/CMR/CO/4, para 27, page 9.

<sup>238</sup>See the preamble to the 1996 Cameroon Constitution. It provides that the nation ‘shall protect women, the young, the elderly and the disabled’.

separated from each other so as to eliminate the possibility of sexual assault and torture. Contrary to the above mentioned law, male and female inmates have often been incarcerated in the same cells. Female detainees are often subjected to sexual harassment and torture by both male prison inmates and public officials.<sup>239</sup> The Special Rapporteur on Torture, on his visit to Cameroon, noted that female and male detainees were often incarcerated in the same cells. The Yaoundé criminal investigation unit is notorious for this practice.<sup>240</sup> A similar situation was observed in the Mfou prison built for juveniles and female inmates, but which has most recently been accommodating male inmates.<sup>241</sup> Generally, female detainees incarcerated with male inmates are being subjected to torture and other forms of ill-treatment like being stripped naked and forced to dance, their bodies insulted and mocked, forced to stand in the sun naked, or stripped and sexually assaulted'.<sup>242</sup>

With regard to people with mental health problems, Cameroon formulated a mental health policy in 1998 for the promotion, protection, treatment and rehabilitation of persons with mental disabilities.<sup>243</sup> Activities related to mental health legislation have been issued in the draft form, but details of its enactment are not yet available. Furthermore, there is no mental health reporting system in the country. Data collection is poor due to insufficient staff.<sup>244</sup> The Centre for Rehabilitation and Abolition of Torture (CRAT), a non-governmental organisation working for the prevention of torture in Cameroon, reported that there is no regime, finance and resources for mental health and psychosocial care for mental patients who are victims of torture in Cameroon.<sup>245</sup>

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<sup>239</sup>Committee against Torture, concluding observations on Cameroon: Report on violence against women under article 19 of the UNCAT, 31<sup>st</sup> session, November 10-21 2003 at page 130. For more, see Winslow Robert, 'Crime and society: A comparative criminology tour of the world, Africa and Cameroon' available at <<http://www-rohan.sdsu.edu/faculty/rwinslow/africa/cameroon.html>> [Accessed 12 April 2011].

<sup>240</sup>Committee against Torture, concluding observations on Cameroon: Report on violence against women under article 19 of the UNCAT, 31<sup>st</sup> session, November 10-21 2003 at page 130. For more, see Winslow Robert, 'Crime and society: A comparative criminology tour of the world, Africa and Cameroon' available at <<http://www-rohan.sdsu.edu/faculty/rwinslow/africa/cameroon.html>> [Accessed 12 April 2011].

<sup>241</sup>Eva Benouaich and MireilleAffa'aMindzie 'The World Organisation against Torture report on the implementation of the Convention on the Rights of the Child in Cameroon' 2001 page 34, 28<sup>th</sup> session, Geneva Switzerland, 24<sup>th</sup> September to 12 October 2001, available at <<http://www.omct.org>> [Accessed 8 September 2011].

<sup>242</sup>Committee against Torture, concluding observations on Cameroon: Report on violence against women under article 19 of the UNCAT, 31<sup>st</sup> session, November 10-21 2003 at page 130.

<sup>243</sup>World Health Organisation 'Mental health atlas: Evidence and research development of mental health and substance abuse' 2005 page 118 available at <[http://whoint/mental\\_health/policy/who\\_rb\\_mnh-hr\\_leg\\_FINAL-11-07\\_05.pdf](http://whoint/mental_health/policy/who_rb_mnh-hr_leg_FINAL-11-07_05.pdf)> [Accessed 23 May 2011].

<sup>244</sup>World Health Organisation 'Mental health atlas: Evidence and research development of mental health and substance abuse' (2005) 118, available at <[http://whoint/mental\\_health/policy/who\\_rb\\_mnh-hr\\_leg\\_FINAL-11-07\\_05.pdf](http://whoint/mental_health/policy/who_rb_mnh-hr_leg_FINAL-11-07_05.pdf)> [Accessed 23 May 2011].

<sup>245</sup>Centre for the Rehabilitation and Abolition of Torture in Cameroon available at <<http://cratcameroon.org/index.php>> [Accessed 17 October 2011].

As a party to the CRC, Cameroon is obliged to ensure that children are not subjected to torture and other forms of ill-treatment.<sup>246</sup> Article 37(c) of the CRC further impose the duty on Cameroon to ensure that children under any form of incarceration shall be separated from adult prisoners and detainees, except where the best interest of the child requires otherwise.<sup>247</sup> This is very important as it will go a long way to minimise torture. Cameroon has put in place legislations meant to prevent torture and other forms of ill-treatment of children in detention. Section 29 (4) of the Cameroon Penal Code and article 706 of the Cameroon Criminal Procedure provides that children below the age of eighteen shall be incarcerated in separate detention centres from adult inmates so as minimise the risk of torture. Furthermore, Article 20 (4) of Decree No. 92/052 of 27 March 1992, on the penitentiary regime in Cameroon the law provides that, children in conflict with the law shall be administered in special detention centres meant for correction and rehabilitation purposes.<sup>248</sup> In practice juvenile prisoners are occasionally incarcerated with adult's inmates who often subjected torture and sexual molestation. The Douala New Bell,<sup>249</sup> Kaele, Dschang and Mbalmayo prisons are famous for incarcerating children and adult inmates in the same prison.<sup>250</sup> Although Cameroon has put in place laws to protect women, people with mental health problems and children against torture, one notes that the laws are poorly implemented and shortage of incarceration facilities have contributed to expose these categories of persons to torture and sexual abuse.

### 3.7 Investigating acts of torture in Cameroon

As indicated earlier, an efficient way to safeguard against torture is for states to investigate allegations of torture. As a state party to the UNCAT, Cameroon is under obligation to ensure that individuals who alleged torture, have the right to lodge complaint to competent authorities, and prompt, thorough and impartial investigations must automatically be conducted. Cameroon has set up a number of institutions to investigate allegations of torture committed within its national

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<sup>246</sup>Article 37 (a) of the Convention on the Rights of the Child.

<sup>247</sup>Article 37 (c) of the Convention on the Rights of the Child.

<sup>248</sup>Article 20 (4) of Decree No. 92/052 of 27 March 1992, on the penitentiary regime in Cameroon. For more, see Eva Benouaich and MireilleAffa'aMindzie 'The World Organisation against Torture report on the implementation of the Convention on the Rights of the Child in Cameroon' 2001 page 29 28<sup>th</sup> session, Geneva Switzerland, 24<sup>th</sup> September to 12 October 2001, available at <<http://www.omct.org>> [Accessed 8 August 2011].

<sup>249</sup>United States Bureau of Democracy, Human Rights and Labour, Department of State (2009) Human Rights report for Cameroon also available at <<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm>> [Accessed 8 August 2011].

<sup>250</sup>Eva Benouaich and MireilleAffa'aMindzie 'The World Organisation against Torture report on the implementation of the Convention on the Rights of the Child in Cameroon' 2009, page 34, 28<sup>th</sup> session, Geneva Switzerland, 24<sup>th</sup> September to 12 October, available at <<http://www.omct.org>> [Accessed 8 August 2011].

jurisdiction such as; the Special Oversight Division for the Control of Police Services (SODP),<sup>251</sup> the courts and the NCHRF. This section will examine the role played by these institutions in investigating acts of torture. It will especially seek to verify whether acts of torture are effectively investigated in Cameroon, and whether torture perpetrators are brought to book.

### **3.7.1 The role of the SODP**

The SODP is a special arm of the police force, meant to curb the excessive use of police power during criminal investigations and for investigating human rights abuses including torture committed by members of the police force.<sup>252</sup> Some states like South Africa is optimistic that the SODP force will play a leading role in safeguarding the right to freedom from torture in Cameroon as it will fight against impunity, and bring torture perpetrators to book.<sup>253</sup> Since its creation, the body has carried out several inquiries of human rights violations, including torture that have led to some administrative prosecutions and penalties against members of the police force in Cameroon.<sup>254</sup> Regrettably, this body is not independent and it lacks objectivity and transparency in its methods of inquiries and investigations, and as a result, only a few hands full of complaints against police officers has been investigated. It has also been reported that some elements of this body has contributed in committing acts of torture and other forms of ill-treatment in the country.<sup>255</sup>

### **3.7.2 The role of the NCHRF**

The NCHRF has the power to entertain all complaints of human rights violations including torture and to conduct all enquiries into such violations.<sup>256</sup> The decree creating the NCHRF and its internal regulations provides that ‘cases of human rights violations including torture and other forms of ill-treatment may be referred to the NCHRF by individuals, cooperate bodies or any group of individuals residing in the Country claiming to be victims of violations of fundamental human rights and freedoms recognised by international legal instruments enforced in Cameroon as well as by

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<sup>251</sup>The SODP was created by Decree No. 2005-065 of 23 February 2005.

<sup>252</sup>Article 1 (2) of Decree, No. 2005-065 of 23 February 2005.

<sup>253</sup>Human Rights Council, Cameroon: Report of the working group on the universal periodic review, eleventh session, agenda 6, A/HRC/11/21, 3 March 2009, para 44, page 12.

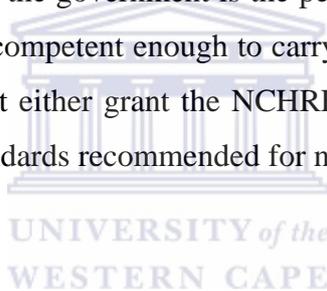
<sup>254</sup>African Charter on Human and Peoples’ Rights, second periodic report on the state of human rights in Cameroon 2003-2005, page 13.

<sup>255</sup>Committee against Torture, consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations on Cameroon forty-fourth session 26 April-14 May 2010, CAT/C/CMR/CO/4, para 22, page 7.

<sup>256</sup>Nkumbe N N ‘The effectiveness of domestic complaints mechanisms in the protection of human rights in Cameroon’ (2011) 5 No. 2 *Cameroon Journal on Democracy and Human Rights* 41.

Cameroon legislation'.<sup>257</sup> The NCHRF can go ahead and convoke the alleged human right violator or torture perpetrator and witnesses for a hearing of the matter in accordance with its rules of procedure.<sup>258</sup>

Njungwe is of the opinion that the NCHRF is not an efficient body to carry out investigations into human rights violations and acts of torture and other forms of ill-treatment in the country. He argues that contrary to its South African counterpart, the NCHRF does not have the authority to investigate human rights violations and acts of torture committed within the country.<sup>259</sup> The NCHRF's power in performing its protection mandate is extremely weak. It does not have the power to issue search warrants and seizure. It cannot also subpoena anyone to testify in an investigation of human rights abuse particularly torture.<sup>260</sup> The NCHRF can appeal to other state institutions to assist it when undertaking inquiries into allegations of human rights violations including torture, but it is not compulsory for such state institutions to render such assistance.<sup>261</sup> The investigatory weakness of the NCHRF is even more apparent when the government is the perpetrator of human rights violation.<sup>262</sup> It is obvious that the NCHRF is not competent enough to carry out investigations into allegations of acts of torture. The government must either grant the NCHRF more investigative power or simply dissolve it as it does not meet the standards recommended for national human rights commissions.



### 3.7.3 The role of the courts

The courts in Cameroon are vested with the powers to carry out investigations into all allegations of torture committed within all regions of the national jurisdiction. Torture victims or other persons interested in their case, like legal counsel, can lodge complaints alleging torture. In Cameroon,

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<sup>257</sup>Hosain K, 'Single organ systems: National human rights commissions' in Hosain K, Besselink L, Selassie S and Volker E (eds) *Human rights commissions and ombudsman offices: National experiences throughout the world* (2000) 178.

<sup>258</sup>Nkumbe N N 'The effectiveness of domestic complaints mechanisms in the protection of human rights in Cameroon' (2011) 5 No. 2 *Cameroon Journal on Democracy and Human Rights* 44.

<sup>259</sup>Njungwe E N, 'A brief comparison between the South African and the Cameroon national human rights commissions' (2007) 1 No. 1 *Cameroon Journal on Democracy and Human Rights* 25.

<sup>260</sup>Progressive initiative group for Cameroon (PICAM) 'The National Commission on Human Rights and Freedom of Cameroon: An epitome of government's contempt for human rights' 2009, available at <<http://www.picam.org/press-releases/2009/08-20-humanrights-commission.htm>> [Accessed 28 April 2011].

<sup>261</sup>Njungwe E N, 'A brief comparison between the South African and the Cameroon national human rights commissions' (2007) 1 No. 1 *Cameroon Journal on Democracy and Human Rights* 26.

<sup>262</sup>Progressive initiative group for Cameroon (PICAM) 'The National Commission on Human Rights and Freedom of Cameroon: An epitome of government's contempt for human rights' 2009, available at <<http://www.picam.org/press-releases/2009/08-20-humanrights-commission.htm>> [Accessed 28 April 2011].

preliminary investigations into acts of torture are carried out by the Examining Magistrate.<sup>263</sup> At the close of the investigations, if the Examining Magistrate observes that acts of torture have been committed, the Magistrate will then forward the case to the competent court for trial.<sup>264</sup> Whenever the court finds that torture has been perpetrated, it punishes the offender accordingly.<sup>265</sup>

Regrettably, there is no independent mechanism to investigate cases of torture in Cameroon.<sup>266</sup> Cameroon courts have often failed to proceed to prompt and impartial investigations into allegations of torture committed by security forces, and those found guilty are not sentenced according to the gravity of their crimes.<sup>267</sup> Moreover, the actual number of persons alleged to having committed acts of torture and those convicted are not proportional, and the few convictions fail totally to respect the sentencing guidelines.<sup>268</sup> For instance, Cameroon neither carried out investigations nor prosecuted security officers for acts of torture and extrajudicial killing of at least one hundred and thirty nine persons during the 2008 riots.<sup>269</sup>

### 3.8 Conclusion

Chapter three has examined the legal framework put in place to safeguard the right to freedom from torture in Cameroon. It has shown that the state of Cameroon has signed and ratified almost all international treaties that are meant to safeguard the right to freedom from torture for detainees and prison inmates in the country. It has also shown that Cameroon has criminalised torture and also prescribed appropriate penalties for torture perpetrators in line with article 4 (1) of the convention. But one realises that these structures put in place to protect its citizens against torture are not observed in practice. Arrest, interrogation and detention rules are not strictly followed as suspects' detainees and prison inmates are still being denied their constitutional and legislative rights and are

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<sup>263</sup>Section 142 (3) of the Criminal Procedure Code.

<sup>264</sup>Human Rights Committee, consideration of reports submitted by state parties under article 40 of the International Covenant on Civil and Political Rights: Cameroon, fourth periodic report, CCPR/C/CMR/4 11 May 2009, para 178, page 62.

<sup>265</sup> See Criminalisation and appropriate punishment for acts of torture at paragraph 3.4.2.3.

<sup>266</sup>Ball M O 'Every Morning, just like Coffee: Torture in Cameroon' 2002, page 10 available at <<http://www.torturecare.org.uk/Cameroon/rtf>> [Accessed 7 May 2011].

<sup>267</sup> Committee against Torture, consideration of reports submitted by State parties under article 19 of the Convention: Concluding observations on Cameroon forty-fourth session 26 April-14 May 2010, CAT/C/CMR/CO/4, para 20 (a), page 6.

<sup>268</sup>Human Rights Committee: Fourth periodic report on Cameroon ninety-seventh session, October 2010, at page 4 available at <http://www.fiacat.org/IMG/pdf/CDHCameroonEN-3.pdf> [Accessed 23 March 2011].

<sup>269</sup>Human Rights Committee: Fourth periodic report on Cameroon ninety-seventh session, October 2010, at page 4 available at <http://www.fiacat.org/IMG/pdf/CDHCameroonEN-3.pdf> [Accessed 23 March 2011].

often subjected to torture. The powers of administrative authorities during public emergency periods are excessive that even render the writ of habeas corpus useless. It has also shown that although a regime exists for the separation of different category of prisoners, this is hardly the case in practice due to unavailable space and infrastructure. The SODP and the NCHRF that ought to carry out investigations into allegations of torture have little or no power to do so, and, as a result, many torture perpetrators often escape liability. Generally Cameroon is still lacking behind in its prison administration and the safeguards against torture provided by the Constitution and legislation is still not available to persons deprived of their liberty. From the above analysis one can rightly argue that although Cameroon has tried to comply with its international obligations under the UNCAT to protect against torture, much work can and still has to be done to ensure the complete prevention and eradication of the practice in the country.<sup>270</sup>



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<sup>270</sup>Mujuzi J D “Implementing articles 4 and 3 of the United Nations Convention against Torture: What the Cameroon approach teaches us” (2009) 2 No. 2 *Journal of African and International Law*, see word from the editors page.

## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

#### 4.1 Conclusion

The study has shown that the international community has adopted treaties, principles, rules, codes of conduct and guidelines meant to prohibit and prevent acts of torture. It has also encouraged states to sign, accede and ratify the relevant international instruments required to criminalise all acts of torture and make torture a specific crime in their various legal systems and also to provide specific penalties for torture perpetrators. As a result, the universal prohibition of torture has attained the status of *jus cogens*.

The study has equally shown that Cameroon also saw the urgent need to prohibit and prevent torture in the country and went ahead to sign and ratify international and regional treaties that are geared to that effect. It has passed anti-torture legislation and made torture a specific crime under its domestic legal system and has also provided specific punishment for torture perpetrators. Despite all these measures put in place to prevent and prohibit torture, the practice continues in the country and with impunity. This is so, because, no law exist in Cameroon regulating investigation into allegations of torture in the country. Bodies like the NCHRF and SODP that ought to carry out investigation into allegations of torture lacks objectivity, autonomy and the power to carry out their duties effectively. Furthermore, investigations and prosecutions relating to allegations of torture are not carried out systematically and torture perpetrators receive lenient sentences that are not proportionate to the seriousness of the crime.

#### 4.2 Recommendations

Cameroon should ensure that all international treaties duly signed geared towards preventing and prohibiting torture should also be ratified or acceded to. For example, Cameroon should ratify both the Rome Statute of the International Criminal Court<sup>271</sup> and the Optional Protocol to the Convention

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<sup>271</sup>Eyembe Elias Ebai, 'Cameroon should ratify the Rome Statute of the International Criminal Court' available at <<http://allafrica.com/stories/200810100990>> [Accessed 23 February 2012].

against Torture.<sup>272</sup> The ratification of these treaties will go a long way to foster the application of the principle of universal jurisdiction of torture, and as a result help in the prosecution of alleged torture perpetrators in and out of the country, and will also ensure the putting in place of national preventive mechanisms that will guarantee frequent and unannounced visits to places of detention which will go a long way to prevent torture in the country.

Legal practitioners in Cameroon should also be encouraged to invoke international laws that protect against torture in local courts and judges should respect the provisions of these laws. Cameroon should put in place a regime to investigate acts of torture promptly, thoroughly and impartially, and suspects should be suspended from duty during the investigation process.<sup>273</sup> It should also ensure that the SODP and the NCHRF be granted more powers to carry out investigations into allegations of torture. More particularly, the NCHRF should be empowered to prosecute cases of torture and to provide compensation and rehabilitation to victims.

Cameroon should also ensure that all persons in charge of administering detention centres are adequately trained on the promotion and protection of human rights generally, and the right to freedom from torture, in particular.

Finally, Cameroon should also put in place a regime that will promote and protect the rights of special categories of persons like women, children and mental persons deprived of their liberty against torture.

Word count 28, 573.

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<sup>272</sup>African Commission on Human and Peoples' Rights, Intersession activity report of the committee for the prevention of torture in Africa: Report presented by Commissioner Catherine Dupe Atoki to the 51 ordinary session of the ACHPR, April 18-2 May 2012, available at <[www.achpr.org](http://www.achpr.org)>[Accessed 25 May 2012].

<sup>273</sup>Committee against Torture, consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations on Cameroon forty-fourth session 26 April-14 May 2010, CAT/C/CMR/CO/4, para 20 (b) (c), page 6.

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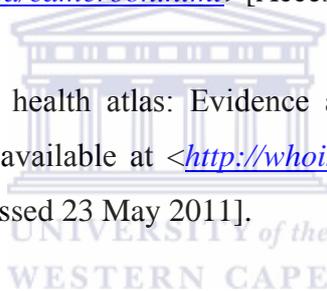
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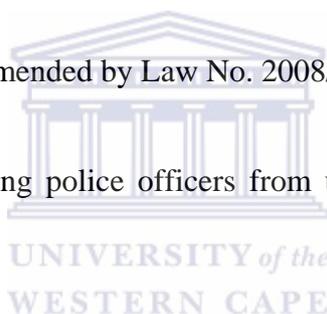
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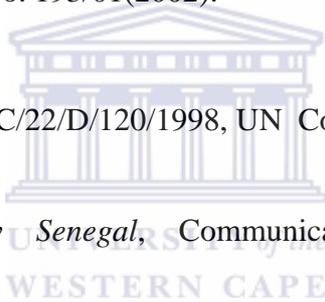
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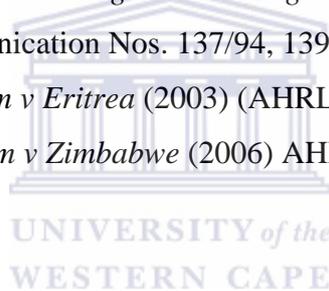
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