REDRESS

Ending Torture. Seeking Justice for Survivors

Briefing paper on Namibia's

"Prevention and Combating of Torture Bill"

March 2016

1. The Redress Trust (REDRESS)[1] presents these comments on Namibia's "Prevention and Combating of Torture Bill" (the Bill) to the Law Reform and Development Commission (LRDC). We hope these comments will be useful to the LRDC and other actors in addressing the absolute prohibition of torture and ill-treatment through comprehensive legislation and welcome the opportunity to further discuss any issues in this submission.

2. We recognise the important efforts undertaken to legislate against torture and commend the LRDC for the development of the Bill. We thank the LRDC for sharing a draft of the Bill and the "Report for the Drafting of the Prevention and Combating of Torture Bill in Namibia" (the Report) as prepared by Professor Jamil Ddamulira Mujuzi, the Consultant hired by the Namibian Ministry of Justice for the drafting of the Bill. We also thank Ms Yvonne Dausab, the Chair of the LRDC, for her collaboration and participation in an Expert Meeting organised by REDRESS and the Independent Medico Legal Unit (IMLU) in Nairobi, Kenya, from 25-26 January 2016.[2]

3. Since April 2015, REDRESS has been implementing a pan-African project on anti-torture legislative frameworks in which we examined the legislative framework in seven countries: the Democratic Republic of the Congo (DRC), Kenya, Namibia, Nigeria, South Africa, Tunisia and Uganda. The Project identified some of the best practices in the development, adoption and implementation of anti-torture legislation in Africa, which, together with our wider knowledge on the development of legislative frameworks worldwide, are incorporated into this submission, and which we hope will be of use to the Law Reform Commission in the further development of the Bill.

[1] See Annex for further information about REDRESS.
[2] For further information about the Expert meeting see REDRESS, at http://www.redress.org/downloads/conference-agenda.pdf.

Introduction

4. Namibia ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1994. It is also Party to other treaties providing for a prohibition of torture and cruel, inhuman or degrading treatment or punishment ('ill-treatment'), including the African Charter on Human and Peoples' Rights (African Charter), the International Covenant on Civil and Political Rights (ICCPR), and the four Geneva Conventions and Additional Protocols.

5. These instruments require States parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture and ill-treatment.[3] Specifically in respect of legislative measures, there is an obligation to criminalise torture under domestic law and to put in place a legislative framework that provides for the prohibition, prevention, investigation and prosecution of torture and ill-treatment as well as the right to redress for victims. The existence of an adequate anti-torture legislative framework is central to the effective prohibition and prevention of torture and ill-treatment.

6. This is also reflected in the *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa*, adopted by the African Commission on Human and Peoples' Rights (African Commission) in 2002 to provide States parties to the African Charter on Human and Peoples' Rights (African Charter) with concrete recommendations for the implementation of Article 5 of the Charter.[4] The Robben Island Guidelines request States parties to the African Charter to "ratify international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish."[5]

7. Against this background, Namibia's decision to develop anti-torture legislation to incorporate its obligations under UNCAT and the African Charter is therefore of crucial importance.

[3] See Article 2 UNCAT, see further pp.1-2 of the Report.
[4] Article 5 of the African Charter provides: "Every 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."
[5] Robben Island Guidelines, para.1.

Namibia's Prevention and Combating of Torture Bill

Preliminary observations

8. We commend the LRDC for drafting a comprehensive Bill that seeks to domesticate Namibia's obligations under UNCAT and is very clearly structured along the lines of the relevant Articles of UNCAT. The Bill places an emphasis on the criminalisation of torture and on the important role the prosecution of perpetrators of torture plays in the prevention and prohibition of torture, including through the use of extraterritorial jurisdiction as set out in Article 7. The Bill's provision on immunity in Article 4 is particularly noteworthy and underlines Namibia's commitment to prosecute torture irrespective of the position of the perpetrator. The non-derogatory clause in Article 5 furthermore underlines the absolute prohibition of torture under any circumstance.

9. We further welcome the LRDC's initiative to consult with stakeholders in Namibia on the development of the anti-torture bill,[6] and encourage further consultations, including with stakeholders outside Namibia, throughout the process of drafting, adoption and implementation of the Bill.

10. We note however, that the current Bill does not include an express provision on the absolute prohibition of cruel, inhuman or degrading treatment or punishment (ill-treatment). This could lead to limited protection for those subjected to ill-treatment and does not reflect the obligation to prevent ill-treatment in line with Article 16 UNCAT. According to Article 16 UNCAT, States parties are obliged to "undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which to not amount to torture." Article 16 emphasises that the obligations contained in Articles 10 - 13 UNCAT "in particular" equally apply to ill-treatment. General Comment No. 2 adopted by the Committee Against Torture provides further clarity on the obligation in relation to ill-treatment, stipulating that the obligations to prevent torture and ill-treatment "are interdependent, indivisible and interrelated."[7] According to the Committee, the "obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture."[8] The rationale for extending the obligations pertaining to torture also to ill-treatment is that "[E]xperience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under

[6] A consultation meeting with stakeholders in Namibia on the Bill took place on 7 August 2015.
[7] Committee Against Torture, 'General Comment No.2: Implementation of article 2 by States parties,' CAT/C/GC/2, 24 January 2008 (Committee Against Torture, General Comment No. 2), para. 3.
[8] Ibid.

the Convention and its prevention to be an effective and non-derogable measure."[9] The Report prepared by Professor Mujuzi highlights further that "practice from the Committee against Torture appears to be moving towards calling upon states parties to criminalise CIDT [Cruel, Inhuman, Degrading Treatment]."[10]

11. Accordingly, there are good reasons for the Bill to also include an express provision on Namibia's obligation to prevent ill-treatment. Anti-torture legislation in several other countries similarly provides for a definition and/ or criminalisation of ill-treatment.[11] Criminalisation of ill-treatment can contribute to its prevention though the prosecution of perpetrators and because it will enable Namibian authorities to identify, track and report instances of ill-treatment.

12. The Law Reform Committee may therefore consider introducing a definition of ill-treatment as a separate crime to torture with reference to the level of severity of the treatment, underlining that the assessment of severity should take into account "the circumstances of the case, including the duration of the treatment or punishment, its physical and mental effects and, in some cases, the sex, religion, age and state of health of the victim."[12]

13. In light of the foregoing, it would be equally important for consideration to be given to amending other provisions in the Bill, where applicable, so as to also expressly include ill-treatment. We propose several such amendments in the analysis of the provisions below.

[9] Ibid.
[10] See Report, pp. 45-46.
[11] See for instance, section 7 of Uganda's Prevention and Prohibition of Torture Act of 2012; a definition and/ or criminalisation of ill-treatment is similarly provided for in anti-torture bills currently being developed in Nigeria and Kenya.
[12] See for instance, African Commission, *Abdel Hadi Radi & Others v Republic of Sudan*, Communication 368/09, paras. 71-73; see also European Court of Human Rights, *Ireland v United Kingdom*, application no.5310/71, Judgment of 18 January 1978, para. 162.

Comments on existing provisions in the Bill

Part I – Preliminary

(1) Interpretation: "Victim or victims"

14. We welcome that the definition of "victim or victims" as provided for in the section on the Interpretation largely reflects the definition of victim provided for in the UN Committee Against Torture's General Comment No. 3 on Article 14 of the Convention (General Comment No. 3).[13] However, the definition in General Comment No. 3 is broader in that it includes in its definition also victims of ill-treatment.[14] In contrast, the Bill provides for victims of "acts or omissions that constitute torture." We therefore recommend amending the definition to also expressly include victims of other forms of prohibited ill-treatment in addition to torture. Such an interpretation would be in line with the Committee Against Torture's General Comments No. 2 and No. 3.

    "…through acts or omissions that constitute torture or cruel, inhuman or degrading treatment or punishment ('other forms of prohibited ill-treatment').

15. As noted further below (see section on Article 14 of the Bill), the section on Interpretation could usefully be amended to include a definition of the different forms of reparation – restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. These definitions could mirror the definitions included in the Committee Against Torture's General Comment No. 3.[15]

Prohibition and Criminalisation of Torture

Article 6: Disobeying an order to commit torture

16. Article 6 of the Bill provides that *'No one shall be subjected to any disciplinary or administrative action or punished for disobeying an order to commit torture*.' We suggest that this Article could be clarified with an additional paragraph highlighting that superior orders are not a defence to torture, and that indeed, officials are under a duty to disobey orders from a superior to commit torture.[16]

[13] Committee Against Torture, 'General Comment No.3 -Implementation of article 14 by States parties,' CAT/C/GC/3, 19 November 2012 (Committee Against Torture, General Comment No.3), para.3, at http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf.
[14] Ibid; General Comment No.3 refers to victims of "violations of the Convention," see para.3, providing that [V]ictims are persons who….suffered harm…through acts or omissions that constitute violations of the Convention."
[15] See paras. 8-18 of General Comment No.3.
[16] Article 2 (3) of UNCAT; UN Human Rights Committee, General Comment No.31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para.18; see also REDRESS, Bringing the International Prohibition of Torture Home, 2006, p. 42, at http://www.redress.org/downloads/publications/CAT%20Implementation%20paper%2013%20Feb%202006%203.pdf.

(1) An order from a superior officer or a public authority shall not be a defence to a charge of torture or other prohibited ill-treatment.

(2) *Officials are under a duty to disobey orders from a superior or a public authority to commit torture or other prohibited ill-treatment and no one shall be subjected to any disciplinary or administrative action or punished for disobeying an order to commit torture or ill-treatment.*

Article 7: Extraterritorial Jurisdiction over torture

17. Article 7 provides for extraterritorial jurisdiction over torture and, in para. (2), provides that any prosecution for torture committed outside the territory of Namibia can only proceed with the "written authority of the Prosecutor-General."

18. Article 7(2) provides the Prosecutor General with absolute discretion and as such can unduly limit the exercise of jurisdiction over torture committed abroad. Article 7(2) does not currently provide for or set out criteria on how the Prosecutor-General may provide (or deny) written authority. Since cases of torture committed abroad might be politically sensitive, such discretion may open the way for interference and result in decisions being made on the basis of expediency rather than justice considerations.

19. We therefore suggest to either delete Article 7(2) or amend it by providing for relevant criteria for the exercise of discretion (having regard, for instance, to the strength of the evidence) and for the possibility of judicial review of a decision not to prosecute. For example:

No person may be prosecuted for an offence under clause 3 which was committed outside the territory of Namibia except with the written authority of the Prosecutor-General. In considering whether to accord permission to prosecute, the Prosecutor –General shall have regard to the available evidence and the interests of justice in pursuing a prosecution. A decision not to prosecute shall be reviewable by the High Court upon application from the victim or the victim's representatives.

Article 11: Training and education

20. The provision in Article 11 for the training and education of relevant authorities could refer to a wider array of authorities, such as law enforcement officials, civil and military personnel and others tasked with the investigation and prosecution of torture and other prohibited ill-treatment.[17] Such an amendment could also specify that training and education to be provided will align with the *Istanbul Protocol on the Effective Investigation and*

[17] See for example Article 10 of UNCAT, providing for training of law enforcement personnel.

Documentation of Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).[18] The Committee Against Torture has furthermore stressed the need for methodological training of "officials and personnel involved in efforts to obtain redress…in order to prevent re-traumatisation of victims of torture or ill-treatment."[19]

This education and training shall be regular, suitable for the relevant officials and compulsory. It shall include education and training of law enforcement personnel, civil and military personnel, medical personnel, the judiciary and others tasked with the investigation and prosecution of torture and other forms of prohibited ill-treatment. Investigative training shall be provided in line with the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment. Public officials and personnel involved in efforts to obtain redress shall receive methodological training in order to prevent re-traumatisation of victims of torture or other forms of prohibited ill-treatment.

Article 13: Investigation of torture

21. Article 13 provides for the obligation to investigate torture. It should also include, in the title, the obligation to investigate other forms of prohibited ill-treatment as provided for in Article 16 UNCAT. The body with the obligation to investigate allegations of torture is furthermore limited to the Office of the Ombudsman, as Article 13 is silent on the role of the police and other law enforcement agencies. As the Ombudsman's mandate does not include powers of arrest and detention, police will generally play a crucial role to ensure that investigations are capable of leading to a suspect's arrest and where appropriate, detention. The Article could be amended to explain the role of law enforcement authorities, which is complementary and should not be displaced by any special role accorded to the Ombudsman.

13. Investigation of torture and other forms of prohibited ill-treatment

(1) The Office of the Ombudsman shall proceed to a prompt, thorough and impartial investigation, wherever there is reasonable ground to believe that an act of torture and cruel, inhuman or degrading treatment or punishment has been committed in Namibia. This will be the case whether or not the victim or any other person has made a complaint. It shall not be a requirement for the complaint, if made, to be in writing. Reasonable ground can include information or evidence based on allegations from any source.

(2) All authorities, including in particular law enforcement authorities, military and security personnel, shall cooperate with the Ombudsman in the investigation. Where substantial grounds exist to support the complaint, the police shall cooperate with the Ombudsman to secure the arrest of the suspect and charge the person with the offence he or she is alleged to have committed.

[18] Office of the High Commission on Human Rights, Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004, at http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf.
[19] Committee Against Torture, General Comment No.3, para.35.

Article 14: Redress for victims of torture

22. Article 14 should include a right to redress for victims of other forms of prohibited ill-treatment as also emphasised by the Committee Against Torture.[20]

23. Article 14 in its current form provides that a victim of torture shall obtain redress. It does not explicitly state that this is a right of victims and does not set out the procedural component of the right to redress, i.e. the right of victims to an effective remedy. The Committee Against Torture had underscored "the important relationship between States parties' fulfilment of their obligations under article 12 [duty to investigate] and 13 [right to complain], and their obligation under article 14 [the right to redress]" and considered that "[F]ull redress cannot be obtained if the obligations under articles 12 and 13 are not guaranteed."[21] Accordingly, States parties to the Convention should ensure that impartial and effective complaints mechanisms are established.[22] Similarly, the Robben Island Guidelines provide that States should ensure "the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.[23] To ensure access to complaint mechanisms, the Committee Against Torture provides that "[S]tates parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress."[24]

24. Since the right to redress can be as much about the process as it is about the outcome, States should furthermore ensure that victims are able to participate in the redress process.[25] In criminal proceedings, this means for instance that the victim has a right to be informed of the progress of and the results of criminal investigations, as well as of any criminal or disciplinary hearings.[26] State parties should also ensure that "notwithstanding the evidentiary benefits to victims afforded by a criminal investigation, a civil proceeding and the victim's claim for reparation should not be dependent on the conclusion of a criminal proceeding."[27]

25. We therefore propose that Article 14 be amended to also provide for the procedural component of the right to redress, and, in particular, the right to complain as enshrined in Article 13 of UNCAT, providing that a victim "has a

[20] Committee Against Torture, General Comment No.3, for instance para.5: "At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation…"
[21] Ibid, para.23.
[22] Ibid.
[23] Robben Island Guidelines, para.17.
[24] Committee Against Torture, General Comment No.3, para.30.
[25] Ibid.
[26] African Commission, *Safia Mohammed Issa (represented by REDRESS and the African Centre for Justice and Peace Studies) v Sudan*, Communication 443/2013, admissibility decision, para.58.
[27] Committee against Torture, General Comment No.3, para.26.

right to complain to, and to have his case promptly and impartially examined by, its competent authorities." Such an amendment would correspond with the Bill's strong emphasis on accountability for torture as set out for instance in Articles 3 and 4.

26. In addition, the current Article highlights that a victim has "an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." While this language reflects Article 14 of the Convention Against Torture, it could ideally be broadened to provide for the full spectrum of reparation as also recognised by the Committee Against Torture when interpreting Article 14 of the Convention,[28] and by the African Commission.[29] Instead of setting out the definition of the different forms of reparation in the Article itself, these could be incorporated into the section on Interpretation.

14. Redress for victims of torture and other prohibited ill-treatment

(1) A victim of an act of torture or other prohibited ill-treatment has a right to access and obtain redress.

(2) The right to redress includes a right to complain to the police, the Office of the Ombudsman or any other appropriate authority, and to have the complaint promptly, effectively and impartially investigated. The authority in charge of the investigation shall keep the victim informed about the progress and the results of the investigation.

(3) A victim's claim for redress will not depend on the conclusion of a criminal proceeding. Where a victim lacks the necessary resources to bring a complaint and to make claims for redress, legal aid will be provided.

(3) The right to redress encompasses the victim's right to adequate reparation, including restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition.

(3) Where reasonable grounds exist to believe that torture or other prohibited ill-treatment has taken place, a victim is entitled to reparation. A victim of torture or other prohibited ill-treatment may choose to pursue a claim for reparation before the appropriate court or any other mechanism established by the State for that purpose. A victim of torture or other prohibited ill-treatment who requires rehabilitation, including psychological support; appropriate medical assistance; or any other necessary social support or assistance is eligible to receive such support from the competent ministries. Victims are not required to file a complaint with the courts to be eligible for rehabilitation or associated social support.

[28] General Comment No.3 provides an interpretation of the different forms of reparation in paras.8-18.
[29] See for instance Committee Against Torture, General Comment No.3, paras.6-18; African Commission, 'International Day in Support of Victims of Torture Statement – 26 June 2015, at http://www.achpr.org/news/2015/06/d188/; the African Commission is currently developing a General Comment on the right to redress for victims of torture and ill-treatment under Article 5, which seeks to expressly include all forms of reparation, see for instance, African Commission, Report on Technical Meeting On Drafting a General Comment On The Rights To Redress For Victims Of Torture And Ill-Treatment Under Article 5 Of The African Charter On Human And Peoples' Rights, 6-7 July 2015, at http://www.achpr.org/news/2015/09/d191/.

Article 15: Evidence obtained through torture

27. Article 15 currently only provides for the exclusion of evidence obtained through torture. However, international human rights bodies have held that the 'exclusionary rule' should be applied to both, torture and other prohibited ill-treatment and the Robben Island Guidelines explicitly provide that "any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence…"[30] Furthermore, Article 15 does not currently set out the burden of proof. Accordingly, we propose that Article 15 be amended to include other forms of prohibited ill-treatment and to also provide for the burden of proof, emphasising that in line with international standards, it is for the State to prove that evidence was obtained voluntarily.[31]

Article 15: Evidence obtained through torture <u>or other forms of prohibited ill-treatment</u>

Evidence obtained through torture <u>or other forms of prohibited ill-treatment</u> shall be inadmissible in any proceedings except against a person accused of that conduct as evidence that it was obtained <u>through that conduct</u>. <u>The burden of proof to demonstrate that the evidence was obtained voluntarily rests with the prosecution.</u>

Proposal for inclusion of additional provisions in the Bill

Safeguards

28. The Bill does not include a provision on safeguards against torture and other forms of ill-treatment with the exception of Article 11 (training and education). International human rights law has developed a range of legal safeguards that can serve to minimise the risks of violations and/or limit the circumstances under which torture and ill-treatment take place. The main safeguards in relation to torture and other prohibited ill-treatment occurring in a detention context, include for instance the prohibition of arbitrary detention, the right to inform family members or others of the arrest, the right to be brought promptly before a court after arrest to challenge the legality of one's detention and the right to access to a lawyer of one's choice as well as the right to regular medical examination and health care.[32] We propose that the Bill emphasises specific safeguards in the context of arrest and detention, and designates the mechanism responsible for the monitoring of compliance with those safeguards. Even though Namibia has yet to ratify the Optional Protocol to

[30] See Robben Island Guidelines, para. 29; also Human Rights Committee, General Comment No.20 on Article 7 ICCPR, 10 March 1992, para.12.
[31] Committee Against Torture, *P.E. v France*, Communication No. 193/2001, para. 6.3.
[32] Detailed safeguards for detainees are provided in the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016; the UN Code of Conduct for Law Enforcement Officials, A/RES/34/169, 17 December 1979; and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988. UNCAT additionally requires States Parties to train law enforcement agents and other relevant officials on the prohibition of torture. The Robben Island Guidelines set out in para. 20, the "[B]asic procedural safeguards for those deprived of their liberty."

UNCAT and therefore has not yet established a National Preventive Mechanism to monitor and inspect places of detention, an Article on safeguards could refer to the Office of the Ombudsman, which carries out such independent monitoring and inspection.

Custodial safeguards against torture and ill-treatment

Arbitrary detention is prohibited. Upon arrest and during detention, a suspect of an offence shall have access to the following safeguards against torture and other forms of prohibited ill-treatment: (i) the right to inform family members or others of the arrest; (ii) the right to be promptly brought before a court after arrest; (iii) the right to challenge the legality of one's detention; (iv) access to a lawyer of one's choice; (v) the right to a medical examination upon arrest and after detention, and access to regular medical examination throughout detention. These safeguards are applicable at all times and cannot be suspended under any circumstance.

The Office of the Ombudsman shall be responsible for monitoring compliance with these safeguards and has the mandate to carry out unannounced visits to prisons and other places of detention.

Protection

29. The Bill does not provide for a victim's right to protection. However, victims seeking to exercise their right to redress, including their right to complain as provided for under the Bill, will frequently be exposed to a risk of reprisals, intimidation, harassment or other forms of violence. The Robben Island Guidelines for instance explicitly provide that States should "[E]nsure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights 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."[33] The Ugandan Prevention and Prohibition of Torture Act of 2012 integrated a right to protection for victims, witnesses and persons reporting torture, making it a responsibility of the State to ensure that they are protected "against all manner of ill-treatment or intimidation as a consequence of his or her complaint or any evidence given."[34]

30. We therefore propose that a provision on the right to protection is included in the Bill. Such a provision could be a standalone provision, or be integrated into current Article 14 on the right to redress:

The right to protection

(1) It shall be the responsibility of the State to ensure the protection from violence, threats of violence or any other form of intimidation of or reprisal against victims of torture and other

[33] Robben Island Guidelines, para.49.
[34] See Ugandan Prevention and Protection against Torture Act of 2012, section 21.

forms of ill-treatment, witnesses, those conducting the investigation, other human rights defenders and families.
(2) Any interference with the right to protection is considered an offence punishable with imprisonment.

Statutes of Limitation and Amnesties

31. While the Bill expressly excludes immunity for torture, it is silent on other obstacles to accountability for torture, such as amnesties and statutes of limitation (criminal and civil) in cases of torture and other forms of prohibited ill-treatment. There is wide recognition of the inapplicability of statutes of limitations to certain crimes under international law, and, as has been recognised by the United Nations Independent Expert who updated the Set of principles for the protection and promotion of human rights through action to combat impunity, "the general trend in international jurisprudence has been towards increasing recognition of the relevance of this doctrine [on the imprescriptibility of certain offences] not only for such international crimes as crimes against humanity and war crimes, but also for gross violations of human rights such as torture."[35] Statutes of limitation are inconsistent with States' absolute duty to prosecute or extradite suspects of torture, as such laws introduce qualifications to that duty.[36]

32. The UN Human Rights Committee has criticised States that have sought to impose amnesties or allow immunities for serious violations of human rights.[37] In its General Comment No. 31, it stressed that States have obligations to investigate and bring to justice alleged perpetrators of violations including "torture and similar cruel, inhuman and degrading treatment..., summary and arbitrary killing... and enforced disappearance". The Committee recognised that "the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations", and that States "may not relieve" public officials or state agents who have committed criminal violations "from personal responsibility, as has occurred with certain amnesties and prior legal immunities and indemnities".[38] In underlining the non-derogable nature of the

[35] Report of Diane Orentlicher to update the Set of principles to combat impunity, E/CN.4/2005/102, 8 February 2005, para.47, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/111/03/PDF/G0511103.pdf?OpenElement.
[36] The Committee against Torture has repeatedly stated that there should be no statutory limitations for torture, e.g. Turkey, UN Doc. CAT/C/CR/30/5, para.7 (c). See also the Inter-American Court of Human Rights in the *Case of Barrios Altos v Peru*, Judgment of 14 March 2001 (Merits), para. 41: "provisions on prescription ... are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture", and the International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija*, IT-95-17/1-T, 10 December 1998, para.157: one of the "consequences" of the jus cogens nature of the prohibition on torture is that "torture may not be covered by a statute of limitations."
[37] For example: Comments on Uruguay, CCPR/C/79/Add.19 (1993); Concluding Observations on El Salvador, CCPR/C/79/Add.34 (1994); Nineteenth Annual report of the Human Rights Committee A/50/40 (1995); Preliminary Observations of the Human Rights Committee: Peru CCPR/C/79/Add.67 (1996); Concluding Observations on France, CCPR/C/79/Add.80 (1997); Concluding Observations on Lebanon, CCPR/C/79/Add.78 (1997) and Concluding Observations on Chile, CCPR/C/79/Add.104 (1999); Concluding observations on Argentina, CCPR/CO/70/ARG (2000); Concluding Observations on Congo, CCPR/C/79/Add.118 (2000).
[38] Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States parties to the Covenant (2004), CCPR/C/21/Rev.1/Add.13, 29 March 2004, para.18.

prohibition of torture, the Committee stressed further in its General Comment No. 2 that the obligation to prosecute and punish perpetrators of torture or ill-treatment also applies during "a state of war, internal political instability or any other public emergency."[39] A failure to prosecute would violate the principle of non-derogability.[40]

33. Accordingly, we propose that the Bill be amended to specifically provide for the non-applicability of statutes of limitation and amnesties.

Annex: Information about REDRESS

REDRESS is an international human rights non-governmental organisation based in the United Kingdom with a mandate to assist torture survivors to seek justice and other forms of reparation.

REDRESS has extensive experience in working to ensure that international standards relating to the prohibition of torture and reparation for victims of torture are provided for and implemented at national level. REDRESS has worked on law reform in the context of the absolute prohibition of torture and ill-treatment with authorities and civil society around the world, including in Sudan, Kenya, Uganda, Libya and Nigeria. REDRESS is currently supporting the Committee for the Prevention of Torture in Africa in its efforts to develop a General Comment on the right to redress for victims of torture and ill-treatment under Article 5 of the African Charter.

For more information about REDRESS, please see our website at www.redress.org.

[39] Committee against Torture, General Comment No. 2, para. 5.
[40] Ibid.