



**AFRICAN CENTRE FOR TREATMENT AND
REHABILITATION OF TORTURE VICTIMS (ACTV)**

POLICY BRIEF ON TORTURE AND VIOLENCE IN RELATION TO ELECTIONS IN UGANDA.

**Action for Torture and Violence Prevention and
Accountability during the election process.**



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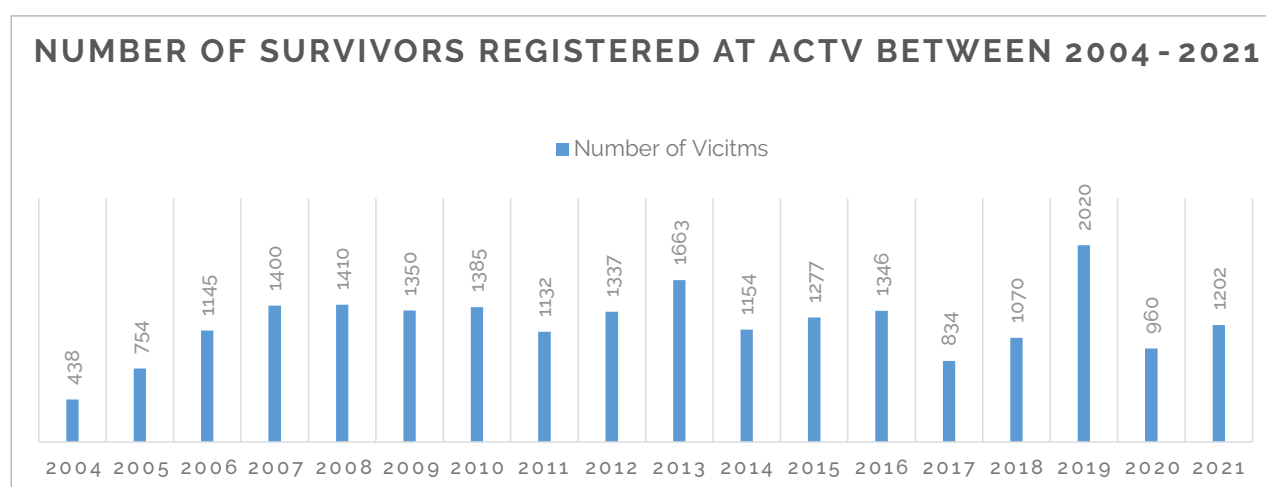
**Action for Torture and Violence Prevention and
Accountability during the election process.**

Summary of the brief.

ACTV implemented a project on scaling up professional documentation of survivors of election violence in the 2021 general election in Uganda. This was implemented in **Central region** - Kampala and Mukono, **Northern region** - Lira and Gulu, **Eastern region** – Iganga, Jinja, Luuka and Kamuli). 108 (82 Male and 25 Female) survivors were documented in the period between February – May 2022. The key emerging issues from the documentation included; security agencies ranked high among the alleged perpetrators, survivors living in immense fear and stigma which affects reporting, and consequentially, accountability and justice for survivors, and limited access to adequate rehabilitation services. It is recommended that the State establishes resilient and sustainable mechanisms to address torture and violence during election processes which are equitably accessible and affordable to all.

Introduction

Uganda is under the multi-party dispensation with elections held every five years. These elections have often been marred with irregularities and allegations of human rights violations and abuse leading to torture, repression and reprisal, corruption and impunity exercised by persons acting either in official or private capacity¹. ACTV has continuously registered an increase in the number of survivors registered each election year since 2005;



Between January to March 2021, Uganda conducted general election, where there were allegations of rampant incidences of violence, torture, illegal detention² and extrajudicial killings by security agencies³. Prior to the national elections, there were reported killings by the military of at least 54 protestors from the 18th to 20th of November 2020 in Kampala district. Similarly, from December, 2020- March, 2021, ACTV documented 69 (60Male and 09Female) case of torture related to election for which most cases were perpetrated by security agencies⁴. In addition the Uganda Human Rights Commission (UHRC) in her 24th Annual report registered 69 complaints of enforced disappearance related to the 2021 general elections⁵.

1 Political Tensions in Uganda Rise as Elections Approach, EU Won't Send Election Observers | The Warsaw The Warsaw

2 Uganda Human Rights Commission (UHRC) 24th Annual Report 2021 at page 89; A total of 32 victims were detained at mini maxi Prison.

3 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26988&LangID=E>; <https://reliefweb.int/report/uganda/uganda-un-experts-extremely-concerned-serious-rights-violations-linked-general>; <https://news.un.org/en/story/2021/04/1089642>; <https://www.theguardian.com/world/2021/apr/22/torture-abducted-uganda-crackdown-museveni>; <https://www.nytimes.com/2021/04/11/world/africa/uganda-election-disappearances-museveni.html>;

4 <https://actvuganda.org/>

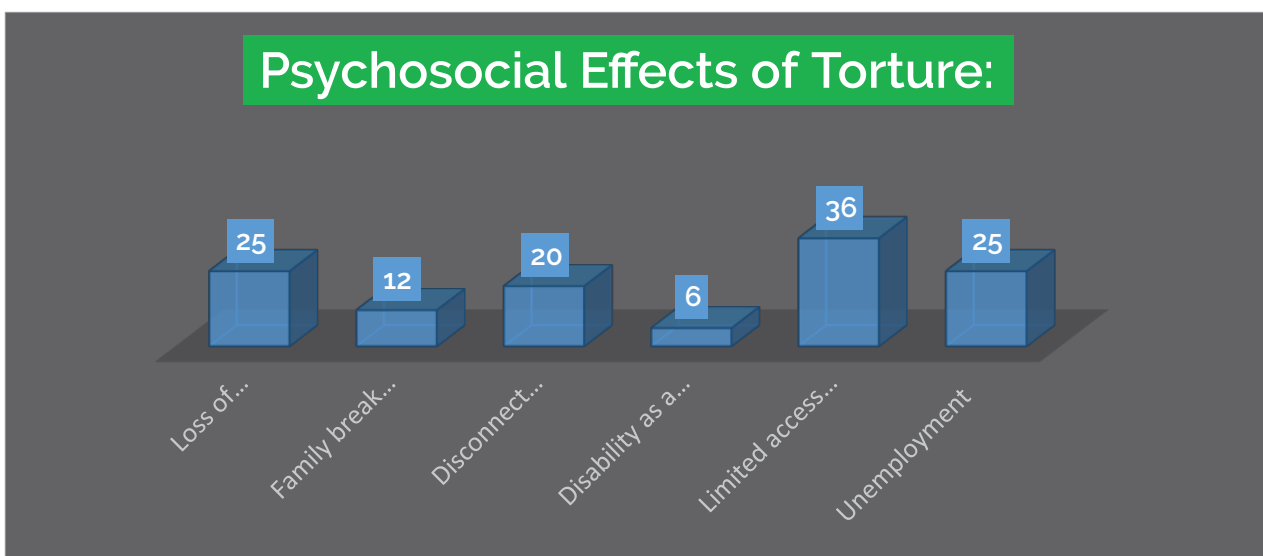
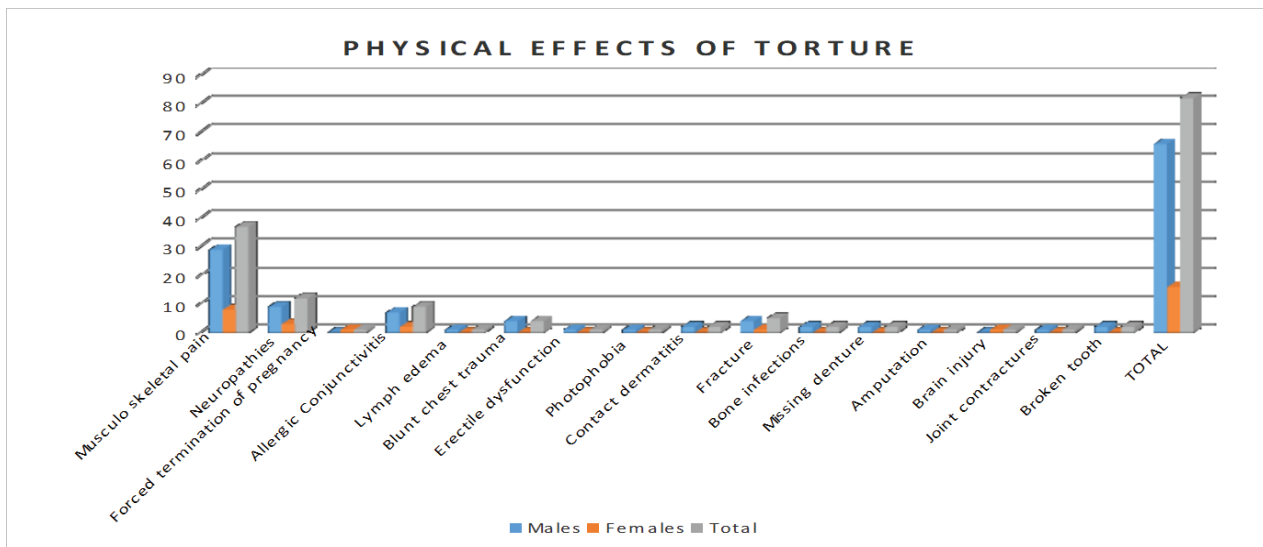
5 Uganda Human Rights Commission (UHRC), 24th Annual Report 2021 at page 85 – 86

Torture results into enormous effects that are physical, psychological, and social effects. These effects not only affects an individual, but their families and the society as well.

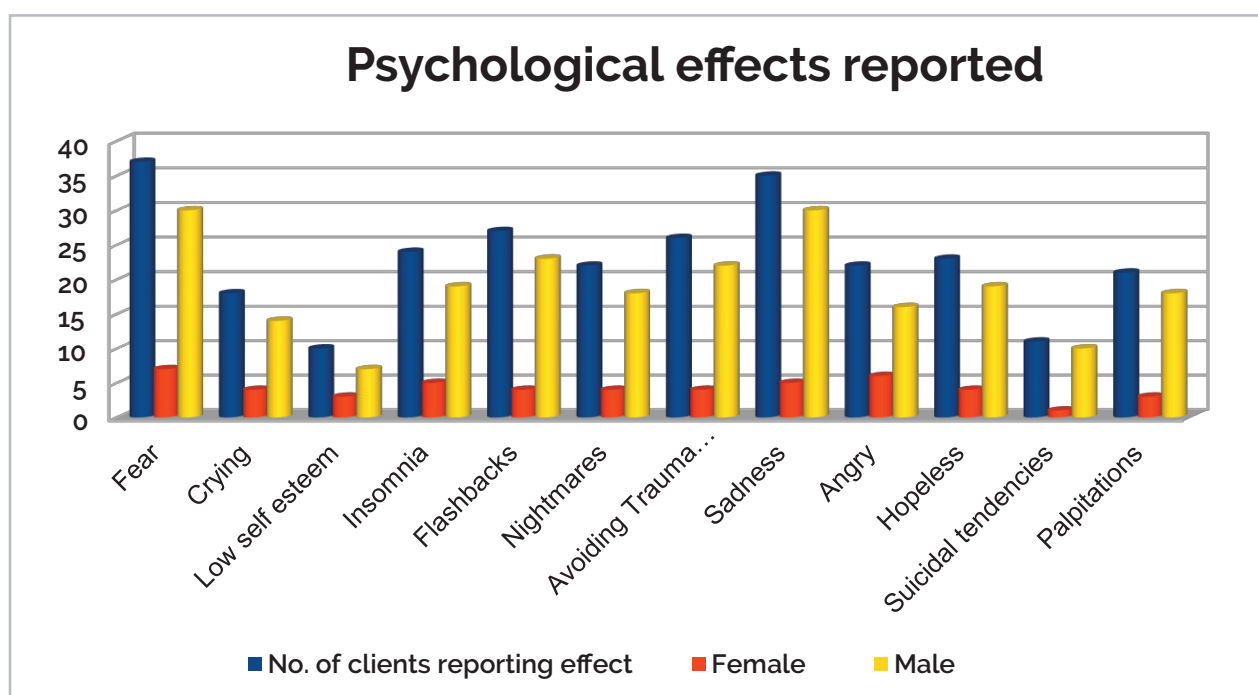
ACTV is currently the only organization that provides comprehensive treatment and rehabilitation services to survivors of torture and violence in Uganda.⁶ The existing public health facilities have not been consciously tailored to provide holistic rehabilitation services to survivors of torture. This has forced torture survivors to seek services in private health facilities at a higher cost thereby complicating equitable and timely access to treatment and rehabilitation which in turn continues access to justice for survivors and accountability. During a documentation exercise of survivors of torture and violence during the 2021 general election, 108 survivors were documented by ACTV in the districts of Kampala, Wakiso, Mukona, Jinja, Luuka, Iganga, Kamuli, Lira, and Kwania.

Effects of torture observed among survivors of election violence.

Out of 108 survivors of torture and violence documented, 82 (66 male and 16 female) presented with physical effects. 51 (38Male and 23Female) presented with psychosocial effects, and 42 with psychological effect of torture.



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Legal Framework on Torture in Uganda

Uganda has an elaborate and comprehensive legal framework against torture. Uganda ratified the United Nations Convention Against Torture (UNCAT) and has since been obligated to uphold its international principles. Further Uganda is also a party to the African Charter on Human and Peoples' Rights, where Article 5 provides for explicit prohibition of Torture and protection of human dignity.

At the National Level the right to freedom from torture is guaranteed under Article 24 and 44 of the 1995 Constitution of the Republic of Uganda. In addition, the Prevention and Prohibition of Torture Act (PPTA) in 2012 criminalized all forms of torture, cruel, inhuman and degrading treatment. The existing legal framework provides for the prevention of torture and redress for those who have been subjected to torture. To ensure effective and efficient implementation of the PPTA, the Prevention and Prohibition of Torture Regulations were enacted in 2017.

However, there is room for more as far as investigation and prosecution of alleged perpetrators is concerned. Despite the robust legal framework Uganda has in place that makes torture illegal, no known cases of torture from elections have been prosecuted, and there is no equitable access to rehabilitation services for survivors. This problem has been highly attributed to: lack of accountability, lack of a national rehabilitation plan or policy, impunity among state agencies, limited community awareness about human rights and where to report human rights violations, and limited knowledge on the value of effective investigation and documentation using acceptable tools like the Istanbul protocol⁷ and Form 4 of the PPTA Regulations 2017.

⁷ https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf

In order to address election violence and torture, ACTV identified 4 areas that need to be handed;

1. Fostering political dialogue and reconciliation

Uganda has signed and ratified international and regional treaties including the International Covenant on Civil and Political Rights (ICCPR)⁸ and the African Charter on Human and Peoples' Rights⁹, which contain broad provisions on the right to democratic elections. Uganda agreed to and endorsed the African Union's (AU) Principles Governing Democratic Elections in Africa which set out various principles of democratic elections and the responsibilities of AU states. Under the Principles, states commit to creating the necessary electoral institutions, safeguarding civil liberties during electoral processes, and taking all necessary measures to prevent electoral fraud and other illegal election practices¹⁰. The constitution also provides for freedom of expression and assembly. It has been observed that during elections each party and other political players exercise political extremism and lack of respect for one another. Security agencies are alleged majority of the perpetrators in the among the 108 survivors of election violence and torture documented by ACTV between February – May 2022, Uganda Police accounting for 42% of the torture cases documented, UPDF (Uganda People's Defense Force) 38%. While politicians had 7% of the persons documented reported that they were tortured by politicians in their communities. It should be noted that there were series of violence among the private persons. This was mainly among the political extremists that ended up attacking each other because of the political differences.

2. Access to comprehensive Rehabilitation services for survivors

Uganda is a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR)¹¹, the United Nations Convention Against Torture (UNCAT)¹², and the African Charter on Human and people's rights (ACHPR)¹³, and these instruments mandate it to ensure both in law and in practice that victims of torture, ill treatment have access to and obtain full rehabilitation.

Article 14 of the UN Convention Against Torture provides torture victims a right to redress including rehabilitation. Similarly, Section 6 of the PPTA stipulates that victims of torture should be compensated, restituted and rehabilitated. The PPTA regulations which operationalizes the Act, has investigation and documentation forms specifically form 4 which documents the physical and psychological effects of torture and this is key in determining rehabilitation and compensation to victims. Despite a clear mandate under the UNCAT and the PPTA, the State has not established any rehabilitation programme for torture victims and it does not fund non-state services to provide support. This leaves ACTV as the only organization that provides holistic rehabilitation to torture survivors.

8 <https://www.hrw.org/report/2009/12/04/preparing-polls/improving-accountability-electoral-violence-uganda> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 25. Uganda acceded to the ICCPR on June 21, 2005.

9 <https://www.hrw.org/report/2009/12/04/preparing-polls/improving-accountability-electoral-violence-uganda> African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 13. Uganda ratified the African Charter in 1986

10 <https://www.hrw.org/report/2009/12/04/preparing-polls/improving-accountability-electoral-violence-uganda> Uganda is a member of the African Union, the successor to the Organization of African Unity (OAU), which adopted the Declaration on Principles Governing Democratic Elections in Africa at its 38th Ordinary Session held in Durban, South Africa in 2002. Accessed at <http://www.pogar.org/publications/other/elections/declaration-africa-02.pdf>

11 Article 12(1) & (2) of the International Covenant on economic, social and cultural rights (ICESCR)

12 Article 14 of the United Nations Convention Against Torture and other forms of ill treatment (UNCAT) & General Comment No. 3 on the implementation of Article 14 of the Convention against Torture.

13 Article 16(1) & (2) of the African Charter on Human and People's Rights (ACHPR)

While doing their best with the resources available, ACTV is far from able to support all the torture victims needing rehabilitation in Uganda. The existing public health facilities have not been consciously tailored to provide these services. This has forced the torture survivors to seek services in private health facilities at a higher cost of which few can afford and others remain unattended.

3. Effective documentation of cases of torture

Uganda is a state party to the United Nations convention against torture (UNCAT) that has an obligation to ensure that its competent authorities conduct a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed¹⁴The Istanbul protocol provides for international guidelines on the effective investigation and documentation of torture and other forms of cruel, inhuman and degrading punishment. The Prevention and Prohibition of Torture Regulations, 2017 provides for the procedures and forms of documenting and investigating torture. Failure of the medical and legal practitioners to adopt the Istanbul Protocol guidelines which would be a guide for effectively documenting evidence to be used in prosecuting torture cases. Failure of the Police to adopt and code the Forms under the PPTA Regulations 2017 on the investigation and documentation of torture which results into compromised prosecution due to insufficient evidence on torture files. Since the enactment of the PPTA Regulations 2017, the Uganda Police Force Annual Crime Reports indicate that there are no torture cases registered among adults, however, there is a record of over an average of 3000 assault case. This mainly because Police often uses Police Form 3 instead of the Form 4 of the Regulations to the Prevention and Prohibition of Torture 2017 which documents torture.

4. Investigation and Prosecution of torture cases

Torture and the right to freedom from torture is enshrined in the Prevention and Prohibition of Torture Act (PPTA, 2012),¹⁵ and Uganda's Constitution.¹⁶ In addition, Uganda has signed and ratified United Nations Convention against Torture and cruel, inhuman, degrading punishment¹⁷and international and regional treaties including the International Covenant on Civil and Political Rights (ICCPR)¹⁸, these instruments provide for prompt investigation and prosecution of perpetrators of torture. The ODPP has the constitutional mandate to prosecute cases of torture and violence.¹⁹ The ODPP has not taken the initiative to dig deeper into the investigations conducted by the Police even in situations where there may be obvious gaps. As a result, there have been several torture cases passed as grievous bodily harm and other torture files closed under the guise of lack of evidence.

For others, the perpetrators have had their way with the police and the police on the other hand have lured the victims into making additional evidence and their files closed and put away.

Further, Articles 2 and 16 of the Convention Against Torture Optional protocol to Convention Against torture & ill treatment, oblige each State Party to take effective measures to prevent acts of torture and other forms of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common

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¹⁵ Section 2 and 4 of The Prevention and Prohibition of Torture Act, 2012

¹⁶ Article 24 and 44(a) of The 1995 Constitution of the Republic of Uganda.

¹⁷ Article 12 of UNCAT

¹⁸ Article 7 of International covenant on civil and political rights(ICCPR)

¹⁹ Article 120 of the 1995 Constitution of the Republic of Uganda

responsibility shared by all and that international implementing bodies complement and strengthen the national measures put in place.

During the 2020/2021 general elections, suspects were Unlawfully detained (Beyond the 48 hour rule, detention and release without charges, detention in ungazetted centres), gross human rights violations in detention facilities, unfavourable conditions in detention centres.

The following are the recommendations to address the sighted areas

Fostering political dialogue and reconciliation

- Continuous dialogues right from the grass root to the national level. Leaders should have a forum where they dialogue on violence prevention before, during, and after elections.
- Awareness and sensitisation of the public on civil and political rights (both communities and stakeholders) by the Electoral Commission and the Uganda Human Rights Commission (UHRC). The Electoral Commission should intensify voter education while the UHRC and the CSOs should engage in extensive civic education right.
- The Ministry of Education should introduce a decentralised and inclusive civic education plan in learning institutions, primary schools not excluded.

Access to comprehensive Rehabilitation services for survivors

- The Ministry of Health should enact a policy on comprehensive rehabilitation of survivors of torture as it is stated in General Comment Number 4 to the African Charter.
- The Ministry of Health should increase accessibility of mental health services and awareness to communities so as to support the many survivors of election violence and torture.

Professional documentation of torture cases.

- Government should mainstream and adopt the Istanbul Protocol guidelines on effective investigation and documentation of torture and other forms of cruel, inhuman, degrading treatment and punishment. This is to ensure effective documentation to improve the chances of proper rehabilitation and successful prosecution of torture cases
- The Uganda Police Force should adopt, code and streamline the 2017 PPTA Regulations and the Forms thereunder to help in effectively investigating, documenting, and prosecuting of torture cases.
- The Ministry of Health should train health workers in effective documentation of torture using the Istanbul Protocol so as to increase accessibility and availability of documentation services for survivors of torture.

Investigation and Prosecution of torture cases

- The State and Parliament to enact the Witness Protection Bill into law to address challenges to do with fear of potential complainants, witnesses and their families when it comes to reporting of torture cases.
- Popularise the use of the Mendes principles of May 2021 to aid trauma informed investigations and interrogations of suspects to foster admissible evidence before

courts of law and access to justice for the victims. In line with the Mendes principles on Effective Interviewing for Investigations and Information Gathering²⁰, security agencies should train their officers on non-coercive methods of investigation and interrogation.

- Parliament should push for increased appropriation of resources towards the investigation agencies, the Police in general and the Criminal Intelligence department (CID) in particular and the Office of the Directorate of Public Prosecutions in order for these aforementioned institutions have capacity to gather evidence which would be used in the courts of law to effectively implement the PPTA.
- The Office of the Directorate of Public Prosecutions (ODPP) should produce guidelines to guide the police on how to conduct effective investigation and documentation of torture and violence. This is to facilitate the smooth and successful prosecution of cases of torture.
- Mainstream Trauma-informed approaches to litigation of torture cases during proceedings (Both on parties to the suit and Judicial officers)
- The Uganda Government to fulfil its pending obligation under the UNCAT to prohibit and prevent torture in its territory by ratifying the Optional Protocol to the Convention Against Torture and other ill-treatment and put in place a Nation Preventive Mechanism (NPM) to conduct regular visits to places of detention and prevent torture, other violations and human rights abuse in places of detention.
- The Police to create a Citizen Advisory Body/Board constituting of members of different sections of the community (men, women, religious sectors, etc to advise and assist with implementing effective strategies to reduce crime and disorder, change perceptions and facilitate positive engagement between the community and the police and to facilitate and create a link between the Police Force and the communities, this will reduce issues of fear, mistrust and tension between the two sectors.
- The judiciary should insist on the non-admission of evidence obtained through torture and ill treatment from suspects. (Section 14 and 15 of the Prevention and Prohibition of Torture Act 2012)

Conclusion;

The findings from the NDI project indicate that, there have been continuous trends of human rights violations especially torture and violence, characterised by ineffective professional documentation linked to the pre and post-election period in Uganda. These continue to cause severe effects on not only the survivors and/or victims, but also their immediate families, the community and the State as a whole. It is therefore important for the State, Ministries, Departments and Agencies, Development partners to join hands and find ways to tackle this concern starting with the policy recommendations shared above, with the target to continuously have peaceful, free and fair elections and a torture free Uganda in the future.

²⁰ https://www.apt.ch/sites/default/files/publications/apt_PoEI_EN_08.pdf



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