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### **PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Written statement\* submitted by Human Rights Advocates (HRA),  
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2008]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Torture as a Method of Suppressing Political Dissent in Selected Emerging Democracies in Eastern Africa**

1. It is stating the obvious that torture is prohibited by international law. There are, however, continued reports of widespread practices of torture in investigation of ordinary crimes.<sup>1</sup> Torture is also used as a method of silencing opposition in many emerging democracies. This report highlights such practice.
2. “Emerging democracies” in this report is used to refer to those states that underwent totalitarian and brutal regimes to the path of democracy at least as they call themselves. Ethiopia adopted a multiparty system after the demise of the single, socialist party system in 1991; Uganda adopted the multiparty system by referendum only in 2005; and Eritrea got its independence from Ethiopia in 1993. While this report focuses on selected African countries, they are only examples of situations that exist in other parts of the world.

### **The Exercise of Democratic Rights**

3. The right of citizens to take part in the conduct of public affairs and in their government either directly or indirectly<sup>2</sup> is a classical first generation political right.<sup>3</sup> This right can effectively be exercised only along with other rights such as the right to assembly, association, freedom of opinion, expression and the media,<sup>4</sup> among others. This right not only requires the government to refrain from engaging in activities that impede the exercise of the right, but it also requires the government to create opportunities for citizens to participate in the affairs of their government.<sup>5</sup>

### **The Prohibition of Torture**

4. Torture and other cruel, inhuman and degrading treatment (“ill-treatments”) <sup>6</sup> is prohibited by a number of international and regional instruments.<sup>7</sup> The importance of this right is evidenced by the fact that the UN General Assembly, the Human Rights

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<sup>1</sup> See for example B. J. Oppenheimer (2005), “From Arrest to Release: The Inside Story of Uganda’s Penal System” in 16 Ind. Int’l & Comp. L. Rev. 117; Amnesty International (2006), Torture at <[www.amnesty.org/en/alfresco\\_asset/899e0208-a2bb-11dc-8d74-6f45f39984e5/afr590102007en.pdf](http://www.amnesty.org/en/alfresco_asset/899e0208-a2bb-11dc-8d74-6f45f39984e5/afr590102007en.pdf)> (last accessed 3 February 2008); Ethiopian Human Rights Council (hereinafter EHRCO) (2007) The Human Rights Situation in Ethiopia, 27<sup>th</sup> Regular Report at <<http://ehrc.org/reports/reg27eng.pdf>> (last accessed on 2 February 2008)

<sup>2</sup> Art 21, UDHR; Art 25, ICCPR

<sup>3</sup> M. Nowak, UN Covenant on Civil and Political Rights CCPR Commentary (Strasbourg: N. P. Publisher, 1993) p 436

<sup>4</sup> Arts 20, 19, UDHR; Art 19 -22, ICCPR

<sup>5</sup> Nowak *Supra* n. 3, p 436

<sup>6</sup> The Committee against Torture referred to them as “ill-treatments” collectively. General Comment No 2, Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT/C/GC/2/CPR.1/Rev.4, 23 November 2007)

<sup>7</sup> Art 5, UDHR; Art 7, ICCPR; Art 6, the UN Declaration on the Elimination of All forms of Racial Discrimination; Art 5(b), CERD ; Art 5, AFCHPR

Council, the Committee against Torture, and the Special Rapporteur on torture have been striving in order to combat torture.<sup>8</sup>

5. Some of the countries discussed in this report are parties to the Convention against Torture while others are not. The prohibition of torture is, however, included in the constitutions of those emerging democracies. Because these countries have passed through their respective ordeals and the constitutions are modern, they have had the advantage of time to incorporate the prohibition in clear terms. For instance, the Uganda Constitution provides that “No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment.”<sup>9</sup> In the same parlance the Ethiopian Constitution provides that “Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.”<sup>10</sup>

### **Violation of the Prohibition of Torture and Democratic Rights**

6. While the political landscape is changing in these countries, and governments recognizing the right of citizens to participate in the affairs of their government, and the domestic laws recognize the freedom from torture and ill-treatments, governments’ violence increases during and the period after the election period.<sup>11</sup>
7. Ethiopia and Uganda provide examples of this connection. Ethiopia held national parliamentary election in 2000 and 2005, while Uganda held presidential elections in 2001 and 2006. Several violations of the right to political participation have arisen in these countries surrounding those elections resulting in death and maiming of many as well as the destruction of property,<sup>12</sup> which the government often blames on the opposition.<sup>13</sup> Many people were tortured for alleged membership and support to opposition political parties<sup>14</sup> even after more than a year had elapsed since the

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<sup>8</sup> The adoption of various resolutions by the General Assembly, such as the Code of Conduct for the Law Enforcement Officials in 1979, and later on Torture and other cruel, inhuman or degrading treatment or punishment in 2007, the Adoption of the Optional Protocol to the CAT which creates the Subcommittee on the Prevention of Torture and provides for visit to places of detention; the relentless examination of states’ reports conducted by the Committee against Torture, constructive dialogue with states, the Special Rapporteur’s visits to countries in response to urgent appeals from persons who are in risk of torture are just the main ones.

<sup>9</sup> Art 24, the Constitution of Uganda, 1995

<sup>10</sup> Art 18, FDRE Constitution, 1995

<sup>11</sup> Human Rights Watch (2004) Uganda: Torture Used to Deter Opposition at <[www.hrw.org/english/docs/2004/03/29/uganda8302.htm](http://www.hrw.org/english/docs/2004/03/29/uganda8302.htm)> (last accessed on 3 February 2008); Oppenheimer *Supra* n. 1; Human Rights Watch (2006) Ethiopia: Hidden Crackdown in Rural Areas at <[www.hrw.org/english/docs/2006/01/12/ethiop12417.htm](http://www.hrw.org/english/docs/2006/01/12/ethiop12417.htm)> (last accessed on 2 February 2008)

<sup>12</sup> “Ethiopia” in US State Department Country Reports on Human Rights Practices for 2000 at <[www.state.gov/g/drl/rls/hrrpt/2000/af/789.htm](http://www.state.gov/g/drl/rls/hrrpt/2000/af/789.htm)> (last accessed 2 February 2008); in Ethiopia for instance, the Independent Commission of Inquiry established by the Government established the fact that in the post election violence between the public and police and security forces, 193 people died and 765 maimed almost all of them from bullets for which so far no one has been prosecuted. “Ethiopia” in Amnesty International (2007) <<http://thereport.amnesty.org/eng/Regions/Africa/Ethiopia>> (accessed on 3 February 2008); HRW (2005) *Infra* n. 14

<sup>13</sup> Members of the opposition leadership were charged for treason, genocide and crime against humanity, among others, for which almost all of them found to be guilty and sentenced to life imprisonment. Amnesty International (2007) Ethiopian Prisoners of Conscience Jailed for Life <[www.amnesty.org/en/library/info/AFR25/017/2007](http://www.amnesty.org/en/library/info/AFR25/017/2007)> (last accessed 1 February 2008)

<sup>14</sup> Human Rights Watch (2005), Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia’s Oromia Region at <<http://hrw.org/reports/2005/ethiopia0505/>> (last accessed on 2 February 2008)

election.<sup>15</sup> Sometimes, the torture results in death,<sup>16</sup> sometimes those tortured are kept under detention until their wound heals.<sup>17</sup> The incidence of torture is ever increasing<sup>18</sup> and torture for reasons of political opinion and support for opposition has a significant share.<sup>19</sup> Those released from detention are made to sign a pledge that they will not participate again.<sup>20</sup>

8. In Eritrea there has been no election since its independence from Ethiopia in 1993, when the Eritrean Peoples' Liberation Front now called People's Front for Democracy and Justice (PFDJ) came into power. Those who have demanded an election (including Government Ministers) were arrested and continue to be in solitary confinement.<sup>21</sup>

### **Methods of Torture**

9. The worst forms include caning with batons, electric shock, hanging an object on the male genitalia, twisting and physical mutilation, Kandoya,<sup>22</sup> water torture,<sup>23</sup> prolonged exposure to the sun under high temperature<sup>24</sup> and beating on the feet while tied up side down.<sup>25</sup> Much worse, some are even detained until their (visible) physical wound heals so that they may not go out public.<sup>26</sup>

### **The Context in which Torture Occurs and the Institutions Involved**

10. The victims of torture are usually demonized and often times they are referred to as "terrorists" for international good while locally they are portrayed as members of opposition party that attempted to usurp power in an unconstitutional manner or as members of an armed (rebel) group. In Ethiopia they are labeled as members of the National Patriotic Front, Oromo Liberation Front, or other groups depending on the locality in which such groups are believed to have influence;<sup>27</sup> in Uganda they are

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<sup>15</sup> EHRCO (2007) *Supra* n. 1; EHRCO (2007), Respect the Rule of Law, 103<sup>rd</sup> Special Report at <<http://www.ehrco.org/reports/special103eng.pdf>> (last accessed 2 February 2008)

<sup>16</sup> EHRCO (2007), Torture of Detainees should be stopped! 99<sup>th</sup> Special Report at <<http://ehrc.org/reports/special99.pdf>>; Human Rights Watch (2006), Uganda: Anti-Terror Unit Allegedly Electrocuting Detainee at <[www.hrw.org/english/docs/2006/07/25/uganda13812.htm](http://www.hrw.org/english/docs/2006/07/25/uganda13812.htm)> (last accessed on 2 February 2008)

<sup>17</sup> EHRCO (2007), The Human Rights Situation in Ethiopia 27<sup>th</sup> Regular Report

<sup>18</sup> African Center for Treatment and Rehabilitation of Torture Victims, <[www.actvuganda.org/read%20more.html](http://www.actvuganda.org/read%20more.html)>; Redress, Torture in Uganda: A Baseline Study on the Situation of Torture Survivors in Uganda at <[www.redress.org/reports/TortureUganda\\_Apr%2007.pdf](http://www.redress.org/reports/TortureUganda_Apr%2007.pdf)> (last accessed at 2 February 2008)

<sup>19</sup> *Id.*; Human Rights Watch (2004) The State of Pain: Torture in Uganda at <[www.hrw.org/reports/2004/uganda0404/uganda0304.pdf](http://www.hrw.org/reports/2004/uganda0404/uganda0304.pdf)> (last accessed on 2 February 2008)

<sup>20</sup> HRW (2006) *Supra* n. 11

<sup>21</sup> "Eritrea" at <[www.amnesty.org/en/region/africa/east-africa/eritrea](http://www.amnesty.org/en/region/africa/east-africa/eritrea)> (last accessed on 5 February 2008)

<sup>22</sup> Kandoya is a method of torture tying the suspect's hands and feet together behind the suspect's back. Oppenheimer *Supra* n. 1, at note 65

<sup>23</sup> This method of torture is commonly referred to as *Liverpool* where the suspect is forced to lie face up with his mouth open under water spigot. *Id.* Note 66

<sup>24</sup> "Eritrea" in U.S. State Department Human Rights Practices Report for 2005 at <<http://www.state.gov/g/drl/rls/hrrpt/2005/61568.htm>> (last accessed on 5 February 2008)

<sup>25</sup> Amnesty International (2007) *Supra* n. 15; Redress *Supra* n. 19, p 15

<sup>26</sup> EHRCO (2007) *Supra* n. 1

<sup>27</sup> HRW (2004) *Supra* n. 11; EHRCO (2007) *Supra* n. 1

alleged to be members of the Lord's Resistance Army (LRA), the Allied Democratic Forces (ADF) or other groups.<sup>28</sup>

11. Torture is committed by such institutions as the police and the armed forces that are lawfully established for the maintenance of law and order.<sup>29</sup> But the worst forms of torture are committed by special ad hoc bodies established under the guise of a particular situation usually accountable to one person- the Prime Minister or the President.<sup>30</sup>

### **Places of Detention**

12. Torture, horrendous as it is, cannot be seen in isolation; normally it is committed either outside of the international eyes in the cities<sup>31</sup> or when it is committed subsequent to arbitrary arrest, it is committed in an inaccessible places either of physical distance,<sup>32</sup> secrecy<sup>33</sup> or high guard such as military barracks.<sup>34</sup>

### **The Effect of Torture**

13. Torture exacts physical, moral, economic and social consequences on the victim.<sup>35</sup> Victims are under constant fear that often and times they are released on condition that they will not participate in such activities as political support and rallies.<sup>36</sup> In fear of the negative implications, neighbors, friends and relatives avoid such persons.<sup>37</sup> They also live in poverty either because they are dismissed from their jobs, their licenses are revoked or their businesses are closed, etc.<sup>38</sup>

### **Lack of Local Remedies**

14. Despite the fact that the domestic laws prohibit torture and ill-treatments, they do not define the practice of torture, such practice is not prosecuted, and/or the application of international conventions is made technically difficult for instance, because the full content of such convention is not published in the official gazette and therefore it does not have direct application.<sup>39</sup>

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<sup>28</sup> Oppenheimer *Supra* n. 1; HRW (2004) *Supra* n. 19

<sup>29</sup> *Id.* Also see the reports of Ethiopian Human Rights Council (EHRCO) at <www.ehrco.org>; HRW (2005) *Supra* n. 11

<sup>30</sup> For instance in Uganda there are ad hoc bodies such as the Chieftaincy of Military Intelligence (CMI), the Joint Anti-Terrorist Task Force (JAFT), the Violent Crime Crack Unit (VCCU), formerly Operation Wembley, which are not necessarily unlawful. See for example Oppenheimer *Supra* n. 1

<sup>31</sup> HRW (2005, 2006) *Supra* n. 14, 11

<sup>32</sup> HRW (2006) *Supra* n. 11; EHRCO (2007) *Supra* n. 1

<sup>33</sup> For instance in Uganda such places are called "safe-houses." See Oppenheimer *Supra* n. 1; Redress *Supra* n. 18; HRW (2004) *Supra* n. 19

<sup>34</sup> In all the countries under consideration, the military barracks are widely used places of detention for opposition party members. Oppenheimer *Supra* n. 1; Redress *Supra* n. 18; HRW (2006) *Supra* n. 11

<sup>35</sup> Redress *Supra* n. 18

<sup>36</sup> HRW (2006) *Supra* n. 11

<sup>37</sup> Redress *Supra* n. 18;

<sup>38</sup> *Id.*

<sup>39</sup> Despite the fact that the Constitution provides that "All international agreements ratified by Ethiopia are an integral part of the law of the land", the courts are not ready to apply the international Conventions for various reasons. Getachew Assefa "Problems of Implementing [International] Human Rights Laws by

15. When such violations of human rights are committed, individuals need to have access to local remedies. Examination of the legal rules of those countries indicates that there are remedies anticipated by the law. In Ethiopia when such acts are committed, arguably, it is the responsibility both the state and the individual offender while the Ugandan Constitutions makes it clear that such person is “entitled to compensation from that other person or authority”.<sup>40</sup> Despite these provisions, however, there is no prosecution of offenders or remedy to victims of torture because of timidity of courts<sup>41</sup> or victims or even where in exceptional circumstance the court awards compensation has not been paid.<sup>42</sup>

### **Recommendations**

16. Mindful of the efforts exerted so far, but also taking into consideration the gravity of the issue, Human Rights Advocates calls upon the Council:

**(I) With respect to the Special Rapporteur on Torture to:**

- a) request the mandate of the Special Rapporteur on Torture be extended; and
- b) encourage the Special Rapporteur on Torture to look into the relationship between torture and political participation.

**(II) with respect to states’ obligations to:**

- a) encourage states to comply with their international obligations;
- b) urge member states to make declarations under Article 22 of the Convention making individual complaint procedure applicable; and
- c) encourage states to ratify the Optional Protocol to the Convention against Torture.

**(III) with respect to practical matters to:**

- a) convince states to legally designate places of detention and ensure that detainees are held only in those places;
- b) convince member states that persons that are lawfully detained be detained in the places where they reside at the time of their detention;
- c) encourage states to take the necessary legislative and administrative measures both in terms of defining the practice of torture and investigation, documentation and prosecution of the practice;

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Ethiopian Courts” in Proceeding of the Symposium on the Role of Courts in the Enforcement of the Constitution (Addis Ababa: Ethiopian Civil Service College, 2000)

<sup>40</sup> Article 23 (7)

<sup>41</sup> Tsegaye Regassa “Courts and the Human Rights Norms in Ethiopia: An Overview” in Proceeding of the Symposium on the Role of Courts in the Enforcement of the Constitution (Addis Ababa: Ethiopian Civil Service College, 2000)

<sup>42</sup> “Uganda” in U.S. State Department Country Report on Human Rights Practice for 2001 at <[www.state.gov/g/drl/rls/hrrpt/2001/af/8409.htm](http://www.state.gov/g/drl/rls/hrrpt/2001/af/8409.htm)> (last accessed 5 February 2008)

- d) advise states to afford effective remedies to victims;
- e) encourage states to make it possible to invoke the Convention before local courts; and
- f) encourage the translation of the Convention into local languages and its distribution to law enforcement officials.

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