

**THE REPUBLIC OF UGANDA**

**THE UGANDA HUMAN RIGHTS COMMISSION  
AT GULU**

**COMPLAINT No. UHRC/G/76/2001**

AKERA ERIC BOSCO ::::::::::::::::::::::::::::::: COMPLAINANT

- V E R S U S -

ATTORNEY GENERAL ::::::::::::::::::::::::::::::: RESPONDENT

**DECISION**

This complaint was brought by Mr. **Akera Eric Bosco** on behalf of his father Mr. Opira Bell Otto seeking an order for release of the latter from detention. The matter was heard *ex parte* under Rule 18(1) of the UHRC Procedure Rules, the Attorney General having failed/neglected to turn up in court in spite of having been served twice.

CW1 Mr. Opira testified before the Tribunal as follows:

That he is a 50-year-old peasant farmer of Pabit village, Paicho Sub-County, Gulu District. He has also done voluntary work as a camp leader of Unyama protected camp for displaced persons since 1996. In addition, he is a Trauma Counsellor for formerly abducted children whom he helps to resettle in the community.

That on April 4, 2001 at around 8.10 p.m. while he was at Unyama camp, the Commander of Unyama Detache one Sgt. Nsereko together with two other soldiers entered his hut. They were armed. Sgt. Nsereko asked him, “Where were you for such a long time? We have been looking for you and were unable to meet you”. Opira said that he replied that he had been around save that he was doing voluntary work at the Trauma Center which is 5 miles away from Unyama camp, and that in any case he continued to reside in the camp.

Sgt. Nsereko further asked, “What sort of work do you do?” Opira explained that he counsels former rebels and teaches them tailoring skills, and he invited Sgt. Nsereko to the Trauma Centre to see the children. Sgt. Nsereko further wanted to know the population of Unyama camp and Opira informed him that the population was 7000. Sgt. Nsereko then arrested Opira and took him to the army barracks.

Opira further testified that while at the barracks, some 3 soldiers arrived from town. One of them was armed. He named two of them as Simon Kinyera Owiya and the other as Odong Computer. They asked, “Where is he?” Odong Computer handcuffed him and they drove him to a cell in the Quarter Guard of the army barracks. While on the way he asked the soldiers why he was arrested and also requested to be taken to police. They said that the matter for which he was arrested was not connected to police.

He further said that while in the cell he lay on a mat with his hands still tied till morning. The handcuffs were removed the following day at 2.00 p.m. when he requested to go for a short-call. He said that Odong Computer took him to his office and asked him to wait for what he called “the big boss” to interrogate him. “The big boss” whom Opira later learnt from other prisoners to be a captain in the army beat and kicked him repeatedly in the jaws until he was forced to “confess” that he was recruiting rebels whereas not. He was subjected to various forms of torture. The purported interrogation started at 9.00 a.m. and ended at around 1.00p.m. He was thereafter detained in a stuffy, dirty and filthy cell where he stayed with other prisoners until he was released on May 25, 2001.

As a result of the torture he felt severe pain in the jaws, shoulders, hands, left ear, both legs and other parts of the body. He also developed worms and was later treated at Mola clinic. He still feels weak and cannot stand for more than 2 hours continuously. He used to work in the garden the whole day but now works for a maximum of 2 hours a day. Consequently, his entire family has suffered financial and material loss.

Opira contended that he was unlawfully arrested, illegally detained and tortured and holds the Attorney General vicariously liable therefor. He prayed for general damages.

**Issues:**

The issues for determination before this Tribunal are:-

- (i) Whether Opira's right to personal liberty was violated;
- (ii) Whether Opira's right to protection against torture, cruel, inhuman and degrading treatment was violated;
- (iii) Whether Opira is entitled to any remedies and if so in what quantum.

(i) **Whether Opira's right to personal liberty was violated:**

Article 23 of the Constitution of the Republic of Uganda (hereinafter called "the Constitution") prohibits deprivation of personal liberty. None of the circumstances under which a person's liberty may be lawfully interfered with under Article 23(1) of the Constitution was available in this case. For example Opira's arrest and detention was neither in execution of a sentence or order of court, nor for purposes of taking him before a court; therefore his arrest and detention were unlawful.

Opira testified that he was arrested on the night of April 12, 2001 and detained at the quarter guard in the army barracks at Gulu until he was released on May 25, 2001 without charge. He spent a total of 43 days in illegal detention.

I therefore find and hold that Opira's right to personal liberty was violated.

(ii) **Whether Opira’s right to protection against torture, cruel, inhuman and degrading treatment was violated;**

Article 24 of the Constitution provides that,

*“No person shall be subjected to torture, cruel, inhuman and degrading treatment”.*

Article 44 of the Constitution makes the right to freedom from torture, cruel, inhuman and degrading treatment an absolute right.

Although ‘torture’ is not defined by the Constitution, it is defined by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as *“Any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purpose as obtaining from him or a 3<sup>rd</sup> person information or a confession, punishing him for an act he or a 3<sup>rd</sup> person has committed or is suspected of having committed”.*

Opira who struck me as honest, truthful and credible testified among others that after he was taken to the barracks, he was handcuffed. He lay on a mat while handcuffed till the following day at 2.00 p.m. He said that he felt pain around the wrists and never fell asleep for fear of what would happen to him that night.

Opira further told the Tribunal that at 8.00 a.m. he was removed from the cell by a soldier called Odong Computer who took him to an office. Odong Computer asked him to wait for ‘the big boss’ who arrived at 9.00 a.m. He said, “The big boss asked, who gave you authority to sit on a chair?” I automatically got off and sat on the floor. He added, ‘don’t you know that you are now a prisoner?’ After about 5 minutes he asked, ‘what have you been doing for the past three months?’ I said that I was working as a camp

leader – registering people in the camp and distributing hoes. I informed him that the people in the camp complain that the war is continuing because of the support of the two Presidents of Sudan and of Uganda who support rebels in each other's country. He asked again 'What have you been doing?' I said, 'Nothing'. He said, 'You are joking'. He got off his chair and boxed me three times on each jaw. He said, 'If you do not tell me the truth I will do away with you'. I said that I had done nothing wrong. He then ordered that I be tied *kandoya*. Other soldiers stretched my arms right from the shoulders and tied them with nylon ropes from behind. It was very painful. I remained in that state for 45 minutes. I was sitting down on the floor with legs stretched. I was feeling severe pain in the chest and hands. In the course of tying my arms my shirt got completely torn".

Opira added that during the time he was tied 'the boss' kept asking him to tell him 'the truth'. He said, "I kept repeating that I had done nothing wrong...the captain again boxed me twice in each jaw. My arms were still tied. I said that I was the secretary to the multiparty camp during the Presidential campaigns and elections. I said Komakech Santo, K. Augustine, Ochaya and Lawrence had participated as agents for the multiparty campaign. They said, 'Those are the rebels'. Their purpose was to force me to accept that those were rebels. One soldier kicked me twice – once in the armpit and once on the back. He was wearing shoes. At that moment I requested to be untied so that I tell 'the truth'. I was untied. The Captain asked me whether I knew Oryem Justine and Akena David. I said I did not know them. He said, 'If you joke we are going to take you to Kidere and leave you there'. I later learnt that Oryem and Akena had been arrested earlier and due to torture had randomly mentioned names of any people as rebels. Oryem had said that I had recruited him to the bush. I was tied again. My arms were raised up from behind and tightly tied using sisal ropes...he put it to me that I was recruiting people into rebellion. I was already feeling weak and very much pain. One soldier was standing on my

feet while hitting me with a big short stick on the knees, back bones and shoulders”.

Opira displayed to the Tribunal scars on his shoulders. He said that the soldiers kept saying that he had to admit that he recruited rebels. “They asked me where the training for rebels takes place. I said I did not know. Again I was boxed twice in each jaw by the same Captain. I feared I would be killed so I said anything to save my life. They asked me, ‘How many guns were you given?’ I said the guns were not yet bought. Oryem was brought. The captain asked me whether I knew Oryem, I said ‘No’. Oryem was asked whether he knew me. He said ‘No’. The Captain asked Oryem to untie me. He untied me and helped me to get up. I was very hungry and felt much pain all over the body”.

Opira’s testimony revealed gruesome details of torture, pain and suffering at the hands of oppressive soldiers who were sadists to the extreme. His alleged interrogation took the form of repeated beatings and kicks which lasted at least 4 hours. He was compelled to ‘admit’ rebellion to save his life. He was traumatized and subjected to psychological and mental turmoil. All such actions amount to *“severe pain and suffering both physical and mental intentionally inflicted on Opira for the purpose of obtaining from him information and a confession”*, and therefore amount to torture.

But even after the soldiers learnt that Oryem had mentioned Opira’s name due to torture, and that Oryem did not even know Opira, they went ahead and detained him at the main quarter guard. From the evidence of Opira, Simon Kinyera Owiya, one of the soldiers on April 17, 2001 mentioned to Oryem, “It is your mistake which led to the arrest of this Mzeei”. On that note Opira requested to be released. Owiya rang ‘the Captain’ inquiring from him if he could release Opira to which ‘the Captain’ responded that only he (‘the Captain’) could release him.

The conditions in the cell were horrible and dehumanizing. Opira testified that there were over 30 prisoners in one small room. He was made to sleep in the corridor leading to a dysfunctional toilet. He said, “The cell was stuffy and dirty...I used to stay very close to the latrine. The water system was not working. I used to remove the refuse and take it to the outside tank. Sometimes I would miss meals. The food was never enough. Civilian prisoners were always discriminated against. They used to say, ‘Give them *kibawo*’. ‘Kibawo’ means a tiny piece of posho. There were no beddings. I used to sleep on the bare floor and never covered with any blanket or bed sheet”. He further said, “When I complained of malaria I was given 2 aspirins and 2 chloroquines. I was never treated for the torture”. Opira also said that while in prison he was forced to clean the cell and compound and wash clothes for the soldiers.

This tribunal was able to believe Opira who testified with calmness, consistence and without emotion and did not appear to exaggerate anything.

CW2, Akera Eric Bosco, testified that, “The day he (Opira) was released he was in a very critical condition. He looked like he was from hospital. He was very thin, had wounds all over the chest and back and could not walk well because of the wounds on the ankles. He was limping”.

This evidence is consistent with Opira’s testimony that one soldier had stood on his (Opira’s) feet while hitting him with a big stick, and that his arms had been raised up and tightly tied from behind using nylon ropes. It also confirms that the soldiers repeatedly boxed and kicked him.

CW3, Opio Benson, the LC.3 Chairman of Paicho Sub-County at the time Opira was arrested and detained, testified that when he saw Opira after release, Opira was “very weak and with paralyzed arms. He was lying down”.

CW4, Oryem Charles, a resident of Unyama camp testified that he saw Opira after release. He said, “I saw him a day after release and he was very sick. He had wounds on the shoulders, chest, back and ears. He also had wounds on the ankles. He went for treatment at Gulu Hospital. He also bought tablets privately”.

The testimonies of Akera Eric Bosco, Opio Benson and Oryem Charles all corroborate Opira’s case that he was tortured. Opira also adduced in court medical forms from Mola Medical Centre and Gulu Hospital showing that he had been treated for among others pain in the ankles, right hand, chest, and a wound. That the doctors who examined and treated Opira did not appear before the tribunal to support his evidence of torture cannot defeat the claim. The evidence already given by Opira and corroborated by his 3 witnesses is sufficient.

In *FRED KAINAMURA & OTHERS V ATTORNEY GENERAL & OTHERS, 1994 V KALR 92*, the complainants pleaded (among others) that they had been tortured during detention. Medical evidence was not adduced in court. It was contended for the defendants that there was no evidence to substantiate the allegation of torture. But it was held by *OKELLO J*,

*“It is true there is no medical evidence to support the evidence of assault as submitted by Turyasingura. But it is not a requirement of the law that every allegation of assault must be proved by medical evidence. I think cogent evidence can do. If a witness says ‘he boxed and kicked me’, that is evidence of assault. You do not need medical evidence to prove that he was boxed and kicked. That would not be the case. Medical evidence helps to prove the gravity of the assault”.*

It should be noted that in the case quoted above no medical evidence whatsoever was adduced but the Judge held that assault had been proved.

Yet in the instant case documentary evidence by way of treatment forms was adduced save that the authors thereof did not testify on them, and the contents therein are fully consistent with the testimonies of all the four witnesses. I am therefore strengthened in my finding that Opira was tortured.

On the basis of the foregoing I hold that Opira's right to protection against torture, cruel, inhuman and degrading treatment was violated. I further hold that the Attorney General is vicariously liable for all the wrongs committed against Opira by the soldiers who were acting in the course of their employment as employees/servants of Government.

(iii) **Whether Opira is entitled to any remedies and if so in what quantum?**

That wrongs must be redressed and reparation be made to the injured party is the most venerable and most central of human rights principles. Indeed under Article 53(2) of the Constitution, "*The Commission may, if satisfied that there has been an infringement of a human right or freedom, order payment of compensation or any other legal remedy or redress*". In this case I am satisfied that the complainant's rights to protection against torture, cruel, inhuman and degrading treatment and to protection against deprivation of liberty were violated. I accordingly proceed to assess compensation for him.

**Assessment of General Damages for Violation of the Right to Liberty**

In computing compensation under this head I will consider that Opira was illegally detained in an ungazetted place and without charge for 43 days.

I will further be guided by the award in the case of *ABDU MAKU v JINJA DISTRICT COUNCIL; JJA HCCS No. 60/2000* (Unreported). In that case the plaintiff was illegally detained for 7 days. The learned Judge, *YOROKAMU BAMWINE J*, awarded him U.Shs 2,000,000=.

Adopting the measure of damages in *ABDU MAKA*'s case I will award the complainant the same amount for every 7 days he spent in illegal detention, i.e. for every 7 days of the 43 days. I therefore deem the figure of U.Shs12,000,000= adequate compensation to the complainant for violation of his right to personal liberty and I accordingly award it.

### **Assessment of General Damages for Violation of the Right to Protection against Torture, Cruel, Inhuman and Degrading Treatment or Punishment**

In assessing damages under this head the tribunal will consider all the acts of torture occasioned on the person of Opira. From his evidence on the day of his arrest he was forced to lie on a mat and remained handcuffed throughout the night. He felt pain around the wrists. He never slept due to uncertainty of what would happen to him. He was boxed 3 times in each jaw, tied '*kandoya*' with his arms stretched from the shoulders and tied with nylon ropes from behind – a state in which he remained for 45 minutes. He felt severe pain in the chest and hands. Opira was also kicked in the armpit and on the back. The soldiers wanted him to admit that he was recruiting rebels. Because of the severe pain he requested to be untied so that he could tell 'the truth'. He was briefly untied. When they asked him if he knew Oryem and Akena suspected rebels, he denied. They again tied him *kandoya* with sisal ropes. He said "I was already weak and feeling very much pain. One soldier was standing on my feet while hitting me with a big shot stick on the knees, backbones and shoulders". Opira displayed to the tribunal scars on the shoulders and knees.

The soldiers forced Opira to admit that he had held meetings with rebels in Gulu town and at Paicho. When they asked for the training camps for the rebels he said that he did not know any. The captain boxed him twice in each jaw. The said training would take place in Acholi ranch and Kasese. "I feared I would be killed so I would say anything to save my life".

I will also take into account the horrible and dehumanizing conditions in the cell. It was stuffy, dirty and overcrowded. He said, “I used to stay very close to the latrine. The water system was not working. I used to remove the refuse and take it to the outside tank”. He also used to clean the cell and compound and wash clothes for the soldiers. Throughout his illegal detention in the cell he slept on a bare floor without beddings. As a civilian prisoner he was discriminated against by fellow inmates who were soldiers. All these conditions constituted extreme forms of torture, cruel, inhuman and degrading treatment both physical and mental.

Because of the torture meted out to Opira by the soldiers he still feels pain in the legs and cannot stand for long. He also feels pain in the right ear and feels physically weak. He can work in the garden for a maximum of only 2 hours. He said, “Before the torture I could work the whole day. The arrest and detention caused financial problems to my family”.

As a camp leader at Unyama camp and a trauma counselor for rescued abductees, he was, on account of the foregoing embarrassed and humiliated.

I will further take into consideration that the right to protection against torture, cruel, inhuman and degrading treatment is an absolute right under Article 44 of the Constitution. There are no exceptional circumstances whatsoever that will ever justify torture.

Unfortunately all that was adduced by Opira by way of medical evidence were treatment forms from Gulu Hospital and Mola Medical Centre. The same did not reveal the incapacitation, if any, resulting from the torture. The tribunal was therefore not properly guided as to the exact extent or impact of the torture suffered by Opira.

Taking into account all the above and doing the best I can, I deem a figure of U.Shs8,000,000= (shillings eight million) adequate compensation for violation of Opira's right to protection against torture, cruel, inhuman and degrading treatment. I accordingly award the same.

### **Exemplary Damages**

It is my considered view that the actions of the soldiers who tortured the complainant and deprived him of his liberty must attract exemplary damages. Their actions were cruel, wanton, arrogant, oppressive, criminal and unconstitutional. They violated the provisions of Article 221 of the Constitution to wit:

*“It shall be the duty of the Uganda Peoples Defence Force (UPDF) and any other armed force established in Uganda to observe and respect human rights and freedoms in the performance of their functions”.*

The soldiers further violated S.45 of the NRA Statute No.3/1992, which provides:

*“A person subjected to military law who:*

- (a) unlawfully detains any other person in arrest or confinement;  
or;*
- (b) unnecessarily detains any other person without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation, commits an offence and shall on conviction be liable to imprisonment not exceeding 10 years;*

Under S.65(1) of the same Act:

*“Any act, conduct, disorder or neglect to the prejudice of good order and discipline of the army shall be an offence”.*

The soldiers also violated their own Code of Conduct under the schedule to the NRA Statute which provides in part:

*“A member of the army shall not abuse, insult, shout at, beat or in anyway annoy any member of the public”.*

The law on exemplary damages is that the same may be awarded in cases like the instant one where Government servants have been guilty of oppressive, arbitrary unconstitutional action.

In *KATENDE v ATTORNEY GENERAL 1971 EA 260* Phadke J, quoting Lord Devlin J.A. in *ROOKES v BARNARD 1964 A.C/129* held that exemplary damages may be awarded in cases where the behaviour of the defendant is oppressive, arrogant and highhanded.

It is the finding of this tribunal that the actions of the soldiers in the instant case were oppressive, arrogant and highhanded. They acted with impunity and such actions ought to be punished. I accordingly award Opira an additional sum of U.Shs2,000,000= as exemplary damages.

**ORDER:**

The complaint is allowed. The respondent is ordered to pay to Opira U.Shs22,000,000= (shillings twenty-two million only) as categorized below:

- (i) U.Shs 12,000,000= general damages for violation of his right to personal liberty;
  - (ii) U.Shs 8,000,000= general damages for violation of his right to protection against torture, cruel, inhuman or degrading treatment;
  - (iii) U.Shs 2,000,000= exemplary damages;
- TOTAL U.Shs.22,000,000= (twenty two million).

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

DATED at Gulu this ..... day of ..... 2003.

.....  
F.M. Wangadya (Ms.)  
**COMMISSIONER**