



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

SPECIMEN CHARGE SHEET UNDER THE PREVENTION OF TORTURE ACT, 2017 AND PROSECUTION RAPID REFERENCE GUIDE



SPECIMEN CHARGES UNDER THE PREVENTION OF TORTURE ACT, 2017

FOREWORD

Article 25 (a) of the Constitution of Kenya 2010 recognizes freedom from torture and cruel, inhuman or degrading treatment or punishment as one of the fundamental freedoms that cannot be limited. Parliament enacted the Prevention of Torture Act 2017 to give effect to this legislation and to enable Kenya to fulfil its international obligations following the ratification of the Convention against Torture and the International Covenant on Civil and Political Rights.

In a bid to ensure effective and efficient prosecution of torture cases, the Office of the Director of Prosecutions has developed a Prosecution Rapid Reference Guide that includes Specimen charge sheet with all the possible offences under the Prevention of Torture Act, 2017.

The Rapid Reference guide is aimed at ensuring that offences instituted under the Prevention of Torture Act are handled efficiently and effectively. The uniqueness of the Rapid Reference Guide is seen in the itemization of salient points that the prosecutor needs to prove in order to secure a conviction in any case brought under the Act. Moreover, investigators will also find the Guide useful as it points out the necessary exhibits that need to be secured when investigating an offence under the Act.

It is our sincere hope that the Rapid Reference Guide will prove useful to its users as we move to ensuring that justice is done to victims of torture without regard to tribe, caste or social class.

NOORDIN M. HAJI CBS, OGW

DIRECTOR OF PUBLIC PROSECUTIONS



ACKNOWLEDGEMENT

The Specimen Charge Sheet under the Prevention of Torture Act, 2017 and the Prosecution Rapid Reference Guide have been developed following a partnership between the Office of the Director of Public Prosecutions and the Independent Medico Legal Unit (IMLU). This guide is aimed at enhancing delivery of efficient and effective prosecution services by giving prosecutors and investigators a tool that ensures effective handling of cases of Torture.

The Office of the Director of Public Prosecutions wishes to convey its sincere appreciation to the Office of the High Commissioner for Human Rights (OHCHR) for the partnership both technical and financial and whose facilitation was instrumental in the finalization and production of the Specimen Charge Sheet and Rapid Reference Guide.

I acknowledge the invaluable contribution of our internal and external stakeholders for their valuable input throughout the process; their views, critique and contributions enriched the development of the Rapid Reference Guide and Specimen Charge Sheet.

I recognize and convey my sincere gratitude to the ODPP Management under the able stewardship of the Deputy Director of Public Prosecutions, Ms Jacinta Nyamosi for their direction and personal commitment in guiding the development of the Prosecution Rapid Reference Guide.

Last but not least, may I make special mention of the critical role and unwavering dedication of the members of the Prevention of Torture Act, 2017 Specimen Charge Sheet and Rapid Reference Guide, led by the Chairperson Ms Tabitha Ouya (ODPP), Alloys Kemo (ODPP), George Okal (IAU), Peter Kiama (IMLU), Carolynne Tunnen (IMLU), Kevin Mwangi (IMLU), Jemimah Aludah (Consultant), Gikui Gichuhi (ODPP), Jackline Njagi (ODPP), Carol Karimi (ODPP), Linda Ndambiri (ODPP), Charles Orinda (ODPP), Agatha Abang' (ODPP) and Brian Kituyi (Kenya National Commission of Human Rights) for bringing this digest to fruition.

To all those who contributed either directly or indirectly to the successful preparation of the Prosecution Rapid Reference Guide and have not been mentioned in this acknowledgement note, I say thank you. I hope to have you all on board for future partnerships.

NOORDIN M. HAJI CBS, OGW

DIRECTOR OF PUBLIC PROSECUTIONS



SPECIMEN CHARGE SHEETS UNDER THE PREVENTION OF TORTURE ACT

A. SECTION 4(A)(i)

Charge

Torture contrary to Section 4 (a) (i) as read with Section 5 (2) of the Prevention of Torture Act.

Particulars

AB (describe the position in the public service) on theday of20.....at.....in.....of..... County, intentionally and unlawfully (describe the actions done) on **CD** with intent (to obtain information/to obtain information from any other person /to obtain a confession/ to obtain a confession from any other person) thereby causing his/her death

B. SECTION 4(A)(ii)

Charge

Torture contrary to Section 4 (a) (ii) as read with Section 5 (1) of the Prevention of Torture Act.

Particulars

AB (describe the position in the public service) on theday of20.....at.....in.....of County,, intentionally and unlawfully (describe the actions done) on **CD** by subjecting **CD** to systematic beating with intent (to punish for an act committed/ an act suspected to have been committed/ for an act he/she is planning to commit/ for an act any other person has committed/ an act any other person is suspected to have committed/ an act any other person is planning to commit)

C. SECTION 4(A)(iii)

Charge

Torture contrary to Section 4 (a) (iii) as read with Section 5 (1)-victim alive/Section 5 of the Prevention of Torture Act.

Particulars

AB (describe the position in the public service) on theday of20...at.....in.....ofCounty, intentionally and unlawfully (describe the acts done) on **CD** with intent to (intimidate/coerce (to do/to refrain from doing); intimidate/coerce another person (to do/to refrain from doing)



SECTION 4 (b)

Charge

Torture contrary to Section 4 (b) as read with Section 5 (1) of the Prevention of Torture Act.

Particulars

AB (describe the position in the public service) on theday of20....at.....in..... ofCounty, intentionally and unlawfully (describe the actions done) **CD** on account of (Race/ Sex/ Pregnancy/ Marital status/ Health status/ Ethnic origin/ Social origin/ Colour/ Age/ Disability/ Religion/ Conscience/ Belief/ Culture/ Dress/ Language/ Birth)

D. SECTION 7 (A)

Charge

Committing cruel, inhuman or degrading treatment or punishment contrary to section 7 (a) of the Prevention of Torture Act, 2017.

Particulars

AB (describe the position in the public service) on theday of20.....at.....in..... of, county, committed(describe the actions done) on **CD** by (e.g. name the act confining her/his in a solitary cell/room against her/his will without regard to her security) thereby causing him/her suffering, gross humiliation and degradation.

Charge

Inducing a person to commit cruel, inhuman or degrading treatment or punishment contrary to section 7 (a) of the Prevention of Torture Act, 2017.

Particulars

AB (describe the position in the public service) on theday of20.....at..... in.....of county induced **CD** to commit(describe the actions done) on **EF** by (e.g. name the act-confining her/his in a solitary cell/room against her/his will without regard to her/his security) thereby causing him/her suffering, gross humiliation and degradation.

E. SECTION 7 (B)

Charge

Cooperating in the execution of cruel, inhuman or degrading treatment or punishment contrary to section 7 (b) of the Prevention of Torture Act, 2017.

Particulars

AB (describe the position in the public service) on theday of20.....at.....in..... of county cooperated to execute(describe the actions done) on **CD** by (e.g. name the act-confining her/his in a solitary cell/room against her/his will without regard to her/his security) thereby causing him/her suffering, gross humiliation and degradation.

F. SECTION 8

Charge

Attempted Torture Contrary to Section 8 of the Prevention of Torture Act, 2017

Particulars

AB (describe the position in the public service) on the of..... 2021 in of County with the intention of obtaining information attempted to (describe the actions done) on **CD**.

Please Note:

1. Replace the word attempt with aiding, abetting, counselling, procuring and conspiring
2. Replace torture with any other offence contained in the Act
3. We noted that the Act is very ambiguous in so far as the creation of offences under Section 8 is concerned. The Act will need to be reviewed to cure this ambiguity.

G. SECTION 9 (2)

Charge

Knowingly using information obtained through torture or cruel, inhuman or degrading treatment or punishment contrary to section 9(2) of the Prevention of Torture Act.

Particulars

AB (describe the position in the public service) on the of 2020 inof County knowingly used information obtained through(describe the actions done) of **CD**.

Please Note:

For the offence under Section 9 (2) to stand, it will be paramount that an inquiry is undertaken on torture or cruel, inhuman or degrading treatment or punishment.



LEGAL FRAMEWORK

The normative framework on torture entails as follows;

The Constitution of Kenya, 2010

Article 25 (a) of the Constitution states that “Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited; freedom from torture and cruel, inhuman or degrading treatment or punishment.

The Penal Code

The Penal Code has offences such as simple assault, abduction, kidnapping, and murder, detention of male or female persons for purposes of prosecution, wrongful confinement, and unlawful compulsory labour, among others. These offences can be charged alongside the offences under the Prevention of Torture Act.

The National Police Service Act, 2011

Detailed rules on police use of force are set out in the 2011 National Police Service Act under the Sixth Schedule and section 95 also expressly prohibits torture within the service.

The Victim Protection Act, 2014

The Act seeks to protect all victims of any offence under Kenyan law and provide various remedies to the victims; a novel concept to the criminal justice system in Kenya. Ordinarily, the only solace that the victims of crime received was the knowledge that the perpetrators of crimes against them would receive a harsh sentence if convicted. This Act provides for various means of assisting the victims cope with the situation such as restorative justice, restitution, rehabilitation, psychological treatment, protection from victimization, etc.

The Counter Trafficking in Persons Act, 2010

The offences criminalized under the Act include-Trafficking in persons; Acts that promote child trafficking; Promotion of trafficking in persons; Acquisition of travel documents by fraud or misrepresentation; Facilitating entry into or exit out of the country; Interfering with travel documents and personal effects; Life threatening circumstances or death; Trafficking in persons for organized crime.

The Sexual Offences Act, 2006

The offences under the SOA include: Defilement, Rape, Incest, Sexual harassment, Sexual Assault, Promotion of sexual offences with a child, Child sex tourism, Child prostitution, Child pornography, Exploitation for prostitution among others.

The Children’s Act, 2001

Under the Children’s Act, some of the offences that one can look at include child labour, use in armed conflict, sexual exploitation and harmful cultural practices.

The Evidence Act

The law encompasses the rules and legal principles that govern the proof of facts in a legal proceeding and prohibits the collection of evidence through torture.

The Persons Deprived Of Liberty Act, 2014

The Persons Deprived of Liberty Act is representative of a key statutory attempt to prevent torture. It is meant to give effect to the constitutional right to freedom and security for every person and guarantees the rights and fundamental freedoms of all persons who are detained, held in custody or imprisoned.

Protection against Domestic Violence Act (PADVA) 2015

One can seek for protection orders under the PADVA when the Offences committed within the context of Public Service and relates to the offences under the PTA.

The African Charter

Section 5 of the Charter states that 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.

The Robben Island Guidelines, 2008

The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa offers a practical approach for effective implementation of the prohibition and prevention of torture at a national level with special regard for African states.

The Universal Declaration for Human Rights

The Universal Declaration of Human Rights articulates fundamental rights and freedoms for all. It declares that human rights are universal – to be enjoyed by all people, no matter who they are or where they live. The Universal Declaration includes civil and political rights, like the right to life, liberty, free speech and privacy. It also includes economic, social and cultural rights, like the right to social security, health and education.

The International Covenant on Civil and Political Rights

The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within States to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights and are compelled to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.



The Convention against Torture

The primary international instrument pertaining to torture in international law is the Convention against Torture which came into force on 26th June 1987 and to which Kenya became a State Party to in 1997. The Convention was meant to give effect to Article 55 of the United Nations Charter which stated that in order to create conditions of stability and well-being necessary for peaceful and friendly international relations, the United Nations would promote among other things the universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion

The International Crimes Act (ICA), 2008

The ICA provides offences such as acts of forcible transfer coupled with rape, sexual slavery, enforced prostitution, sexual enslavement, forced pregnancy, enforced sterilization of any other form of sexual violence may constitute crimes against humanity if committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.

Guiding points on the definition of Torture

The Prevention of Torture Act, 2017 defines torture any act by

- a) Which causes severe pain or suffering, whether physical or mental, which is intentionally inflicted on a person-

In assessing whether a particular treatment is sufficiently severe to meet the test of severity for torture, courts have considered the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim. The African Commission for instance found in the Abdel Hadi Radi case that conduct “ranging from severe beating with whips and sticks, doing the Arannabb Nut (rabbit jump), heavy beating with water hoses on all parts of their bodies, death threats, forcing them to kneel with their feet facing backwards in order to be beaten on their feet and asked to jump up immediately after, as well as other forms of ill-treatment, “which resulted in serious physical injuries and psychological trauma, amounted to torture.

The Human Rights Committee indicated in the case of Vuolanne v Finland that the assessment of whether particular treatment constitutes a violation of Article 7 of the ICCPR “depends on all circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim.” Elements such as the victim’s age and mental health may therefore aggravate the effect of certain treatment so as to bring it within Article 7. However, it is not sufficient that treatment be capable of producing an adverse physical or mental effect; it must be proven that this has occurred in a specific case.

- b) For the purposes of obtaining information or a confession from him or her or any other person; punishing him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or intimidating or coercing him or her or any other person to do, or to refrain from doing, anything; or for any reason based on discrimination of any kind.

The purposes specifically named in the Act do not constitute an exhaustive list; “such purposes as” indicates that other similar purposes may be included. The element joining these purposes is perhaps best understood as “some connection with the interests or policies of the State and its organs. “Sufficiently severe pain or suffering inflicted by a public official purely sadistically, but for no other purpose, would therefore appear to be excluded from the definition of torture. However, it is likely that such behavior would come within the scope of the UNCAT if there was an additional element of punishment or intimidation, and acquiescence by the State.

As former UN Special Rapporteur on Torture Manfred Nowak has explained, “A detainee who is forgotten by the prison officials and suffers from severe pain due to the lack of food is without doubt the victim of a severe human rights violation. However, this treatment does not amount to torture given the lack of intent by the authorities. On the other hand, if the detainee is deprived of food for the purpose of extracting certain information, that ordeal, in accordance with article 1, would qualify as torture.

- c) When such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public officer or a person acting on behalf of a public officer,
Article 260 of the Constitution states that public officer” means—

- (a) Any State officer; or
(b) Any person, other than a State Officer, who holds a public office;

“Public office” means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.

An act qualifies as torture if it is inflicted by a public officer. The public officer can:

- Commit the torture him or herself;
- Permit ordinary citizens to torture another person e.g., where a prison officer tells inmates to beat up another prisoner to teach us him or her a lesson and be aware that torture is being committed by private citizens against other citizens but does nothing about it. This is referred to as acquiescence e.g. a criminal gang is collecting protection fees from shop owners in a certain area and if anyone does not comply, they get beaten up.

The community has reported to the local administration but no action is taken. In this case, the local administration will be held responsible for the torture.



In contrast to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), there is no requirement in the ICCPR for a level of involvement or acquiescence by a State official for an act to be qualified as torture or ill-treatment. Rather, “It is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. General Comment-22

“Cruel, inhuman and degrading treatment or punishment” includes a deliberate and aggravated treatment or punishment not amounting to torture, inflicted by a public officer or a person acting on behalf of a public officer against a person under their custody, causing suffering, gross humiliation or degradation to the person;

The Committee against Torture has itself recognised that “In practice, the definitional threshold between cruel, inhuman or degrading treatment or punishment and torture is often not clear- General Comment 2.

In *Huri-Laws v Nigeria*, the African Commission adopted the reasoning of the European Court to find that, to qualify as cruel, inhuman or degrading, treatment must reach a ‘minimum level of severity,’ the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.

The Act also states that torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. A sanction considered lawful under national law may nonetheless constitute torture or other prohibited treatment under international law if it causes severe pain or suffering and meets the additional elements of the definition. Forms of corporal punishment that have been outlawed under international law include using canes or whips, lashes, “excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.”

The African Commission considered in a case against Sudan that lashes imposed as a form of punishment amounted to a violation of Article 5 of the African Charter, finding that “[T]here is no right for individuals, and particularly the government of a country, to apply physical violence to individuals for offences. Such a right would be tantamount to sanctioning State sponsored torture under the [African] Charter and contrary to the very nature of this human rights treaty.”

Similarly, the Committee for the Prevention of Torture Act has determined that judicial corporal punishment is cruel, inhuman or degrading “because the punishment is carried out in public, oftentimes on the bare backside of a victim, and in the case of flogging, the injuries sustained are severe...”⁴³ The Committee for the Prevention of Torture Act stressed that this form of sanction is “clearly a punishment of the past” amounting “to torture or other cruel, inhuman or degrading treatment or punishment.



POINTS TO PROVE ON OFFENCES UNDER THE PREVENTION OF TORTURE ACT, 2017

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
1.	Torture C/S 4 a (i) Obtain information, as read with Section 5	Mens Rea: Obtaining information from him or her or any other person. Intentional inflicting of pain and suffering	<ul style="list-style-type: none"> • Gunshots • Obtaining information • Public officer or a person acting on behalf of a public officer • Deliberateness • Not out of lawful sanctions • Severe mental pain and suffering • Threat of imminent death or threat of the other person • Consent or acquiescence 	<ul style="list-style-type: none"> • Gun • Arms Movement register • Ballistic report • Bullet/cartridges • Deployment schedule/duty roster • Proof of employment in the public service • Acting on the direction of a public officer • Victim testimony • Information • Medical report • Photographs • Sketches • Independent witnesses 	<ul style="list-style-type: none"> • Power to search • Power to investigate • Power to issue summons • Power to enter any premise (private/public) to collect information 	<ul style="list-style-type: none"> National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
2.	Torture –C/S 4 A (i)- Obtain a confession	Mens Rea: Obtaining a confession Intention to inflict pain and suffering Actus Reus: Intentional inflicting severe physical or mental pain	<ul style="list-style-type: none"> • Electric shock • Confession • Victim testimony • Obtaining a confession • Public officer or a person acting on behalf of a public officer • Not out of lawful sanctions • Deliberateness Severe physical or and mental pain	<ul style="list-style-type: none"> • Sketch of crime scene • Item used to commit offense • Photo/video • Victim testimony • Public officer: Proof of employment • Confession by victim • Independent witnesses • Medical documents 	<ul style="list-style-type: none"> • Power to enter any premise private/public to collect information • Powers to search • Power to investigate • Power to issue summons 	National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG Office Department of Children Services Kenya Prisons Service ODPP



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
3.	Torture C/S 4A (ii) Purposes of punishment for an act committed as read with section 5	<p>Mens Rea: intention to punish Intention to inflict pain</p> <p>Actus Reus: intentional inflicting of severe physical pain. Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach</p>	<ul style="list-style-type: none"> Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach; Public officer or a person acting on behalf of a public officer Not out of lawful sanctions Deliberateness <p>Severe physical & mental pain</p>	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Independent witnesses Physical evidence on the victim Medical reports; P3/Postmortem Proof of employment 	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<p>National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP</p>

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
4.	Torture C /S 4a) (ii) Punishment for an act committed by any other person as read with section 5	Mens Rea: To intention to punish an act committed by another person Actus Reus: inflicting of severe physical pain	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness Severe physical & mental pain	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Independent witnesses Physical evidence on the victim Medical reports; P3/Postmortem Proof of employment	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
5.	Torture C /S 4a) (ii) For purposes of punishing an act suspected to have been committed by the victim as read with section 5	Mens Rea: To punish for an act suspected to have been committed. Actus Reus: Being tied.	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Being tied Not out of lawful sanctions Deliberateness Severe physical & mental pain Act suspected to have been committed <p>Public officer</p>	<ul style="list-style-type: none"> Rope used Photos Witness statements Physical evidence on the victim Medical reports; P3/ Postmortem Proof of employment 	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<p>National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP</p>

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
6.	Torture C /S 4a (ii) For purposes of punishing an act suspected to have been committed by another person as read with section 5	Mens Rea: To punish for an act suspected to have been committed by another person. Actus Reus: Act of inflicting pain and suffering eg Beating	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness Severe physical & mental pain <p>The act suspected to have been committed by another person</p>	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Witnesses statements Physical evidence on the victim Medical reports; P3/Postmortem <p>Proof of employment</p>	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<p>National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP</p>



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
7.	Torture C /S 4a0(ii) For purposes of punishing an act of planning to commit an act by the victim as read with section 5	Mens Rea: To punish. Actus Reus: Systematic beating	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness Severe physical & mental pain <p>An act being planned by the victim</p>	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Witness statements Physical evidence on the victim Medical reports; P3/Postmortem <p>Proof of employment</p>	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<p>National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP</p>

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
8.	Torture C /S 4a) (ii) For purposes of punishing an act of planning to commit by another person as read with section 5	Mens Rea: To punish. Intention to cause pain and suffering Actus Rea: Systematic beating	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness Severe physical & mental pain 	<ul style="list-style-type: none"> Proof of the person planning to commit the Act Photos Equipment used to commit the offense Independent witnesses Physical evidence on the victim Medical reports; P3/ Postmortem Proof of employment 	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<ul style="list-style-type: none"> National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
9.	Torture C/S 4a0 (iii) Torture for purposes of Coercing to do, as read with section 5	<p>Mens Rea: Coercion Intention to cause pain and suffering</p> <p>Actus Reus: Systematic Beating</p>	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness <p>Severe physical & mental pain</p>	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Independent witnesses Physical evidence on the victim Medical reports; P3/Postmortem <p>Proof of employment</p>	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<p>National Police Service</p> <p>Judiciary</p> <p>KNCHR</p> <p>IPOA</p> <p>Medical practitioner</p> <p>Civil Society</p> <p>Psychologists</p> <p>AG office</p> <p>Department of Children Services</p> <p>Kenya Prisons Service</p> <p>ODPP</p>

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
10.	Torture C/S 4) (iii) Torture for purposes of intimidating another person section 5	<p>Mens Rea: Intention to intimidate Coercion Intention to cause pain and suffering</p> <p>Actus Reus: Systematic Beating</p>	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness Severe physical & mental pain 	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Independent witnesses. Physical evidence on the victim Medical reports; P3/Postmortem Proof of employment 	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<ul style="list-style-type: none"> National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
11.	Torture C/S 4a) (iii) Torture for purposes of coercing another person, as read with section 5	<p>Mens Rea: Coercion Intention to cause pain and suffering</p> <p>Actus Reus: Systematic Beating</p>	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness <p>Severe physical & mental pain</p>	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Independent witnesses. Physical evidence on the victim Medical reports; P3/ Postmortem <p>Proof of employment</p>	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<p>National Police Service</p> <p>Judiciary</p> <p>KNCHR</p> <p>IPOA</p> <p>Medical practitioner</p> <p>Civil Society</p> <p>Psychologists</p> <p>AG office</p> <p>Department of Children Services</p> <p>Kenya Prisons Service</p> <p>ODPP</p>

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
12.	Torture C/S 4a) (iii) Torture for purposes of Intimidating to refrain from doing anything as read with section 5	<p>Men Rea: Intention to intimidate</p> <p>Actus Reus: Act of intimidation</p>	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts, jumping on the stomach Not out of lawful sanctions Deliberateness Severe physical & mental pain 	<ul style="list-style-type: none"> Photos Equipment used to commit the offense Independent witnesses Physical evidence on the victim Medical reports; P3/ Postmortem Proof of employment 	<ul style="list-style-type: none"> Power to enter any premise private/public to collect information Powers to search Power to investigate Power to issue summons 	<p>National Police Service</p> <p>Judiciary</p> <p>KNCHR</p> <p>IPOA</p> <p>Medical practitioner</p> <p>Civil Society</p> <p>Psychologists</p> <p>AG office</p> <p>Department of Children Services</p> <p>Kenya Prisons Service</p> <p>ODPP</p>



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
13.	Torture C/S 4 b) Torture on account of (Race/ Sex/ Pregnancy/ Marital status/ Health status/ Ethnic origin/ Social origin/ Colour/ Age/ Disability/ Religion/ Conscience/ Belief/ Culture/ Dress/ Language/ Birth) as read together with section 5	Mens Rea: Intention, deliberateness, to torture on basis of discrimination Actus reus: Act of discrimination	<ul style="list-style-type: none"> Public officer or a person acting on behalf of a public officer Physical appearance- skin colour of the victim Not out of lawful sanctions Deliberateness Severe physical & mental pain 	<ul style="list-style-type: none"> Photos Equipment used to commit the offense to blind fold Period/length of the blind folding Independent witnesses Physical evidence on the victim Medical reports; P3/ Postmortem Proof of employment 	<ul style="list-style-type: none"> Power to enter any premise private/ public to collect information Powers to search Power to investigate Power to issue summons 	<ul style="list-style-type: none"> National Police Service Judiciary KNCHR IPOA Medical practitioner Civil Society Psychologists AG office Department of Children Services Kenya Prisons Service ODPP

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
14.	7(a)	Commit Cruel, inhuman or degrading treatment	<p>Mens reus: Deliberate nature of the act</p> <p>Actus reus: Omission or Commission of the act</p> <p>Public officer or a person acting on behalf of a public officer</p>	<ol style="list-style-type: none"> 1. Status of the person- Public officer or acting on behalf 2. The alleged offender is a citizen of Kenya 3. The alleged offender is resident in Kenya 4. The offence was committed – <ol style="list-style-type: none"> (i) in any territory under the control or jurisdiction of Kenya (ii) on board a vessel flying the Kenyan flag registered in Kenya at the time the offence is committed 	<p>Proof for Public Officer</p> <ul style="list-style-type: none"> • Employment Letter/ Payslips <p>Proof of Citizenship</p> <ul style="list-style-type: none"> • National ID • Residency Permit <p>Proof for acting on behalf</p> <ul style="list-style-type: none"> • Electronic communication • Eye witness (verbal) • Issuing instruction by a person in Authority • Responding to the instruction 	<p>AG</p> <p>IPOA</p> <p>EACC</p> <p>NPS</p> <p>KNCHR</p> <p>ODPP</p> <p>Legal Aid Service</p> <p>CSOs</p> <p>Public</p> <p>NPSC</p> <p>PSC</p>



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
				<p>(iii) on board an aircraft operated by the Government of Kenya, or a body in which the Government of Kenya holds a controlling interest, or which is owned or operated by a body corporate in Kenya;</p> <p>5. The victim is a citizen of Kenya; or</p> <p>the offence is committed by a person who is present in or expected to be present in Kenya or in a territory under the control or jurisdiction of Kenya.</p>	<p>Proof of Mens reus: Conduct before, during and after the crime</p>	



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
15.		Inducing a person to Commit Cruel inhuman or degrading treatment	<p>Mens reus: Deliberate nature of the act</p> <p>Actus reus: Omission or Commission of Act</p> <p>Public officer or a person acting on behalf of a public officer</p>	<ol style="list-style-type: none"> 1. Position of Authority 2. Intimidation 3. Payment 4. Blackmail 5. Provide evidence to prove <ul style="list-style-type: none"> • Causing suffering • gross humiliation or degradation to the person 6. Victim- Under custody of the public officer 	<ul style="list-style-type: none"> • Electronic communication • Eye witness (verbal) • Issuing instruction by a person in Authority • Responding to the instruction 	<p>AG</p> <p>IPOA</p> <p>EACC</p> <p>NPS</p> <p>KNCHR</p> <p>ODPP</p> <p>Legal Aid Service</p> <p>CSOs</p> <p>Public</p>



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
16.	7(b)	Cooperates in the execution of cruel, inhuman and degrading treatment or punishment	<p>Mens reus: Deliberate nature of the act</p> <p>Actus reus: Omission or Commission of the Act</p> <p>Public officer or a person acting on behalf of a public officer</p>	<ol style="list-style-type: none"> 1. Facilitation e.g. financing 2. Nexus for cooperation 3. Provide evidence to prove <ul style="list-style-type: none"> • Causing suffering, • gross humiliation or degradation to the person; 	<ul style="list-style-type: none"> • Money transactions through mobile banking, online transfers e.t.c • Witness statements • Phone data 	<p>AG</p> <p>IPOA</p> <p>EACC</p> <p>NPS</p> <p>KNCHR</p> <p>ODPP</p> <p>Legal Aid Service</p> <p>CSOs</p> <p>Public</p>

NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
17.	Section 8 the word attempt with aiding, abetting, counsel, procure and counsel	Mens rea- it is as defined by the substantive provisions of the law e.g Section 4 defines the offence of Torture. Act- the environment/ instruments for torture are ready but something intervenes and it doesn't take place	Has to be within the confines of what has been defined by/ provided for in the Act. The person must be a public officer or someone acting under the instructions of the public officer	Instruments of torture that is in the case of torture or cruel inhuman, degrading treatment, e.g electric shocks, burnt cigarettes Witness statements Photographs	None	National Police Service IPOA KNCHR Experts (medical and psychologists) ODPP



NO	OFFENCES	ACTUS REA AND MENS REA	POINTS TO PROVE IN THE OFFENCE	EVIDENCE REQUIRED	ANCILLARY POWERS GIVEN BY THE ACT	AGENCIES
18.	Section 9(2) A person who fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both	Mens rea - the knowledge Actus - using the information	Knowingly either you obtained the information yourself or from someone else Public officer or a person acting on behalf of a public officer	The document or recording (video, audio, CCTV camera) that contains the information Witness statements	None	National Police Service IPOA KNCHR Experts (medical and psychologists) ODPP



**OFFICE OF THE DIRECTOR OF
PUBLIC PROSECUTIONS**

**SPECIMEN CHARGE SHEET UNDER THE
PREVENTION OF TORTURE ACT, 2017
AND PROSECUTION RAPID
REFERENCE GUIDE**