

# IMPLEMENTING ANTI-TORTURE STANDARDS IN COMMON LAW AFRICA: COMPLAINTS AND INVESTIGATION MECHANISMS

*An overview of complaints and investigation mechanisms in The Gambia, Ghana, Kenya, Nigeria, South Africa, Sudan, Uganda and Zimbabwe*

## INTERNATIONAL STANDARDS

The right to complain, followed by prompt and impartial investigations of human rights violations including torture and other cruel, inhuman, or degrading treatment or punishment (**CIDTP**), are crucial steps towards accountability, redress and deterring future violations. Article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) provides for the right of individuals alleging to have been subjected to torture to complain and requires States to promptly and impartially examine such complaints, while Article 12 commands that State authorities “proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. Both provisions are also meant to apply to acts of CIDTP under Article 16 of UNCAT.

Independent complaints and investigation mechanisms play a vital role in enabling States to effectively fulfil these obligations. States should “[e]nsure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment” and such complaints should be investigated promptly, impartially, and effectively. Such obligation to investigate has also been considered by the African Commission on Human and Peoples’ Rights (ACHPR) to form part of States’ procedural obligations to prevent torture and provide redress to the victims.

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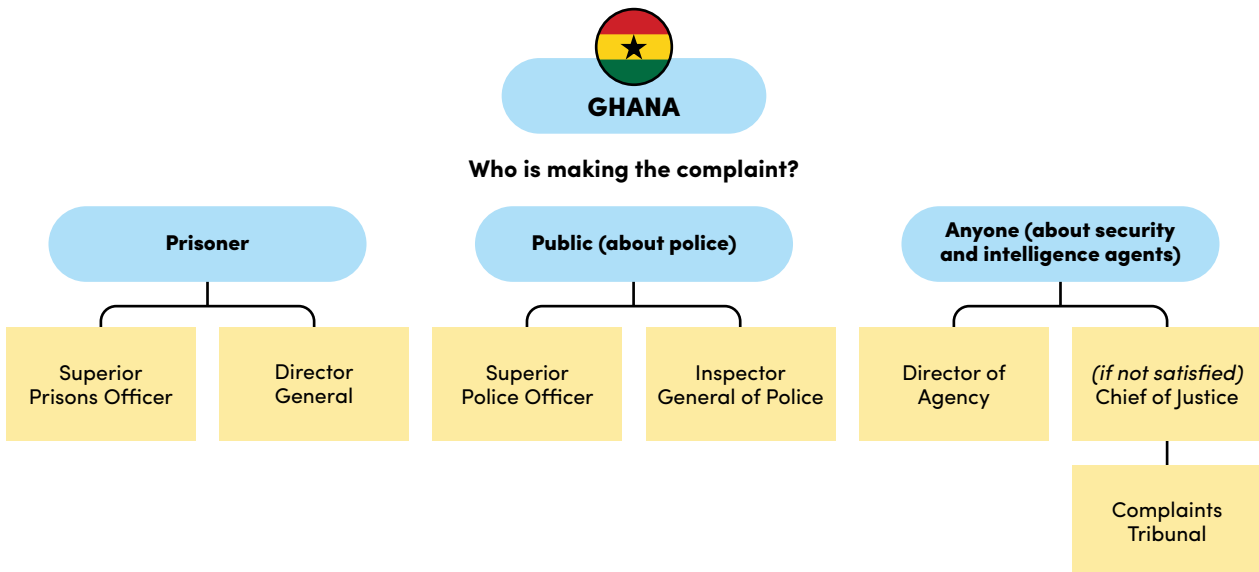
## THE ISTANBUL PROTOCOL

The Istanbul Protocol is a set of international United Nations standards for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment, and for the reporting of these findings to the judiciary and other investigating bodies.

### NATIONAL LEGAL FRAMEWORK

All the States reviewed have, to some extent, procedures in place to receive and investigate complaints against public officials (such as police officers, prison officials, and other security officers in detention facilities). In addition, all of the States reviewed have established special oversight mechanisms, such as national human rights institutions (NHRIs), which are mandated to receive and investigate allegations of human rights abuses including torture.

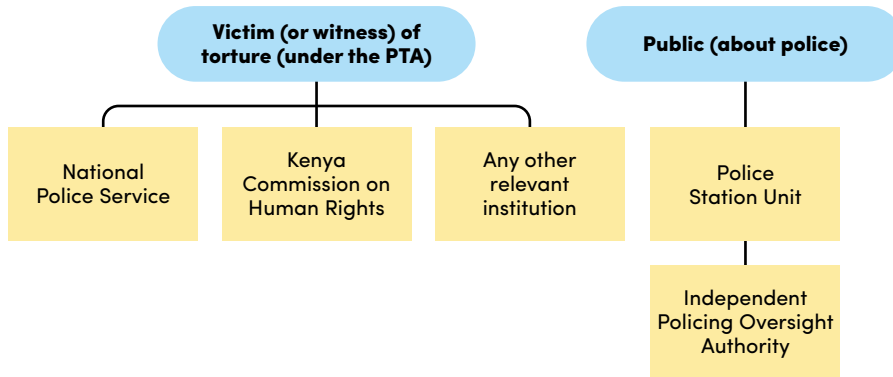
#### Examples of complaints mechanisms





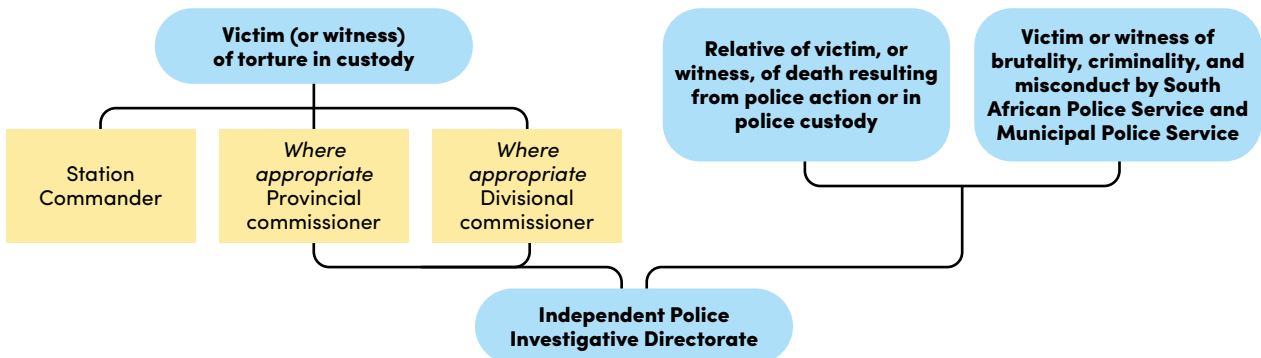
**KENYA**

Who is making the complaint?



**SOUTH AFRICA**

Who is making the complaint?




**Accountability efforts for excessive use of force in Sudan**

In June 2019, peaceful protesters who attended a sit-in were attacked by security forces, mainly the paramilitary Rapid Support Forces (RSF). More than one hundred civilians were killed and protesters were beaten, raped, intimidated and detained. Later, eight hospitals were forced to close due to the harassment of medics. As a result, the National Independent Investigation Committee was established to achieve justice and accountability for the violations committed in what is now known as the 3 June Massacre. The Committee indicates that they have documented audio-visual evidence with at least 3,200 testimonials, including from victims, family members and military officials. Delays, challenges in the criminal justice legal framework and absence of the principle of criminal liability on the grounds of command or superior responsibility are impeding the progress made by the Committee's work.


### National human rights institutions

The UN Committee Against Torture (CAT) has recommended that States establish NHRIs to investigate complaints of human rights violations. All reviewed States have such a mechanism in place.


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 **Ghana** Commission on Human Rights and Administrative Justice

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 **Kenya** Kenya National Commission on Human Rights


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 **Nigeria** National Human Rights Commission of Nigeria


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 **South Africa** South Africa Human Rights Commission


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 **Sudan** National Human Rights Commission

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 **Uganda** Uganda Human Rights Commission

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 **Zimbabwe** Zimbabwe Human Rights Commission

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#### Initiative in The Gambia

In an important step towards promoting human rights in the country, and in acceptance of recommendations received during their Universal Periodic Review (UPR) in 2010, **The Gambia** set up a National Human Rights Commission, with a broad mandate, including the investigation of human rights complaints, provided these occurred after the coming into force of the National Human Rights Commission Act or have continued beyond 24 January 2018. For violations before this date, the Truth, Reconciliation and Reparations Commission has the power to investigate based on an ongoing review of priorities, including specific allegations of torture.

## CHALLENGES

While the legal framework and existing institutions highlighted above represent important steps towards accountability, States also face shared challenges related to their investigative efforts. These include barriers to institutional independence, the underreporting of complaints, and a lack of training and funding.

### *A. Maintaining independence*

The independence of investigative mechanisms is not always clear. Circumstances suggestive of a lack of independence include complaints against police officers being investigated by fellow officers; the results of investigations being withheld from the public; political appointments to investigative bodies; and statutory immunities from prosecution.

### *B. Underreporting*

Complainants in States reviewed have reported feeling intimidated and deterred when complaints and investigation mechanisms lack independence. This is a particular challenge in prisons: it has been noted that prisoners “[suffer abuses] in silence” and the number of complaints can be “surprisingly low”. Such issues are likely to persist in the absence of adequate safeguards to protect victims from reprisals and other risks associated with making complaints.

### *C. Lack of training and funding*

Lack of training has caused significant delays in the investigative process, including through the mishandling of crime scenes, as well as leading to failures in documenting torture in accordance with the Istanbul Protocol. Similarly, limited financial resources result in slow progress on complaints of torture.



## PROPOSALS FOR STATES

1. Ensure complaint mechanisms are effective and easily accessible to all persons, including by providing various options to submit complaints and through various locations throughout the State, and by taking steps to ensure that the public is well-informed about their existence and encourage individuals to make use of their right to complain.
2. Enact legislation to ensure that victims, witnesses and any individuals making a complaint against a public official are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
3. Ensure that investigations are carried out promptly, effectively, independently, and in accordance with the Istanbul Protocol.
4. Enact legislation and regulatory procedures for judicial review of decisions not to investigate allegations of torture.
5. Establish specific independent and impartial bodies (such as Ombudspersons, NHRIs, or Committees) with a mandate to receive complaints, undertake investigations of allegations of torture and other ill-treatment and refer them to the competent authorities, and ensure they are adequately funded in order to effectively and independently carry out such a mandate.

6. Conduct trainings for all officials involved in the investigatory process, including forensic experts, on the documentation of torture and other ill-treatment in accordance with the Istanbul Protocol, training of judicial officers on interpreting these assessments, and training of law enforcement personnel in cooperating and refraining from intervening in the investigations.
7. Develop and implement procedures and mechanisms to collect clear and reliable statistical data on the number of complaints made, investigations launched, as well as the number of subsequent convictions and penalties imposed by the judicial authorities on the perpetrators of torture and other ill-treatment. Such data should be made available and easily accessible to the public to ensure transparency.