

The protection of citizens from torture in Uganda. What is done and what could be done?

Asiimwe Jackline*

Abstract

This study analyses the protection of citizens from torture in Uganda. It explains that torture which has a long history in Uganda continues to be used as an instrument of repression of political dissent citizens by the government. The study further assesses what has been done to combat torture by looking at the institutional and legal framework in place. A conclusion is made that the existing legal framework in place on prohibition of torture is sufficient. However, the study states that there are underlying weaknesses when it comes to implementation.

Further, the study answers the question why torture still prevails in Uganda whereas there is sufficient legislation in place. The study suggests a three-tier preventive strategy to protect citizens from torture in Uganda namely; a legal framework that prohibits torture, effective implementation of this legal framework and mechanisms to monitor the legal framework and its implementation.

1. Introduction and General Background

Uganda has a long history of torture, often perpetrated on a very large scale. The post-independence regimes of Obote, Idi Amin and various interim governments used torture mainly as an instrument of repression.¹ As a testimony to this, Uganda had numerous torture survivors in the period 1986–1995, comprising mainly of political opponents, suspects of Lord's Resistance Army (LRA) suspects and prison inmates.² The period 1986 -1995 is significant because of non-patriotic leaders who failed to inculcate a culture of reverence of the law among the citizens. In addition, victims of torture had much more limited access to justice before 1995 when the present Constitution was adopted and the Uganda Human Rights Commission established.

In the period 2015 to 2018, torture was as the highest violation of human rights. The report states that out the 3,008 complaints of human violation registered 1,027 were of torture. In addition to the above, in 2018 alone, the highest number of complaints of human

* The author is an Experienced Legal Researcher, and Human Rights Law, Constitutional Law Expert as well as a Lecturer in Uganda. Contact: Tel. +256775491866 Email: asiimwejackline4@yahoo.com.

1 Pearl of Blood, *Summary of the Report of the Uganda Commission of Inquiry into the Violation of Human Rights*, UPPC, October 1994, p.29.

2 Ibid.

right violation registered by the commission were allegations of torture, cruelty, inhuman or degrading treatments 346 out of 746 cases reported.³ From 2019 to date, Uganda still registers a high number of torture victims.

The war crimes and crimes against humanity committed during World War II led to international condemnation torture. In the same vein, a number of international treaties have since been adopted to prevent its use. The development of domestic and international jurisprudence over the same period resulted into the strengthening of protection against torture.⁴ This far, promoting awareness, political initiative and relevant training have been identified to combat torture. Nevertheless, torture continues to be a persistent practice worldwide.⁵

The reasons for perpetration of torture include; obtaining a confession/information, punish and last but not least to coerce the sufferer to act in a certain way. Yet, torture destroys people, corrodes the rule of law, undermines the criminal justice system and erodes the public trust in public institutions and the State they represent. Torture also causes severe pain and suffering to victims which continues long even after the acts of torture to stop. Torture is inherently morally wrong because all forms of torture involve intentional infliction of extreme physical suffering.⁶

There several non-approved interrogation methods used include; prolonged incommunicado detention; beatings; death threats; painful stress positions; sexual humiliation; forced nudity; exposure to extreme heat and cold; denial of food and water; use of electric shocks, sensory deprivation such as hooding and blindfolding; sleep deprivation; water-boarding; use of dogs to instigate fear; and racial and religious insults.⁷

2. Definition of the Term Torture

According to the Black's Law Dictionary, *torture* means “the infliction of intense pain to the body or mind to punish, to extract a confession or information or to obtain sadistic pleasure.”⁸

Torture may also refers to “any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or

3 Annual Reports Uganda Human Rights Commission 2015–2018.

4 The Fight Against Torture: The OSCE Experience ODHIR, Poland, 2009, ISBN 978–92–9234–763–5. Available at: <http://www.osce.org/odihr>.

5 Ibid.

6 Enduring Abuse: Torture and Cruel Treatment by USA at Home and Abroad, 2006, ACLU.

7 Foundation for Human Rights Initiative (FHRI), Status Report, 2005, p.17. See also: Kinyanda et al, Medical Aspects of Torture as seen in Uganda, National Training Manual for the Istanbul Protocol Training, 2004, p.5.

8 Bryan A Garner, (2015), Black' s Law Dictionary, 10th ed., Thomas Reuter, USA, p.1718. See: Also, James Heath, Torture and English Law, 3 (1982). Section 2 of the Prevention and Prohibition of Torture Act, 2012.

a third person information or a confession, punishing him for an act he or a third person has committed or suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.⁹ It does not include pain or suffering arising from, inherent or incidental to lawful sanctions.

This second definition has three collective ingredients namely¹⁰;

- (i) the intentional infliction of severe mental or physical suffering,
- (ii) by a public official, who is directly or indirectly involved and
- (iii) for a specific purpose.

Whereas torture may take various forms, it is important to note that this paper is limited to torture instigated by the state meted on the suspects or political dissents to extract information or discourage dissenting ideas. Noteworthy, Uganda in her laws provides for an absolute prohibition of torture.¹¹ This means that whereas some rights can be derogated from, freedom from torture is non derogable.¹² In the same vein, *Issa Wazembe v. Attorney General*¹³, *Ssekaana, J.* stated that “Torture is considered so barbaric and incompatible with civilized society that it cannot be tolerated. Torturers are seen as the ‘enemy of mankind. Whereas there is a comprehensive legal regime that prevents and prohibits torture, it’s evident that the violation of the right to freedom in the form of torture and cruel, inhuman and degrading treatment or punishment are still rampant in Uganda.”

In *Ireland v. United Kingdom* ECHR¹⁴ court explained the distinction between Torture and inhuman or degrading treatment lies in the difference in the intensity of suffering inflicted. In deciding whether certain treatment amounts to torture, the court takes into account factors of each individual case, such as the duration of treatment, its physical and mental effects, and age, sex, health and vulnerability of the victim.

Prohibition of torture has taken on the status of customary international law hence having a universal binding force. The prohibition against torture is also fundamental during armed conflicts which governs the conduct of parties during armed conflict. An important element of international humanitarian law is the duty to protect the life, health and safety of

9 Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10 Association for the Prevention of Torture: Definition of Torture, apt, Switzerland, Available at: <https://www.ap.t.ch/en/what-we-do/torture-prevention/definition-torture#>.

11 Article 24 of the Constitution of the Republic of Uganda, 1995 (as amended).

12 Article 44(a) of the Constitution of the Republic of Uganda, 1995(as amended) states; “Notwithstanding anything in this constitution, there shall be no derogation from enjoyment the following rights and freedoms- (a)Freedom from torture and cruel, in human or degrading treatment or punishment.” Freedom from torture is a non derogable right under the constitution.

13 Civil Suit No.154 of 2016.

14 Application No.5310/71.

civilians and non-combatants, including soldiers who are captured or who have laid down their arms. Torture of such protected persons is absolutely forbidden.¹⁵

That as it may be, one of the major grey areas remains why is torture is still rampant in Uganda yet there are sufficient legal provisions in place. Thus, this study focuses on answering this question in order to find a lasting solution to combat torture. This is compounded by the fact that the State which should play a central role in the protection of the citizens against torture is actually the violator. State security agencies are major conduits of torture in Uganda. It is upon this background that this study evaluates protection of citizens against torture in Uganda, what has been done and what should be done.

3. What has Been Done to fight against Torture in Uganda

3.1 Institutional Framework

Since the enactment of the Constitution of Republic of Uganda, 1995, Uganda has had significant efforts to develop its institutional framework related to human rights. Several institutes have been put in place whose role is to solely handle matters relating to human right. These institutions include; Uganda Human Rights Commission, the courts of judicature, the Standing Human Rights Committee of Parliament, Directorate of Human Rights and Legal Services within Uganda Police Force, Human Rights Desk in the Chieftaincy of Military Intelligence, the Police Force and Air Force. Last but not least is the fourth estate of government i.e., a vibrant civil society whose role in combating torture in Uganda cannot be underestimated.

Each of the above-mentioned institutions plays a fundamental role in the investigation, adjudication, holding torture perpetrators responsible as well as awarding compensation to the victims of torture.

3.2 Regulatory Framework

Uganda has an elaborate legal framework on the prohibition against torture comprised in the national and international law. This segment of the study makes an analysis of the said legal instruments to fundamentally shape a foundation within which the subsequent segments are discussed.

Accordingly, the ban on torture is found in a number of international treaties, including article 5 of the Universal Declaration of Human Rights, article 2 of the United Nations Convention Against Torture and article 5 of the African Charter on Human and People's Rights, the African Charter on Human and Peoples Rights and International Covenant on Civil and Political Rights, article 7.

Article 5 of UDHR states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Also, UDHR provides for "an effective

¹⁵ Common Article 3 to the Geneva Conventions.

remedy¹⁶ if their rights are violated. The Universal Declaration of Human Rights, which sets out the basic human rights standards that apply to all States, forms part of customary international law.

Under the International Covenant on Civil and Political Rights article 7 of the provides that no person “shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In addition, article 10 states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The Covenant further provides that anyone claiming that their rights have been violated shall have an effective legal remedy. Further, no derogation is allowed regarding the right not to be subjected to torture and other forms of ill-treatment. One of the sources of international law applicable in the International Court of Justice.¹⁷

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the most comprehensive international treaty dealing with torture. It contains a series of important provisions in relation to the absolute prohibition of torture and establishes the Committee against Torture to monitor the implementation of obligations by States parties. The role of the Committee is to examine the reports of States parties and individual complaints.

African Charter on Human and Peoples’ Rights article 5 states: 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.

The Constitution of Republic of Uganda, 1995(as amended) provides, for an absolute prohibition of torture.¹⁸This means that whereas some rights can be derogated from, freedom from torture is non derogable.¹⁹ Under Article 50, the constitution provides for enforcement of fundamental rights and freedoms by courts.²⁰ It should be noted that the powers of government are not unlimited, therefore government has to operate within the law prescribed scope. The law sets a mark on how far should government go in handling those who go to the wrong side of the law.

An award of compensation for established infringement of the indefeasible rights guaranteed under the Constitution is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein rights and interests shall be protected and preserved.²¹

16 Article 13 of the UDHR.

17 Article 38 (1) of the ICJ Statute.

18 Article 24.

19 Article 44 (a).

20 Article 50(1) Any person who claims that a fundamental right or freedom guaranteed under the Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which includes compensation.

21 Issa Wazemba v AG Civil Suit No. 154/ 206.

The Prevention and Prohibition of Torture Act, 2012²² defines torture to mean any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as;

- i) obtaining information or a confession from the person or any other person;
- ii) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or
- iii) Intimidating or coercing the person or any other person to do, or to refrain from doing, any act.

Courts in Uganda have stated that for an act to amount to torture, not only must there be a certain severity in pain and suffering, but the treatment must also be intentionally inflicted for the prohibited purpose.

As already stated, the existing law in Uganda prohibits torture. The Anti- Torture Act stipulates that any person convicted of an act of torture may be sentenced to 15 years' imprisonment, a fine a fine of UGX. 7.2 million (USD 1,920\$) or both. The penalty for conviction for aggravated torture is life imprisonment. Nevertheless, security forces still torture and physically abuse suspects.

Paulo Baguma Mugarama v. Uganda Revenue Authority ²³, *Ssekaana, J.*, emphasised that the courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment. Only worst examples are likely to satisfy the test. In *Lt. (Rtd) George Kiggundu v. Attorney General* ²⁴, *Ssekaana, J.*, awarded UGX 50.000.000 as sufficient compensation for the injuries suffered (torture) and illegal detention.

Human Rights (Enforcement) Act of 2019, further criminalize torture and provide for personal liability for public officers who commit human rights violations.

As is evidenced above, Uganda has an elaborate regulatory framework on prohibition of torture as well as the requisite institutional framework in place. However, there are underlying weaknesses when it comes to enforcement. Likewise, the State has from time to time failed to respect the spirit of the letter relating to prohibition of torture. This is largely explained by the state apparatus employing torture as a tool of repression of the political dissent.

4. Why then has torture Prevailed?

Although I have already alluded to as to why torture continues to soar high in Uganda irrespective of the institutional and legal framework in place, it would defeat the purpose of

22 Section 2.

23 High Court Civil Suit No. 93 of 2014.

24 High Court of Uganda Civil Suit No. 386 of 2014.

this study if it omits to explain why torture has prevailed? Generally, the continued failure to honour legal obligations on prohibition of torture in Uganda is premised on a number of factors namely;

4.1 Poor Enforcement Mechanisms in place

Whereas adequate legal provisions exist, there are underlying weaknesses in the enforcement of these laws. It can be argued that Uganda may have excelled in the area of enactment of anti-torture legal framework in order to appease donors as opposed to the desire to have the law implemented. Hence, the law fails to protect citizens from torture.

4.2 Admission of confessions extracted through torture

The military tribunals in Uganda despite hearing testimony detailing torture have taken no steps to address the abuses. This amounts to condoning an illegality. The Human Rights Watch observed trials in which confessions extracted through torture were held as admissible evidence by the court martial without proper scrutiny of the source and methods by which the evidence was obtained.²⁵

4.3 Torture victims suffer from chronic lack of access to medical treatment

While in the hands of interrogators even when they are in illegal detention for several months. Many access medical facilities after release or after reaching prison. Realizing the damage inflicted on the victim, the perpetrators often coverup by releasing the victim and warning them sternly to remain silent. As part of coverup medical statements are normally incomplete or inaccurate. In one torture case, a military doctor diagnosed hernia that required surgery. However, according to the victim and the doctor who later examined him, the victim had never suffered from hernia but the interrogators from CMI stabbed his testicals with needles. He never received medical treatment and the wound started rotting.

4.4 Inordinate delay in detention centres exposes suspects to torture

Severe torture is often applied soon after arrest in order to compel the suspect to provide information. If detention centres charge the suspect and produce them in court within forty-eight hours, this will reduce the likelihood of torture immediately after arrest. A court observing such marks may well discard the suspect's testimony or impose sanctions on the detaining authority. The relatives of the suspect can also lodge a complaint. The UPDF and particularly its military intelligence arm, the Chieftaincy of Military Intelligence hold suspects in barracks or CMI for many months. Likewise, Suspects of terrorism are detained

25 Uganda: Torture, Extortion, Killings by Police Unit, Available at: www.hrw.org.

in a separate wing at police stations and are referred to as terrorists. The terrorism suspects are often detained longer than 48 hours.

Torture occurs mostly during the first days of detention when the next of kin do not even know the whereabouts of the detention of the suspect.²⁶

4.5 institutionalized practice by police and special law enforcement agencies

These agencies use violence amounting to torture as a means to extract information and confessions. Torture has apparently also been used to turn suspects into informants. Legal safeguards have been eroded by the setting up of special units, such as the Violent Crime Crack Unit (VCCU) that comprises the CMI, ISO and other agencies, which has been given wide powers to combat the rise of violence did not confess or make a statement voluntarily. However, there is an absolute prohibition of torture in Uganda.²⁷

4.6 Existence of Illegal and non-gazetted centres of detention

Uganda still has non gazetted centres also known as 'safe houses. While in the safe house, the victim lives at the mercy of those in charge of the safe house. The lawlessness that exists in safe houses exposes the victim to all manner of inhuman and degrading treatment.

The Uganda security forces have unlawfully detained and tortured many people including government critics and opposition supporters, often in unsanctioned or unauthorised places of detention. Some of these locations are termed as 'safe houses' and are residential buildings converted by authorities to be used for witness protection. In fact, they operate as makeshift detention centres under the authority of the Internal Security Organization (ISO), Uganda's domestic intelligence body. Unlawful detention, torture and abuses continue with impunity. It is the illegal detaining authority to determine the means and methods of effecting arrests, detention as well as extraction of information hence exposing the suspect to torture.

4.7 Lack of political Will

There is also a challenge of lack of political will. Whereas the State has a duty to protect, promote and implement all human rights and fundamental freedoms inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic,

26 In **Steven Semugoma v. Magidu Mafuge & 5 Other (1994) 2 Kalr 108** the Commission found that a suspect had been detained in a UPDF barracks, a non-gazetted place and beaten for 93 days. As a result, left him impotent. Neither the UPDF nor the prosecutor showed reasonable probable cause for the detention. When the case finally came for hearing, the prosecution learned that the guilty party was someone else. The commission concluded that there was no honest belief in the guilt of the complainant, as he was never taken to court and the arrest was based on mere guesswork and not upon reasonable probable cause that he had committed the crime.

27 Supra.

political and other fields as well as legal guarantees required to ensure full enjoyment of fundamental rights. However, the political actor is not willing to commit precious time, energy and political capital to achieve change. Thus, government institutions which are supposed to prevent torture in fact are the perpetrators.

4.8 Role of Security Organs

A range of security organs have reportedly been responsible for torture in Uganda. Though Ugandan law bestows responsibility for law enforcement on the police, there is a proliferation of bodies, often operating as plain cloth officers, which have arrested, detained and tortured suspects. These agencies have in many instances removed victims from the protection of the law to so-called ‘safe houses’ and are difficult to identify, resulting in a climate of impunity. These agencies are used to torture suspects.

4.9 Lack of independence of judiciary in Uganda

There is an increasing acknowledgement that an independent judiciary is the key to upholding rule of law in a free society. This basic premise is crucial to the maintenance of the rule of law. In order to maintain public confidence in administration of justice, it is not enough for a court to be independent. It is equally vital that courts are seen to be independent. Accordingly, the test for independence is whether a reasonable, informed person would perceive that a court is independent.

4.9.1 Lack of training of the police and other security entities

Not everybody arresting in Uganda has training in handling suspects; for instance, the local civilians are used to carry out arrests, the Kiboko squad which canned Ugandans randomly and the person is coerced into accepting the charges. Most of these torture perpetrators are at large. Hence there is zero deterrence when it comes to those found guilty of perpetrating torture. A good example is the young man hired by the state to spray hot pepper in leading opposition leader’s eyes is known but still at large. Those who tortured presidential candidate Kyagulanyi, Hon Zaake and National Unity Platform party members are equally still at large. And last but not least Lukwago the Lord Mayor’s clothes were ripped apart in public and his private parts squeezed and he could be heard screaming for his life. It should be noted that these are elite high-profile citizens and one need not wonder at the treatment meted on the ordinary man.²⁸

28 Another Presidential candidate Patrick Oboi was arrested on his way going to launch his manifesto, clothes torn and shoes removed.

It should also be noted that most torture survivors are exiled to foreign countries. In the recent past Rukirabahsaija and Stella Nyanzi both satirical writers²⁹ are good examples of torture victims by the state agencies repeatedly beat them to ‘pulp’ attacked them while in detention.

4.9.2 Torture as a result of use of unreasonable force in arrest and poor conditions of incarceration

The detention centres in Uganda are characterised by overcrowding. Methods of arrest and seizure of suspects under seats in police patrol cars equally amounts to torture. This is exacerbated by the fact that Uganda has no effective oversight bodies to monitor police departments, jails, prisons and detention centres. In absence of this, the suspect is left at the mercy of the security operatives. In Uganda torture seems to be the unwritten government policy for those contesting for the presidential seat and generally members of opposition.

5. Conclusion

In final analysis, the prohibition of torture is not a luxury to be dispensed with in difficult times, but the very essence of a society worth defending. Rejecting torture does not mean forgoing effective interrogations of terrorist suspects. Patient, skilful, professional interrogations obtain critical information without relying on cruelty or inhuman or degrading treatment. Torture is not only immoral and illegal, but ineffective and unnecessary as evil. Given that people being tortured will say anything to stop the pain, the information yielded from torture is often false or of dubious reliability. The best remedy for torture thus remains prevention. Investigation departments must resist the use torture at all times.

6. What can be done to prevent torture?

In light of the above discussion and conclusion, this study proposes a three components of an integrated torture preventive strategy namely; a legal framework that prohibits torture, effective implementation of this legal framework and mechanisms to monitor the legal framework and its implementation. It should be noted that the fight against torture has, for a long time, focused on the first two elements of this strategy, in particular the enactment of laws and prosecution of torture cases. Nevertheless, an effective legal framework is an essential part of any programme to combat torture. However, the mere existence of laws and regulations is not sufficient to prevent torture. There is equally need to be properly implemented to ensure the workability of the law.

29 Rukirabasaija authored two books namely ‘the greedy barbarian’ and ‘the banana republic’ and on the other hand, Nyanzi is alleged to have insulted the president calling him ‘a pair of buttocks’. She was arrested in 2017.

A significant emphasis has to be placed on ending impunity. This is an important indirect prevention strategy that must be complemented by other approaches to effectively address the root causes of torture. This is why an integrated torture prevention strategy requires a third element, which is focused on direct prevention and employing non-confrontational and non-judicial control mechanisms.

Effective implementation requires practical measures to be taken on a range of levels to ensure that national laws on torture are respected in practice.

The different actors involved in implementing the legal framework, and in particular those within the criminal justice system (such as law enforcement officials, judges and detaining authorities), will require proper training – both initial and ongoing – regarding the normative framework and the development of operational practices that respect these norms.

Procedural safeguards should be put in place and operate as intended in particular for persons deprived of their liberty. This could include ensuring that all registers in places of detention are properly maintained and that there is a regular review of police codes of conducts.

Allegations of torture must be promptly, impartially and effectively investigated¹³, even in the absence of a formal complaint, and the investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might be involved. Any violation of the law must be appropriately sanctioned. When this does not occur, a culture of impunity develops which can undermine both the spirit of the law and its implementation. Taking action to tackle impunity is even more important in relation to torture and ill-treatment, as it is absolutely prohibited under all circumstances.

Other actions to be taken include; strengthening the independence of the judiciary, establishing effective and accessible complaints mechanisms, ensuring access to free legal aid and legal assistance, promptly and effectively investigating allegations of torture or ill-treatment, ensuring those who breach the law are punished and reparation for victims. Victims of torture should be provided with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and a guarantee of non-repetition.

Financial compensation should be provided for economically assessable damages. Satisfaction can include a variety of measures, such as an official declaration to restore the dignity of the victim, a public apology or a commemoration and tribute to victims.

In addition to an effective legal framework, there is also a need to establish control mechanisms, as the risk of torture is present in all countries at all times. Control mechanisms can help identify areas of potential risk and propose possible safeguards. Internal administrative control mechanisms which are set up within an institution – such as police inspection services or prison inspection services – help monitor the functioning of State institutions and their respect for legislative norms and regulations. While very useful, internal control mechanisms are, by themselves, insufficient for this preventive work as they lack independence and have a more administrative monitoring function.

In addition to internal control mechanisms, it is essential to set up independent mechanisms to visit places of detention. The mere fact that independent bodies can enter places of detention, at any time, has a strong deterrent effect. The objective of these visits is not to document cases of torture or denounce the situation or the authorities. Instead, the aim is to analyse the overall functioning of places of detention and provide constructive recommendations aimed at improving the treatment and conditions of detained persons.

Other control measures include; name and shame the perpetrators of torture, arrest, try and imprison torture perpetrators, lay travel bans on torture perpetrators and freezing and confiscating the assets of torture perpetrators.

Finally, the media and civil society organizations can contribute to an effective system of checks and balances to prevent and prohibit torture. Responsible media reporting, public education campaigns and targeted awareness-raising initiatives can build greater knowledge and understanding of the issues, influence public opinion and help change the attitudes of stakeholders and decision makers.

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