

Accountability for Acts of Torture by Counter Terrorism Law Enforcement Officials in Uganda

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ABSTRACT

The paper discusses the challenge of countering terrorism by law enforcement agencies in Uganda while at the same time ensuring full recognition and protection of rights of suspects such as freedom from torture, inhuman and degrading treatment. The paper notes that agencies responsible for combatting terrorism in Uganda have been known to execute their duties and responsibilities sometimes in complete disdain of the prohibition under Uganda's Constitution and other laws of all forms of torture and cruel, inhumane and degrading treatment of suspects or offenders. The paper suggests strategies for turning this around. They include incorporating in the legislative framework accountability measures for law enforcement agencies; countering terrorism only through units properly established under laws incorporating accountability measures; and improved training and education of law enforcement agencies on human rights likely to be violated in counter terrorism activities.

1. INTRODUCTION

The problem of torture has been a serious challenge within Uganda's police force and has persisted over the years regardless of a number of measures against the practice.¹ The practice of torture has permeated the entire police force but has been more pronounced in the fight against terrorism by the Counter Terrorism Police Unit and its affiliated security agencies.² The threat of crime such as terrorism in Uganda has had a number of implications on the safety and security of the country. In response to these threats, the Ugandan

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- 1 Human Rights Watch, *Fresh torture accusations levelled against Uganda's police*, (2017). Available at: <https://www.hrw.org/news/2017/05/14/fresh-torture-accusations-levelled-against-ugandas-police> (accessed 02 February 2018).
- 2 The Observer, *Witness reveals JATT's ugly torture methods*, (29 June 2015). Available at: www.observer.ug/news-headlines/38490-witness--reveals-jatt-s-ugly-torture-methods (accessed 01 April 2018).

government has implemented a number of counterterrorism measures including enacting the Anti-Terrorism Act, and revamping law enforcement agencies to improve their capacity to effectively respond to and neutralize threats of terrorism.³ While these measures are essential for the maintenance of safety and security, some of them have had the effect of unlawfully limiting and eroding certain rights and freedoms, including the protection against torture, inhuman and degrading treatment.⁴ One of the main concerns is that counterterrorism legislation in itself tends to be generally permissive, granting law enforcement wide discretion within the course of their duties with minimal accountability measures.⁵ It is therefore essential for the State to strike a balance between safeguarding national security and protecting the right against torture, inhuman and degrading treatment. This article recommends a number of changes including improving internal and external accountability measures in order to ensure that law enforcement does not engage in torture, a practice which is clearly against both international and Ugandan law.

Counterterrorism in Uganda today has become synonymous with torture and grave brutality at the hands of counterterrorism law enforcement agencies that seem to operate with minimal accountability and impunity.⁶ Such conduct is indeed concerning given the fact that in addition to the prohibition of torture in the Bill of Rights under the Constitution,⁷ Uganda enacted the Prevention and Prohibition of Torture Act⁸ in 2012 which outlawed the use of torture by both

3 Anti-Terrorism Act of Uganda, Act No 14 of 2002.

4 M. Head, "Counter-terrorism laws: A threat to political freedom, civil liberties and constitutional rights" 26 *Melbourne University Law Review* (2002), pp. 667; A. Roberts, "Counter-terrorism, armed force and the laws of war" 44(1) *Survival: Global Politics and Strategy* (2002), pp. 8; L. Lustgarten, "National security, terrorism and constitutional balance" 75(1) *The Political Quarterly* (2008), pp. 4.

5 M. Mutua, "Terrorism and human rights: power, culture and subordination" *Buffalo HRLR* (2002), pp. 302. See also: K. Anderson, "U.S. counterterrorism policy and superpower compliance with international human rights norms" 30 *Fordham International Law Journal* (2006-2007), pp. 455; A. Kielsgard and D. Mark, "Human rights approach to counter-terrorism" 36 *California Western International Law Journal* (2005-2006), pp. 249; A. Hudson, "Not a great asset: The UN Security Council's counter-terrorism regime: Violating human rights" 25 *Berkeley Journal of International Law* (2007), pp. 203; J. Fitzpatrick, "Speaking law to power: The war against terrorism and human rights" 14(2) *EJIL* (2003), pp. 241; C. Gearty, "11 September 2001, Counter-terrorism, and the human rights act" 32(1) *Law and Society* (2005), pp. 18; J. Mertus and T. Sajjad, "Human rights and human insecurity: The contributions of US counterterrorism" 7(1) *Journal of Human Rights* (2008), pp. 2.

6 S. Lubwama, *Kaweesi suspects reveal torture, death at Nalufenya*, (26 May 2017). Available at: <http://www.monitor.co.ug/News/National/Kaweesi-suspects-reveal-torture--death-at-Nalufenya/688334-3942506-bpvrki/index.html> (accessed 31 July 2017).

7 Article 24 of the Constitution of Uganda.

8 Prevention and Prohibition of Torture Act of Uganda of 2012.

the police and private individuals regardless of the intended outcome.⁹ The role of law enforcement in any democratic state is to maintain order, uphold the law and ensure that rights and freedoms are protected rather than infringing them.¹⁰ The success of police work cannot therefore be measured against how brutal law enforcement is towards the citizenry. Police operations should therefore be conducted in strict accordance with the provisions of the law otherwise they run the risk of breaking the very law they seek to uphold.¹¹ With a great deal of discretion at their disposal, there is always a high probability of abuse of power. There is therefore a need to constantly review police actions and hold them accountable for any violations. If nothing is done about such cases of misconduct, there is a likelihood of establishing a culture of impunity which leads to a vicious cycle of human rights violations.¹² This has been a real challenge in Uganda where counterterrorism police have been responsible for a number of human rights violations including the torture of suspects of terrorism.

Mount noted that one of the major human rights violators in Uganda was the Uganda Police Force.¹³ Some of the regularly alleged violations included torture and cruel, inhuman or degrading treatment or punishment. Mount attributed the high prevalence of human rights abuse by the police to inadequate training, equipment and resources. However, she argued that the number one factor that facilitates such abuse of power is impunity. She further argued that the lack of investigation and accountability leads officers to act as they please. Mount emphasized that accountability is the cornerstone of the criminal justice system and the lack of investigation and punishment corrupts the institution.

The Commonwealth Human rights Initiative (CHRI) further argues that the Police Act of Uganda maintains a colonial approach to policing which focuses on crime prevention and security.¹⁴ This approach is inconsistent with

9 Section 3 of the Prevention and Prohibition of Torture Act.

10 R. Crawshaw, S. Cullen and T. Williamson, *Human rights and policing* (2006), pp. 20; Commonwealth Human Rights, Initiative *The police, the people, the politics: police accountability in Uganda* (2006), pp. 8-10. Available at: http://www.humanrightsinitiative.org/publications/police/uganda_country_report_2006.pdf (accessed 10 April 2018).

11 J. T. Walker, *Policing and the Law*, Prentice Hall (2002), pp. 23.

12 M. Daruwala and A. Chaltin, *Stamping Out Rights: The Impact of Anti-Terrorism Laws on Policing* in T. Boyd-Caine, (Ed.) (2007), pp. 40.

13 S. Mount, *Policing and human rights: Time for real change in Uganda* (15 May 2013) *The Daily Monitor* available at: www.monitor.co.ug (accessed 8 September 2014). Sarah Mount was the program officer for the Police Reform Commonwealth Human Rights Initiative.

14 Commonwealth Human Rights Initiative, *The police, the people, the politics: police accountability*

international practice which requires government to impose a legal obligation upon law enforcement to operate efficiently, effectively and democratically while upholding the rule of law.¹⁵ The latter obligation enables policing formulation for law enforcement while ensuring accountability. The police in Uganda often use their authority for protecting the interests of the current government.¹⁶ During the colonial era, the police served the interests of the government rather than the public. The police were controlled by the executive; used to control but not protect the public; protected the interests of the government; and were generally alienated from the public, characteristics that are akin to Uganda's current police force.

On the contrary, an effective law enforcement abides by the rule of law; is accountable to the community; acts with sufficient transparency; prioritizes the protection of citizens; upholds human rights; and works with the public in the execution of its duties.¹⁷ Although there are various mechanisms to ensure accountability of law enforcement in Uganda, most of them merely remain on paper.¹⁸ The police continue to conduct themselves improperly with impunity. Law enforcement has created a culture of corruption, lack of transparency, non-accountability and self-regulation. The next section will examine the operations of the Counter Terrorism Police Unit and its associated security agencies, and how they contribute to torture in the country.

in Uganda (2006) ISBN: 81-88205-29-X. PART V—Powers, duties and privileges of police officers: Available at: http://www.humanrightsinitiative.org/publications/police/uganda_country_report_2006.pdf (accessed 10 May 2018).

15 *Ibid.*

16 *Ibid.*, para 11. See also Human Rights Watch, *World Report 2003 Uganda* (2003), (accessed at <http://www.hrw.org/wr2k3/africa13.html> on 11 February 2018). In January 2002, the Uganda Peoples' Congress political party staged a peaceful demonstration in Kampala, Uganda. The police responded violently by firing upon the crowd killing a journalist. Several demonstrators were also detained.

17 See note 16 above, and C. E. Stone and H. H. Ward, "Democratic policing: A framework for action" 10(1) *Policing and Society: An International Journal of Research and Policy* (2000), pp. 11.

18 Commonwealth Human Rights Initiative *op. cit.* para. 32.

2. COUNTER TERRORISM LAW ENFORCEMENT IN UGANDA

2.1 Counter Terrorism Police Unit and Joint Anti – Terrorism Task Force

Every counter terrorism strategy requires careful coordination of various resources in order to effectively combat the crime. It is therefore imperative to have specialized agencies within law enforcement that are dedicated to the fight against terrorism. The Uganda Police Force therefore created the Counter Terrorism Police Unit that is charged with the mandate of diffusing explosives; rescuing hostages and negotiating for their release; apprehending terror suspects; and investigating acts of terrorism.¹⁹ The Counter Terrorism Police Unit reports directly to the Uganda Police Force Directorate of Terrorism.²⁰ The Counter Terrorism Police Unit is comprised of regular police officers who receive some form of additional training on counter terrorism.²¹ However, the effectiveness of this unit has often been undermined by the lack of adequate training, limited resources and the lack of manpower.²² These challenges have impeded on the unit's ability to detect acts of terror before they happen and respond to them appropriately.²³ Regardless of its inadequacies, the Uganda Police Force retains the Counter Terrorism Police Unit as one of its main divisions.

In order to address the deficiencies of the Counter Terrorism Police Unit, the Uganda Police Force established the Joint Anti-Terrorism Task Force (JATT) that operates alongside the unit.²⁴ The JATT is best described as a paramilitary agency which spearheads counter terrorism operations in Uganda.²⁵ The agency's members are selected from various institutions including the military, police and security personnel. JATT's operations have raised a number

19 See: Immigration and Refugee Board of Canada, *Responses to information requests* (2013). Available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/07/UGA102830.E.pdf> (accessed 01 April 2018).

20 *Ibid.*

21 U.S. Department of State, *Country Reports: Africa Overview*. Country Reports on Terrorism 2015 (2015). Available at: <https://www.state.gov/j/ct/rls/crt/2015/257514.htm> (accessed 02 April 2018).

22 See: www.upf.go.ug/directorate/ (accessed 02 November 2017); Responses to information requests. Available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/07/UGA102830.E.pdf> (accessed 31 April 2018).

23 *Ibid.*

24 United States Department of State, *Country Reports on Terrorism 2011 - Uganda* (2012). Available at: <http://www.refworld.org/docid/501fbc9928.html> (accessed 05 April 2018).

25 *Ibid.*

of legitimate concerns because the agency's mandate is not codified and most of its operations are secretive with minimal accountability.²⁶ The agency has developed an infamous reputation for brutality and violence towards suspects of terrorism.²⁷ Suspects are frequently swooped up by plain-clothed undercover personnel who deliver them to secret locations where their appointment with torture awaits.²⁸ After harrowing ordeals, some suspects are charged with terrorism while others are released without charge or even being produced in court.²⁹ However, a considerable number of suspects never survive the intense torture that is designed to extract as much terrorism intelligence as possible.³⁰ Some of the survivors reported that JATT personnel utilize any object within reach to inflict trauma, including whips, sticks, chairs, hammers and butts of guns during interrogation.³¹ In addition to battery, chili is often sprayed into eyes, noses and ears, and suspects endure inhumane treatment such as prolonged starvation; being chained in uncomfortable postures; and electrocution.³²

JATT's reliance on torture is emblematic. The Uganda Police Force is notorious for conduct of security operations in a manner that disregards the rule of law, human rights and the welfare of the community.³³ Mount notes that the Uganda Police Force is one of the worst violators of human rights violators in

26 B. Baker, "Multi-choice policing in Uganda" 15(1) *Policing and Society: An International Journal of Research and Policy* (2005), pp. 19.

27 A. L. Sage, *African Counterterrorism Cooperation: Assessing Regional and Subregional Initiatives* (2007), pp. 85.

28 V. V. Ramraj, M. Hor and K. Roach, *Global anti-terrorism Law and Policy* (2012), pp. 590; Refugee Documentation Centre, *Information regarding abuses carried out by the ISO in Uganda* (2010); J. Rone, "State of pain: Torture in Uganda" 16(4) *Human Rights Watch* (2004), 4; S. Pavic and J. Kyriazis, *Presumed innocent, behind bars: The problem of lengthy pre-trial detention in Uganda*, International Human Rights Program (2011). Available at: http://www.asf.be/wp-content/uploads/2014/06/ASF_UG_Pre-trial-detention-report-Univ-Toronto_2011.pdf (accessed 05 April 2018).

29 Pavic and Kyriazis (n 28 above).

30 S. Lamwaka, *Preventing torture in Uganda*, The Finnish NGO Foundation for Human Rights (2011). Available at: <http://projects.essex.ac.uk/ehrr/V6N2/Lamwaka.pdf> (accessed 07 August 2017); The Redress Trust, *Torture in Uganda: A Baseline Study on the Situation of torture Survivors in Uganda* (2007). Available at: http://www.redress.org/downloads/publications/TortureUganda_Apr%2007.pdf (accessed 02 April 2018); Open Society Foundations *We're tired of taking you to court: Human rights abuses by Kenya's Anti-Terrorism Police Unit*, pp. 24.

31 J. Davis, 'Evaluating counterterrorism in Africa' (2010) 212; S Lamwaka *Preventing torture in Uganda*, The Finnish NGO Foundation for Human Rights (2011). Available at: <http://projects.essex.ac.uk/ehrr/V6N2/Lamwaka.pdf> (accessed 29 July 2017); The Redress Trust *Torture in Uganda: A Baseline Study on the Situation of torture Survivors in Uganda*. Available at: http://www.redress.org/downloads/publications/TortureUganda_Apr%2007.pdf (accessed 29 April 2018).

32 *Ibid.*

33 Commonwealth Human Rights Initiative, *The police, the people, the politics: police accountability in Uganda* (2006). Available at: http://www.humanrightsinitiative.org/publications/police/uganda_country_report_2006.pdf (accessed 10 April 2018), pp. 8-10.

the country in terms of subjecting citizens to various forms of torture.³⁴ Mount attributes this to limited or inadequate training, lack of appropriate resources, and a culture of impunity.³⁵ Such impunity is facilitated by lack of investigation and punishment of police indiscipline and limited oversight or supervision which makes them susceptible to human rights violations.³⁶

2.2 Safe Houses and Torture Chambers

The Constitution of Uganda strictly requires that any individual who is arrested on a charge or suspicion must be detained at a facility that is recognized under the law for that purpose.³⁷ Detaining an individual at a location that is not designated as a detention facility is therefore a violation of the constitution. However, the JATT and Counter terrorism Police Unit in Uganda have repeatedly detained terror suspects at secret locations and so-called safe houses where ill-treatment and infliction of torture can hardly be monitored. It is believed that there are several safe houses dotted around the country. In 2009, the Uganda Human Rights Commission (UHRC) carried out investigations on human rights accusations levelled against the JATT including the use of torture and detaining suspects at certain locations that are not designated as detention facilities.³⁸ It found that the JATT had indeed been responsible for several human rights violations carried out at several locations, including at its headquarters in Kololo, a suburb in Kampala.³⁹ Several cases of torture allegedly perpetrated at Kololo have resulted in deaths of victims.⁴⁰ It is also alleged that the Special

34 S. Mount, *Policing and human rights: Time for real change in Uganda*, Daily Monitor, (15 May 2013). Available at: <http://www.monitor.co.ug/OpEd/Commentary/Policing-and-human-rights--Time-for-real-change-in-Uganda/689364-1852782-5oap1wz/index.html> (accessed 8 April 2018).

35 *Ibid.*

36 B. Baker, "Multi-choice policing in Uganda" 15(1) *Policing and Society: An International Journal of Research and Policy* (2005), pp. 19; United States Department of State, *Country Reports on Terrorism 2011 - Uganda* (2012). Available at: <http://www.refworld.org/docid/501fbc9928.html> (accessed 2 February 2017).

37 Art 23(2) of the Constitution of Uganda.

38 Uganda Human Rights Commission, *12th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda* (2009). Available at: <https://www.google.com/search?q=uganda+human+rights+commission+terrorism+investigation&ie=utf-8&oe=utf-8> (accessed 30 July 2017).

39 As above; see also: B. Baker, "Multi-choice policing in Uganda" 15(1) *Policing and Society: An International Journal of Research and Policy* (2005), pp. 19; United States Department of State, *Country Reports on Terrorism 2011 - Uganda* (2012). Available at: <http://www.refworld.org/docid/501fbc9928.html> (accessed 29 July 2017).

40 Human Rights Watch Uganda, *Open secret, illegal detention and torture by the Joint Anti-Terrorism Task Force in Uganda* (2009), pp. 35. The HRW documented several cases including that of Saidi Lutaaya, a hawker who operated at the taxi park in Kampala. Lutaaya was arrested for undisclosed reasons and was

Investigations Unit (SIU), situated at Kireka, Kampala, is equally guilty of such human rights violations.⁴¹

In 2017, a detention facility located at Jinja, known as Nalufenya high security prison, came into the limelight for torture of detainees, including the Mayor of Kamwege, Godfrey Byamukama.⁴² The mayor together with thirteen other individuals were detained in connection with the gruesome gunning down of the late Assistant Inspector General of Police, Andrew Felix Kaweesi in March 2017.⁴³ The accused persons alleged that they were subjected to repeated acts of torture for a total period of thirty days. They were repeatedly beaten in attempt to force them to confess to the murder of the fallen Assistant IGP.⁴⁴ On 7 November 2017, twelve of the suspects who had not been committed the High Court were granted mandatory bail by the Magistrates Court.⁴⁵ Shortly thereafter security operatives in plain clothes re-arrested them not far from the court premises and whisked them off to an unknown destination.⁴⁶ During the colonial period and after independence, up to the 1990's, Nalufenya was an ordinary police station.⁴⁷ This changed after 2000 when Brigadier Elly Kayanja, the commander of Operation Wembly transformed it into a base for operations to crack down on crime in Kampala.⁴⁸ The Nalufenya Special Investigations Centre was managed by the Flying Squad Unit, under the leadership of Herbert Muhangi, who reported to the former Inspector General of Police, General Kale Kayihura.⁴⁹ The facility housed suspects of serious crimes including terrorism, who revealed that torture often begun immediately upon one's arrival at the facility.

detained at JATT's headquarters in Kololo. He was subsequently tortured until he could not stand on his own. He was later taken to hospital with serious injuries to his entire body where he later died.

41 Human Rights Watch Uganda, *Uganda: Torture, extortion, killing by police unit* (2011). Available at: <https://www.hrw.org/news/2011/03/23/uganda-torture-extortion-killings-police-unit> (accessed 01 August 2017), para. 16.

42 S. Lubwama, *Kaweesi suspects reveal torture, death at Nalufenya* (26 May 2017). Available at: <http://www.monitor.co.ug/News/National/Kaweesi-suspects-reveal-torture--death-at-Nalufenya/688334-3942506-bpvrki/index.html> (accessed 31 April 2018).

43 *Ibid.*

44 *Ibid.*, para. 6.

45 J. Kigongo, *Kaweesi murder suspects re-arrested after securing bail* (7 November 2017). Available at: www.monitor.co.ug/News/National/Kaweesi-murder-suspects-rearrested--bail-Sajjabi/688334-4176704-ta329w/index.html (accessed 10 April 2018).

46 *Ibid.*

47 S. Kafeero and A. Bagala, *Nalufenya: A look inside the dreaded police station* (21 May 2017). Available at: <http://www.monitor.co.ug/News/National/Nalufenya-look-inside-dreaded-police-station/688334-3935154-gmx0xd/index.html> (accessed 30 April 2018).

48 *Ibid.* para. 7.

49 *Ibid.* para. 10.

Following the release of pictures of seriously wounded detainees, including the Mayor of Kamwenge, the UHRC instituted investigations into the torture allegations at the facility.⁵⁰ The police, attempting to resist or obstruct the process, granted investigators limited access to the facility or to those detained there. The UHRC report nevertheless confirmed and highlighted incidents of torture perpetrated at the facility, and upon review of the report, Parliament recommended the closure of Nalufenya.⁵¹ A senior police officer was perplexed with the public outcry that ensued.⁵² He reasoned that similar treatment was meted out at the Kireka Special Investigations Unit and at several other safe houses across the country.⁵³ He also noted that the facility housed dangerous individuals who are accused of murder and terrorism who cannot be released within 48 hours as mandated by the constitution.⁵⁴ This raised several questions about police regard for the protection against torture even during counterterrorism operations. However, Okoth Ochola, the current Inspector General of Police of Uganda, who assumed office in March 2018, closed the controversial facility, reverting it back to its original use as police station.⁵⁵ Nonetheless, it is still alleged that there are several other secret detention centers situated all over the country.⁵⁶

3 LEGAL STANDARDS ON THE PREVENTION OF TORTURE

3.1 International Framework on Torture

The protection against torture, inhuman and degrading treatment is fundamental to the preservation of human dignity. The Universal Declaration of Human Rights (UDHR) as well as the International Covenant on Civil and Political Rights (ICCPR) both prohibit any treatment that falls within the category of

50 Daily Monitor, *Parliament tells Uganda govt to close Nalufenya torture chambers* (24 May 2017). Available at: <http://perilofafrica.com/parliament-tells-uganda-govt-close-nalufenya-torture-chambers/> (accessed 10 May 2018).

51 *Ibid.*

52 Kafeero and Bagala *op cit* para. 25.

53 *Ibid.*

54 Kafeero and Bagala *op cit* para. 26.

55 J. Kato, "Why IGP Ochola closed Nalufenya" *Daily Monitor* (29 April 2018). Available at: <http://www.monitor.co.ug/News/National/Why-IGP-Ochola-closed-Nalufenya-Special-Forces-/688334-4535048-orwltz/index.html> (accessed 17 May 2018).

56 *Ibid.*

torture.⁵⁷ The ICCPR further requires that individuals under detention must be treated with dignity⁵⁸ and this must be done even during emergencies.⁵⁹ The Human Rights Committee (HRC) in General Comment 20 emphasized the importance of the protection against torture, inhuman and degrading treatment, and noted that there can never be a justification for torturing an individual.⁶⁰ This protection is also repeated in the Convention against Torture (CAT) which defines acts of torture as:⁶¹

“... 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 a third person information or a confession, punishing him for an act he or a third person has committed or is 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.”

The elements of torture highlighted in the definition under Article 1 of the CAT are as follows: there must be an intentional infliction of mental or physical pain that causes suffering to the victim; for the purpose of obtaining a confession or other information; and such treatment must be instigated or authorized by a public official or person acting in an official capacity. In addition, the prohibition of torture has attained the status of *jus cogens* within international law.⁶²

Despite its universal prohibition, torture is still widely employed by counter terrorism law enforcement and agencies in Uganda for the purpose of extracting confessions and intelligence.⁶³ Such acts fall squarely within

57 Article 5 of the UDHR; Article 7 of ICCPR.

58 Article 10 of the ICCPR.

59 Article 4(2) of the ICCPR.

60 HRC General Comment 20, Article 7 (Forty-fourth session, 1992), U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 3.

61 Article 1 of the CAT

62 E. De Wet, “The prohibition of torture as an international norm of *jus cogens* and its implications for national and customary law” 15(4) *European Journal of International Law* (2004), pp. 97; Robben Island guidelines for the prohibition and prevention of torture in Africa. Available at: http://www.achpr.org/files/special-mechanisms/cpta/rig_practical_use_book.pdf (accessed 27 April 2018), pp. 7.

63 Redress Trust, *Torture in Uganda: A baseline study on the situation of torture survivors in Uganda* (2006). Available at: http://www.redress.org/downloads/publications/TortureUganda_Apr%2007.pdf (accessed 29 April 2018).

the classification of torture as prohibited under international law. The CAT obligates state parties to ensure that they prohibit acts of torture carried out by State agencies such as the police⁶⁴ as well independent or private actors.⁶⁵ Uganda therefore has an obligation to criminalize all forms of torture and punish those who are found guilty of perpetrating it.⁶⁶

The classification of a particular act as torture must be assessed subjectively on a case by case basis in relation to necessity and proportionality,⁶⁷ as well as the physical condition of the victim of torture.⁶⁸ Any form of physical harm, mental/psychological pain and suffering that is inflicted upon such individuals automatically falls under acts of torture which are prohibited by international law.⁶⁹ The proper implementation of this protection against torture necessitates educating and training law enforcement in lawfully acceptable methods of arrest, interrogation and treatment of detainees.⁷⁰ This would minimize the recurrence of acts of torture within counter terrorism law enforcement which would in turn improve the image of the police in Uganda.

The CAT also mandates States to conduct an impartial investigation whenever a detainee complains about torture.⁷¹ In Uganda, however, as noted above, notwithstanding that torture is prevalent at detention facilities and acknowledged by authorities, investigations are seldom carried out. In addition to investigation of allegations of torture, Uganda also has a duty to inspect its detention facilities to ensure that the living conditions are not detrimental to the health and safety of detainees.⁷² In *Mukong v Cameroon*⁷³ the HRC held that poor detention conditions may very well amount to torture, inhuman and degrading treatment depending on the state of the facility. It was noted that there are indeed certain minimum standards which every detainee is entitled to, for example, food, clothing, bedding and medical attention.⁷⁴ Living conditions

64 Article 16 of the CAT.

65 General Comment 20, para. 13.

66 Article 4 of the CAT.

67 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, UN Doc. E/CN.4/2006/6 (23 December 2005), para. 39.

68 General Comment 20, para. 2.

69 M. Nowak and E. McArthur, "The distinction between torture and cruel, inhuman or degrading treatment" *16(3) Torture* (2006), pp. 147–151.

70 Article 10 of the CAT.

71 Article 2 and 3 of the CAT.

72 *UN Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment*, UNGA Res 43/173 (9 December 1988) para 29(1).

73 *Mukong v Cameroon* HRCte Com 458/1991.

74 *Mukong v Cameroon* HRCte Com 458/1991, para. 9(3).

which do not meet these minimum standards ultimately infringe on the prohibition against torture, inhuman and degrading treatment. Unfortunately, poor living conditions in Uganda's detention facilities appear to be the intended standard. It would appear that the facilities are purposely designed to be as uncomfortable as possible in order to extract information and confessions from the detainees. Jamil Mukulu, a former leader of the Allied Democratic Forces (ADF)⁷⁵ who was detained at Nalufenya prison facility described the condition of the premises as a 'pigsty' that was not suitable for human beings.⁷⁶

3.2 African Regional Framework on Torture

The African Charter on Human and Peoples' Rights (ACHPR) also prohibits torture and mandates State parties to enact legislation that criminalizes such conduct.⁷⁷ The ACHPR imposes a duty upon States to educate police officials on the prohibition of torture and ensure that all allegations of torture are investigated.⁷⁸ In *Okiring v Uganda*,⁷⁹ the African Commission held that where an individual is injured during detention or within the custody of security officials, there is a strong presumption that he/she was tortured. In such instances, the State must prove that its security operatives did not engage in such actions.⁸⁰ Where an individual claims to have been tortured, the State has an obligation to conduct an independent investigation into the allegation.⁸¹

In 2008, African Union adopted the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (*Robben Island Guidelines for the prohibition and prevention of torture in Africa*).⁸² The guidelines acknowledge that torture,

75 The ADF has been designated as a terrorist organization under the Second Schedule to the Anti-Terrorism Act of Uganda (2002).

76 Kafeero and Bagala *op cit* para. 25.

77 Article 5 of the ACHPR 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."

78 See Article 6 of the ACHPR.

79 Communication 339/2007: *Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v Republic of Uganda*.

80 *Okiring v Uganda*, para. 97.

81 *Okiring v Uganda*, para. 98; Communication No. 187/2001: *Dhaou Belgacem Thabti v Tunisia* (14 November 2003) Committee against Torture CAT/C/31/D/187/2001.

82 Robben Island guidelines for the prohibition and prevention of torture in Africa. Available at: http://www.achpr.org/files/special-mechanisms/cpta/rig_practical_use_book.pdf (accessed 27 April 2018).

inhuman and degrading treatment or punishment is a vice plaguing most African states.⁸³ It also underscores that prohibition and prevention of torture are interrelated and important for ensuring human dignity.⁸⁴ States must not therefore just end at prohibiting torture under their national laws, but should also adopt measures that prevent such conduct. In this regard, states must adopt international instruments on the prohibition of torture and promote related regional initiatives;⁸⁵ criminalize the use of torture;⁸⁶ prevent impunity of perpetrators;⁸⁷ and adopt mechanisms for the investigation of complaints.⁸⁸ The second aspect which relates to prevention of torture requires states to implement procedural safeguards for detainees;⁸⁹ ensure that the conditions of detention conform to the basic minimum standards;⁹⁰ implement measures to oversee and supervise law enforcement;⁹¹ train law enforcement;⁹² and encourage the participation of civil society organizations.⁹³ Part three of the guidelines emphasize the need to respond to victims of torture by providing medical care, preventing reprisals from perpetrators, rehabilitation, and compensation.⁹⁴ The Committee for Prevention of Torture was established to oversee the implementation of the *Robben Island Guidelines*.⁹⁵

The African Commission acting under the authority of Article 45(1) (b) of the ACHPR,⁹⁶ adopted the *Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*.⁹⁷ The African Guidelines emphasize that African states have an obligation to respect the prohibition against torture even during counter terrorism by criminalizing torture, ensuring accountability for violations and providing effective remedies for victims of torture.⁹⁸ The African framework creates accountability measures that guide

83 See para. 1 of the Introduction to the *Robben Island Guidelines*.

84 See para. 3 of the Introduction to the *Robben Island Guidelines*.

85 See Part I. A of the *Robben Island Guidelines*.

86 See Part I. B of the *Robben Island Guidelines*.

87 See Part I. E of the *Robben Island Guidelines*.

88 See Part I. F of the *Robben Island Guidelines*.

89 See Part II. A of the *Robben Island Guidelines*.

90 See Part II. C of the *Robben Island Guidelines*.

91 See Part II. D of the *Robben Island Guidelines*.

92 See Part II. E of the *Robben Island Guidelines*.

93 See Part II. F of the *Robben Island Guidelines*.

94 See Part III of the *Robben Island Guidelines*.

95 ACHPR/Res 158(XLVI) 09.

96 Article 45(1) (b) of the ACHPR.

97 Adopted by the African Commission on Human and Peoples' Rights during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015).

98 Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, para. D

State parties in the prohibition and prevention of torture. Such measures include ensuring accountability of law enforcement by promptly investigating human rights abuses and prosecuting those found in violation.⁹⁹ One of the most emphasized measures therein is the enactment of national legislation that prohibits torture, inhuman and degrading treatment. It is also important to briefly examine the East African sub-regional framework and how it contributes to the prevention and prohibition of torture, cruel, inhuman and degrading treatment.

3.3 East African Sub-Regional Framework on Torture

The East African Community (EAC) originated from the Customs Union between Uganda and Kenya in 1917.¹⁰⁰ Tanzania was admitted into the Customs Union in 1927. The main function of the Union was to facilitate trade between the three partner states.¹⁰¹ Later between 1948 and 1961, the Union was restructured into the East African Commission with the aim of establishing a federal government.¹⁰² However, differences in ideologies between the three partner states led to its collapse in 1977.¹⁰³ The EAC was revived in 1999 with the signing of the Treaty for Establishment of the East African Community.¹⁰⁴ The membership of the EAC has expanded from three to six countries with the admission of, Rwanda, Burundi and South Sudan.¹⁰⁵

The EAC has a vision to create a prosperous, stable and politically unified sub-region for the benefit of its peoples.¹⁰⁶ While the EAC's main agenda is the facilitation of trade, the sub-region now recognizes the role of human rights and its impact on the quality of life of its citizens. The EAC Treaty provides that a foreign State may be admitted into the EAC on condition

(i).

99 Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, Part 1(D).

100 Global Edge, *EAC*. Available at: <https://globaledge.msu.edu/trade-blocs/eac/memo> (accessed 14 April 2018).

101 *Ibid*.

102 F. Oluoch, "Leaders launch economic bloc" (28 July 2013) *Daily Nation*. Available at: <https://www.nation.co.ke/lifestyle/dn2/Leaders-launch-economic-bloc-/957860-1929534-10ksbk8/index.html> (accessed 13 April 2018).

103 East African Community, *History of the EAC*. Available at: http://www.eac.int/index.php?option=com_content&view=article&id=44&Itemid=54 (accessed 23 March 2018).

104 For more information, see: <http://www.eac.int/treaty/> (accessed 23 March 2018).

105 The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18 June 2007 and became Members from 1 July 2007. South Sudan was admitted into the EAC in April 2016.

106 East African Community, *About EAC*. Available at: http://www.eac.int/index.php?option=com_content&id=1:welcome-to-eac&Itemid=53 (accessed 24 June 2015).

that it respects democracy, the rule of law and human rights.¹⁰⁷ According to the EAC Treaty, these same principles must be observed by all member states of the EAC.¹⁰⁸ Pursuant to this commitment, the Council adopted the Plan of Action on Promotion and Protection of Human Rights for the East African Community¹⁰⁹ which contained a number of strategies on the protection of human rights, including the adoption of a Bill of Rights for protection of human rights in the EAC.¹¹⁰ In addition, the Council proposed compliance with the Paris Principles on National Human Rights Institutions; empowering national human rights institutions; National Plans of Action; improving human rights reporting; ratification of all international human rights treaties; and improving awareness.

In 2012, the East African Legislative Assembly (EALA) passed the EAC Bill of Human Rights.¹¹¹ The Bill of Rights adopts measures for the protection and enforcement of human rights in the region. The Bill of Rights prohibits use of torture in any form whether physical or mental.¹¹² However, the Bill of Rights is not yet operational for want of assent from the EAC Heads of State. Citizens therefore do not have the capacity to sue member states in the East African Court of Justice (EACJ) for human rights violations.¹¹³ In 2005, the Council concluded a Draft Protocol to extend the jurisdiction of the EACJ to include claims of human rights violations. However, the Draft Protocol has also not yet been approved. Regardless of this impediment, the EACJ has entertained some cases involving human rights under the commitment of States in the EAC Treaty.¹¹⁴

107 Art 3(3) (b) of the EAC Treaty of 1999.

108 Art 7(2) of the EAC Treaty of 1999.

109 EAC/CM 15/Decision 36.

110 Sec 3 of the EAC Plan of Action on Human rights.

111 East African Community *EALA passes Bill on Human Rights* available at: http://www.eac.int/index.php?option=com_content&view=article&id=988:eala-passes-bill-on-human-rights&catid=146:press-releases&Itemid=194 (accessed 29 March 2018).

112 Article 17(d) of the EAC Human and Peoples' Rights Bill of 2011.

113 International Justice Resource Center, *East African Court of Justice*. Available at: <http://www.ijrcenter.org/regional-communities/east-african-court-of-justice/> (accessed 29 March 2018).

114 See for example: *James Katabazi and 21 others v Secretary General of the East African Community and the Attorney General of the Republic of Uganda* held in the East African Court of Justice at Arusha, Case no. 1 of 2007; *Omar Awadh and Six Others v Attorney General of Kenya, Attorney General of Uganda, and Secretary General of the EAC*. Decision on Jurisdiction: *Omar Awadh and Six Others v Attorney General of Kenya, Attorney General of Uganda, and Secretary General of the EAC*. 1 November 2011, EACJ First Instance Division, App. No. 4 of 2011.

3.4 National Framework on Torture

The Constitution of Uganda prohibits the use of torture, inhuman and degrading treatment in all its forms.¹¹⁵ The prohibition is considered absolute in that the Constitution does not provide for any derogations even in instances where a state of emergency is declared.¹¹⁶ The Police Act of Uganda forbids police officers from torturing any individual and states that any officer who does so commits a crime.¹¹⁷ In instances where a detainee alleges to have been tortured, the Act requires that a prompt and independent investigation must be carried out to verify the claims.¹¹⁸

In addition to the Constitution and the Police Act, Uganda enacted the Prevention and Prohibition of Torture Act¹¹⁹ in 2012 which specifically prohibits acts of torture. According to the Prohibition of Torture Act, torture is defined as an act or omission that inflicts excessive pain and suffering which may be physical or mental.¹²⁰ The pain and suffering has to be caused deliberately in order to obtain information against the will of the victim,¹²¹ for the purpose of punishing an individual,¹²² and for the purpose of getting an individual to cooperate for whatever reason.¹²³ The act also lists examples of torture¹²⁴ which include the application of physical trauma or the threat thereof;¹²⁵ the administration of mind-altering compounds;¹²⁶ threats to death;¹²⁷ and threats to friends, relatives or another person.¹²⁸ The Act emphasizes that all methods of torture are unlawful regardless of the circumstances¹²⁹ and that torture is a criminal offence.¹³⁰ Any individual may bring a complaint of torture to the Police Commission or authority regardless of whether they are the victim.¹³¹ In

115 Article 24 of the Constitution of Uganda.

116 Article 44(a) of the Constitution of Uganda.

117 Section 25 of the Uganda Police Act.

118 *Ibid.*

119 Prevention and Prohibition of Torture Act of Uganda of 2012.

120 Section 2 of the Prevention and Prohibition of Torture Act of Uganda.

121 Section 2(1) (a) of the Prevention and Prohibition of Torture Act of Uganda.

122 Section 2(1) (b) of the Prevention and Prohibition of Torture Act of Uganda.

123 Section 2(1) (c) of the Prevention and Prohibition of Torture Act of Uganda.

124 See also: Section 1 of the Second Schedule to the Prevention and Prohibition of Torture Act of Uganda.

125 Section 2(2) (a) of the Prevention and Prohibition of Torture Act of Uganda.

126 Section 2(2) (b) of the Prevention and Prohibition of Torture Act of Uganda.

127 Section 2(2) (c) of the Prevention and Prohibition of Torture Act of Uganda.

128 Section 2(2) (d) of the Prevention and Prohibition of Torture Act of Uganda.

129 Section 3(1) of the Prevention and Prohibition of Torture Act of Uganda.

130 Section 4 of the Prevention and Prohibition of Torture Act of Uganda.

131 Section 11 of the Prevention and Prohibition of Torture Act of Uganda.

fact, the Act places an obligation upon all individuals who have a suspicion that torture has or is taking place to file a report with the Police Commissioner.¹³² When such a complaint is made, a prompt investigation must be instituted and if found guilty, perpetrators must be held accountable.¹³³ In addition, individuals who bring such complaints of torture must be protected against retribution and intimidation by the State or the police.¹³⁴ It must further be noted that the Act renders evidence that is obtained through torture inadmissible¹³⁵ and any person who utilizes such information or evidence for the purpose of prosecution of a particular case commits an offence.¹³⁶

The Constitutional Court of Uganda and the Human Rights Commission have had the opportunity to interpret the prohibition on torture. In the case of *Emmanuel Mpondi v Chairman Board of Governors & 2 ORS*, the Uganda Human Rights Commission ruled that the whipping of students to a point that they get injured constituted cruel, inhuman and degrading treatment.¹³⁷ While the Commission merely condemned corporal punishment in schools, the Children's Act abolished it completely.¹³⁸ Likewise, in *Kigula and Others v The Attorney-General*, the Constitutional Court of Uganda held that the death penalty is a violation of the protection against torture.¹³⁹

The Prohibition of Torture Act of Uganda as well as international law clearly prohibit torture regardless of the intended outcome and criminalize such conduct. However, despite such an elaborate legislative framework on the prohibition of torture, counter terrorism law enforcement agencies continue to subject detainees to torture with impunity. Torture often occurs with the knowledge of senior police officials who are supposed to hold junior police officers accountable for such misconduct.¹⁴⁰ With impunity permeating most public institutions in the country, investigations on police misconduct also hardly materialize.¹⁴¹ While the Prevention and Prohibition of Torture Act of Uganda

132 Section 20 of the Prevention and Prohibition of Torture Act of Uganda.

133 Section 11(b) of the Prevention and Prohibition of Torture Act of Uganda.

134 Section 21 of the Prevention and Prohibition of Torture Act of Uganda.

135 Section 14 and 15 of the Prevention and Prohibition of Torture Act of Uganda.

136 *Ibid*

137 *Emmanuel Mpondi v Chairman Board of Governors & 2 ORS* UHRC 1 (1999-2002).

138 Section 106A of the Children's Act of 2016.

139 *Kigula and Others v The Attorney-General* (2005) Constitutional Court of Uganda, pp. 197.

140 Kafeero and Bagala (n 47 above), para. 10.

141 United States Department of State, *Country Reports on Terrorism 2011 - Uganda* (2012). Available at: <http://www.refworld.org/docid/501fbc9928.html> (accessed 2 April 2018).

is a very important piece of legislation, it largely remains unimplemented in practice. Police and security agents are in the habit of condoning and covering up for the misdoings of their colleagues, which hinders effective accountability.¹⁴² As such, there is urgent need to ensure accountability of law enforcement officials in order to prevent further torture of suspects.

4. ACCOUNTABILITY FOR TORTURE BY LAW ENFORCEMENT OFFICIALS

The principle of accountability which forms the cornerstone of every democratic state necessitates that all officials who perform a public mandate must be answerable to the public they serve.¹⁴³ Accountability is so important that it is written into the Constitution of Uganda under the National Objectives and Directive Principles of State Policy.¹⁴⁴ Although the objectives and principles of state policy are not directly enforceable, they constitute guidelines by which government and its agencies are supposed to fulfil their mandate. The process of accountability establishes checks and balances that minimize the probability of abuse of authority.¹⁴⁵ Auerbach notes that the effective accountability of police requires a command of ranks; procedures for lodging complaints; oversight of juniors; access to the judiciary; the right to access information; reasonable transparency of police work; restraint; and observing the rule of law.¹⁴⁶

In April 2013, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, noted important principles for ensuring accountability during counterterrorism operations.¹⁴⁷ The Special Rapporteur emphasized that in order to ensure accountability, there was a need to prohibit systematic violations

142 Human Rights Watch Uganda, *Open secret, illegal detention and torture by the Joint Anti-Terrorism Task Force in Uganda* (2009), pp. 36.

143 M. Bovens, *Public accountability* (2003). Paper for the EGPA annual conference, Oeiras Portugal September 3-6, to be presented in workshop 8 (Ethics and integrity of governance) 2003. Available at: <http://www.law.kuleuven.be/plaatsingsdienst/integriteit/egpa/previous-egpa-conferences/lisbon-2003/bovens.pdf> (accessed 18 April 2018).

144 National objectives and directive principles of state policy, Objective XXVI of the Constitution of Uganda.

145 A. Schedler, L. J. Diamond and M. F. Plattner, *The self-restraining state: Power and accountability in new democracies*. Lynne Rienner Publishers (1999), pp. 13.

146 J. N. Auerbach, "Police accountability in Kenya" 3 *African Human Rights Law Journal* (2003), pp. 279.

147 Framework principles for securing the accountability of public officials for gross or systematic human rights violations committed in the course of States-sanctioned counter-terrorism initiatives. A/HRC/22/52, 17 April 2013 (accessed 22 April 2018).

of human rights including abuses that are authorized by the State; securing the right to the truth; emphasizing the role of accountability; implementing measures that combat impunity,¹⁴⁸ and limiting the unjustifiable invocation of the national security defense in order to preclude review.¹⁴⁹ The Special Rapporteur also noted that in order for accountability to be properly achieved, there was a need for government to uphold the principle of the rule of law at all times.¹⁵⁰ It is therefore important to briefly examine some of the internal and external accountability mechanisms which contribute to the accountability of the police institution as well as make an assessment of their effectiveness.

4.1 Internal Accountability Mechanisms

Internal accountability measures are those checks and balances established within the police institution that ensure the answerability of law enforcement officials for their actions. These mechanisms can prove essential for the elimination of the use of torture against detainees, resolving cases of indiscipline, and ensuring professionalism.¹⁵¹ While the measures discussed hereunder may be applicable to the general police force, their effective implementation can have the effect of limiting torture carried out by counter terrorism police and agencies.

4.1.1 Police Disciplinary Code of Conduct

The disciplinary code of conduct was enacted as part of the Uganda Police Act under the disciplinary section.¹⁵² The disciplinary code is applicable to law enforcement officers, students in police academies, local police administrations, security organizations that are subject to the command of the Inspector General of Police, all individuals who perform duties within the police institution.¹⁵³ This implies that counterterrorism police and security agencies, such as the JATT, which perform policing functions are all expected to abide by the code of conduct. The code of conduct requires law enforcement officers not to

148 *Ibid* para. 13.

149 *Ibid* para. 15.

150 *Ibid* para. 38.

151 Kafeero and Bagala *op cit* para. 10.

152 Part VI, Section 44 of the Uganda Police Act.

153 Section 45 and the Schedule of the Uganda Police Force Act.

intentionally deprive individuals of their rights without probable cause and to treat all persons with dignity.¹⁵⁴ Any police officer who contravenes the provisions of the code of conduct may be prosecuted in the disciplinary courts of the police.¹⁵⁵ According to section 49 of the Police Act, every police unit shall have a disciplinary court. Police Disciplinary Courts include the Police Council Appeals Court, Regional Police Courts, and Subordinate Police Courts.¹⁵⁶ These disciplinary courts are indeed a potential avenue for disciplining counter terrorism police officers who engage in torture of detainees. However, it must be noted that the disciplinary code is only useful if it is implemented. For as long as it remains merely theoretical, it ceases to serve the purpose which it was intended for.

4.1.2 Public Complaints Against the Police

The Police Act of Uganda establishes a complaints procedure under which individuals may submit complaints against police officers who are accused of human rights violations, indiscipline and unprofessionalism.¹⁵⁷ These complaints have to be addressed to the highest ranking police officer in the district. Upon receipt of the complaint, the senior officer must initiate an investigation to validate the claims and respond to the complaint with the results of the investigation and the course of action if necessary.¹⁵⁸ The public complaints procedure is an internal investigation. As such, the data on how frequent it is used and whether complainants' grievances are actually investigated remains abstract since such information is not published. In addition, the process involves a senior officer solely examining a complaint against a staff member under his/ her command. After the investigation, the course of action is solely determined by the same officer. The probability of a conflict of interest is very high in such circumstances which potentially blurs the effectiveness of this procedure.

154 Section 2 of the Schedule to the Uganda Police Act. "A member of the force shall - not use the authority of his or her office for undue gain; not take away the liberty or rights of any person without reasonable cause; not convert property of any person or any property which comes into his or her custody by virtue of his or her office; treat humanely all persons at his or her disposal without discrimination ..."

155 Section 49 of the Uganda Police Force Act.

156 Section 50 of the Uganda Police Force Act.

157 Section 70(1) of the Uganda Police Act.

158 *Ibid.*

It is important to note that there is another forum which is empowered to receive complaints against police officers from members the public. This is the Human Rights Desk established under the Uganda Police Professional Standards Unit.¹⁵⁹ Members of the public whose rights have been violated by a police officer can report the matter to the human rights desk for investigation and further action. The human rights desk offers a quick way to report misconduct by law enforcement including torture. The major challenges with the Human Rights Desk are that it is centrally located in Kampala, making it inaccessible to complainants in other regions, and it is manned by the police themselves who may be biased in some cases.¹⁶⁰

Another factor which may render the internal accountability measures so far discussed ineffective is that senior police officers expected to hold junior officers accountable may well be instigators of the misconduct complained against. In several cases, senior police officers have sanctioned the use of violence against citizens.¹⁶¹ For example, during the Ugandan presidential campaigns in 2016, the former Inspector General of Police (IGP) of Uganda, Kale Kaihura, directly instructed his officers to whip the supporters of opposition parties.¹⁶² This was widely criticised, but no disciplinary action followed since the order came directly from the chief of police.

4.2 External Accountability Mechanisms

In order for internal accountability measures to be more effective, there is a need for external accountability measures within law enforcement. While there is a possibility for internal accountability measures to be effective on their own, external accountability measures create an extra layer of oversight that reinforces the process of accountability in form of review. External accountability measures are mechanisms that are established outside law enforcement agencies such as the Police or JATT. External accountability mechanisms are therefore independent and serve the purpose of scrutinizing whether law enforcement officers are indeed held accountable for their actions.

159 For more information, see: <https://ugfacts.com/uganda-police-professional-standards-unit/>.

160 *Ibid.*

161 Kafeero and Bagala *op cit* para. 10.

162 Daily Monitor, *Police okayed beating of citizens, says Kayihura* (15 July 2016). Available at: <http://www.monitor.co.ug/News/National/Police-okayed-beating-of-citizens--says-Kayihura/688334-3295338-v2yu4vz/index.html> (accessed 8 April 2018).

Such avenues include Parliament, the court system as well as independent organizations such as human rights institutions, NGOs and CSOs. External mechanisms play a complementary role to internal accountability mechanisms. In addition, they have an advantage of independence from the influence of law enforcement while carrying out the function of review.

4.2.1 The Judiciary (Courts of Law)

The court system in several countries is often referred to as the administration of justice because of the role they play in every democracy. The courts are an important avenue through which victims of human rights violations can seek redress.¹⁶³ Victims of human rights violations have the right to bring an action before the courts of law in order to seek a resolution. The accessibility, independence and effectiveness of the court system is therefore pivotal towards the enforcement of human rights. It must be noted that law enforcement officers are also subject to the jurisdiction of the courts and are not immune from prosecution should if they violate the law in the course of their duties. In addition, the following issues have to be ensured: access to courts; effectiveness of remedies; and independence of courts.

Independence of the judiciary is obviously essential for ensuring the rule of law in every democratic state.¹⁶⁴ To carry out its function of administering justice, the judiciary should not be subject to undue influence from the other branches of government especially the executive.¹⁶⁵ Dudziak noted that in many developing countries, the judiciary is perceived as an agent of political leaders.¹⁶⁶ Historically, there have been significant tensions between the executive and the judiciary in Uganda which persist even today. The President of Uganda has on several occasions been critical of the judiciary, accusing them of being unpatriotic and biased against him and the ruling party (NRM).¹⁶⁷ The President has even vowed in the past not to follow some court decisions which he thought

163 Article 50(1) of the Constitution of Uganda; Article 23(1) of the Constitution of Kenya.

164 M. Mutua, "Justice under siege: The rule of law and judicial subservience in Kenya" 23(1) *Human Rights Quarterly* (2001), pp. 96.

165 M. Perry, "Protecting human rights in a democracy: What role for the courts" 38 *Wake Forest Law Review* (2003), pp. 635.

166 M. L. Dudziak, "Who Cares About Courts? Creating a Constituency for Judicial Independence in Africa" 101 *Michigan Law Review* (2003), pp. 1622.

167 Commonwealth Human Rights Initiative Uganda *op cit* para. 34.

were not made in his favor.¹⁶⁸ This is a significant challenge to the potential of the Judiciary in Uganda to act as an external accountability mechanism when the Police must be held accountable for acts of torture perpetrated in counter terrorism operations.

4.2.2 The Human Rights Commission

The Uganda Human Rights Commission is a constitutional body responsible for promoting, protecting and monitoring the implementation of human rights in Uganda.¹⁶⁹ The institution is required to investigate allegations of violations of human rights, including carrying out site visits and interviewing complainants such as detainees; to conduct research on different aspects of human rights; and to oversee implementation of human rights by Government and its various institutions.¹⁷⁰ The Human Rights Commission may institute a human rights violation investigation either on its own motion or upon receipt of a complaint.¹⁷¹ The Commission has been instrumental in investigating and highlighting abuse of human rights committed during counter terrorism, as well as seeking proper remedies for victims. In 2009, the UHRC investigated nineteen cases of human rights abuses allegedly perpetrated by the JATT in counter terrorism operations.¹⁷²

The Commission has faced some challenges in the execution of its mandate, including lack of adequate security for investigations to be conducted in some areas; intimidation of victims and witness to silence them; threats to employees of the Commission; and denial of access to information, restricted areas and victims in custody.¹⁷³ Regardless of these challenges, the Commission has performed commendably. It is able to do so partly because its independence is adequately secured under the Constitution.¹⁷⁴ It has been able to execute its

168 *Ibid.*

169 Art 51(1) of the Constitution of Uganda.

170 Article 52 of the Constitution of Uganda.

171 Article 52(1) (a) of the Constitution of Uganda; Section 7 of the Uganda Human Rights Commissions Act.

172 Uganda Human Rights Commission, *12th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda*. Available at: <https://www.google.com/search?q=uganda+human+rights+commission+terrorism+investigation&ie=utf-8&oe=utf-8> (accessed 9 April 2018) (2009), p. 12.

173 *Ibid.*, p 38.

174 Article 54 of the Constitution of Uganda. Compare Article 59(2) (g) of the Constitution of Kenya.

mandate free from control or influence by any institution or individual. This makes the Uganda Human Rights Commission an important and potentially effective external accountability mechanism over violations committed by counter terrorism law enforcement agencies.

4.2.3 Civil Society Organizations

Civil society refers to the collection of various non-governmental organizations, pressure groups and institutions that advocate for the interests and spirit of the common citizenry. Civil society organizations (CSOs) play a very important role in every democracy to ensure the rule of law, transparency and democracy, service delivery, protection of human rights and accountability among many other objectives.¹⁷⁵ There are several civil society organizations operating in Uganda with the main objective of ensuring the promotion and protection of human rights. When it comes to accountability of law enforcement, the civil society organizations whose mandates fall within this area may be classified under two categories: organizations that focus on human rights abuse by law enforcement; and organizations that focus on reform within the law enforcement institution.¹⁷⁶

While civil society organizations are often promising avenues for addressing human rights due to their independence and focus on the interests of society, they are often underfunded and lack expertise.¹⁷⁷ In addition, CSOs are often treated with suspicion depending on the source of their funding and objectives. These organizations also face opposition from the governments which view them as essentially anti-establishment.¹⁷⁸ In Kenya, for example, authorities issued shoot to kill orders in a crackdown on terrorists and radical Muslims in April 2014, and warned NGOs and human rights organizations to keep off.¹⁷⁹ CSOs thus have a limited potential to serve as external accountability

175 KPMG, *Civil society and accountability – should donors try to influence civil society efforts to strengthen accountability?* Available at: http://www.kpmg.com/eastafrica/en/services/Advisory/Development-Advisory-Services/Thought_Leadership_at_DAS/Documents/DAS_Paper_3%20-%20Governance.pdf (accessed 10 April 2018) (2011), pp. 2.

176 Commonwealth Human Rights Initiative Uganda *op cit* para. 41.

177 A. Fowler, "The role of NGOs in changing state-society relations: perspectives from Eastern and Southern Africa" 9(1) *Development policy review* (1991), 53.

178 Commonwealth Human Rights Initiative Uganda para. 41.

179 Kimaiyo Warns NGOs to Keep off Government's Crackdown on Terrorists and Radical Muslims – We

mechanisms in situations where protection against torture is violated in counter terrorism operations.

4.2.4 The Media

The media is a collective term for all forms of mass communication including radio, TV, newspapers, internet, magazines, billboards, mail and telephone. The media plays an important role in any democracy and is often referred to as the watchdog of democracy and the principles it stands for.¹⁸⁰ In the course of their duties, the media exposes misconduct including human rights violations, implicates errant officers, and provides the public with more information which the police and government might want to conceal as it would tarnish their image.¹⁸¹ It is no wonder that some members of the media are often intimidated, targeted and even arrested for their role in publicising certain information. Due to the effectiveness of the media in uncovering cases of human rights abuses, the governments of Kenya and Uganda, for example, have desperately attempted to curtail freedom of the press.¹⁸² Such attempts include raids and confiscation of material, suspension of operation licences, prosecuting journalists and enactment of laws that effectively limit freedom of the press and expression.¹⁸³ Regardless of these attempts to silence the media, journalists continue to carry out their duties, and play a vital role in pressurizing government and its agencies to abide by the principles of democracy and rule of law.

5 CONCLUSIONS AND RECOMMENDATIONS

International, regional, sub-regional and national law all contain protections that criminalize and prohibit the use of torture on detainees regardless of the intended outcome. In addition, Uganda has an Act dedicated to the prohibition of torture. While this model piece of legislation is undoubtedly important, it remains

Will Finish Them (7 April 2014) *Kenyan Daily Post*. Available at: <http://www.kenyan-post.com/2014/04/kimaiyo-warns-ngos-to-keep-off.html> (accessed 28 August 2014).

180 J. Schultz, *Reviving the fourth estate: Democracy, accountability and the media* (1998), pp. 3.

181 Commonwealth Human Rights Initiative Uganda *op cit* para. 42.

182 D. Ziegler and M. K. Asante, *Thunder and silence: The mass media in Africa* (1992), pp. 2; J. Butler, "4 Evolving Political Accountability in Kenya" 10 *The Political Economy of Development and Underdevelopment in Africa* (2013), 93.

183 *Ibid*

largely unimplemented in relation to counter terrorism police and agencies who continue to torture suspects with impunity. The issue is also made complex by the fact that there are internal accountability measures within law enforcement which are designed to curb misconduct. These include police disciplinary codes as well as public complaint measures which have been largely ineffective.

In addition to the ineffective accountability measures, the problem of incitement and condoning of indiscipline by senior officials further fuels indiscipline and abuse of human rights by junior officers.¹⁸⁴ This gives junior officers the confidence that their indiscretions will go unpunished since they are acting on the orders of their seniors. It is unarguable that combatting terrorism in Uganda requires an effective and agile Police force. The police must however operate within the parameters of the law. Respect for the rule of law and observance of human rights should not be regarded as a hindrance to effective policing, even in counter terrorism operations. It is therefore recommended that there is need for a change of mind set in the manner in which the Police and other agencies responsible for combatting terrorism in Uganda approach their work. They must regard themselves as strictly bound by the laws that have been put in place; they must consider themselves as accountable to the public they are mandated to protect and serve; and they must be transparent. This change of mind set could be facilitated by improved and better training of police officers on human rights, acceptable treatment of suspects and detainees, and proper interrogation technics.

It is also recommended that the legal framework for policing in Uganda must be revisited, to provide for clearer articulation of accountability measures and incorporation of enforcement mechanism. Accountability measures should be both internal and external, with accent on external measures not likely to be ignored by police officers and their superiors. It is also recommended that only units or agencies provided for under laws clearly articulating accountability measures should be deployed in counter terrorism operations. Thus, although the JATT has made some contribution to the prevention of terrorism in Uganda,¹⁸⁵ it should be suspended, pending the codification of its mandate under improved

184 Kafeero and Bagala *op cit* para. 10.

185 A. Habib, *Police foil terror attack on Kampala installations, arrest several suspects with explosives* (14 September 2014). Available at: www.galaxyfm.com.co.ug/2014/09/14/ (accessed 02 April 2018); New Vision, *Uganda arrests two terror suspects* (7 April 2015). Available at: www.newvision.co.ug/new_vision/news/1323705/uganda-arrests-terror-suspects (accessed 01 April 2018).

policing legislation.

It is finally recommended that notwithstanding resource constraints, Police and other responsible agencies in Uganda should, in line with international best practice,¹⁸⁶ develop protocols for planning, execution and post-execution review of counterterrorism operations, which would also incorporate and provide for monitoring of implementation of accountability measures.

¹⁸⁶ For police accountability in the US and UK, for example, see: S. Walker, *Police accountability* (2001), pp. 199-214; S. Holdaway, *Inside the British police: A force at work* (1983), p. 2; and F. M. Costa *et. al.*, “Communication system with improved safety feature” (7 February 2017) US Patent No. 9,564,042.