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**TORTURE IN UGANDA: STATE FAILURE AND A CASE  
OF OLD HABITS DIE HARD.**

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P. O. Box 23276, Kampala

Email: [info@cepa.or.ug](mailto:info@cepa.or.ug)

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## ABSTRACT

Throughout Uganda's history, torture has remained a prominent tool in the repertoire of tactics that the state uses against suspects. It can in fact be argued that the use of torture by regimes is as old as Uganda itself. Dating back to the days of Idi Amin that were characterized by safe houses, torture chambers and disappearing of suspected dissidents, we remain unable to escape the tales of mass arbitrary incarcerations, violence against those anti-regime and misuse of power by security officers. Torture is not new in the Ugandan scene, a fact reported by local civil society organizations like the African Centre for Treatment and Rehabilitation of Torture Victims<sup>1</sup> and international human rights bodies like Human Rights Watch<sup>2</sup>. Charles Onyango-Obbo in one of his weekly articles in the Daily Monitor notes that, "Governments and times change in Uganda, but the one thing all of them have had in common is the appalling reliance on primitive torture of suspects."<sup>3</sup> However, the historical prevalence of torture by Ugandan security forces is more alarming in democratic Uganda because of the robust legal framework that is set out to address prevention of torture and which also provides for accountability for acts of torture.

This analysis will attempt to provide some insight into Uganda's long and troubled history of torture by post-independence governments. It will also explain the current position and policy on torture in Uganda by the government as well as assess the government's ability and willingness to enforce the punishment of torture by state officials. The paper will also explore the question of impunity and the need for punishment of individuals who perform acts of torture and holding the State accountable for failure in the duty to protect against human rights violations. Finally, the paper will assess the relevance of the Prevention and Prohibition of Torture Act passed in 2012 and give recommendations on what Parliament can do to prevent and hold government more accountable for the acts of torture.

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<sup>1</sup>African Centre for Treatment and Rehabilitation of Torture Victims, 'Situational analysis of the prevalence of torture in Uganda', November 2015, available at [http://actvuganda.org/download/Publication/ACTV-Situational-Analysis-on-the-Prevalence-of-Torture-in-Uganda-Report-June-2016\\_2.pdf](http://actvuganda.org/download/Publication/ACTV-Situational-Analysis-on-the-Prevalence-of-Torture-in-Uganda-Report-June-2016_2.pdf), last accessed 30 May 2017.

<sup>2</sup>Human Rights Watch, 'Violence instead of vigilance; torture and illegal detention by Uganda's Rapid Response Unit,' March 23, 2011, available at <https://www.hrw.org/report/2011/03/23/violence-instead-vigilance/torture-and-illegal-detention-ugandas-rapid-response>, last accessed 30 May 2017.

<sup>3</sup> <http://allafrica.com/stories/201705170007.html>

## INTRODUCTION

### *Uganda's Troubled History; The Past We Can't Escape*

To understand Uganda's current situation, we must go back into history and analyze post-colonial regimes, their use of torture as a means of survival and their continued influence today. Tales and recounts of gross human rights violations, a series of military coups and brutal regimes mostly mar post-independence Uganda. In the lead up to President Museveni's civil war and subsequent ascent to power, during the various regimes, rule of law was suspended and a series of crimes were committed against both civilians by both state and non-state actors.<sup>4</sup> Perhaps Uganda's most infamous President to date is Idi Amin Dada, dubbed "the butcher of Uganda." Estimates for the number of his opponents who were killed, tortured, or imprisoned vary from 100,000 to half a million.<sup>5</sup> At the start of Amin's rule, he sent out "killer squads" to hunt down and murder Obote's supporters, predominantly those from the Acholi and Lango ethnic groups, military personnel and civilians.<sup>6</sup> It is this same ruthlessness that would go on to characterize his rule. The victims soon spread out to include anyone accused of supporting the opposition including religious leaders, journalists, professionals and students. Security forces acted with impunity and a record number of lives were lost, with some bodies, never discovered. There were many prominent victims of Amin's repression: Benedicto Kiwanuka, the Chief Justice who "disappeared" after being abducted from his chambers by security officials; Janani Luwum, the Anglican Archbishop who had criticized army behavior and was brought before the President shortly before he died in a faked car accident; even Idi Amin's own wife Kay, whose dismembered body was found in the boot of a car after her husband had found out that she was having an affair with another man.<sup>7</sup>

During the second Obote regime from 1981 – 85, the ghastly precedent of the Amin years continued. The Obote government's four-year military effort to destroy its challengers resulted in vast areas of devastation and greater loss of life than during the eight years of Amin's rule.<sup>8</sup> While the Obote II UPC government prided themselves on being better and less murderous than Amin's the reality was that the abuse of power by security officers, disappearances and various human rights violations recurred. Amnesty International in a 1985 report, cited an estimate between 100,000 and 200,000 people died as a result of the atrocities of that regime. In what seemed to be a turn of the tides for Uganda, President Museveni eventually took control of Kampala in 1986 and became the President of Uganda. The change of government was seen as a chance to re-write the history and mark a new era for the country.

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<sup>4</sup>Accountability form Mass Atrocities; The LRA Conflict In Uganda. Chapter One.

<sup>5</sup>Biography: Idi Amin Dada available via <https://www.thoughtco.com/biography-idi-amin-dada-43590>

<sup>6</sup>Biography: Idi Amin Dada available via <https://www.thoughtco.com/biography-idi-amin-dada-43590>

<sup>7</sup>Report by Amnesty International; Uganda The Human Rights Record 1986 - 1989

<sup>8</sup>The Second Obote Regime, 1981 – 85 via <https://www.globalsecurity.org/military/world/uganda/obote-3.htm>

However as fate would have it, the ghosts of the past continue to haunt Uganda's governments and the mistakes and inadequacies of past regimes have slowly crept back to characterize our state of affairs. In place of the infamous State Research Bureau at Nakasero and Nile Mansions that existed during Amin and Obote II regimes respectively, we now have to deal with Nalufenya<sup>9</sup>.

## **WHERE WE ARE TODAY**

### ***Uganda's current position and policy on torture***

Uganda is a party to all other major international human rights instruments, which outlaws torture and other forms of ill treatment in any circumstances to all human beings.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, defines torture as "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." Article 24 of the 1995 Constitution of Uganda, which states that, "no person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment" specifically, prohibits the use of torture.

Article 44 of the Constitution also makes the right to protection against torture, cruel, inhuman or degrading treatment or punishment a non-derogable right meaning that it cannot be taken away or disregarded by the State under any circumstances. Additionally, the Prevention and Prohibition of Torture Act was passed in 2012 to domesticate the UN Convention, widens the definition of torture to include private individuals, inadmissibility of evidence obtained by means of torture except in instances where such evidence is being used against the alleged perpetrator of torture, punishment for the offence of torture up for 15 years imprisonment, amongst many others (prosecution of individual public officials for participation in torture).

However, despite all these seemingly relevant laws aimed at protecting human rights in Uganda and existing mechanisms, torture continues to be at the heart of government security institutions' approach to policing and providing security with top police and government officers implicated yet going unpunished. Various reports over

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<sup>9</sup>Refer to a Daily Monitor article of Sunday 21, May that details the experiences of victims at Nalufenya.

the years indicate widespread torture, committed with impunity by both state and non-state actors. The Uganda Human Rights Commission (UHRC) in 2011 noted a 55% increase in the violation against torture with 72.5% of all the awards for human rights violations awarded by the Human Rights Commission related to torture. In 2015, torture was reported by UHRC as the highest of all human rights violations in the country comprising 37.95% of all reported violations. The Uganda Police Force, which is charged with protecting people and their property, unfortunately continues to be ranked as one of the top violators.<sup>10</sup>

Illegal detention, detention incommunicado, threats, intimidation, forced disappearance and extra-judicial killings are the common patterns of torture in Uganda.<sup>11</sup> Some of the most notable victims remain human rights defenders, activists, opposition leaders and those seen to be a threat to the regime. More recently, Ugandan media has been awash with different torture reports ranging from allegations made by suspects appearing in court<sup>12</sup>, the gruesome images of Kamwenge Town Council Mayor Geoffrey Byamukama<sup>13</sup> to the now notorious Nalufenya prison accused of being the hub for these violations. After public outcry and loud demands, the Parliament Committee on Human Rights in May 2017 visited Nalufenya. In the report, the Committee observed that detainees “seem to live under fear and that there is a general fear of disclosure of information to any person. Hence, even though the detainees may want to disclose information, they are constrained.”<sup>14</sup> While police continues to vehemently deny these allegations<sup>15</sup>, it is clear that there is an issue that needs to be addressed.

### ***Prevention and Prohibition of Torture Act***

On June 26, 1987, Uganda became one of the first countries to ratify the UN Convention against Torture and other inhuman or degrading Treatment or Punishment. To domesticate obligations under the convention, Uganda took progressive steps to enact a legal framework that criminalizes torture and related actions.<sup>16</sup> The 9<sup>th</sup> Parliament assented into law the Prevention and Prohibition of Torture Bill, 2010 on April 26, 2012.

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<sup>10</sup> <https://ugandaradionetwork.com/story/uhrc-2011-report-pins-police-on-torture>

<sup>11</sup> See African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) report, “The Situational Analysis on the Prevalence of Torture in Uganda.”

<sup>12</sup> <http://www.ntv.co.ug/news/crime/05/may/2017/aigp-kaweesei-murder-suspects-accuse-police-torture-17218>

<sup>13</sup> Al Jazeera, ‘Grim torture images ignite anger against Ugandan police’, 13 May 2017, available at <http://www.aljazeera.com/news/2017/05/grim-torture-images-ignite-anger-ugandan-police-170512233031829.html>, last accessed 30 May 2017.

<sup>14</sup> As reported by the Insider on June 27, 2017.

<sup>15</sup> Uganda Today, ‘Police denies torturing Kaweesi murder suspects’, 6 May, 2017, available at <http://www.theugandatoday.com/news/2017/05/police-denies-torturing-kaweesei-murder-suspects/>, last accessed 30 May 2017.

<sup>16</sup> See Uganda Human Rights Commission joint statement on activities to commemorate the International Day in Support of Victims of Torture. June 26, 2017

The Act was a welcome intervention with the new law expected to translate into a safeguard for citizens and perhaps end the cycle of use of torture. The Act was enacted to give effect, in accordance with Articles 24 and 44(a) of the Constitution, to the respect of human dignity and protection from inhuman treatment by prohibiting and preventing any form of torture or cruel, inhuman or degrading treatment or punishment; to provide for the crime of torture; to give effect to the obligations of Uganda as a State Party to the United Nation's Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other related matters.<sup>17</sup> The Act expounds the offense of torture beyond state actors to include non- state actors. It emphasizes individual responsibility for perpetrators for the offense and resultant repatriations and places responsibility for rehabilitation services on the state. In the past, the civil society organizations perform the bulk of treatment and rehabilitation of torture survivors.<sup>18</sup> The law under Section 6 provides for compensation, rehabilitation or restitution to be made by court. Some of the reparations subscribed include; restitution, compensation and rehabilitation. The act also places jurisdiction of the offense of torture in chief-magistrates court for wider court coverage under Section 17 and makes all evidence obtained through torture inadmissible in court in Section 14.

While the act provides adequate legal framework for investigation, prosecution and the fight against torture that, five years later, we are still grappling with perhaps even more horrendous allegations mostly against state and security officers accused of being the perpetrators of torture. In the words of the Chairperson of the Parliamentary Committee on Human Rights, Hon. Jovah Kamateeka, “It is absurd that torture is increasing in Uganda. Anyone torturing a Ugandan should be held accountable and be brought to book.”<sup>19</sup>

### ***Existing International and Regional Legal Frameworks***

Uganda in principle agreed to outlaw torture and other forms of ill treatment in any circumstances to all human beings.<sup>20</sup>

Article 5 of the African Charter on Human and Peoples’ Rights<sup>21</sup> provides 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

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<sup>17</sup>Section 1; The Interpretation of The Prevention and Prohibition of Torture Act

<sup>18</sup>A presentation on the Prevention of Torture and Rehabilitation of Victims by the ACTV Chief Executive Officer; Samuel Herbert Nsubuga

<sup>19</sup>Statements made by Hon. Jovah Kamateeka after the visit to Nalufenya.

<sup>20</sup> Supra; see Footnote

<sup>21</sup> The African Charter was adopted in June 1981 in Nairobi, Kenya and entered into force in October 1986.



degrading punishment and treatment shall be prohibited. The charter extends coverage of the right to freedom from torture to include respect for the inherent dignity in a human being. This is significant because it deals with the resultant impact of torture to a victim which reduces the individual to the level of losing their human dignity.<sup>22</sup> The Robben Island Guidelines for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (RIG)<sup>23</sup> also emphasizes the prohibition of torture and further urges African states to put in effect and ensure concrete and effective measures. The institutional mechanisms that currently exist to oversee this include; the African Commission on Human and Peoples Rights, the African Court on Human and Peoples Rights and the African Special Rapporteur on Human and Peoples Rights.

The Universal Declaration of Human Rights herein referred to as the UDHR of 1948 prohibits these of torture and other cruel, inhuman degrading treatment or punishment on human beings in all circumstances. It provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>24</sup>

The International Covenant on Civil and Political Rights (ICCPR) prohibits torture and other cruel, inhuman degrading treatment or punishment.<sup>25</sup> The covenant to which Uganda has ratified the first Optional Protocol allows individual complaints of violation of rights under the treaty to the UN Committee on ICCPR.

The Convention against Torture (CAT), commits states to a duty to investigate allegations of torture and cruel, inhuman degrading treatment or punishment. It places significant emphasis on ending impunity through the use of national and international criminal law.<sup>26</sup>

The existence of international criminal justice institutions like the International Criminal Court established by the Rome Statute is a key strategy to hold perpetrators of torture accountable and ensure non re-occurrence of acts of torture. The ICC treaty was ratified by the parliament on June 14, 2002. While the primary responsibility to hold perpetrators accountable is vested in individual states, the ICC exercises jurisdiction only when states are unwilling or unable to investigate or prosecute such crimes. Uganda became the first state to self-refer after the government invited the ICC prosecutor to open an investigation into several allegations of grave crimes in

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<sup>22</sup> African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) report, “The Situational Analysis on the Prevalence of Torture in Uganda.”

<sup>23</sup> It was adopted by the African Commission on Human and Peoples Rights in October 2002, at its 32<sup>nd</sup> Ordinary Session and endorsed by the Assembly of Heads of State and Government of the African Union in Mobutu, Mozambique in 2003.

<sup>24</sup> Article 5 of the Universal Declaration of Human Rights

<sup>25</sup> Article 7 of the of The International Covenant on Civil and Political Rights

<sup>26</sup> See Convention Against Torture available via <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Northern Uganda.<sup>27</sup>

There also exist a number of UN Human Rights Enforcement Mechanisms aimed at ensuring compliance with treaty obligations and prevent torture. This includes the UN treaty monitoring bodies, the special rapporteurs and the Universal Periodic Review (UPR).

In a 2013 report submitted by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reported it indicated concerns about the allegations of inhuman treatment of prisoners.<sup>28</sup> In a 2011 report by Human Rights Watch to the Universal Periodic Review (UPR); one of the most recent additions by the Human Rights Council to ensure observance of human rights, the report also had similar concerns. Human Rights Watch indicated prolonged illegal detention and torture by security forces remain serious and unaddressed problems in Uganda.<sup>29</sup> The report in detail asked the Government of Uganda among others to; “take immediate measures to investigate the excessive use of force and incidents of torture by the security forces and to prosecute and punish its perpetrators; eliminate detention facilities known as “safe houses”, among other recommendations.

### ***Uganda’s Existing Institutions and Enforcement Mechanisms***

- The Uganda Human Rights Commission (UHRC)

The UHRC is a protection mechanism entrenched in the Constitution.<sup>30</sup> The Commission under Article 52 has the power to investigate complaints, conduct monitoring and inspection in places of detention, publish periodical reports on its findings and submits annual reports to Parliament for action.

Over the last couple of years, the UHRC reports have consistently noted that victims of torture constitute the highest percentage of cases reported to the UHRC. Despite the constitutional mandate, the UHRC has been criticized for failing to enforce decisions and hold government accountable.

- Parliamentary Committee on Human Rights Affairs

Established in May 2012, the Committee is dedicated to the protection of human rights as well as the monitoring of Governments’ towards the observance of human rights. The mandate of the Committee includes monitoring and reporting on human rights concerns in every business handled by Parliament; monitoring Government

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<sup>27</sup> Article on Uganda and the ICC via [coalitionfortheicc.org](http://coalitionfortheicc.org)

<sup>28</sup> See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (2013), available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add4\\_EFS.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add4_EFS.pdf)

<sup>29</sup> HRW Submission to UPR (2011). Seen via <https://www.hrw.org/news/2011/03/29/universal-periodic-review-uganda>

<sup>30</sup> Article 51 of the 1995 Constitution of Uganda

compliance with national and international human rights instruments; following up on Government periodic reports to international human rights monitoring bodies; examining the recommendations of UHRC reports and ensuring that Government is held accountable where appropriate.<sup>31</sup>

The Committee receives petitions and complaints on thematic issues related to human rights concerns, government practices and law as part of its mandate.

- The Uganda Police Force

Article 211 of the Constitution establishes the Uganda Police Force. The police are mandated to protect life and property, preserve law and order, prevent and detect crime.

However, the police have garnered a reputation as the perpetrators of human rights violations. The trend as observed and reported by various reports by both the UHRC and several other international organizations illustrate the police whose primary obligation is to protect human rights has failed on this front.

In recognition of acts of torture and other unprofessional conduct in execution of police duties, the Professional Standards Unit (PSU) and the Human Rights and Legal Directorate were established ensure professional standards and observance of human rights. It should also be noted that the Uganda Police with input from ACTV and UHRC developed Anti-Torture guidelines for intended use by the officers, women and men carrying out their duties.<sup>32</sup>

## **THE QUESTION OF IMPUNITY**

***Government's (in) ability and (un)willingness to enforce the punishment of torture by state officials.***

While it is clear that the legal framework and institutions exist to prevent torture, all that remains irrelevant without the political will to enforce them. Unfortunately, the very systems in place to protect Ugandans are the very institutions accused of perpetuating torture against Ugandans.<sup>33</sup>

Despite widespread criticisms from civil society and activists, there is no significant official reaction to the reports of excessive force, targeted attacks and use of torture mostly by security operatives. As disappointing as this is however, it is not surprising. As history has shown us, the use of torture has been an instrumental tool used to keep the status quo in check. After the news broke of Kamwenge Town Council mayor Geoffrey Byamukama where the brutality unleashed on him in secrecy manifested on

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<sup>31</sup>From the report, "The Situational Analysis on the Prevalence of Torture in Uganda."

<sup>32</sup>Supra; Above

<sup>33</sup>Refer to the Human Rights Watch Reports and Uganda Human Rights Commission reports already cited.

his hospital bed to the shock of health workers through deep, septic wounds on both knees and ankles<sup>34</sup>, the expected outcome was that those responsible would face justice. Several months later, we are still waiting and might be waiting for a lot longer. The mayor is just one in the long line of suspects who have suffered at the hands of the police. Many of the 13 suspects charged over AGIP Andrew Kaweesi's killing<sup>35</sup> were paraded before court in obvious agony with exposed wounds on their torso and alleged torture at the hands of security operative while they were detained. There are not the first.

In what played out like a horror movie, key opposition leader Dr. Kizza Besigye faced what is perhaps his most violent arrest to date. Gilbert Bwana Arinaitwe was seen violently attacking the opposition leader's car and later directly spraying pepper spray into the eyes of Besigye rendering him temporarily blind and deaf.<sup>36</sup> Arinaitwe was never arrested.

Besigye has since been the victim of several other violent arrests. Different opposition leaders and their supporters have been the victims of police brutality, torture allegations all met with little and no response from the state.

Perhaps one of the most shared explanations for police partiality is that often times security agents are acting in defense of the state. The victims of security agent's aggressive actions are more often than not characterized as critics of the state, activists, human rights defenders and etc. As a result, there is undoubtedly less desire to hold the officers in charge accountable when they are viewed as agents to safeguard the regime.

While police has for the most part maintained that it is a force aimed at serving all Ugandans, their actions are far from this.

It is therefore upon government to demand that security organs refrain from torturing any and all Ugandans. Without any real repercussions, this is not likely to change.

In what can be considered a step in the right direction, President Museveni condoned the use of torture declaring it unnecessary and wrong.<sup>37</sup> While Museveni's denunciation of torture is important, actions not words are what matter in the end. It remains to be seen whether any of the individuals responsible for torture in Uganda will be held accountable for their actions.<sup>38</sup>

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<sup>34</sup>Daily Monitor article on May, 17, 2017 accessed via <http://www.monitor.co.ug/News/National/Police-torture-mayor-over-Kaweesi-killing/688334-3923814-mh0036/index.html>

<sup>35</sup>Unknown assailants shot Police Spokesperson Assistant Inspector General of Police Andrew Felix Kaweesi dead on Friday March 17.

<sup>36</sup> Gilbert Arinaitwe violently attacked Besigye on April 28, 2011. Details of the story can be accessed via <http://www.africareview.com/opinion/979188-1152942-71vcdb/index.html>

<sup>37</sup> <https://www.independent.co.ug/president-museveni-speaks-torture/>

<sup>38</sup> An article by Sarah Nagle on Police Brutality and Torture in Uganda accessed via

## ***RECOMMENDATIONS***

Despite the enactment of the Prevention and Prohibition of Torture Act 2012, there has been no single perpetrator convicted under the law. Without the implementation of the law, the allegations of torture and inhuman treatment are likely to continue. While the guidelines for implementation of the anti-torture legislation have been developed there is need to make them widely available to law enforcement officers and make sure there is distribute and to train law enforcement agencies on application of these guidelines.

The first recommendation would therefore be to all the different stakeholders; civil society, judicial officers, security agents and etc. to see to it that all are equipped with the knowledge of the law and any perpetrators are held accountable under that law.

Checks and balances are put in place to ensure that organs of the state are not free to run amok. In this regard, the judiciary as a safeguard of the rights of Ugandans must be able to hold any and all perpetrators accountable for their crimes. The justice system should therefore take a more hands on approach not only to condemn the use of torture but also to ensure that all perpetrators are held accountable.

The Uganda Human Rights Commission and the Parliamentary Committee on Human Rights as mechanisms to protect human rights in Uganda should be better equipped. Currently the UHRC struggles with issues such as resources and manpower. As bodies aimed at protecting Ugandans, they must be prioritized to allow them do their work.

## ***CONCLUSION***

As Uganda recovers from the actions of past regimes, it is the responsibility of government to ensure that we do not deteriorate into the very chaos that they claim to have liberated Uganda from. While the situation is wanting, it is certainly controllable. With the different existing laws and institutions, we still have the opportunity to turn the tide.

There is also a need to intervene and curb the forceful and violent nature of police as they are currently the biggest perpetrators of torture in Uganda. The use of torture as has been discussed above remains as a dark stain on Uganda's history. The work that lies ahead will determine the legacy of the government in power. Praised as the liberators in 1986, they are now facing the challenge of repeating the grave mistakes of the past.