

## TORTURE AND FORCED CONFESSIONS IN THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE UNITED KINGDOM AND TANZANIA

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*'Governments that block the aspirations of their people, that steal or are corrupt, that oppress and torture or that deny freedom of expression and human rights should bear in mind that they will find it increasingly hard to escape the judgment of their own people, or where warranted, the reach of international law.'* - William Hague

### Abstract

*This article is a comparative study on torture of suspects in both the UK and Tanzania in the light of municipal legislations and international instruments. The article examines the local statutes and International Instruments which provide for protection of suspects against torture, rights to the suspects and the procedures to be followed by the investigating machinery including police officers. International instruments and municipal laws of the UK and Tanzania prohibit torture. However, there are provisions of law which to a certain extent leave room for the investigation machinery to use unreasonable force and therefore causing torture to suspects during the investigation process. The article has also discussed the interpretation of international instruments and local laws by the courts of the UK and Tanzania.*

**Key Words:** *Criminal Justice, Torture, Concessions, United Kingdom, Tanzania*

### 1.0 Introduction

Torture and inhuman treatment is one of the methods employed in the course of police interrogation with an aim to extract statements or confessions for finding solutions to criminal offences and to accomplish the obligation of criminal investigation. The prohibition of torture is provided in the constitutions of many countries but is not enacted into legislations. Even though statutes are there, the offenders are not prosecuted in many instances due to a number of legal, procedural and practical obstacles. If they are prosecuted at all, they will be imposed lesser or trivial punishment. The core reason behind it is that, there is no independent authority to investigate the matter, or the police is lenient in their powers against offenders. In addition to that, the victims are not given the right to have medical examination in line with international standards promulgated in the Istanbul Protocol<sup>100</sup> or other International Instruments including the Charter of the United Nations, Universal Declaration of Human Rights, International Convention on Civil and Political Rights.

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<sup>100</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Treatment or Punishment, 1999.

Torturing of human beings is generally an inhuman act. The origins of torture date back to 530 AD, when the great Roman jurists espoused the virtues of torture as 'the highest form of truth. Greek legal orator Demosthenes believed that 'no statements made as a result of torture have ever been proved untrue.<sup>101</sup> Now laws are enacted to prevent the torture of animals like, the Wild Bird Conservation Act of 1992 and the Captive Wildlife Safety Act of 2003 both of the US. Likewise, certain laws have been enacted to prevent the torture of human beings. Complaints of abuse of power, torture of suspects in custody by the police and other law enforcing agency having the power to detain a person for interrogation in connection are on upward trend.<sup>102</sup> Of late, such complaints have assumed a lamenting dimension projecting the incidence of torture, assault, injury, extortion, sexual abuse and death in custody etc. Compared with other crimes, custodial crimes are particularly heinous and revolting as they reflect betrayal of custodial trust by a public servant against the defenceless citizens. Custodial crimes violate law, human dignity and human rights.<sup>103</sup>

### 1.1 Torture

Torture poses problem to human beings. It threatens life and existence. There are several definitions of torture. Under the Convention against Torture<sup>104</sup> it is considered to be other cruel, inhuman or degrading treatment or punishment.<sup>105</sup> Torture is defined as,

'any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or 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, 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 persons acting in an official capacity.'<sup>106</sup>

Normally, it is regarded as torture when the offence is committed by a state organ or official, mostly the police force and the police officers, who have statutory powers to deal with suspects of crimes.<sup>107</sup> Infliction of pain or any other kind of inhuman treatments of civilian are regarded as normal offences of assault, battery, gross decency and others of the like, which are punishable as criminal offences under the penal code.<sup>108</sup>

101 [http://thejusticecampaign.org/?page\\_id=175](http://thejusticecampaign.org/?page_id=175) (accessed on 12 May 2016).

102 shodhganga.inflibnet.ac.in/bitstream/10603/2714/.../18\_chapter%209.pdf. (accessed on 12 May 2016).

103 Law Commission Report on Custodial Crimes of India, 1994.

104 The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

105 *Ibid.*

106 The Convention adopted by General Assembly Resolution on December 1984 and came into force on 26<sup>th</sup> June 1987.

107 LHRC Report of 2009, at.29.

108 [Cap. 16, RE 2002].

The Tokyo Declaration made by the World Medical Association (WMA) of 1975 defines torture as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone on the order of any authority, to force another person to yield information to make a confession or for any other reasons.<sup>109</sup>

## 1.2 Method of Torture

Torture can be inflicted through different methods. It can be physical including; sustained beating including punching, kicking and hitting the victim for a prolonged period, whipping, burning, rape and suspension upside down, submersion into water almost to the point of suffocation and electric torture with shocks of high voltage on various parts of the body, very often on the genitals or nipples or private parts of human beings which is said to be as sexual torture.<sup>110</sup> It can also be psychological, including threats, deceit, humiliation, insults, sleep deprivation, blindfolding, isolation, mock executions, witnessing torture of others (including one's own family), being forced or to torture or killing others and withholding of medication or personal items.<sup>111</sup>

## 1.3 Confession Caused by Inducement

Confession is a statement by which an individual acknowledges his or her guilt in the commission of a crime.<sup>112</sup> Since, confessions are the most incriminating and persuasive evidence of guilt that the state can bring against a defendant; confession caused by inducement, threat or promise can be used as evidence against the victim.<sup>113</sup> The use of torture to extract confessions and obtain information has formed an integral part of legal and political practice throughout history.<sup>114</sup> A forced confession is a confession obtained by a suspect or a prisoner under means of torture, enhanced interrogation technique or duress.<sup>115</sup>

## 2.0 International Instruments

The prohibition of torture in international law is notable and that it is absolute, applying at all times and in all circumstances. Article 5 of the 1948 Universal Declaration of Human Rights states: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' The right to be free from torture and other ill-treatment is taken up in major international and regional human rights treaties, including the Charter of the United Nations Organization;<sup>116</sup> Universal Declaration of Human Rights;<sup>117</sup> International

109 Reproduced from Kijo-Bisimba and Peter Maina C. *Justice and Rule of Law in Tanzania*.p.70 in *Human Rights in Tanzania* by Chris Peter Maina, (Dar es Salaam: Dar-es-Salaam University Press, 2005) at 84.

110 [www.faluninfo.de/imdetail\\_foltermethoden/.../1151916750.html](http://www.faluninfo.de/imdetail_foltermethoden/.../1151916750.html) (accessed on 13 May 2016).

111 [www.amnestyusa.org/.../Issues/Torture/Accountability for Torture](http://www.amnestyusa.org/.../Issues/Torture/Accountability%20for%20Torture) (accessed on 13 May 2016).

112 [Legal-dictionary.thefreedictionary.com/confession](http://legal-dictionary.thefreedictionary.com/confession).

113 Section 29 of Law of Evidence Act, [Cap. 6, R. E. 2002].

114 <http://laic.columbia.edu/courses/tortured-confessions-from-the-inquisition-guantanamo/> (accessed on 27 January 2017).

115 [www.observer.ug/news-headlines/38490-witness-reveals-jatt-s-ugly-torture-methods](http://www.observer.ug/news-headlines/38490-witness-reveals-jatt-s-ugly-torture-methods) (accessed on 13 May 2016).

116 The Charter of the United Nations was signed on 26 June 1945.

117 The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris.

Convention on Civil and Political Rights;<sup>118</sup> and the African Charter on Human and People's Rights.<sup>119</sup> In 1984 the UN adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, highlighting the particular attention given to this absolute prohibition, and providing additional rules to assist in prevention during investigation. These international instruments/conventions prohibit torture and other forms or cruel inhuman or degrading treatment and punishment as discussed hereunder.

### **2.1 The United Nations Charter**

The United Nations Charter aims among other purposes to achieve international co-operation in solving international problems such as economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights irrespective of race, sex, language or religion.<sup>120</sup>

### **2.2 The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights aims to promote respect for human rights and freedoms universally. Article 5 of the Universal Declaration of Human Rights provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 11 (1) provides that everyone charged with a penal offence has the right to be presumed innocent until proved guilty.

### **2.3 The International Covenant on Civil and Political Rights**

From the preamble of the Covenant<sup>121</sup> one will see an individual having a duty towards other individuals to strive for the promotion and observance of the rights recognised under the Covenant. Article 4 provides the State parties to the covenant shall not take measures which are inconsistent with International law. Article 7 of the covenant provides that no one shall be subjected torture or to cruel, inhuman or degrading treatment or punishment. The crux of the covenant with regard to the subject matter is in Article 10. This article provides that the arrested persons or under-trial persons during their custody shall be treated with humanity and dignity. It indirectly states that they shall not be tortured or subjected to cruel treatment. Further, Article 2 (3) (a) of the same Covenant provides that each state has to ensure that any person's rights or freedoms are violated shall have an effective remedy, even when that violation has been made by persons acting in an official capacity.

### **2.4 The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

The UN Convention against torture and other cruel, inhuman or degrading treatment or punishment of 1984, came into force on 26th June, 1987. The Convention comprises 33 Articles divided into three parts. Part I of the Convention define torture, prohibit acts of torture and allied concepts and

118 The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966.

119 African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981.

120 Article 1 of the United Nations Charter.

121 which came into force 23 March 1976.

obliges State Parties to the Convention to ensure that all acts of torture are punished. Part II provides for the machinery for the enforcement of the above prohibition. Part III relates to formal matters. The Convention among other things provides for the condemnation of any inhuman act.<sup>122</sup> It also emphasizes the training of law enforcement personnel and other public officials to prevent torture of human beings in custody.<sup>123</sup> Article 2 obligates the State Parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 7 provides that each state has to ensure that all acts of torture as defined under Article 1 are to be made as offences under its criminal law. In a situation where the person proves to have been tortured by a public official, the Convention provides that such a victim shall be afforded redress and compensation in accordance with national law.<sup>124</sup> It is the responsibility of the State to investigate allegations of torture or ill-treatment provided under Articles 12 and 13. It is the important convention, which prevents the torture of any kind, but most of the states have not ratified, even they ratified this Convention, they are not implementing the same in their states.

## **2.5 The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The Protocol reaffirms to take effective measures for the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. It has given provisions for the formation of committees for visiting the places to strengthen the protection of persons deprived of liberty by torture.

## **2.6 African Charter on Human and People's Rights**

The charter<sup>125</sup> provides, among other things that, human rights, stem from the attributes of human beings. Article 5 of the Charter provides that every individual shall have the right to dignity as a human being and all forms torture, cruel, inhuman or degrading punishment and treatment should be prohibited. In addition to that Article 7.1 (b) provides that every person shall be presumed innocent until proved guilty by a competent court or tribunal.

Other international instruments which provides against torture are the Optional Protocol to the United Nations Conventions such as Geneva Convention IV Exemptions<sup>126</sup>; Additional Protocols to the Geneva Conventions<sup>127</sup> or Rome Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>128</sup>

<sup>122</sup> Article 1 of the Convention.

<sup>123</sup> Article 5 of the Convention.

<sup>124</sup> Article 11.

<sup>125</sup> African Banjul Charter of Human and People's adopted on June 27, 1981, under Article 3 of the Convention.

<sup>126</sup> Article 31 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

<sup>127</sup> Article 11 and 75 of the Protocol Additional to the Geneva Conventions of 12 August 1949.

<sup>128</sup> Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 Rome, 4.XI.1950.



## 2.7 European Convention on Human Rights

The Convention is formed by taking into consideration the Universal Declaration of Human Rights. The aim of European Council is to form ECHR for collective enforcement of certain rights of the Universal Declaration. Article 3 provides prevention of torture or degrading treatment or punishment.<sup>129</sup>

## 2.8 The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Convention for the Prevention of Torture and Inhuman or Degrading treatment or Punishment of 1987, came into force on 1st March, 2002. The Convention comprises 23 Articles divided into five parts. Chapter I of the Convention provide for the establishment of European Committee for the prevention of torture and with the co-operation of national authorities protect the persons from torture or inhuman or degrading treatment. Chapter II provides for the machinery for the enforcement of the above prohibition. Chapter III and IV relate to the functioning of the committee and appointment of national authority. Chapter V is connected to the acceptance and ratification of the covenant.

The Convention among other things, provides for the committee to travel to the places where the persons are deprived of liberty, interview them, take information from others draw a report.<sup>130</sup> The committee gives suggestions to the parties, if they do not comply then they will put before the members for further steps.<sup>131</sup> This convention works by taking into consideration the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by non-judicial means.

## 3.0 Legal Framework in United Kingdom

It is quite evident that the domestic laws are formed on the foundation of International instruments. In other words all laws are domesticated in United Kingdom in consonance with the International Instruments discussed above. In this caption the authors would discuss the legal frame work of United Kingdom each of them viz., legislative acts, court judgments, works of authority and treaties which are discussed below.

The new statistics from the Independent Police Complaints Commission (IPCC) say 17 people died in or following detention by the police in 2014-15 – six more than during the previous year;<sup>132</sup> all were adult males aged between 31 and 70 years. Ten people were accounted to be White and one person as White and Black Caribbean in England and Wales.<sup>133</sup>

<sup>129</sup> Article 3 of the Convention.

<sup>130</sup> Article 8 of the Convention.

<sup>131</sup> Article 10 of the Convention.

<sup>132</sup> <http://www.theguardian.com/uk-news/2015/jul/23/deaths-in-custody-highest-level-five-years-independent-review> (accessed on 5 March 2016).

<sup>133</sup> Rebecca Teers. "Deaths during or following Police Contacts: Statistics for England and Wales, 2013/14." [http://www.ipcc.gov.uk/sites/default/files/Documents/research\\_stats/Deaths\\_Report\\_1314.pdf](http://www.ipcc.gov.uk/sites/default/files/Documents/research_stats/Deaths_Report_1314.pdf) (accessed on 8 September 2014).

The United Kingdom is a signatory to the UN's Universal Declaration of Human Rights which states that no one shall be subjected to torture. The UK is also a State party to the European Convention on Human Rights 1950, the International Covenant on Civil and Political Rights 1966, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002. It has also ratified the four Geneva Conventions of 1949 and is also a party to the Additional Protocols I and II to the Geneva Conventions including Statute of the International Criminal Court (ICC).

For the application of International law in English Customary rules of International Law are treated as part of English law unless they are inconsistent with the English Statutes.<sup>134</sup> Regarding the treaties, they are not self-executing. A treaty is not part of English Law unless and until it has been incorporated into the law by legislation or domesticated observed in International Tin Council case *J.H. Rayner Ltd. v. (Mining Law) Department of Trade and Industry*.<sup>135</sup>

The legal framework in UK is embodied in legislative acts, court judgments, works of authority and treaties. The substantive law Human Rights Act 1998 provides for damages of a person causing injury, torture or death of the body of a person in custody.<sup>136</sup> The procedural law (Police and Criminal Evidence Act, 1984) contains several provisions safeguarding the fundamental rights and interest of a person in custody.<sup>137</sup> The constitution and relevant statutory provisions on the subject have been supplemented by the significant judicial pronouncements which are given below.

### 3.1 The Constitution of United Kingdom

The UK Constitution is an unwritten constitution and has been developed for a long period. It is the amalgamation of statutes, common law, conventions, works of authority and treaties. The law regarding torture is drawn through the above said sources. The provisions of the European Convention on Human Rights had given prohibitions of torture through different Articles which are relevant to criminal process directly. Article 2 of the ECHR provides that no person shall be deprived of life except either through conviction or through use of force while discharging duties. Article 3 of the ECHR prohibits torture or to inhuman or degrading treatment or punishment. Article 7 of the ECHR provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Because of the expansive interpretation placed on the words 'procedure established by law,' this Article has been held to cover all varieties of Governmental acts which have an impact on personal liberty. Article 8 Right to Privacy and Article 14 says about the prohibition of discrimination. These Articles are also provided under Schedule 1 of the Human Rights Act, 1998.

<sup>134</sup> J. G. Starke, *Introduction to International Law*, 10th edn (Singapore: Butterworth, 1989), at 78.

<sup>135</sup> [1990] 2 AC 418.

<sup>136</sup> Section 8 of Human Rights Act of 1998.

<sup>137</sup> Sections 58, 60 and 76 of Police and Criminal Evidence Act, 1984.

### 3.2 The Human Rights Act, 1998

The Human Rights Act 1998 was enacted in United Kingdom to provide 16 basic rights laid down in the European Convention on Human Rights and are enforceable in United Kingdom Law. If anyone feels his rights are violated, he can file case even against the public authority for the violations of provisions of the Convention in domestic courts of the United Kingdom instead of going to the European Court of Human Rights (ECHR), Strasbourg. If they are aggrieved by the decision of United Kingdom Court, they can file their case in the ECHR.

The United Kingdom Courts can take into consideration the judgments, decisions, declarations, advisory opinion of ECHR while deciding the cases.<sup>138</sup> If the provisions of the convention are in conflict with domestic legislation, the courts shall not override them but can make a declaration of incompatibility.<sup>139</sup> The declaration of incompatibility does not affect the validity and continuing operation and enforcement of domestic legislation.<sup>140</sup>

### 3.3 The Criminal Justice Act, 1988

The provision of the Code that is relevant for the present purpose fall into several categories. Section 134 deals with the criminal offence of torture. This definition is in line with Article 1 of the United Nations Convention against Torture. It provides that a public official or a person acting in an official capacity or on the instigation of them, if any, other person intentionally inflicts severe pain or suffering on another person during the performance of official duty is liable for the offence of torture. The suffering may be physical or mental and inflicted by either act or omission is immaterial.

The two defences which are stated under section 134 (4) is a defence of legitimate authority, justification or excuse against the charge of official infliction of serious pain or suffering and under section 134 (5) a defence of conduct permitted under law of the United Kingdom or a foreign law is inharmonious with it. Section 134 (6) prescribes the punishment of life imprisonment for the offence of torture.

### 3.4 Offences against the Persons Act, 1861

The Code contains provisions intended to operate as a safeguard against custodial torture. These represent, what may be called, the positive side. Secondly, those provisions of the Code, which confer various powers on law enforcement agencies, need to be kept in mind, in so far as they create possibilities of abuse of authority. The police officers, who assaults the suspected person to make him answer the question liable for the assault under section 47 of the Act.<sup>141</sup>

<sup>138</sup> As per Section 2 of the Act. Examples: *R. v. Horncastle (Michael Christopher)*, [2009] UKSC 14; [2010] 2 AC 373, *Reilly's Application for Judicial Review, Re*, [2013] UKSC 61; [2013] 3 WLR 1020, *R. (on the application of Chester) v. Secretary of State for Justice*, [2013] UKSC 63; [2013] 3 WLR 1076.

<sup>139</sup> Section 4(2) of the Act.

<sup>140</sup> Section 4(6) of the Act.

<sup>141</sup> Amy Murphy "100 Payout to Police 'Torture' Victim." <http://www.independent.co.uk/news/uk/crime/100-payout-to-police-torture-victim-7737480.html>, (accessed on 8 September 2014).





### 3.5 Police and Criminal Evidence Act, 1984

This Act has given different powers for obtaining evidence during criminal investigation. These provisions of the Act, which confer various powers to enforcement agencies, need to be kept in mind, in so far as they create possibilities of abuse of authority. To curb such abuse, section 76 of the Act provides that

‘a court shall not allow a confession to be given in evidence against an accused person unless the prosecution has proved a reasonable doubt that it was obtained by oppression or in consequence of anything said or done which was likely to render it unreliable.’

Here ‘oppression’ includes torture, inhuman or degrading treatment and the use or threat of violence. Under this provision, if a person in the custody of a police officer makes a statement leading to the discovery of a fact, the same is admissible even though the confession is wholly or partly excluded. The fact that a statement can be rendered admissible, if it is presented to the trial court as a ‘discovery statement’ and presented at the trial in the contour of a confession marked as a discovery statement, a fact well recognized to every police officer, acts as a lever to the police officer to employ unjust means to secure such a statement. The police know that this is an easy method of circumventing the prohibitions based on practical wisdom, experience, of generations, and deep thinking.

### 3.6 Police Ombudsman in United Kingdom

The Police Ombudsman<sup>142</sup> investigates complaints about the conduct of police officers and where appropriate makes recommendations in respect of criminal, disciplinary and misconduct matters stated here as: i) the Police Ombudsman also investigates matters of public interest and all grave and exceptional matters referred to him and reports as appropriate; ii) publishes reports and makes policy recommendations aimed at improved policing within Northern Ireland; and iii) provides statistical reports for management purposes to the Police Service of Northern Ireland, the Northern Ireland Policing Board and the Secretary of State.

### 4.0 Judicial Decisions in United Kingdom

In the United Kingdom, the people’s resolve to foster respect for international law and Treaties and obligations is reflected in statutes. In fact, parliament has enacted laws to give effect to the international obligation as contained in various Declarations and Conventions. In addition, the courts have also, by their judicial innovation, ensured the effective implementation of those norms. Where the State or its agencies failed to implement the international norms, and the State has ratified or adopted those norms, the domestic courts of the United Kingdom or European Court of Human Rights has intervened to issue directions for the effective enforcement of those norms. Further, the

<sup>142</sup> Complain to the Police Ombudsman online, <http://www.nidirect.gov.uk/complain-to-the-police-ombudsman-online>, (accessed on 8 September 2014).

Courts have interpreted the domestic law in a manner so as to give effect to the implementation of the international norms. The authors do not consider it necessary to refer to all the decisions on the subject/topic, but it would be worthwhile to refer to only some of the landmark decisions under this caption.

The courts try to interpret Article 3 of the European Convention of Human Rights which is a part of their Human Rights Act. In *Wainwright and another (Appellants) v. Home Office (Respondents)*,<sup>143</sup> the applicants Allan Wainwright and his mother went to Leeds prison to visit his step brother. There the prison authorities strip-searched him. The Wainwright filed a case against prison authorities for his humiliating strip-search as a trespass to his person and his right to privacy infringed. It went up to House of Lords and then to then to European Court of Human Rights. The ECHR held that there is no violation of Article 3 and the suffering and humiliation has caused the applicants some pain but is not tortuous or connected with the inhuman treatment or punishment. The court further held that it has not reached the minimum level of severity under Article 3 which depends on different circumstances such as duration of treatment, physical and mental effects, sex age, and health of the victim. The court concluded that it has come within the purview of Article 8 and awarded compensation under Article 13.

The European Court of Human Rights consolidated the interpretation of Article 3 in *Tyrer v. United Kingdom*.<sup>144</sup> In this case, the court tried to differentiate torture, inhumane treatment and degrading treatment based on the concept of severity. It observed that in the ladder of seriousness torture will come first, then inhumane treatment and finally degrading treatment. Article 3 is also made applicable to the persons to be extradited under extradition laws where it has prohibited the extradition of a person who is threatened with torture or inhuman or degrading treatment or punishment in the requesting country. The court further ruled that, it is against the conviction and fortitude of the Article and would 'hardly be compatible with the underlying values of the Convention.'<sup>145</sup> In the case of *A and others v. Secretary of State for the Home Department*,<sup>146</sup> the foreign prisoners were kept in Belmarsh prison without trial under section 23 of the Anti-terrorism, crime and security Act 2001 by the British Government. The House of Lords held that section 23 is incompatible with ECHR Convention and made declaration of incompatibility under section 4 of Human Rights Act 1998. During the hearing of the case<sup>147</sup> by the Special Immigration Appeals Commission (SIAC), the Home Secretary allowed evidence obtained outside the United Kingdom by torture. The House of Lords held that common law which existed for hundreds of years has been not allowing evidence obtained by torture and SIAC's practice is against it.

One can see the Article 3 does not only apply to nationals, but also foreigners who have to be deported to the other countries. In this connection, the ECHR

143 [2003] UKHL 53; [2003] 3 WLR 1137.

144 [1978] ECHR 2; (1980) 2 EHRR 1; IHRL 17; (ECHR 1978).

145 *Soering v. United Kingdom*, [1989] 11 EHRR 439.

146 [2004] UKHL 56.

147 *A & Others v. Secretary of State for the Home Department*, [2005] UKHL 71.

emphasised in the case of *Othman (Abu Qatada) v. United Kingdom*,<sup>148</sup> the deportation of the applicant to Jordan due to the risk of extorting evidence by torture is against Article 3. This judgment reverses the House of Lords judgment.

In *Chahal* case,<sup>149</sup> an individual was involved in terrorist activity in the United Kingdom. The Government wanted to deport him to India. The Court held that even though terrorist act affects the security of the State, still Article 3 of the Convention prohibits torture or inhuman or degrading punishment regardless of the suspected conduct.

The Irish Republican Army (IRA) members were held responsible for terrorist activities in the United Kingdom. They were being interrogated by using different methods of interrogation practices for extortion of information such as wall-standing, continuous noise disturbance, hooding, depriving them sleep and withholding food and drinks. The Government of Republic of Ireland approached the European Court of Human Rights for the violation of Article 3 (torture and other aspects) and Article 5 (right to liberty). The court in the *Ireland Case*<sup>150</sup> held that it amounts to inhuman treatment under the scope of Article 3.

These illustrative cases are cited here simply to show the importance of keeping in mind International Conventions while dealing with questions of national law which emphasizes any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 3 of the ECHR, whether it occurs during an investigation, interrogation or otherwise. If the functionaries of the Government become lawbreakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become a law unto himself thereby leading to anarchy. No civilised nation can permit that to happen.<sup>151</sup> The above court decisions which were based on international instruments as well as domestic legislation clearly had shown the procedure and practice of torture and forced confessions in the administration of criminal investigation in the United Kingdom.

## 5.0 Legal Framework in Tanzania

In Tanzania, the act of torture is dealt widely at national level as well as international level. The State Constitution and statutes guide police officers to follow certain procedures in discharging their duties. These statutes provide the rights of the suspects during their interrogation in police custody as discussed below.

### 5.1 The Constitution of the Union Republic of Tanzania, 1977<sup>152</sup>

The Bill of Rights in Tanzania was incorporated in the 5th amendment of the Constitution of the United Republic of Tanzania (1977 as amended) in 1984 under Part 3 of the Constitution. Article 13 (6) (c) and (e) of the Constitution forbids torture or otherwise excessive or to meet out punishment or treatment

148 [2012] ECHR 56.

149 *Chahal v. The United Kingdom*, [1996] ECHR 54.

150 *Ireland v. United Kingdom*, [1978] ECHR 1.

151 <https://books.google.co.in/books?isbn=1136702180> (accessed on 13 May 2016).

152 [Cap. 2, RE 2002] as Amended time to time.

that humiliates and degrades a person. This is basically addressed *inter-alia*, to the police and security forces. It is intended to ensure humane treatment of suspected persons in custody. The essence of Article 13(6) (c) of the Constitution is that, no person charged with a criminal offence shall be treated as guilty unless and until it is proved in the court of law as a guilty.

## 5.2 The Criminal Procedure Act

After the 5<sup>th</sup> amendment of the Constitution, the Criminal Procedure Act (CPA)<sup>153</sup> was enacted in 1985. Under CPA police officers are given very wide discretion in exercising their powers of arrest, search and seizure.<sup>154</sup> Most of the investigative work is usually carried out by the police department in the powers conferred to it by the Criminal Procedure Act and the Police Force Auxiliary Service Act.<sup>155</sup> In due course of their duty police officer must investigate every case reported to them diligently and with the necessary expertise. They must use professionalism rather than force. In order for a police officer to understand the facts and circumstances of the case they certainly need to interrogate the one who is expected to be familiar with the case. For this reason, section 10 (2) of the CPA provides for police officers to summon any relevant person within the local limit of their police station. Section 10 (3) provides for the manner in which a person can be examined including any clarification made therein. Section 10 (4) of the same Act requires the examiner (Police Officer) to inform the examinee the duty to answer truly all questions asked relating to the case.

Moreover, section 10 (6) requires that the person so interrogated should be informed of the fact that the statement taken may be used in court as evidence in relation to the case. It is necessary that every statement taken and which may perhaps be produced in court as evidence is duly complied in accordance with the law. Any defect in form or content is likely to vitiate its validity in favour of the accused person.

However, there are floodgates of abuse by police under the provisions of section 5 of the CPA which allows the police officers to put a person under restraint for the purpose of investigation on any offences whether there are reasonable grounds of suspecting him to have committed the offence or not.

## 5.3 The Police Force and Auxiliary Service Act (PFASA)

Under this Act,<sup>156</sup> police officers are vested with powers to investigate and interrogate interview the suspects. This means the Police Force and Auxiliary Service Act under section 32 (1) provides the manner on how to deal with the suspect in accordance with section 13 of the CPA. The power given to the police officer is to interview the suspect for ascertaining whether the person has committed offence or not. Such an interview is to be recorded in writing due to the fact that under this interview, the person might make a confession. It is during this process that the police officers use force to extract confession.

153 [Cap. 20, RE 2002].

154 C.P., Maina, & I.H. Juma, *Fundamental Rights and Freedom in Tanzania*, (Dar-ss-Salaam : Dar- es-Salaam University Press,1998), at 146.

155 [Cap. 322, RE 2002].

156 *Ibid.*

## 5.4 The Evidence Act

The Evidence Act<sup>157</sup> for this purpose provides the manner on how confession obtained during interrogation can be admissible in the court of law against the person who made it. Section 27 (1) of the Act provides that confession voluntarily made to a police officer by a person accused of an offence may be proved as against that person. Sub section 3 of the same section provides that the confession is voluntary if the court believes it was not induced by any threat, promise or other prejudice held out by a Police Officer to whom it was made or by any member of the police force.

Therefore, it is the intention of the legislation that confession should not be admissible when the method used to obtain it is through torture and the court will not admit it. However, the mere allegation that the confession was obtained by way of torture will not make the confession inadmissible rather it should be proved that torture led the confessor to give an untrue statement; this is in accordance with section 29 of the Act. This means that even where torture was administered to the accused person if such accused person gave a true statement upon such torture the court will admit the confession.

It is viewed that section 29 of the Evidence Act in a disguise form allows torture so long as the applied torture will lead the person to reveal true statement. This can further open floodgate of acts of torture to continue in Tanzania.

## 6.0 Judicial Decisions in Tanzania

It is observed that there are cases relating to voluntariness of the confession but there are no cases of torture of the suspected persons because the victims are afraid of the police and the police force and there is no possibility of procuring evidence to prove it. The cases related to voluntary confession are discussed hereunder.

In the case of *Elias Kigadye and others v. R.*<sup>158</sup> an area commissioner of Maswa once divulged to a medical doctor what the executive had planned and the doctors expected to do with the following words,

‘what I tell you is a secret and I say it as an area Commissioner. I request you to keep the secret and oath of your profession.’

The President of the United Republic of Tanzania appointed a Commission which will work in Shinyanga Region particularly Maswa District, where witch doctors and the robbers were arrested and tortured. Some of them died because of torture. The Government requested the doctor to write a report of a post-mortem but the doctor indicated that the death resulted from natural death and not torture.<sup>159</sup>

<sup>157</sup> [Cap. 6, R. E. 2002].

<sup>158</sup> (1980) TRL 197.

<sup>159</sup> Hosea Y.K. & Ahmada Shafi, *Fundamental Rights and Freedom in Tanzania*, (Dar es Salaam: Mkuki & Nyota Publishers, 1998), at 148.



In the case of *Josephat Somisha Maziku v. R.*<sup>160</sup> the court held among other things that, it is trite law that the condition precedent for the admissibility of a confession is voluntarily given, a confession is not automatically inadmissible simply because it results from threats or promise. It is inadmissible only if the inducement or threat was of such a nature as was likely to cause an untrue admission of guilt. The above case decision was followed in the case of *Thadei Mlomo and others v. R.*<sup>161</sup> where it was held that under section 29 of the Evidence Act an involuntary confession is admissible if the court believes it to be true. Protection against torture, an inhuman and degrading treatment or punishments in Tanzania are observed in the High Court of Tanzania in cases of *Republic v. Godfrey Ihuya and 3 Others*,<sup>162</sup> *Republic v. Godfrey Ihuya and 3 Others*,<sup>163</sup> and *Thomas Mjengi and Another v. Republic*.<sup>164</sup> In the above cases, decisions were based on international instruments as well as domestic legislation.

## 7.0 Conclusion

As observed from international instruments and domestic laws in the UK and Tanzania, any act of torture to a person is forbidden whether it is physical or mental. There is executive machinery to uphold the rights of individual. In addition to that, there is a clear execution mechanism to deal with the victim of torture. Whilst having included the content of UDHR in the Constitution of the United Republic of Tanzania and ECHR in UK other legislations of those countries have left room for law enforcers to use torture. The room created by legislation is manifested in using the phrases like 'legitimate authority' 'justification' and 'excuse' which are not clearly defined to show what amounts to 'legitimate authority' or 'conduct permitted under law.' Due to these *lacunas* in the enactments the officials as well as executing machinery concerned have been misusing their powers in extracting confession against detainees or offenders.

In the UK, the people's resolve to foster respect for international law and treaties and obligations are reflected in statutes. Comparing Tanzania and United Kingdom, efforts to combat torture in the UK are more elaborate and sophisticated in law and procedure than in Tanzania. Tanzania being common law country has only been following the English law with modification to suit its circumstances.

## 8.0 Recommendation

Under the municipal laws in the UK and Tanzanian as well as international law, victims of torture can sue in municipal court or any other competent court in the protection of human rights. However, there are numerous practical impediments to such lawsuits including the difficulty of securing evidence of torture. There are financial constraints also for legal representation in such

<sup>160</sup> (1992) TRL 227.

<sup>161</sup> (1995) TRL 187.

<sup>162</sup> Criminal Sessions Case No. 8 of 1980.HC, Mwanza, (Unreported).

<sup>163</sup> *Ibid.*

<sup>164</sup> Criminal Appeals No. 28 and 31 of 1991. HC, Dodoma, (Unreported).

cases as well as legal and procedural obstacles to a successful case. Moreover, even if a case is successful and damages are awarded, then the financial compensation does not restore the victim to his/her original position because of inflation or delay in disposition or adjudication.

The experience of torture is perennial physical, psychological, and emotional. Officials including executive machinery who engage in torture including those who give the orders as well as those who carry them out can and should be prosecuted by filing civil cases and criminal cases and disciplinarily sanctions should be taken against them. Nevertheless, history counsels that the decision to prosecute public officials, the actual charges brought, and the penalties or damages sought are often influenced by such extra-legal considerations as public sympathy for the victim or sometimes forgiveness or support for the officials and the political scenarios in which the crime took place.

One of the best 'remedy' for torture is thus prevention as the saying goes 'prevention is better than cure.' The UK and Tanzanian officials should resolutely resist any influence, temptation or encouragement to use torture or cruel, inhuman or degrading treatment against detainees held and questioned in connection with its campaign against any type of offences or heinous crimes and not to torture the offender/detainees in extracting confession based on Laws of UK, Tanzania and international instruments to protect human rights in national, regional, and international level.

In the UK, the people resolve to foster respect for international law and treaties and obligations is reflected in statutes/ domestic legislations. In the same way, in Tanzania, people should resolve to foster respect for international law. Treaties and obligations should be reflected in statutes/ domestic legislation.