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**Compensation for Torture Victims in Uganda: Explaining and
Addressing the Delays**

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Harriet Rwakabbira Kajobe

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Members of the Examining Committee:

Supervisor's Name: **Prof. Dr. Karin Arts**

Readers Name: **Dr. Dubravka Zarkov**

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Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

Inquiries:

Postal address:

Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

Location:

Kortenaerkade 12
2518 AX The Hague
The Netherlands

Telephone: +31 70 426 0460

Fax: +31 70 426 0799

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List of Acronyms

ACHPR	African Charter on Human and Peoples' Rights'
ACTV	African Centre for Rehabilitation and Treatment of Victims of Torture
CSOs	Civil Society Organisations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
MJCA	Ministry of Justice and Constitutional Affairs (Uganda)
OHCHR	Office of the High Commissioner for Human Rights (United Nations)
PPTA	Prevention and Protection of Torture Act, 2012 (Uganda)
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UHRCT	Uganda Human Rights Commission Tribunal
UNCAT	United Nations Convention Against Torture
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Ug Shs	Uganda Shillings
UN	United Nations

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Dedication

This Research is dedicated to my children Comfort K. Nassolo and Mouxin Walugembe and my niece Rhoda Basemera. Let it be an inspiration for you to always be determined to advance yourself in order to make your dreams come true. And to my fellow Ugandan Human Rights defenders who are the voice for the voiceless.

Abstract

Compensation as part of the right to remedy is internationally recognised and provided for in various legal instruments. However, swift payment of compensation for victims of torture has been a challenge for many states. In Uganda, this can partly be attributed to the prevailing political environment, the legal framework in place governing the payment of compensation, and implementation issues.

This paper examines the underlying factors that are responsible for the delay of compensation for torture victims in Uganda from the time of award by the Uganda Human Rights Commission Tribunal (UHRCT) up to the time of actual payment or lack thereof.

The paper clarifies the state obligation in terms of providing compensation to torture victims, the institutional framework and the power dynamics involved and the follow up of the tribunal awards for compensation, the legal framework and its accessibility, enforceability and challenges.

The study indicates that Uganda seemingly is committed to observing human rights and effectuating compensation for torture victims. This is evidenced by the laws, policies, directives and other human rights mechanisms in place or still in the making. However, these efforts have not yet yielded sufficient tangible results in practice. Legal, structural, institutional and individual power relations, and administrative gaps still exist in the system of government in regard to efficient and effective service delivery to victims of torture in the area of compensation.

The paper also formulates some recommendations of what could be done to reduce on the delay of compensation to torture victims in Uganda in the future.

Relevance to Development Studies

Torture is a human rights issue and according to international human rights standards, in Articles 1 and 5 of the Universal Declaration of Human Rights (UN UDHR 1948), all persons are born equal, in dignity and in right, and no one should be subjected to torture. When this fundamental right has been infringed upon, adequate compensation should be given as a means of redress. This is aimed at reinstating the sufferer of torture more or less to her/his original physical and psychological state, to the extent possible. This is important for development because with delayed compensation victims, who may have been incapacitated both physically and mentally as a result of torture, may be deprived of sources of livelihood as well as social networks that could have been helped

to advance them in various dimensions of life. This hinders them victims from generating a standard of living that is adequate for health and wellbeing, both economically, socially and politically.

In addition, consequences of torture and delayed or non-payment of compensation for the victims impose an economic burden on families in treatment and rehabilitation that eventually lead to poverty. In addition, the costs involved and the non-productivity of victims may in one way or another affect the national economy. More to that, the money for compensation that has so far been paid by government to some victims, and that it still owes others, could otherwise have been used in other developmental undertakings that could have contributed to the wellbeing of the Ugandan people at large.

This study is premised on the idea that human rights and development have a close linkage and that development begins with wellbeing of human beings. An incapacitated populace as a result of torture and lack of reparation would lead to impoverishment in the broadest sense of the word. While this might dal-dalat large would be affected, hence an overall negative effect on development results. As Alston has put it, “poverty impedes the freedom to live one’s life to the full because of the absence of education, good health and the like” (Alston 2005:479).

Keywords

Torture, compensation, state obligation, power relations, human rights, Uganda.

Structure of the paper

Chapter 1: Introduction and overview of the study

Chapter 2: Concepts, approaches and theories

Chapter 3: Analysis of field findings;

- i. Current legal framework on compensation of rights violations including torture
- ii. Practice of the existing legal framework in Uganda

Chapter 4: Institutional framework and the respective official mandates and roles in the process of compensation for torture in Uganda.

Chapter 5: Measures undertaken by the state to improve on the delay of compensation and what ought to be done.

Chapter 6: Concluding chapter: summary of the research and overall conclusions.

Chapter 1: Introduction:

This chapter presents an overview of the study which includes an historical overview of torture in Uganda and its definition, the problem statement, justification, the scope of the study and research objectives. It also introduces the research questions, methodology, research methods and data collection tools and techniques, field research process and limitations as well as ethical considerations and positionality.

1.1: Torture in Uganda: Definition and a historical overview

Between 1894 and 1962, when Uganda was a British protectorate, observance of human rights received little emphasis. Rather, “the development of a socio-economic and political system that would tie Uganda into a web of Imperialist Interest” (Mubangizi 2005:169) took shape. Since its independence in 1962, Uganda has gone through various post-colonial political regimes. In each of these, torture has manifested at varying levels as a primary instrument of the respective ruling regimes to insert control under the guise of national security. Torture was especially intensive during the Amin dictatorship (1971-79) and the Obote II era (1980-85) (UN CCPR/C/UGA/2003:13; Sarkin 2014:531).

Torture has been defined by the United Nations Convention Against Torture (UN CAT) 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 (Assembly, UN General 1984: Article 1).

With the end of the Obote II era (1980-85), in 1986 the current National Resistance Movement (NRM) led by Yoweri Museveni took over the government. The program of the new government was premised on moving Uganda away from a track record of human rights violations towards one centred on the protection of the rights of people, and a more humane and inclusive democratic dispensation (Ssekandi and Gitta 1994:191; Mubangizi 2005:171). This was for example evidenced by the inclusion of a Bill of Rights in chapter 4 of the Constitution of Uganda during its promulgation in 1995 as well as the establishment of the Uganda Human Rights Commission (UHRC) by the same Constitution as a human rights ‘watch dog’ mandated to protect and promote human rights of the people in Uganda (Uganda Constitution 1995). Further details of the composition, functions and powers of the Commission, in relation to the awarding of compensation to victims of torture will be provided in later chapters of the paper.

1.2: Problem Statement

1.2.1: The Torture Practice in Uganda and its consequences

There has been a “comprehensive legal regime that prevents and prohibits torture” in Uganda (UHRC: 2016:1). Uganda is a state party to various international and regional instruments that criminalize and prohibit torture (as shall be explained in Chapter 3). However, while reportedly there has been some improvement over time, a systematic practice of torture still exists in Uganda (UHRC report 2016:1). It is reported that “torture has remained the most recorded rights violation and over the years, about 70% of the awards made by UHRC Tribunal to victims of human rights violations related to torture” (Ibid). The reported challenges of addressing torture among others include lack of alternative investigative tools and techniques and impunity and failure to punish the perpetrators (UHRC report 2016 report 2016: xix).

Over the years in Uganda,

“torture has been used as an investigative technique to extract information from suspects to secure easy convictions as well as political repression to oppress the opposition of the ruling regime” (UHRC Report 2016:4).

This includes physical forms of torture such as beating/whipping using sticks or gun butts, kicking all over the body especially in the stomach and ribs, and using pepper spray or electric shocks (UHRC Report 2016: xix). Other forms include: punching with closed fists and slapping, hitting down and stepping onto the victim, placing objects like sticks between fingers and tying and squeezing tightly the fingers together causing gruesome pain, placing victims in insects (e.g. red ants and wasps) that sting and bite, piercing and pulling out fingernails, suffocating in polythene paper, splashing water in nostrils, suspending victims upside down (Redress 2007:5; UHRC Report 2016:xix; ACTV Report 2016:11).

The table below shows the number of complaints received by the 10 regional offices of the UHRC in the country between 2012 and 2016. These offices are Arua (ARU), Gulu (GLU) in the north, Central (CTR) and Masaka (MSK) in central Uganda, Hoima (HMA), Mbarara (MBA) and Fort Portal in the West and Jinja (JJA), Moroto (MRT) and Soroti (SRT) in the East.

Table 1: Number of Torture related complaints registered by UHRC in the last five years

Year	ARU	CTR	FPT	GLU	HMA	JJA	MSK	MBA	MRT	SRT	TOTAL	REGISTERED	% of total registered complaints
2012	10	55	21	55		27	30	31	38	36	303	706	42.9
2013	14	38	24	53	2	21	26	39	25	31	273	720	37.9
2014	32	39	22	48	32	23	34	18	58	52	357	895	39.9
2015	9	45	26	63	14	21	39	33	65	30	345	731	47.2
2016	15	43	85	47	32	24	42	35	31	26	380	848	44.8

To- tal	80	220	178	26 6	79	116	171	156	217	175	1658	3900	42.5
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Source: UHRC Report 2016:4

Victims of torture may suffer physical injuries, chronic pain, ill health and incapacitation. Some victims can no longer be productive (ACTV Report 2016:42; UHRC Report 2016:12). Acts of torture that entail hitting the head may result in rupture of ear drums, fractured nasal ear drum and many other ailments (Forrest 1995:83). In addition, grievous harm as a result of torture may deprive of other rights like sexual rights when victims are rendered impotent and sexually inactive. Injuries as a result of beating and kicking might leave permanent scars on the victims, and may lead to a ruptured spleen and/or liver or any other delicate organs of the body. These injuries may be life threatening (Forrest 1995:83). In some cases torture also leads to death. Records indicate that in a specified period from 2012 to 2016, a total number of 46 cases of death as a result of torture were handled by the Uganda Human Rights Commission (UHRC 2016:12;13). In some other cases, physical torture deliberately causes internal damage and bleeding but no outright external signs of harm which can easily alarm people and the world at large.

Victims may be subjected to psychological torture as well. This might be in the form of threats to shoot or actual shooting around the person, lengthy solitary confinement in a filthy environment, denial of sleep for long hours, detention incommunicado, interrogating victims from burial grounds, mock executions among others” (UHRC 2016: xix). This may lead to psychological stress and depression and mental disorder on the victim. According to Basoglu: “Post-traumatic stress disorder that leads to severe depression, thoughts of suicide or death may occur. In summary, torture may lead to serious medical, psychiatric and psychological problems...” (Basoglu 1992:4).

Torture may also lead to a breakdown of family ties because of incapacitation of the victims in various spheres of their lives. Table 2 below indicates some effects that torture victims in Uganda have suffered in the period 2012 to 2016. Cases of death are not included in this table.

Table 2: Effects of Torture on victims as recorded at UHRC in the last five years

General effects	Specific Effects	2012	2013	2014	2015	2016
Physical Effects	Physical Injuries	239	208	237	257	232
	Chronic pain	26	33	30	41	30
	Disabilities	23	16	15	19	18
	Impotence	03	06	14	01	01
	Others (impaired vision, paralysis etc.	01	01	01	06	05
Psychological Effects	Depression	22	11	31	45	34
	Forgetfulness	03	01	02	01	02
	Broken Families	08	06	08	08	04
	Low self Esteem	08	12	04	08	09

	Sexual Problems	02	01			0-1
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Source: UHRC Report 2016:13.

In my opinion, according to the table above, there is a fairly stable trend of effects of torture on the victims. It gives an indication that torture has been and is still systematic and has more or less the same impact on victims over the years. Intervention by the State is crucial particularly in giving redress to the victims.

1.2.2: The Significance of compensation

Because of the consequences of torture by state agents, compensation by the State becomes very essential (Forrest 1995:94); since the State has failed in fulfilling its obligation of protecting its citizens from the unlawful vice.

As part of the broader notion of reparation, monetary compensation would help the victims manage to bring about their economic relief, to fulfil their basic survival needs and those of their families. It would also assist in payment for treatment of physical or psychological health issues that may have resulted from torture. Compensation contribute to the psychological healing thereby restoring them (Shelton, Dinah 1999:9) and help the victims to “move on to rebuild their lives so that they are not always victims” (UHRC, OHCHR 2012:36).

Furthermore, Compensation also as part of reparation, is meant to undo the political and moral wrongs done by the perpetrator; to reinstate the dignity that was ripped off the victims by torture (Garry, Hannah R 1998:101). However, on the other hand, I envisage that there may be no amount in monetary terms to make up for some damages caused by torture on the victims like permanent incapacitation, disability and loss of life or rape. Nevertheless, unless there is a better alternative in the circumstances it remains very vital to the victims as an indication that the government has owned up to their mistake. Government should therefore ensure that the victims of torture get adequate and quick compensation by ensuring that structures in place are competent to offer the necessary services efficiently

1.2.3: The procedure of obtaining compensation through the UHRC Tribunal

The UHRC was granted quasi-judicial powers by the Constitution (Uganda Constitution 1995). After complete investigation of alleged torture cases as per its constitutional mandate under article 52(a) (Uganda Constitution 1995), and the Commission is convinced that indeed there is sufficient evidence to prove the violation, the matter is set for hearing before the tribunal against the state which is represented by the Attorney General, and following proof on a balance of probabilities, an award is given to the victim(s) accordingly. All services by the UHRC are free of charge and the victims are financially facilitated to attend tribunal thereby enabling even the most indigent in society to access justice. The victims do not have to be represented by personal lawyers, except where they opt for one themselves. This is partly why majority cases of torture are handled by

UHRC. However, appeals from the tribunal are made to the High Court if one party is dissatisfied with the tribunal's decision.

1.2.4: Compensation not being paid in practice

According to my own experience as a worker for UHRC, after the victims have been awarded compensation, the role of UHRC reduces to referring the victim to the MJCA of Justice and Constitutional Affairs (MJCA) and the office of the Attorney General (AG) for settling of the compensation awards. The rest of the process of claiming compensation is left to the individual victim's to follow up. This is problematic among others because there is no streamlined procedure for this purpose at the Ministry which usually puts the victim not in the position to realize payment in the end. Additionally, in instances where the Attorney General appeals in the High Court, it is likely that some torture victims who had been initially assisted by UHRC free of charge, will fail to follow up or will be unable to engage further because of the legal and other costs involved.

Therefore, awards for compensation for the victims of torture by the Uganda Human Rights Commission Tribunal (UHRCT) seem not to be translated easily into actual payment by the government in Uganda in due time. This is in line with Oette's observation that: "remedies for victims, including effective access to justice and substantial reparation, are either not adequately recognized in law or not provided in practice, or both" (Oette 2012:717).

Whereas some UHRCT awards for compensation of victims of torture have been settled by the State (UHRC 2016:179), a substantial number of victims have languished in anticipation of payment of their compensation for periods ranging from several years to over a decade. Below are three examples of cases that were completed, with compensation awarded but the victims not having been paid to date:

1. UHRC/G/172/2001: *Onek Atunya Jervasio vs Uganda people's Defence forces 4th Division* who was awarded compensation of Uganda Shillings (Ug Shs) 9,000,000 by the Commission Tribunal on 24th February 2004 which has not been paid to date.

2. UHRC/202/1998: *Pte Sam Muvonge – and – Attorney General*: The tribunal ruled in favor of the complainant in August 2003 and awarded 4,900,000 Ug Shs which is still pending to-date.

3. UHRC/110/1998: *Mahmood F.E Hassouna – and – Attorney General* whose compensation has pended since June 2003 when the Commission Tribunal awarded a total sum of Ug Shs 18,712,967.

According to the press release issued by the UHRC on the occasion of the UN Day in Support of Torture Victims in 2014, at the time "the outstanding bill was over 3 billion Uganda shillings in compensation awards" (UHRC press statement 2014). By the end of 2016 this had increased to Ug Shs 5 Billion (UHRC Report 2016:265), some of which dated back to over 10 years. This is evidence that government has been slow in

settling compensation awards victims of torture and other human rights violations as a whole (UHRC Report 2016: xix).

1.3: Justification

During my experience of over 8 years working with a National Human Rights Institution, I have on several occasions interacted with victims of torture, which made me appreciate their plight and the pathetic conditions they have experienced as a result of torture. I noticed that torture was meted upon the victims in order to extract information, confession or punishment. This means that torture is commonly exercised before trial of suspected offenders in courts of law, and therefore some innocent people fall victims.

Although UHRC tribunal makes orders for compensation of torture victims, neither UHRC nor any other institution follows-up to ensure receipt of this compensation. This shows that there is a problem and makes me want to find solutions for the marginalised victims. My question in the circumstance has always been, what is it that hampers the government from paying victims of human rights violation?

I chose to research on compensation for victims of torture and not any other violations because torture still occurs in Uganda and it is a human rights violation that has a direct negative impact onto the victim both physically and psychologically as well as the society at large; and needs urgent attention especially politically, medically, economically as well as ethically. It “leads to multiple disabling conditions that interfere with the most basic functions of daily life” (UHRC Report 2016:12). And I believe everybody may be a potential victim of torture regardless of his/her innocence.

I therefore took special interest to establish the reasons that account for the delay of compensation of the victims of the vice despite the government owning up to the fault. I’m convinced that, by establishing the root cause of the delay or non-payment of compensation of the victims of torture, I will contribute to the research on compensation of torture victims in Uganda thus form a basis for strategies of improvement on the delay of the said compensation. It would also facilitate my in-depth understanding of compensation of torture victims.

1.4: The Scope of the study:

My study addresses the delay of compensation by the state only. Therefore, I only considered torture that was perpetrated by state agents, that is where the state is solely accountable. The study therefore works with the UNCAT definition of torture presented earlier.

This research paper will thus not cover cases of torture involving individuals as perpetrators in their private capacity who are held individually accountable as per the provision of Uganda’s Prevention and Prohibition of Torture Act (PPTA) 2012. Although implementation of the PPTA has started, this law is relatively new and still being popularized. My concern of delayed compensation dates long back even before its enactment. Besides, the acts of individual perpetrators acts may not necessarily be held against government. Further analysis of the PPTA 2012 shall be given in Chapter 3.

Additionally, the study does not cover the compensation of victims of torture handled by ordinary courts of judicature rather only compensation awarded in cases of torture handled by UHRC Tribunal. This is because UHRC handles most torture cases and its services are all inclusive and accessible by even the most vulnerable and indigent persons.

1.5: Research Objectives

The main objective of this research was to understand specifically the reasons for the delay or non-payment of compensation for victims of torture by the state in Uganda. This is unpacked through the following sub-objectives;

- i. To analyze state compliance with its human rights obligations in respect to adequate and effective compensation of torture victims.
- ii. To explore and assess the current practices of the UHRC in providing remedies for victims of torture in Uganda, the challenges therein and how the system of compensation can be strengthened.
- iii. To understand how power relations between the different actors involved and other relevant factors affect timely payment of compensation for torture victims in Uganda.

1.6: Research Questions

The main Research question that this paper will address is:

‘What factors account for the delay of compensation awarded by the UHRC to victims of torture by state agents in Uganda, and how could this aspect of delay be improved?’

1.6.1: Sub questions

To answer my main research question the following sub questions will be addressed:

- i. What are Uganda’s state obligations in terms of providing compensation to victims of torture in the country?
- ii. Which institutions are involved and what role do they play in the process of compensation of victims of torture?
- iii. What are the current practices of the UHRC in providing remedies for torture victims in Uganda and its challenges?
- iv. How could delays in providing compensation to torture victims be reduced in the future?

1.6: Methodology

In a bid to establish the factors responsible for the delay and non-payment of compensation for victims of torture, my findings tailored significantly towards the state’s failure to fulfil its obligations of respect, protect and fulfil the rights of its citizens. Delayed or non-payment of compensation is a human rights issue and tantamount to delayed justice

for the victims of torture. If we take a human rights-based approach to the situation of torture victims, then getting in place proper systems of adequate compensation for torture victims is a must and a state obligation.

The study therefore, will adopt a human rights-based approach perspective to assess the situation of compensation of victims of torture in Uganda. In this case, a human rights-based approach perspective means among others that the state is the primary duty bearer for making sure that people are not tortured in the first place. In circumstances where torture occurs, compensation is due and needs to be paid. The very fact that people were and are still being tortured is a human rights violation and a failure on the part of the state as the principal duty bearer to protect the rights of the people.

More so, not compensating the victims of the vice after an official authority ruled against it in favor of the victim is another violation and a failure to fulfil its obligations. Thereby double jeopardy is done to the victims. I would therefore assume that the people have suffered torture and lack of adequate compensation because the state may have not done enough on its responsibility to protect, respect and fulfil the human rights of its people, which is contrary to the various international human rights standards that the country is obliged to adhere to. This shall be expound further later on in chapter 3.

In addition to the above, in analysing the roles of various institutions and individual persons who take part in the process of compensation resulting from UHRCT procedures, the issue of power relations comes out. On this basis, the framework of this study shall further explore the power dynamics and any other possible relevant factors that may be responsible for the delay or non-compensation of victims of torture by the state of Uganda.

I believe that power, authority, resources and legal obligations lie with the state. With this in mind, analysis using a human rights-based approach perspective and the notion of State obligations becomes crucial.

1.7: Research Methods and Data Collection

The research used qualitative methods for gathering information, data and reference materials for this study.

According to O'Leary,

the qualitative tradition calls on inductive as well as deductive logic, appreciates subjectivities, accepts multiple perspectives and realities, recognizes the power of research on both participants and researchers... (O'Leary 2010:113).

Qualitative techniques enabled me to understand the compensation process in Uganda and its shortcomings through interactions with the actors involved from Government, non-governmental organizations and individual human rights lawyers. Qualitative interviews gave an opportunity to observe the behaviour of respondents like body language, tone in response to certain questions, or emotions.

Data collection was done by use of purposive sampling and, to a limited extent, snow balling. According to Tongco, a "purposive sampling technique, also called judgment sampling is a deliberate choice of an informant due to the qualities the informant

possesses” (Tongco 2007:147) and “choosing the purposive sampling is fundamental to the quality of data gathered; thus reliability and competence of the informant must be ensured” (Ibid.).

Purposive sampling was used to identify the specific best-placed and most relevant officials to interview from the selected institutions. Most of these were the heads of the selected institutions and civil society organizations and Heads of Departments that played a role in the compensation process. These included the Chairperson of the Uganda Human Rights Commission which investigates cases of torture and awards compensation to the victims of torture accordingly; the Chairperson of the African Centre for Rehabilitation and Treatment of Victims of Torture (ACTV) an International Non-Government Organisation that deals with treatment and rehabilitation of victims of torture; Directors of Directorates of the Uganda Human Rights Commission that handle the complaints of victims of torture from receipt of complaints, instigations and Tribunal handling and awarding of compensation, as well as monitor “government’s compliance with International Treaty and Convention obligations on human rights” (Uganda Constitution 1995).

Other interviewees included the executive director of Chapter 4 Uganda, a human rights Civil Society Organisation. In addition, the selection included some Heads of Departments in the Ministry of Justice and Constitutional Affairs. This Ministry is the channel through which actual payments to the victims of torture and various other kinds of compensation by the Government are done. Other interviewees included private human rights lawyers as well as the Chair Person of the Human Rights Parliamentary Committee. This Committee ensures that human rights concerns are included in Parliament business including concerns of delayed effectuation of Tribunal awards for compensation of torture victims. All these were selected because they are the most relevant and major actors that directly deal with torture and compensation matters in Uganda.

Non-random sampling was vital in obtaining in-depth and quality information (see *Appendix 1*). This was done before going to the field. Selection was done using my professional knowledge and experience. I also got guidance through inquiries from my work place, the Uganda Human Rights Commission, which guided me among others on the question which other institutions worked on the matters of my interest including CSOs. I also selected and contacted a prominent private human rights lawyer whom I know helps people with following up on their compensation.

I conducted semi-structured interviews. A list of pre-set guiding questions assisted me to make thorough and systematic inquiries into the subject matter of the research for in-depth information from the respondents (see *Appendix 2*). I only used face to face interviews while in field as.

1.8: Field Research Process and Limitations

Initially, twelve (12) interviews had been planned. However, a total of sixteen (16) interviews were conducted instead. This was because some interviewees kept suggesting

other key actors that they felt would be well placed to give certain information that I needed, which they were not in the position to give. This assisted me in obtaining further vital information that I could otherwise have missed.

Given the short time frame available for the field research, I made preparations by getting contacts of some of the informants and actually contacted some of them via telephone and Facebook already before the actual interview.

Once in Uganda, during the first week, I made phone calls to different informants and made appointments for the actual interviews. I also contacted other people to get contacts of other informants that I had been referred to. Some of the informants could be contacted easily on phone and appointments could be made accordingly. Getting others required patience and persistence since their telephones would not go through easily. However, I finally contacted all of them except one whom I substituted easily with another equally competent person knowledgeable of the subject matter.

I went through some bureaucracy to be able to meet and interview informants from the Ministry of Justice and Constitutional Affairs. This could only be done after securing approval from the Solicitor-General in the Ministry. I complied accordingly writing and dropped the letter personally at the Ministry.

As I waited for a response from the Solicitor-General, I managed to interact with some other officials in the same Ministry trying to find out who could be most positioned to handle my subject matter. One of the officials that I was directed to insisted that he could not be interviewed without permission from the Solicitor-General while another, equally senior, government official was willing to talk to me in an interview without necessarily seeking for permission first. An appointment was fixed accordingly and an interview was carried out successfully on the agreed date and time in his office. Later on, fortunately within a week, I was able to get a positive response from the Solicitor-General and I interviewed a second official.

During the interviews, I jotted down a brief outline of notes in a note book. I also did audio recordings during the face to face interviews using my Android mobile phone. The recordings were only made after I requested permission from the respective informants. I made this request either at the time of making appointments or on commencement of the interviews. Out of the sixteen informants that I interviewed, fifteen accepted to be recorded and they did not mind to be quoted in my report. One declined without giving reasons but promised that he would speak as slowly and clearly as possible for the researcher to understand what he put forward. He indeed talked clearly and I was able to capture the vital information during the interview.

The respondents' choice of time of the interview and venue was given priority unless they suggested a date and time that had already been booked for another interview. Rapport was built in all the interviews, permission was sought for recording before the interviews commenced and clarification sought whether their names could be revealed in my report or not.

During my data collection exercise I encountered some limitations. First and foremost, since I did not have funding or any facilitation from anywhere, planning to meet

victims from various parts of the country within the limited time within which I was carrying out the research would be difficult and costly on my side. However, the decision not to interview victims of torture in the end was taken for ethical purposes (see next section of this chapter). It turned into a limitation concerning my data collection. This was so, after I had received contradicting information from the UHRC and MJCA which is responsible for effectuating payments for the victims. Each institution refuted being responsible for following up compensation on behalf of the victims and one of them apportioned blame onto the victims for not following up for their pay. Further details of this shall be given in Chapter 4. Getting the victim's side of the story could have enriched my findings more. However, I was able to confront the above in part through retrieving a communications by the UHRC to MJCA expressing the concern of a victim who had petitioned the Commission that he had followed up his payment at the MJCA for a long time but in vain and wanted the Commission to intervene. In addition, an interview with a human rights lawyer addressed this concern as well since he gave his views on the subject matter on behalf of some victims. He has assisted (but not on pro bono services) some victims in following up pay of their compensation.

Another limitation was noise during interviews. Most interview venues were offices of my informants. The majority of these were located in noisy places along the streets in the city centre of Kampala. Because of this, some interviews would be disrupted by sounds and traffic sirens and horns of moving vehicles on streets. However, since I was allowed to do recordings, I would place the telephone recorder very close to informants and managed to capture what they said.

Additionally, interviewing some of my workmates was an interesting experience. I had to keep out of my positionality as an insider and maintain the position of a student throughout. However, during the interviews with them, I encountered a few limitations in a few instances. Some of them expected me to be knowing some of the information I was inquiring about, especially as regards the stand of the Commission on certain issues. Yet I needed their personal views, given their expertise regardless of what is ongoing on the ground. Some questions would be bounced back to me, asking what my view as a researcher would be on the matter, and some interviewees kept referring me to some other documentation. However, with good rapport, the skills I had acquired and a good working relationship, I was able to freely and confidently probe for their side of the story and views which I eventually obtained.

Finally, some documentation could not be easily accessed for example the government circulars/directives, some statistics of funds allocations to the Ministry of Justice and Constitutional Affairs and their utilisation, complaint details at the Commission in regard to payment of victims of torture. Most complaints involved torture in combination with other violations. I nevertheless picked cases of torture regardless of the additional violations involved. In regard to the finances allocated and statistics, I was able to access some annual reports of the Uganda Human Commission in which most information as regards allocation of finances to cater for human rights violations and other important information could be retrieved.

1.9: Ethical Considerations and Positionality

Throughout the process of conducting my research, strict ethical considerations were followed to ensure the quality and integrity of the research. O’Leary (2014) has stated that it is a researcher’s responsibility to make sure (s) he has “captured ‘truth’, reached conclusions not tainted by error and unrecognized bias and ensure that research is conducted with professional integrity” (O’Leary 2014:47). The research was also conducted according to the ethical standards of respect and privacy. After every interview, I would ask the respective respondents whether there was anything talked about that they would want me to keep confidential, as part of getting their stand on anonymity.

I also made it clear prior to the interviews that the information obtained was for academic purposes only and that it shall not be used in any way that would jeopardize the rights and wellbeing of the interviewees or to harm them as a result of misuse of the information obtained. O’Leary also emphasized that it is important for the researcher to ensure that “the rights and wellbeing of those involved in the study are protected at all times” (O’Leary 2014:47).

I carried out research in an institution that I work for. I decided to nevertheless approach the informants from this institution in a similar way to how I approached other informants. The only difference was that I contacted most of them in person, apart from two who were on leave, to make appointments for the interviews. I kept a bit of distance from them to maintain respect and to be able to get the needed information. This was eased by the fact that I had spent a long period without working with the majority of my informants from the UHRC at the same station. Prior to my study programme at ISS, I spent over 5 years working for rural UHRC Regional Offices when the majority of my interviewees worked at the Head Office in Kampala. During this period we occasionally interacted in meetings and online. Because of my professional approach as a student researcher, and most of the interviewees involved being senior officials who have gone through the same experience of carrying out research, I was able to build rapport and command the desired treatment as a researcher. Nevertheless, some of the interviewees involved did not respond to all the questions when they were unsure of the answers expected.

In regard to anonymity, apart from two informants, others did not mind being quoted. They did not show any sign of need of anonymity. Some said that what they were saying were just facts on the ground. However, to me, it still would not be ethical to expose my key informants who have volunteered information even though the data obtained is deemed not to be as sensitive to necessitate confidentiality to avoid any unforeseen eventualities. For this reason, the names of informants shall not be mentioned in this paper, rather their functions and the institutions they work for. The real names are kept on file with the researcher.

Also based on ethical considerations, as addressed earlier, I did not interact with the victims of torture while I conducted my research. This was to avoid the ethical hiccup of destabilizing them psychologically by opening up their healing wounds since I had no solution to their plight of delayed compensation.

CHAPTER 2: CONCEPTS, APPROACHES AND THEORIES

2.1: Introduction

This chapter is comprised of the concepts, approaches and theories that I found relevant for the study, and which I will use as a framework for analysis. These include the concepts and theories of compensation as a form of reparation, state obligations through a human rights-based approach perspective and power relations.

2.2: Compensation as a form of reparation

Compensation for victims of bodily and psychological harm as a practice dates back to the early history of civilization. This was before the preceding period of state responsibility for adjudication in criminal cases (Wolfgang, Marvin E 1965:223. Individual offenders and his/her family would be compelled to compensate the victims who were wronged within the society, regardless the absence of central authority (Ibid). Therefore, compensation is not a new phenomenon or a practice that has been brought about by modern legal instruments. It is a historical practice. I believe it was meant to rebuild broken social relationships between the individuals and societies at large; as well as to restore the victims where possible to their original state, physically and psychologically.

To date, compensation is one of the remedies that can be looked at as part of doing justice to a victim following the abrogation of a set rules. It might also act as a deterrent of the reoccurrence of the same by the perpetrators (Garry 1998:100). However, this has to be limited to an extent because if compensation acted in this way then there wouldn't be any torture. It might have (some of) a deterring effect if the culprits were compelled to compensate victims from their own pockets which can be heavy on them and make them opt to refrain from the practice.

An effective remedy of compensation as part of reparation is a right and since human rights accrue to every human being (UDHR 1948), rights holders should have a possibility to holding duty bearers responsible for non-compliance to their human rights obligations (Nowak 2007:254; 257). On the other hand, reparation is a sign of reconciliation that the Government has owned up to the crime committed against the victim and a measure towards non-repetition as well as satisfying the victims (De Brouwer 2007:220). Reparation focuses on the positive action undertaken by the state in acknowledgement of the wrongs committed against the victim either on its own or as a result of the court decision in favor of the victim (Sveaass 2013:5). According to Christian Tomuschat (2002), it is obvious to many that people whose rights are violated should have a right to reparation regardless of who has violated these rights.

2.3: State obligation on compensation through a human rights-based approach perspective.

It is the state's obligation to enforce both international and domestic human rights law to guarantee that torture is prevented and, where it has occurred, to investigate the matter and provide the victims with compensation and effectuate it accordingly (Bassiouni 2006:231). According to Tomuschat as well, when the state fails to protect the rights of the people under its jurisdiction or all those affected by the conduct of its agents, it should ensure that the victims get redress (Tomuschat 2002:57). Also Sveaass (2013:7) has noted that, the state has the responsibility to ensure that the rights and freedoms of its citizens are observed and respected and where the rights of the people are violated including torture, the victims are entitled to prompt and effective compensation.

States should ensure enforcement of international legal provisions on human rights geared at achieving justice for the victims of rights abuses - in this case torture – and are accountable for this (Bassiouni 2006:231). In my opinion, there is a need therefore for the state to establish mechanisms to enforce judgements for compensation of victims, as well as to ensure that funds are available for the same. Such mechanisms and funds should be easily accessible by claimants in their different capacities.

Freedom from torture and reparation as a remedy for torture by state agents enjoy broad recognition by international human rights law. This includes the Universal Declaration of Human Rights (UDHR) that prohibits torture in Article 5 (UDHR 1948). Although as such the UDHR is not a binding document, much of its contents has evolved into binding international customary law. The UDHR also set a standard and a basis for some other human rights legal provisions. Article 8 of the Declaration grants everyone “the right to an effective remedy for violations of fundamental rights and freedoms granted by law” (UN 1948), and calls upon the state to put in place enforcement mechanisms (Ibid).

The International Covenant on Civil and Political Rights (ICCPR), in Article 7, explicitly prohibits torture. Article 2 (3) provides for an effective remedy for victims of human rights abuses, which include torture. Uganda is a state party to this human rights treaty and therefore it is bound by its provisions. Article 5 of the ICCPR emphasizes that no abuse of rights and derogations are possible:

“Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights...” (ibid).

The ICCPR also in Article 4(1) provides for the right to a fair hearing, right to a fair trial, and presumption of innocence till proven guilty (Van Banning 2004:7). The fact that torture sometimes results in loss of lives of the victims, and without according them a fair hearing and trial by a competent court, contravenes the law and therefore the victims are entitled to a remedy.

This is further emphasized in the Robben Island Guidelines for Prohibition and Prevention of Torture in Africa that was drafted at the Robben Island in 2002 by international and regional human rights experts. The Guidelines do not allow any exceptions to the absolute prohibition of torture (and other ill-treatment). They also call for appropriate sanctions for violations of this prohibition (ACHPR). The Guidelines further stipulate that the obligation upon the state to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought to book. Thus, all states should ensure that all victims of torture and their dependants are provided with appropriate levels of compensation and support (Ibid). This is further reinforced by the UNCAT which, in article 14, provides for redress and compensation for torture victims:

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation (UNCAT 1984).

Other international instruments that provide for the right to remedy and reparation include the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR) (Sarkin 2014:536) among others. Additionally, Article 17 of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide for redress for the victims who have suffered harm and emphasize that mechanisms have to be put in place to ensure effectuation of the same. They emphasize also that victims of rights abuses are to be treated with humanity and that the laws in place as well as administrative procedures for justice and reparation should aid the victim by easy accessibility and use without being re-traumatized. It also states that “adequate, effective and prompt reparation for harm suffered” shall be provided (Assembly, UN General 2006). It is the duty of the state as principle duty bearer to enforce these cardinal provisions. In consideration of a human rights-based approach, Galoob has stated that:

The rights violated by an injustice form the core of the case for reparation. The basic thrust of such an approach is that injustices contravene rights. The contravention of rights calls for reparation, which vindicates these rights (Galoob 2015:81).

2.4: Institutional and social power relations within institutions involved in the current compensation process of victims of torture in Uganda:

Borrowing from the social contract concept of John Locke, social contract was described as an agreement made between “citizens and the state, through which they accept the authority of the state in return for benefits which only a sovereign power can provide” (Heywood 1994:198). This implies that people come together to form a state

and decide to subordinate to the state. The state in turn commits to protecting the people, including their fundamental rights and freedoms, by virtue of entrusted power, and authority.

Unlike Hobbes, whose analysis of the theory of social contract stipulated that man, in pursuit of order and security, entered into contract with the state? He argued that “citizens have an absolute obligation to obey political authority, regardless of how government may behave ... and the state itself was not subject to any reciprocal obligations” (Heywood 1994:199). Locke took the view that not all rights were surrendered, but that citizens volunteered to sacrifice a portion of their liberty in order to secure the order and stability and protection of the natural rights of its citizens” (Ibid), This implies the individuals still have their rights to demand for accountability, protection and good governance from the state since rights are inalienable. According to Locke, although the government possess power and authority over its people “unlimited sovereignty is contrary to natural law” (Elahi 20015:3), and according to Heywood, a state among others is a “collection of institutions...” (Heywood 1994:75), so any powers that may be found within the state institutions should be seen as power of the state regardless of through which of the state institutions is being unleashed. The state holds the responsibility “to preserve the rights maintain order and enforce the law” (Heywood 1994:199). The state does this by putting in place institutions and legal structures through which it is expected to channel its operations to fulfil its commitments of protect, respect and fulfil the rights of the people.

However on the hand, there exists different hierarchies in different institutions different mandates and functions in various dockets (economic, social, political, legal etc.) of the state’s business, the issue of power institutional dynamics may not cannot be disregarded as shall be expound further later on in chapter 4. According to Migdal and others, “Power is the ability to secure compliance to one’s will” (Migdal, Kohli, Shue 1994:223). So any institution or individual can be construed to have power as long as have the ability to subordinate the counterparts but this would be out of order. Burnell and Randall states that a state retains:

“Relative independence and autonomy of the public service from both the elected political parties and also from the public. Offices of the state officials including presidents, ministers, legislators, police or civil servants belong to the state and not to them personally. ... Public offices and powers should not be used for private gain by the incumbents of such offices and their occupancy entail no powers of private patronage” (Burnell, Randall 2008:214).

I envisage that the state remains with the oversight role to regulate operations and that it is supposed to exercise power efficiently and within the granted jurisdiction.

CHAPTER 3: UGANDA'S LEGAL FRAMEWORK ON COMPENSATION FOR TORTURE: AN ANALYSIS OF FINDINGS

3.1: Uganda's Current legal framework on compensation of victims of torture

3.1.1: Introduction

Until 2012 Uganda did not have a specific law on torture but the UHRCT while handling torture matters relied on the some other national laws that contain provisions on compensation, regional and international instruments that the country had ratified and that prohibited torture and provided for compensation as part of redress to torture victims. The most relevant ones included the UNCAT, International Convention on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR). At the same time, since the UHRC received human rights violation cases that WERE mainly torture related cases, it played a crucial role in lobbying for a specific anti-torture law. This led to the subsequent enactment of the Prevention and Prohibition of Torture Act (PPTA) 2012. The enactment of a specific law on torture was to domesticate the UNCAT (UHRC Press Statement 2014).

3.1.2: The definition of torture in the Ugandan legal context

The anti-torture law adopted the earlier quoted definition of torture of UNCAT. However, in section 2(1) it included "acts or omissions by private persons in their private capacity (PPTA 2012). This was partly because of the kind of cases that were being received. The perpetrators of these were private individuals but the acts involved were tantamount to torture. These acts were being perpetrated by individuals on their own and were not fitting the UNCAT definition of torture. With the above explanation, Section 2 of the PPTA therefore defines torture as:

Any act or omission by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as obtaining information or confession from the person or any other person; punishing that person for an act he or she has or any other person has committed, or is suspected of having committed or of planning to commit; or intimidating or coercing the person or any other person to do, or to refrain from doing any act; but does not include pain or suffering arising from, inherent in or incidental to a lawful sanction (PPTA 2012).

According to an informant from UHRC, the perpetrators of the cases at the time included people that had all the necessary machinery for torture, just as the state, but fell outside the law. Examples are rebels, rebel leaders and private security operatives. Others included civilians such as parents and other individuals in communities (R6 17/08/2017).

3.2: Compensation

Compensation as part of the redress of victims of human rights violations is also provided for in the Constitution of Uganda. Chapter 4 of the current Constitution of Uganda (1995) is a bill of rights section. Its article 20 (2) states that: “Fundamental rights and freedoms of the individual are inherent and not granted by the State” (Uganda Constitution 1995:39) and that “the rights and freedoms of the individual and groups enshrined in the chapter shall be respected, upheld and promoted by all organs and agencies of government and by all persons” (Uganda Constitution 1995:39). In this way, it can be argued that the Constitution upholds the principles of international human rights law as expressed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) among other vital instruments that provide for the prohibition of torture and emphasize redress for torture victims. Non-derogable rights, that rights to which no exceptions are allowed, include the right to a fair hearing and freedom from torture. Article 24 of Uganda’s Constitution specifically states that “no person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment” (Constitution of Uganda 1995:42), not even in a state of emergency. Therefore, the violation of these provisions necessitate compensation to victim of the violations as provided for by Article 53(2) (b) (Constitution of Uganda 1995:57).

According to all informants interviewed, the Constitution of Uganda provides for a UHRC compensation procedure in Chapter 4, Article 52(d) and 53(2)(b)(c).

One respondent from the Judiciary noted,

Compensation is a Constitutional Command, as long as someone proves that she/he is a victim of a wrong is entitled to adequate compensation and that this applies in adjudicating cases of both of Civil and Criminal nature and provided for by both the National and International Legal Frameworks (R5 02/08/2017)

Article 53(2) (b) (c) of the Constitution states that,

The Commission may, if satisfied that there has been an infringement of a human right or freedom, order for payment of compensation or any other legal remedy or redress (Uganda Constitution 1995:57).

The PPTA on the hand under section 6 (1)(a-b), provides for “Compensation for any economically assessable damage resulting from torture such as— physical or mental harm, including pain, suffering and emotional distress; lost opportunities, including employment, education and social benefits; material damage and loss of earnings, including loss of potential earnings; medicines, medical services...” (PPTA 2012)

However, despite the mentioned provisions of the Constitution and PPTA among other laws that provide for compensation, some informants maintained that Uganda

lacked a specific law on compensation and that it was one of the challenges for the delay of compensation. A senior official from the MJCA asserted, “to be specific, there is no law on compensation but we have two laws that relate to compensation and these are the Civil Procedure and Criminal Procedure rules” (R4 25/08/2017). He explained that the effect of those two laws was that a party who is successful in any litigation is entitled to compensation the party whom one won the case against and that compensation is determined on precedent as well as the gravity of the harm caused by the acts of torture and at the discretion of the presiding judge (Ibid).

However, interestingly, an equally senior official from the UHRC was of the view that Uganda had adequate law and mechanisms of compensation; this was in reference to the Constitution, PPTA and the UHRC Act 1996.

She emphasized,

Yes laws are in place, mechanisms are in place like UHRC tribunal; ... but the problem is the time it takes to pay these awards (R10 03/08/2017).

She explained that since the Constitution is specific on human rights and also the PPTA and UHRC Act, they can as well be regarded as specific on compensation since it is provided for under these laws (R10 03/08/2017).

Considering the responses from the informants on compensation it is clear that although compensation is a right to those it is awarded after the tribunal hearing, the the extent of government’s good will to honor the compensation awards is questionable. There are quite a number of provisions on compensation of aggrieved parties found in different laws, but the challenge of delayed or non-compensation of victims of torture has carried on. This therefore raises a question of how effective are these legal provisions and therefore calls for a discussion in the next part of this chapter.

3.3: Adequacy/Effectiveness of the legal provisions

Regardless of the absence of a specific law on compensation in Uganda, the effectiveness of the available provisions is a concern that needs to be addressed.

In instances where the Attorney General appeals to the High Court against the UHRT judgement on compensation for torture victims, some victims fail to follow-up or defend their award because of the expenses involved. Most of the victims therefore have not been able to access their compensation as expected (Rights Commission's petition 2013).

According to senior judicial official from the Judiciary, he noted,

“When the government appeals against the UHRT judgement for compensation of torture victims, it is up to the victim to defend the award this presupposes that he has a lawyer” (R5 02/08/2017).

This is a limitation in the structural procedure that disadvantages the victim. There is a glaring power imbalance for the government to take on the victim it has wronged. According to the official from the judiciary, in the majority of the cases, such victims are poor and marginalized and cannot afford the services of a lawyer (R5 02/08/2017). He noted that, in Uganda the availability of legal aid services is very limited and this denies many victims access to fairness and justice (Ibid).

However, it is also important to note that these appeals against UHRCT judgement on compensation awards to the victims of torture contribute to the delay because cases take long to be completed. An informant from the Judiciary noted

On the outlook, it may seem that courts are reluctant to handle such cases, but it may not be as such, cases take long because there exists systematic bottlenecks like inadequate human resource (judicial officers) among others that impede the effective handling of the cases swiftly. The courts then handle according to who is vigilantly following up the matter. The reason some old cases are still pending handled while new ones are completed contrary to the ‘first in, first out’ principle (R5 02/08/2017).

Indeed, the fact that the challenges of delay of compensation or non-compensation of victims of torture still exist in Uganda despite the legal provisions for redress in the various laws, is a clear indication to me that in reality effective implementation and effectiveness of these laws is still lacking. As a consequence, actual payment of compensation remains a nightmare to many victims. In my opinion, a special procedure to aid the victims’ to access justice through evidential hearing/non –Adversarial procedure (where by parties do not have to go to court) should be emphasized by the State.

Timeliness

The law is not precise on the issue of timeliness in effectuation of compensation awards. The Constitution caters for adequate compensation but does not provide an actual timeframe within which it should be paid. Some respondents from UHRC (R15 (03/08/2017; R12 (24/08/2017; R10 03/08/2017; R6 (17/08/2017), Chapter 4 Uganda (R2 26/02/2017; R9 04/08/2017) and ACTV (R14 14/08/2017) were of the view that this affected prompt compensation. However on the other hand, an informant from the Judiciary noted that the time frame can be catered for in the provision of the Constitution where it sets out principles for court in Article 126(b) which states that “In adjudicating cases..., justice shall not be delayed” (Uganda Constitution 1995:104).

On the other hand, informant from Chapter 4 Uganda. He notes that there has been a challenge with duration taken for compensation.

He gave a scenario;

the Uganda Constitution will say someone has to appear before an impartial and prompt tribunal, which happens most times but what happens to the awards given? Nowhere is it stated that these awards should be settled promptly within a specified time frame. The tribunal delivers quick judgment that will remain on paper but the award will not materialize (R2 26/07/2017).

However, currently, not all that is provided for by the law on compensation is being fully complied with by State. The question remains: to what extent would the inclusion of the timeframe in all the laws would effectively would if it was included in all the laws address the problem of delay of effectuation of compensation to the victims of torture? This notwithstanding, however, the issue absence of timeframe in the legal frame work may be taken advantage of by the Government to take its time to effectuate compensation since it is not expressly time bound by law. The victims are paid at the impulses of state as it may so wish. A specific timeframe therefore would suffice to form part of basis for one to take further action against the state in regard to non-payment.

This can be illustrated by the statement made by the UHRC on behalf of the Coalition Against Torture organization during the 2016 international day of support for victims of torture:

In Uganda, we have an Anti-Torture legislation, PPTA 2012 in english and simplified in some local languages. However, with increased dissemination of this Law, there are still challenges of its implementation. Uganda does not yet have a case which it is able to use to illustrate that it used the Anti-Torture Law to prosecute a perpetrator of torture to secure a conviction (Uganda-joint-statement 2016).

Therefore, having in place specific laws may not necessarily guarantee their effective implementation but their adequacy, effective implementation would make a difference.

CHAPTER 4: THE INSTITUTIONAL FRAMEWORK AND CURRENT PRACTICE – FINDINGS ON THE DECISION CHAIN IN THE PROCESS OF COMPENSATION

4.1: Introduction:

The research also seek to establish the institutions involved in the process of compensation, and their respective functions and powers. This assists the researcher in analyzing government performance concerning compensation of torture victims in Uganda. It was meant to understand whether there were institutions that were not effectively performing their duties by omission or commission, and the likely causes of the same. It also sought to understand whether there were/are relevant power dynamics among the different institutions that have been affecting service delivery in the compensation process.

4.2: Institutions involved in the compensation process:

The major actors/institutions identified that are involved in the process of compensation other than the victims themselves have included: the Uganda Human Rights Commission (UHRC), the Ministry of Justice and Constitutional Affairs (MJCA), the Judiciary, the Ministry of Finance, Planning and Economic Development (MoFPED) and the Parliament of Uganda. The private sector includes some private lawyers and Civil Society Organizations (CSOs). The institutions involved are legally established with a defined mandate, functions and powers in the performance of their tasks as abridged below.

4.2.1: Institutional functions and powers in the current practice of compensation

The Uganda Human Rights Commission

Articles 51-53 of Uganda's Constitution also provide for the creation of the Uganda Human Rights Commission (UHRC) and stipulate its mandate, functions and powers (see chapter 4 for further details). In the performance of its tasks, conformity to principles of natural justice is paramount and legal technicalities are toned down to enable both the complainant and the respondent to understand the proceedings (UHRC Report 2010:14). A UHRC Tribunal is in charge of making decisions and awarding compensation or any other redress to the victims of human rights violations. The Tribunal is presided over by a UHRC Commissioner who acts according to his/her discretion (Mujuzi 2007:112).

After the award for compensation, details of the UHRT judgement are forwarded to the MJCA for further management and subsequent effectuation. After this stage, an active role of the UHRC in the process ceases although the office remains open for the victim to seek guidance and inquiries. The Commission does not play part other than lobbying and engagements with government for settling its awards the UHRC has not been in position to compel government to comply to its decisions which is a limitation on a National Human Rights Institution that impacts on its impacts negatively on its

reputation and effectiveness of its work in regard to access to justice of the victims of torture.

The Ministry of Justice and Constitutional Affairs:

This government department is headed by a cabinet Minister. In Uganda, Ministers are appointed by the President with the approval of Parliament in accordance with Articles 108(1&2), 99(1), 114(1) and 113 (1) of the Constitution (Uganda Constitution 1995). Just like the UHRC and other government Ministries, Departments and Agencies, the MJCA has a distinct mandate and function. It is empowered to carry out various functions geared at ensuring good governance and the rule of law as stated in Article 119(c) of the Constitution. These functions include but are not limited to:

representing the Government in courts or any other legal proceedings to which the Government is a party, peruse contracts, agreements, treaties, conventions and other legal documents to which Government is party, give legal advice and legal services to Government on any legal services (Constitution 1995:99).

Being representative of government in matters against the government, it bears the responsibility of effectuating payments for all compensation by the government where it loses the cases in court.

According to an informant from MJCA, when the file on a torture victim is received from the UHRC, an internal payment procedure at the Ministry commences. A decision is made whether to appeal against the Tribunal decision or settle the award for compensation for the torture victim (R4 25/08/2017). A senior official from the MJCA said that the MJCA has a Committee on quarter awards and compensation chaired by the Solicitor- General, with membership from the various directorates of the Ministry that make decisions on the allocated monies in regard to the awards and compensation (R11 24/08/2017). Once the Committee makes a decision of payment to a victim, a minute is sent to the Ministry's Accounts department for payment as and when funds are available. It should be noted that the MJCA receives all sorts of awards of compensation by the state, and these are not limited to Tribunal awards only. The Tribunal awards of the Commission are only a fraction of all cases. The Ministry of Justices budgets for the required resources and forwards to the Ministry of Finance which drafts the national budget. In my opinion, the committee on quarter awards should extend to other external stakeholders within the, Law and Order Sector (JLOS) to ensure transparency and that the tribunal awards to victims of torture are at the fore front for consideration.

The Ministry of Finance

This Ministry controls and manages the country's resources. The Ministry derives its powers from Article 119(4) Constitution of Uganda 1995. Among its functions is resource mobilization for government programmes. (Uganda Constitution 1995:99). It makes the allocation to all to government ministries, departments and agencies. It also "formulates policies that enhance stability and development, mobilizes local and external financial resources for public expenditure, and regulates financial management ensuring efficiency in public expenditure." (Government of Uganda: MoFPED).

The Ministry makes a national budget and apportioning funds to MJCA among other Ministries, Departments and Agencies (MDAs) with the available revenues and the consolidated National Budget is presented to Parliament for approval annually.

The Parliament of Uganda

Parliament is the country's legislative body whose main function is to make and pass laws for good governance in accordance with Article 91(1) of the Constitution (Uganda 1995:78). It is comprised of members of Parliament who represent the people from their respective constituencies and is headed by the Speaker of Parliament. The Parliament is comprised of different Parliamentary Committees "for efficient discharge of its functions" (Uganda 1995:77). One of these Committees is the Parliamentary Committee on Human Rights that was established purposely to include human rights into the government business and programmes. According to an informant from the UHRC, the Committee among others reviews the Annual UHRC reports on the state of human rights in the country and guides government to handle human rights concerns (R10 03/08/2017).

The Judiciary

On the role of the Judiciary, Article 126 of the Constitution states that "Judicial power is derived from the people and shall be exercised by the Courts...in the name of the people and in conformity with the law and with the values, norms and aspirations of the people" (Uganda 1995:105). It stipulates that the judiciary shall adjudicate cases and ensure that justice is done to all, not delayed (Uganda Constitution 1995). Its independence is also provided for in Article 128: "in exercise of its power, it shall not be controlled by any person or authority" (Constitution 1995). In regard to UHRCT tribunal awards, the judiciary comes into play only when either party that is dissatisfied with tribunal decision appeals to High Court. When the appeal comes up, the victim may choose to appear in person, then the court will listen to him or her. But this will constitute inequality. In case the court is unable to secure legal aid or pro bono services for such a person, it will have no choice but to proceed with the case (R5 02/08/2017).

4.3: Relationship between the different actors and institutions

According to most informants, the institutions involved work in partnership and complement each other in carrying out their tasks. They have a good working relationship as stakeholders and their dealings are a chain kind of network (R1 25/08/2017; R11 24/08/2017; R4 25/08/2017; R2 26/07/2017). It was noted that the working relationship in partnership between the relevant institutions has laid a good platform for engagements and lobbying for improvement on the delay of compensation. For example, an informant noted that it was out of the good relationship between the actors involved that it became agreeable to Parliament to constitute a specific Committee in Parliament to handle human rights concerns. According to the findings of this research this Committee so far has done well (R1 25/08/2017; R10 03/08/2017; R8 15/08/2017) as will be detailed in the next chapter. In particular the UHRC has always worked in partnership and seemingly good working relationship with the Ministry of Justice and Constitutional

Affairs and each of these institutions understands the mandate of the other and their limitations as government entities.

4.4: Effectuation of payment: who gets compensation swiftly and who does not

4.4.1: The principle of ‘first in, first out’

One would expect to find the principle of ‘first in, first out’ in the administration of compensation awards (R4 25/08/2017; R11 24/08/2017). But, concerning compensation for torture victims in Uganda, the reality is different (R5 02/08/2017; R4 25/08/2017; R11 24/08/2017; R4 25/08/2017). Other circumstances come into play that override this principle and determine who gets compensation swiftly and who does not. For example, an informant from the MJCA said that the Ministry uses “a principle of first in first out but this depends on some circumstances still. There are some emergencies where some people are on death beds and need urgent attention” (R11 24/08/2017). Much as this makes sense too, it may not be possible that all those who need urgent financial attention due to their poor health are considered first because in any case, most of the victims of torture find themselves in that state of emergency and some die without being considered.

However, another informant from the same Ministry was very clear on this which clarified my concern. On who gets paid swiftly, he clearly and confidently retorted “Justice aids the vigilant. So the vigilant will always get, the ignorant do not get, the poor and uneducated will not get, those who do not know, will not get. The bottom line is that the knowledgeable and vigilant will always get their compensation” (R4 25/08/2017). (Ibid). According to him, the hiccup affecting the system of compensation is that the people are ignorant, uneducated and most of them come from very far to the city and they do not know where and whom to turn to for guidance (R4 25/08/2017). In my opinion, the kind of response and demeanor expressed depicted the kind of public relations services the victims who are often uninformed and with low self-esteem, may encounter at the MJCA when following up pay of their compensation awards.

4.4.2: Inability to locate victims

An informant from the MJCA noted that the Ministry had a challenge of tracing recipients of compensation without proper addresses to follow the Integrated Management Finance System (electronic fund transfer) (R11 24/08/2017). He said, “tracing recipients is no simple task, you get a file from the UHRC with an order for award of compensation to pay but we fail to pay because we can’t transfer the money to the recipient whose details we do not have” (Ibid). He claimed that efforts to seek help from the UHRC sometimes does not yield results. It is not unusual in Uganda for certain people moving to different places in search of work/employment and sometimes temporary kind of jobs and others get displaced due to internal conflicts and natural calamities like landslides.

According to one of the informants from the UHRC, there has been a challenge of the Commission losing touch with some complainants especially some of the people who lived in IDP camps during the insurgency in Northern Uganda at the time they lodged their complaints, but later changed location when these camps were disbanded after the war had ended without updating the Commission with their new addresses (R1 25/08/2017). He said, “It is true sometimes these clients change location without informing the Commission and the ability to trace them is lost” (Ibid). So this implies in my opinion that those who cannot be traced cannot not be paid according to the queue of ‘first in first out’. However, this would have made it easier for those available in the queue to get their pay instead, but this is not the case. Some victims are available and are not getting their pay either.

4.4.3: Lack of proper documentation

There was an allegation of lack of proper documentation as one of the reasons affecting systematic payments of compensation for victims of torture. According to officials of the MJCA, some people also get bogged down when they fail to produce the documents needed (R11 24/08/2017; R4 25/08/2017). One of them emphasized that MJCA was strict on proper documentation which is important to them to deal with the challenge of masqueraders who pretend to be victims and those who allege that the victims died and come to claim the deceased’s compensation (Ibid). He said that documentation required includes death certificates, confirmation from the Administrator-General, pictures, bank details and personal identification among others. He noted that sometimes when victims are asked to produce the documents “they go and disappear” (R11 24/08/2017). Even cases of genuine victims who fail to avail the necessary documentation, will eventually disappear without payment being made.

This puts me in a state of dilemma especially in circumstances where the victims are genuine and alive but ‘disappearing’ for lack of identification documentation. In the system of Uganda where there is an established local council system, certainly the local leaders cannot fail to give identification documents to their residents. Besides, Ugandan nationals are registered and currently hold national identity cards which should have solved the matter.

Moreover, according senior officials from the UHRC, the Commission always gives the necessary details of the victims and goes an extra mile of guiding them and giving them the necessary information in regard to their matters and compensation procedures, but unfortunately some are still failing to get their money (R1 25/08/2017; R6 17/08/2017; R12 24/08/2017).

4.4.4: Alleged corruption in the system of compensation

Corruption was another challenge that was mentioned as affecting effective compensation of the victims and part of the determinants of who gets paid swiftly and who does not. It was alleged that some lawyers conspire with individuals in the MJCA to identify some cases where by the lawyers ‘offer’ to follow up the matter on behalf of the victims.

In the end, indeed those victims get payment more swiftly than others but the biggest chunk of their money is taken by the unscrupulous lawyer(s) as 'legal costs' thereby exploiting the already aggrieved victim. Because of this, some victims who would not engage lawyers are not easily attended to which might often makes them fail to get their compensation (R1 25/08/2017; R3 27/07/2017; R5 20/08/2017; R13 25/07/2017). On this basis, to me the current seemingly juggled up compensation system may be to some extent by design for some illegal gain to some involved culprits.

In addition, an informant from a CSO stated that "some people at the MJCA want kickbacks where by one is expected to pay for the services rendered in the form of 'appreciation' which I consider as disguised corruption. When one is willing to give such inducements, one would be paid within a limited time compared to the counterparts who decline that may have to wait for years" (R2 26/07/2017). It should be noted that this was of course not the official government approach but that as long as there is lack of systems to address those gaps, the challenge will remain (R5 02/08/2017).

4.5: Allocation of resources for compensation vis-à-vis government priorities

Interestingly, government priority in relation to inadequate allocation of finances for compensation was emphasized during the study by over 90% of my key informants. One noted that every monetary dealing needs to be prioritized, that the government has its priorities and that compensation of tortured victims has not been one of them (R4 25/08/2017). An informant from the Judiciary noted that government's priority is on infrastructure, like roads that would facilitate production, and that compensation may be perceived as an expense with limited returns if any (R5 02/08/2017). An informant from the MJCA also informed the researcher that the Ministry of Finance allocated the finances according to government priorities. He asserted that the government spells out priorities within the financial year which are usually communicated in the budget speech. These priorities are in response to the ruling government manifesto that was used during the campaign for votes during the presidential elections and in fulfilment of the national Vision 2040 (R11 24/08/2017). Some informants from UHRC and a civil society organization attributed government's priorities to political inclinations and revealed that, since the torture victims also comprise of some political opponents, it may certainly not be government's priority (R4 25/08/2017; R3 27/07/2017). It was further explained that, usually in the month of October of every year, the Ministry of Finance communicates the total resource envelope and government priorities. This is normally communicated with the budget call circular with emphasis on particular areas of investment, and budget ceilings over and above which a particular institution cannot budget in the forthcoming year. Every sector/institution is given a particular ceiling and money is distributed according to priority (R11 24/08/2017).

He also noted that inadequate funding with rampant budget cuts leaves the MJCA in a dilemma in regard to payment of compensation (Ibid).

Indeed if the government's priorities do not include compensation of torture victims, then it would be difficult for the MJCA responsible for payments and the Attorney-General to get all the funds required for compensation. The Constitution, in its section on National Objectives and Directive Principles of State Policy states that "The state shall guarantee and respect Institutions which are charged by the state with responsibility of protecting human rights by providing them with adequate resources to function effectively" (Uganda 1995:23). Ironically, on the other hand, even what is allocated, much as it is inadequate, often times the MJCA fails to utilize within a given period of time. The budget is given on a quarterly basis. According to one of the senior officials of the MJCA, once the funds allocated are not utilized within the specified period, this is regarded as a failure to utilize the funds which automatically affects the next release:

...the money remains and remember the Ministry has to give an account for the utilization of the funds given in a particular quarter of the financial year. The Ministry of Finance will be monitoring the utilization and will be seeing billions seemingly lying idle yet it was requested for. They would feel rather to give the money to accomplish other tasks. At the end of the financial year, whatever is not absorbed is retrieved because they also want to reconcile with the Central Bank" (R11 24/08/2017).

It is ironical that, amidst inadequacy of funds allocated for compensation, there is underutilization of the available when the beneficiaries are languishing in need of the same.

4.6: Follow-up mechanism from the time of award to actual payment of the individual victim(s)

Currently there is no follow up mechanism to ensure that individual victims get their pay after the Tribunal award level. Victims are left to tussle it out on their own with the MJCA which has proved a cumbersome task for the majority and they fail to get their pay. An informant from the MJCA faltered the UHRC for stopping their role at awarding compensation and leaving the victims in 'suspense' on their own (R4 25/08/2017). One asserted that "the Commission should find a mechanism of taking the victims to the Attorney-General and ensure they are paid. It is not fair to open up a door for the people and you don't take them through the house and they come up with something" (R4 25/08/2017). However, according to informants from the UHRC, the Commission cannot interfere in the MJCS's internal operations by dictating the actual payment technicalities to them. One asserted "When court /tribunal gives judgment, it depends on government to execute, the reason why it goes to Ministry of Justice" (R10 03/08/2017).

I took note that none of the actors was willing to take up responsibility for the flaw of the effectuation of compensation for the torture victims especially in regard to the follow-up after the Tribunal award stage until the victims get their money. The UHRC, after awarding compensation expects the MJCA to take over and pay the victims and the MJCA expects the victims after the award to be assisted further by the Commission until they get their pay or to do it on their own. Some respondents from UHRC also mentioned that the victims should follow up the compensation themselves although

it is important to be mindful of the unfavorable system for them (R1 25/08/2017; R10 03/08/2017; R12 24/08/2017). So according to the UHRC, whatever services it offers to the victims after the Tribunal level is out of good will especially information and referrals but that actually it is outside its mandate. The Commission cannot be the judge and the enforcer of its own judgment after all (R1 25/08/2017, R10 03/08/2017).

4.7: Enforceability mechanism

Currently, Uganda has an inadequately streamlined domestic procedure of enforceability of the tribunal awards. The only mechanism cited by some informants from both the Judiciary, Chapter 4 Uganda, the MJCA and UHRC was Mandamus. This is a situation where court can issue an order to compel one to comply with its orders or face prosecution which they said was restrictive because a limited number of people can afford. (R5 02/08/2017; R10 03/08/2017; R4 25/08/2017; R2; R11 24/08/2017). In addition, attachment of Government property was mentioned by several informants but in divergent explanation. It was interesting to note that while some senior officials said that government property can be attached, others refuted that it was illegal. According to an informant from the MJCA, Government property cannot be attached so as not to paralyze its other functions. He gave an example of attaching a police vehicle yet the police needs mobility to protect the lives and property of the people.

4.8: Analysis of the institutional Power dynamics involved in the compensation process/practice

The social contract of John Locke expresses the commitment by the state to protect the people (Heywood 1994:198) and this is further reinforced by the various national, regional and International legal regimes. The state being comprised of a collection of institutions (Heywood: 1994:75) does this by putting in place relevant institutions and legal structures through which it is expected to channel service delivery and observance of human rights. However, although these established institutions belong to the state, they may not be on the same footing in terms of power, interest, independence and influence on other organs of the state as well as in efficiency of performance of their tasks. Interlink ages of power and differences exist. For example, the UHRC is empowered by the Constitution to ensure human rights observance in the nation. However, it enjoys only the powers given to it by the legislature since it is a Constitutional establishment and cannot therefore go beyond its stipulated jurisdiction. This is the reason why after the award of compensation to the victims of torture, its role is reduced to mutual engagements with the state institutions and making recommendations in a bid to cause the execution of its decisions. Because of the power dynamics involved, some of which is politically oriented, compliance with the orders of the UHRC by the state as part of its contract with people still remains a challenge and at the will of the state. The Commission is rendered with less power because it has no credible legal means of enforceability of its decisions although this may not necessarily mean that the actors that are

supposed to effectuate payments are more powerful but also weakened in their own right as far as effective performance of their duties is concerned.

In addition, the Judiciary, still on behalf of the state, comes in to review the Commission's decisions. I derive this argument from Article 53(3) of the Constitution of Uganda where it is stipulated that, "A person or authority dissatisfied with an order made by the Commission... has a right to appeal to the High Court" (Constitution of Uganda 1995:57). So there is a clear indication that the Judiciary has higher powers since it can review the ruling of the Commission. This is important in ensuring fairness in dispensing justice to both parties as long as the judiciary remains independent. However, the power indifference manifests in an appeal after the UHRCT between the State and the victim(s), in cases where the victim has no representation in court while Uganda's bill of rights is clear that access to justice is a right to all persons and an obligation on the state.

On the other hand however, there are always delays at work on matters in court. The victims will have no influence to expedite the case while the victim can never be given any money when the case is still pending in court.

Furthermore, when we look at power in relation to the state obligations to fulfil human rights, the UHRC Tribunal was created by the state and empowered to give redress to victims of human rights violations. The state therefore has a crucial obligation to fulfil and uphold the decisions by the Tribunal, if the Commission (UHRC) is to be perceived as a body with power. It must pay the victims of torture (and other human rights violations). Its failure to do so has obvious negative implications for the perception of the credibility of the Commission.

Additionally, given the power that the state possesses, it takes an upper hand to give in its priorities consideration in allocation of adequate finances. In the whole process, the Ministry of Finance that compiles National Budgets and Parliaments that approves it have a bigger powers and influence decisions in regard to finance allocation. On the other hand the Parliament of Uganda has the strongest clout to influence government in decision making although it cannot be separated from Government itself. It makes decisions for good governance on behalf of the state. So any flaws not addressed to ensure quick compensation for the victims fall back on the State's failure to perform its obligations efficiently.

Other than institutional power issues, power differences also influenced the relationship between the institutions and the victims, as well as between victims themselves. The victims are left at the mercy of the private lawyers and the MJCA to determine when to get paid, that is if some of them will ever get paid. They do not have the ability to hold these institutions accountable for the delay or non-payment of their compensation given their vulnerability and inadequate enforceability mechanisms. And even among the victims there are social differences. Victims include the politically connected, the educated and those who are well placed financially and who may easily access their compensation. According to Orentlicher, the state is obliged to "organize all the government structures through which public power is exercised so that they are capable of ensuring

the full and free enjoyment of human rights” (Orentlicher 1994:430). Ultimately, this also holds for the state of Uganda.

CHAPTER 5: MEASURES BY THE STATE AND CSO'S TOWARDS IMPROVEMENT ON THE DELAY OF COMPENSATION

5.1: Possible improvement measures taken by government so far

Findings indicated that the state has taken some measures to improve on the delay of the compensation process. These are presented below.

5.1.1: Specific law on compensation

According to senior officials in the MJCA, a compensation policy paper/proposal has been drafted by Ministry of Justice and Constitutional Affairs and is pending to be tabled before Cabinet, and later to the Parliament of Uganda, for approval (R11 24/08/2017; R4 25/08/2017). Although the draft policy could not be accessed for details, both officials noted that it will streamline the compensation procedure. However, this will depend on its interpretation and implementation depending on the will of the state and the prevailing political environment. Therefore, the law in itself may not suffice, if other underlying factors as explained in chapter 4 are not holistically addressed by the state. This notwithstanding however, as such this policy too is critical for improvement.

5.1.2: Establishment of the Parliamentary human rights committee

A Parliamentary human rights committee was established, mandated to play an oversight role in Parliament, to incorporate human rights concerns into Parliament business (R10 03/08/2017) and to ensure compliance with international human rights standards. The Committee reviews bills and debates reports of the UHRC. This was a critical measure and, according to informants from UHRC and the chairperson of the said Committee, the Committee has so far progressively performed well and there is a shift towards improvement in human rights considerations by Parliament (R1 25/08/2017; R11 24/08/2017; R8 15/08/2017).

i. Presidential Directive to offset tribunal awards for compensation

An informant from the UHRC emphasized that due to vigorous engagements with the government through the Parliamentary Human Rights Committee, there is now a commitment by the Government (through a directive from the President) that funds should be availed specifically to offset the whole debt of Tribunal awards of compensation for victims of human rights violations (which includes torture) that has been carried forward and accumulated for several years. The same was expressed by another high senior official in the Commission. (R10 03/08/2017; R1 25/08/2017). However, no copy of the directive could be obtained because it was not readily available (This indicates that there is a seemingly positive change by Government in regard to fulfilment of its obligation of observance of human rights, especially now that there is a

closer channel within Parliament to thrust further the human rights concerns as expressed by the National Human Rights Institution. Otherwise, the same exercise of authority by the State through such a directive could have been issued decades ago.

ii. Engagements with other state holders:

Other interventions by the Committee include engagements with the various actors for improvement in their respective service delivery. An informant from Parliament noted, “First of all there are delays and secondly, there is no equity in payment. There is unfairness in the process of who gets paid first” We engage with the MJCA that there should be a specific streamlined system of selection that the earliest cases are paid first” (R8 15/08/2017).

iii. Human Rights Checklist

With technical support from the OHCHR and human rights CSOs, the Committee developed a checklist as a tool and benchmark to ensure that a human rights-based approach is complied with in Parliament’s work, in government policies, review of bills, programmes and in examining the recommendation of UHRC (R8 15/08/2017). This was further echoed by the senior officials from the UHRC (R1 25/08/2017; R10 03/08/2017). However, the checklist it could not be accessed.

5.1.5: Decentralization of payment for torture victims by respective institutional culprits

A directive has been passed by government that agencies and institutions and departments will be held responsible for compensating victims of torture committed by their workers. That money shall be drawn from their budgets and no longer be piled on the MJCA (R4 25/08/2017).

However, at the end of the day, it is still within government ambits and government finances. They are also government institutions within the same system. Therefore, if the structural challenges are not addressed, the challenge will remain. And the burden in some instances may trickle down to innocent citizens in regard to other service delivery by these institutions. For example, the already insufficient funds allocated to the Uganda Police Force. If it is to pay for compensation, then it may not have enough for its operations to fulfil its mandatory obligations. The issue of holding to account the responsible institution whose officials are the culprits of torture and these institutions would in turn punish the individual culprits.

5.2: Suggested measure for Improvement on the delay

The study finally sought to get insight in how the current delay of compensation for torture victims could be improved.

According to a senior official of the UHRC, government should create a specific vote/budget line with adequate funds for payment of Tribunal awards in the budget of the Ministry of Justice and Constitutional Affairs (MJCA) where payment can be drawn from and put under the direct supervision of the Uganda Human Rights Commission (R1 25/08/2017). He said that: “The money should be ring fenced. With a specific vote in the budget, approved by Parliament and the money put by Finance, nobody can touch that money for anything else unless they get permission from the Secretary to Treasury” (R1 25/08/2017). This would counter the current situation where all monies are put in a pool for all kinds of compensation awards and Tribunal awards get ‘swallowed up’ in the pool. This same stand was fronted by almost all the informants interviewed from both government institutions and CSOs. They felt that funds for compensation of victims of torture and other human rights violations should not be part of a pool ‘one big basket’ allocated for every other award. These may include claims by displaced people, property like land, contracts and business related matters among others. A specific allocation of funds would ease accessibility monitoring by UHRC and follow up.

Also the UHRC has been recommending in the Annual report to Parliament for the Government to establish a human rights compensation fund named the ‘Torture Victims Compensation Fund’. This was further echoed by informants from the MJCA and Parliament (R11 24/08/2017; R10 03/08/2017; R8 15/08/2017). However, they were of the view that the separate fund should be put aside under the docket of the UHRC to manage and pay the victims thereby relieving the MJCA of the ‘burden’. But, according to the informants from the UHRC, the Commission is only concerned with is the government to put measures to counter the delay of compensation of victims of rights violations among which is the separate fund specifically for this; but not to take over the role of paying the victims (R11 24/08/2017).

CHAPTER 6: SUMMARY AND CONCLUSION

6.1: Introduction

This is the last and concluding chapter of my research paper. It summarizes the study as described and analyzed in the preceding chapters based on the field data collected, literature review and the theoretical framework used.

6.2: Summary of the Research and final conclusion

This study first gave an overview of the history and practice of torture in Uganda as per the UNCAT definition, its forms and consequences. This clarified why adequate and quick compensation is crucial. It gave an over view on the UHRC Tribunal procedure through which the victims of torture can seek redress for compensation. The scope of the research was on the delayed or non-payment of tribunal awards by the UHRC for compensation of victims of torture which has been perpetrated by State agents and the State is solely vicariously liable.

Informed by the researcher's experience and interaction with victims of torture as a human rights defender, as the main objective, the study sought to understand the factors that could explain the delay in, or non-effectuation of, compensation awards for the torture victims by the state in Uganda. In addition the study generated recommendations on possible measures that could improve on the delay. These were unpacked in sub-themes that can be summarized as: analyzing the State's compliance with its obligations of observance of human rights in respect to adequate and prompt compensation; understanding the institutional framework involved in the compensation process, and the respective roles of relevant institutions and actors; exploring the current practice of compensation as part of reparation and its flaws; and ascertain how it could be improved; as well as understanding the power dynamics and other factors that could have contributed to the delay or non-payment.

In order to achieve the objectives, the main question asked was, 'What factors account for the delay of compensation for victims of torture by the state agents in Uganda, and how could the aspect of delay in the current compensation process be improved?' In order to get the required insights, the study used qualitative methodology and semi structured interviews as the data collection technique which was triangulated with secondary data. It discussed ethical considerations and the researcher's positionality during the study.

In terms of Uganda's State obligations in regard to adequate compensation to victims of torture, the State has put some measures in place in order to improve on the observance of human rights including freedom from torture and compensation to be given where it occurs. For instance the enactment of the PPTA Act 2012 which also provides for redress for the victims of torture. The State also created a Parliamentary Committee on human rights to ensure that decisions, policies and programmes of the government are human rights compliant in support of the recommendations of the UHRC. This has led to the government's commitment to offset tribunal awards that has accumulated over the years as well a development of a human rights check as a guide during decision making. Decentralization of compensation to government's Ministries, Departments and Agencies, whose officials are the perpetrators of torture, is another intervention by the state in a bid to improve on torture and compensation for the victims. This will relieve the MJCA on the overwhelming responsibility of handling all compensation awards against government and may improve on the delay.

However, this notwithstanding, there has not been any improvement in regard to the delay of effectuation of UHRCT awards for compensation of victims of torture and other human rights violations.

In addition, the current legal framework which is comprised mainly of the Constitution of the Republic of Uganda and the Prevention and prohibition of torture Act Provide for compensation for rights violations including torture. Although there is no specific exclusively law on compensation, the current provisions that would have otherwise sufficed have not been effectively implemented. The Constitution is the supreme law in the land and the PPTA 2012 that domesticated the UN CAT have not been fully complied with as evidenced by the existence of torture and the delay or non-compensation of the victims. This means therefore that there is a gap in regard to implementation and enforceability of the existing law.

The institutional framework involved in the compensation practice in Uganda include The UHRC, The MJCA, the Ministry of Finance and the Parliament of Uganda. The institutions work in Partnership and in a chain. The inefficiency of even a single Institution of these affects drastically access to justice by the victims of torture. The performance of these institution are affected partly by the existing hierarchies of power relations. In terms of allocation of finances, the executive had higher power on what comprised the Government priorities in a given period of time and how the available resources should be allocated. Parliament also has a clout in decision making in regard to finances and other policies but because of some political inclination, majority support the already identified government priorities at a time which human rights. Therefore lack of will by the State to prioritize settlement of tribunal awards for compensation for the victims of torture has been the foundation for the delay or non-payment of compensation awards. As regards, a number of recommendation is drawn out:

- In order to improve on the delay of compensation, government should among others consider settlement of UHRCT awards for torture victims and other human rights violations a priority and allocate adequate resources accordingly. This can be done through allocation of a separate and specific budgetary vote for Tribunal awards under the MJCA but directly monitored by the UHRC;
- A special procedure to aid the victims' to access justice through evidential hearing/non-adversarial procedure (where by parties do not have to go to court) should be emphasized by the State;
- Failure to produce identification by the victim can be improved by use of the electronic National Identification details since the citizens of Uganda that are 18yrs old and above are expected to have registered. The MJCA should establish a specific office for the vulnerable persons and the indigent specifically to assist the victims of torture who make follow up of their compensation award at the MJCA.
- The legal and institutional frameworks should specifically consider the enforcement of UHRCT decisions in regard to awards of compensation for victims of torture and adopt measures to curb corruption;

The Power of UHRC should be extended to enforceability capacity to be in position to compel the government to comply with UHRC tribunal decisions.

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APPENDIX 1

LIST OF RESPONDENTS/INTERVIEWEES (*Names of the interviewees are on file with the researcher*)

No	Function	Reference codes Used in the text	Venue of Interview	Date and time of Interview
1.	Chairman	R1	Head Office Lumumba Avenue-Kampala	25/08/2017 at 09:00pm
2.	Program Manager	R2	Hotel Africana	26/07/2017 at 15.00pm
3.	Private Human Rights lawyer	R3	Javas Café-Kampala Road, Kampala	27/07/2017 at 12.00 Noon
4.	Principal State Attorney	R4	MoCA-Kampala	25/08/2017 at 12:15pm
5.	The Deputy Registrar of the High Court /Private Legal Secretary to the Chief Justice of Uganda	R5	Chambers at the High Court -Kampala	02/08/2017 at 4.00pm
6.	Director / Complaints, Investigation and Legal Services	R6	Head office Lumumba Avenue-Kampala	17/08/2017 at 14:30am
7.	Advisor, Human Rights and Accountability	R7	MJCA office - Kampala	15/08/2017 at 03:00pm
8.	Member Of Parliament/Chair Person The Parliamentary Committee Of Human Rights	R8	Parliament chamber, 5 th floor, Parliament of Uganda building	15/08/2017 at 11:00am
9.	Executive Director	R9	office – Kololo, Kampala	04/07/2017 at 9.00pm

10.	Director/ Monitoring and Inspections	R10	Head Office Lumumba Avenue-Kampala	03/08/2017 at 2.45pm
11.	Head Policy Analysis And Planning	R11	MJCA	24/08/2017 at 04.00PM
12.	Director/Regional Services	R12	Head Office Lumumba Avenue-Kampala	24/08/2017 at 08.10am am
13.	Senior Human Rights Officer	R13	Former UHRC offices, Buganda Road, Kampala	25/07/2017 at 16:00pm
14.	Chief Executive Officer/CSO	R14	Head Office –Owen Road, Kamwokya Kampala	14/08/2016 at 09.00am
15.	Senior Human Rights Officer /UHRC	R15	Head Office Lumumba Avenue-Kampala	03/08/2017 at 17.30pm
16.	Registrar	R16	Jobia Hotel-Mukono	01/08/2017 at 11.00am

Appendix 2.

Main Research Question

What factors account for the State’s non-compliance with its obligation of providing prompt compensation for victims of torture by state officials in Uganda, and how could the current compensation practice be improved?

To support my main question, the research looked into the following sub questions that were asked during the face to face interviews with the respondents;

Sub Questions:

- 1) What are Uganda’s state obligations in terms of providing compensation to victims of torture in the country? (Law)
- 2) Which institutions are involved and what role do they play in the process of compensation of victims of torture? (Institution)
- 3) What are the current practices of providing remedies for torture victims in Uganda? (Practice)
- 4) What are the challenges faced in the enforcement
- 5) How can the practice of compensation be strengthened?

INTERVIEW QUESTIONS:

- In your own understanding, what is torture and who is a victim?

Sub Questions;

1. What are Uganda's state obligations in terms of providing compensation to victims of torture in the country? (Law)

- What does the Uganda law say about compensation? And what does the International Law provide?

2. Which institutions are involved and what role do they play in the process of compensation of victims of torture? (Institution)

How has the government operationalized the law of compensation?

- Do they have budgetary provisions for compensating victims?
- What type of alternative remedies exist for torture victims in Uganda?
- Who provides these remedies?
- How is compensation administered? /Who is responsible for administering compensation?
- Who are the actors involved in the process and what is their role?
- What powers are conferred on the institutions and what redress mechanisms do they have?
- What is the nature of relationship between the institutions?
- What follow up mechanisms are in place to see that victims are compensated?
- **What are the enforcement mechanisms currently in place**

3. What are the current practices of providing remedies for torture victims in Uganda? (Practice)

How familiar are you with CAT and Uganda Law on Torture?

- Has the government respected the law? / What is the government doing to fulfill the law?
- What recourse is available in cases that the government fails to meet its obligations (How is the government held accountable).
- How effective are the remedies?
- What bottlenecks exist in administering remedies?
- How is compensation determined and how long does it take for the cases to be resolved?
- Who gets compensation swiftly? Who is does not and why?

4. What are the challenges faced in the enforcement

5. How can they be strengthened?