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Abstract

When police brutality occurs in an efficient domestic legal system, the internal oversight mechanisms should investigate and hold the individual police officers responsible for the unlawful use of force. If the internal police oversight mechanisms are ineffective, external oversight agencies ought to institute their own investigations into the allegations of police brutality. Subsequently, the individual police officers can be held responsible for their misconduct. The problem is that this is not the case with many African countries including Uganda. This is because both the internal and external police oversight organs usually perform their mandate for the benefit of sustaining the ruling class in power. In such situations, the victims of police brutality are left with no remedy under the domestic legal system, save for the strategic use of alternative remedies. The alternative remedies may include private prosecutions, applications for human rights enforcement/or constitutional petitions. Doctrinal research methods are used in this paper. The findings indicate that Uganda has no comprehensive police oversight structure that would enable accountability for police brutality. The paper recommends, among others, the establishment of a police oversight agency to curb police brutality in Uganda.

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Introduction

When police brutality occurs in an efficient domestic legal system, the internal oversight mechanisms should investigate and hold the individual police officers responsible for the unlawful use of force. If the internal police oversight mechanisms are ineffective, external oversight agencies ought to institute their own investigations into the allegations of police brutality. Subsequently the individual police officers can be held responsible for their misconduct. The problem is that; this is not the case with many African countries including Uganda. This is because both the internal and external police oversight organs usually perform their mandate for the benefit of sustaining the ruling class in power. In such situations, the victims of police brutality are left with no remedy under the domestic legal system, save for the strategic use of alternative remedies.

It is a trite principle of international law that national governments have the duty to respect, protect and fulfil human rights.[1] In case of human rights violations, accountability for violations is easier through domestic remedies. This is because they are inexpensive, proceed more quickly and are easier to access by the victims more than international remedies.[2] Consequently, it may be prudent to fully exploit the advantages of domestic remedies. They could include the strategic use of private remedies like instituting private prosecutions, applications for human rights enforcement and/or constitutional petitions against the individual police officials for their misconduct.

If the victims of police brutality opted for the international human rights mechanisms, they will be suing national governments as opposed to the individual perpetrators of police brutality thus encouraging impunity by individual police officials. Consequently, it is easier to fight impunity at the domestic level. Besides this, the regional human systems have their own weakness to contend with.[3] Often times, the hearing of the communications and applications takes long, and when the recommendations are sent to the state party the implementation may never occur.[4] The fact is that

[1] Walter Kalin and Jorg Kunzli, *The Law of International Human Rights Protection* (Oxford University Press, 2009), page 112.
[2] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR)) Article 8, Also see International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 2(3) (a), (b) & (c), Godfrey Musila, *The Right to an Effective Remedy Under the African Charter on Human and Peoples Rights*, (African Human Rights Law Journal 2006) pg. 6
[3] George Town University, 'Regional Human Rights Systems' (2021) https://guides.ll.georgetown.edu/c.php?g=273364&p=6025368 accessed on 7 October, 2021.
[4] Ibid, George Town University (2021).

that these alternative remedies may, at times, not be successful, but will highlight the issue of police brutality to the general public. This will in turn will draw interest from the general public and international community about these human rights violations prevailing in a particular country is an important way of enabling a solution to police brutality. The international community may pressure the national government to act, which may result into legal and institutional reforms. The other advantage of strategic use of private remedies is that the individual perpetrators are named and shamed before both the domestic and the international community.[5] Subsequently, the international Community may be persuaded to issue sanctions against the individual perpetrators of police brutality. Therefore, the strategic use of alternative remedies under domestic law may achieve gains for the victims of the police brutality in as far as it highlights the issue which in turn puts national governments on pressure to address the problem.

The strategic use of alternative remedies are therefore potential instruments to hold perpetrators of police brutality accountable. On the African continent, the police forces are among the conspicuous perpetrators of these grave human rights violations.[6] The article will, therefore investigate whether alternative domestic remedies are of any use as a redress mechanism for victims of police brutality. This study covers Uganda, but will also investigate other jurisdictions facing the challenge of police brutality, with a view of examining the best practices that have been employed to eradicate this particular type of human rights violation. Considering that state parties have a duty to protect human rights, these alternative remedies will strengthen the domestic legal regimes in dealing with police brutality, thereby curtailing violence and enabling a peaceful culture on the African continent.

In part 1 the author introduces the problem of police brutality. Part 2 frames the key terms and concepts through which police brutality is discussed in the article. Part 3 reviews the normative international and regional human rights framework on ill-treatment, torture and extrajudicial executions. Part 4 examines the nexus between ill-treatment, torture, extra-judicial executions and police brutality. The various theories on policing are discussed in part 5. Part 5 also details the internal and external police oversight mechanisms that ought to nip police brutality in the bud. The

[5] Jacob Ausderan, 'How Naming and Shaming Affects Human Rights Perceptions in the Shamed Country', (*Journal of Peace Research* 51, no. 1 2014) http://www.jstor.org/stable/24557536 accessed on 6 October, 2021. Pg. 81–95

[6] Natascha Wagner, Wil Hout & Rose Namara, 'Improving police integrity in Uganda: Impact assessment of the police accountability and reform project', (2019) https://doi.org/10.1111/rode.12643 accessed on

Limitations on police use of force are traversed under part 6. The legal framework and practice governing police use of force in Uganda is considered in part 7. Part 8 makes recommendations on how police brutality may be curbed and concludes the article.

Key Terms and Concepts through which Police Brutality is examined

Alternative Remedies

For purposes of this article, private remedies include judicial remedies that a citizen may employ to hold perpetrators of police brutality accountable, when internal and external police oversight mechanisms fail, or are so weak that they encourage impunity within the police forces. These alternative remedies may include petitions to enforce human rights, civil litigation, private prosecutions, strategic litigation, among other remedies.

Police

For purposes of this study, "Police officers" includes law enforcement officials whether appointed or elected, who exercise police powers, especially powers of arrest and detention.[7] It is important to note that section 1(s) of the Police Act defines a "Police officer" as "[a]ny attested member of the police force".[8] The amendment to the Police Act provides that an "attested member" "means a police officer, regardless of rank, who completed the training course, taken the requisite oath and been listed in the Force as a member".[9]

Extrajudicial Executions

Extrajudicial executions are unlawful and deliberate killings, such as those resulting from excessive use of force by police. The unlawful killings violate the right to life in accordance with the Constitution of the Republic of Uganda, 1995 (1995 Constitution).[10] They are also in violation of the provisions of the African Charter on Human and Peoples Rights (African Charter) and the International Covenant on Civil and Political Rights (ICCPR).[11]

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[7] Code of Conduct for Law Enforcement Officials.
[8] Police Act, Cap. 303 Laws of Uganda.
[9] Section 1 of the Police (Amendment) Act, 2006.
[10] Constitution of the Republic of Uganda, 1995 (as amended) Article 22
[11] African Charter, Article 4 and International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 6.

Accountability

Accountability is one of the principles of democracy in which public officials are held accountable by the community for functions carried out in their official capacity.[12] Bovens argues that effective accountability constitutes openness and answerability of public officials to the citizens concerning the execution of their publicly entrusted mandate.[13] If the law enforcement institution is secretive about its operations and does not give members of the public a reasonably opportunity to scrutinize their actions – [subject to sensitivity of information], such conduct defies the spirit of accountability. Schedler also defines accountability as a mechanism for surveillance and oversight of public officials during the execution of public authority.[14] Accountability therefore constitutes the checks and balances to ensure that public officials do not abuse the power that they are entrusted with.

Effective police accountability involves many different actors including government representatives, parliament, the judiciary, civil society actors, and independent oversight bodies such as national human rights institutions. Primarily, it involves the police themselves.[15] Members of the government and other political authorities should promote a culture of accountability for law enforcement and should be held responsible if they encourage or promote unlawful behavior.[16] Internal and external oversight systems should be in place with respect to every law enforcement agency.[17] Bovens has distinguished various limbs of accountability.[18] These include professional accountability, corporate accountability, political accountability, hierarchical accountability, collective accountability, individual accountability, among others. For purposes of this article,

[12] Emmanuel Okurut, *Preventing Human Rights Violations by Law Enforcement Agencies during Counterterrorism Operations in Kenya and Uganda* (LLD Thesis, University of Pretoria, November 2017) page 17.
[13] M Bovens, 'Public Accountability' (*Paper for the EGPA annual conference, Oeiras Portugal September 3-6, to be presented in workshop 8 (Ethics and integrity of governance) 2003*) http://www.law.kuleuven.be/plaatsingsdienst/integriteit/egpa/previous-egpa-conferences/lisbon-2003/bovens.pdf, accessed on 28 September 2018.
[14] A Schedler, LJ Diamond & MF Plattner, *The self-restraining state: Power and accountability in new democracies* (1999) pg. 13.
[15] UN Office on Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity*, Criminal Justice Handbook Series, Vienna, July 2011, Page iv.
[16] Geneva Guidelines on Less – Lethal Weapons and Related Equipment in Law Enforcement, page 11.
[17] ibid.
[18] M Bovens, 'Public Accountability' (*Paper for the EGPA annual conference, Oeiras Portugal September 3-6, to be presented in workshop 8 (Ethics and integrity of governance) 2003*) http://www.law.kuleuven.be/plaatsingsdienst/integriteit/egpa/previous-egpa-conferences/lisbon-2003/bovens.pdf accessed on 28 September 2018.

emphasis will be placed on professional accountability and individual accountability. He notes that "professional bodies lay down codes with standards for acceptable practice that are binding on all members".[19] He notes that these may include police officers. Bovens notes that these standards are monitored and enforced by professional bodies of oversight on the basis of peer review.[20] Individual accountability on the other hand "is the most specific strategy for attributing blame".[21] Bovens argues that in individual accountability "an attempt is made to do justice to the circumstances of the case".[22] He states that "each official is held liable in so far as, and according to extent to which, he personally contributed to the malperformance of the agency".[23] Bovens notes that from a preventive perspective, individual accountability would seem to be more helpful than others.[24] Therefore, in this article, the term accountability refers to the obligation placed upon law enforcement agencies and individual officers to answer for their individual excesses in the course of executing their mandate.

Police Brutality

Police brutality is a grave criminal offence.[25] It is also a violation of fundamental and constitutional rights. It occurs when police officers act with excessive force by using an amount of force with regard to civilians that is deemed more than necessary.[26] Excessive force is not subject to a precise definition, but it is generally beyond the force a reasonable and prudent law enforcement officer would use under the circumstances.[27] Police brutality may take various shapes and forms. It may be a minor act by a police officer that only requires police administrative action as a remedy. It may also be a grave act that requires both police disciplinary action but also criminal prosecution of the police officers involved. As indicated earlier, it may also involve civil action by the victims of police brutality who may sue the police institution and the individual police officers involved in the misconduct. Police brutality within the context of this article, therefore refers to the unlawful

[19] ibid.
[20] ibid.
[21] ibid.
[22] ibid.
[23] ibid
[24] ibid.
[25] See United Nations Code of Conduct for Law Enforcement officials (1979); Also see United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), among other instruments.
[26] Snyman, Criminal Law (2008) 130-138; Also http://www.saflii.org/za/journals/PER/2012/26.pdf accessed April 7, 2022.
[27] ibid.

use of force that results into ill-treatment, torture and extrajudicial executions by police officials. The author now examines the nexus between ill-treatment, torture, extra-judicial executions and police brutality, hereunder.

International Regime On Police Brutality

Severe violations of international human rights law occur on a daily basis on the African continent. Perhaps the most rampant violations are ill-treatment, torture and extrajudicial executions. Police brutality in all its forms, such as ill-treatment, torture and extrajudicial executions, are a violation of international human rights law. The aforementioned violations are not acceptable under any circumstances. Many international legal instruments provide for how these grim crimes should be prohibited and prevented.

The Universal Declaration of Human Rights (UDHR) provides that every human being has the inherent right to life which shall be protected by the law,[28] whereas the International Covenant on Civil and Political Rights (ICCPR) further fortifies this right to life by stating that no one shall be arbitrarily deprived of life.[29] Consequently extrajudicial executions are prohibited under international law.[30] The ICCPR also states that everyone has a right to liberty and security of person.[31] The ICCPR further prescribes that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.[32] The prohibition of torture is a jus cogens norm from which no derogation is permitted by international law. The African Commission on Human and Peoples Rights (African Commission) has generated significant jurisprudence on the fact that the right to life is the fountain of all human rights.[33] Without this right, other human rights cannot be enjoyed.[34]

[28] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR)) Article 3.
[29] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 6.
[30] See UN Principles on Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions Article 1; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR)) Article 3; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 6 and UN Code of Conduct for Law Enforcement officials Article 3, among others.
[31] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 9.
[32] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 7.
[33] General Comment No. 3 Paragraph 1.
[34] African Charter Article 4.

It follows naturally that the right to life, liberty, security of person and freedom from torture are interrelated.[35]

Consequently, ill-treatment, torture, and extrajudicial executions have been declared crimes under international law. According to many international instruments, these heinous human rights violations are absolutely prohibited and cannot be justified under any circumstances. They are also crimes under international customary law.[36] Therefore, even if a state has not ratified international instruments that prohibit ill-treatment, torture and extrajudicial executions, the said instruments are binding on them.[37] Several international instruments have defined ill-treatment, torture, and extrajudicial executions. The international legal framework governing the protection of the right to life, liberty and security of person is constituted in the Universal Declaration of Human Rights (UDHR)[38] and the International Covenant on Civil and Political Rights (ICCPR).[39] The provisions of the UDHR and ICCPR are buttressed by a number of soft law instruments adopted by United Nations organs. These include the Basic Principles on the Use of Force and Firearms by Law Enforcement officials,[40] Safeguards guaranteeing protection of the rights of those facing the death penalty,[41] the Principles on the Effective Prevention and investigation of Extra-legal, Arbitrary and Summary Executions[42] and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[43] The right not to be arbitrarily deprived of life is recognised as a jus cogens norm of international customary law.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines "Torture" under Article 1.[44] The UNCAT also provides that no

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[35] General Comment No. 3 of the African Commission, Paragraph 1; also see General Comment No. 4 of the African Commission.

[36] Office of the United Nations High Commissioner for Human Rights (OHCHR) (May, 2002), *Fact Sheet No. 4 Methods of combating Torture (Rev.1)*, Geneva. OHCHR.

[37] ibid.

[38] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR)) Article 3.

[39] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 6; also see Articles 14 and 15 guaranteeing safeguards for a fair and impartial judicial proceeding.

[40] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. See "Report by the Secretariat", United Nations publication, Sales No. E.91.IV.2, chap. I, sect. B.

[41] ECOSOC resolution 1984/50 of 25 May 1984.

[42] ECOSOC resolution 1989/65 of 24 May 1989. In paragraph 1 of the resolution, the Council recommended that the principles be taken into account and respected by Governments, within the framework of their national legislation and practice.

[43] UN General Assembly resolution 40/34 of 29 November 1985.

[44] United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) Article 1.

exceptional circumstances such as war or a threat of war, internal political instability or any other emergency maybe invoked as a justification for torture and other ill-treatment. The same applies, in the case of an individual offender, to an order from a superior officer or public authority.[45] The ICCPR also provides that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.[46] Article 7(2) (e) of the Rome Statute of the International Criminal Court, 1998, (Rome Statute), lists torture as a crime against humanity. The Rome Statute also defines what torture entails, in specific terms.[47]

Regional Framework on Police Brutality

On the African continent, efforts have been made to prohibit and prevent ill-treatment, torture and extrajudicial executions. This has been through enactment of regional instruments and establishment of human rights mechanisms. Article 4 of the African Charter on Human and Peoples Rights (African Charter) provides for the right to life. The African Commission also adopted a General Comment on the right to life.[48] The General Comment emphasises the duty of the states "to develop and implement a legal and practical framework to respect, protect, promote and fulfil the right to life".[49] The General Comment further implores states to "take steps both to prevent arbitrary deprivations of life and to conduct prompt, impartial, through and transparent investigations into any such deprivations that may have occurred".[50] The instrument further appeals to states to "hold those responsible to account and provide for effective an effective remedy and reparation for victims, including, where appropriate, their immediate family and dependants".[51] The General Comment also stresses the concept of accountability by calling on states to establish "effective systems and legal processes of police investigation (including capacity to collect and analyse forensic evidence) and accountability (including independent oversight mechanisms)".[52] In regard to use of force by police the General Comment compels "states to adopt a clear legislative framework for the use of force by law enforcement and other actors that

[45] OHCHR Fact Sheet No. 4, Op. Cit. page 8.
[46] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 7.
[47] OHCHR Fact Sheet No. 4, Op. Cit. p.10; also see Article 7(2) (e) of the Rome Statute for the definition of torture.
[48] General Comment No. 3 was adopted during the 57th Ordinary Session of the African Commission held on 4 -18 in Banjul, Gambia.
[49] Paragraph 7.
[50] ibid.
[51] ibid.
[52] ibid., paragraph 16.

complies with international standards, including the principles of necessity and proportionality".[53] The instrument also emphasises that firearms should never be used to disperse an assembly.[54] It also emphasises that armed forces can only be used for law enforcement in exceptional circumstances.[55]

The African Charter does not provide for the right to a remedy.[56] The African Commission on Human and Peoples' Rights (African Commission), however, adopted a Resolution on Police Reform, Accountability and Civilian Oversight in Africa in 2006.[57] The preamble of the aforementioned resolution encourages African states to establish independent policing oversight platforms, to which the public may report police misconduct and abuse of their powers.[58]

Nexus Between Ill-Treatment, Torture, Extra Judicial Executions and Police Brutality

The concepts of ill-treatment, torture and extra-judicial executions are ideally grounded under the fundamental human right to life.[59] The right to life has been described as the fountain from which all other human rights spring.[60] These as related to the study include: - the rights to liberty and security of person[61] and freedom from torture and other ill-treatment.[62] It follows naturally that once all the aforementioned rights are protected by the state, then ill-treatment, torture and extrajudicial executions will be prevented. Unfortunately, this is not the reality.

Ill- treatment, torture and extrajudicial executions are a usual occurrence in many parts of Africa. The aforementioned crimes are grave violations of human rights.[63] Extrajudicial executions are prohibited by international human rights instruments.[64] Extrajudicial executions have been

[53] ibid., paragraph 27.
[54] ibid., paragraph 28.
[55] ibid., paragraph 29.
[56] Musila (2006).
[57] African Commission on Human and Peoples' Rights (African Commission), Accountability and Civilian Oversight in Africa 2006 (adopted at the 40th session held in Banjul on 15–29 November 2006).
[58] ibid.
[59] See UDHR, Article 3; ICCPR, Article 6; African Charter, Article 4., Also see Articles General Comment No. 3 was adopted during the 57th Ordinary Session of the African Commission held on 4 -18 in Banjul, Gambia.
[60] ibid.
[61] See Article 23 of the Constitution of the Republic of Uganda, 1995 (as amended); Also see Article 6 of the African Charter.
[62] See Article 24 of the Constitution of the Republic of Uganda, 1995 (as amended); Also see Article 5 of the African Charter.

[63] See United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT); Rome Statute.
[64] See UNCAT & ICCPR, among others.

variously defined as killings by state agents which have not been sanctioned by law.[65] The UNCAT has defined torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or 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 any other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".[66]

Rodley states that aforementioned "definition of torture has become the defacto 'first port of call' for those seeking a definition under international law more generally, notwithstanding the treaty's own caution against transposing its definition to other contexts where broader definitions maybe required or appropriate".[67] Nils Melzer notes that "torture has been defined in many universal and regional instruments…".[68] He states that the various instruments have, however, not defined torture in exactly the same way.[69] Melzer refers to definitions in various universal and regional instruments including the UNCAT.[70]

There are various scholarly debates on how torture should be defined. Whereas it is recommended that the definition of torture in the domestic sphere comply with the definition in the UNCAT, some state parties have altered the definition to suit their environments.[71] Proponents of the definition of torture limited to acts involving public officials argue that it is the official element and association to the state that distinguishes the crime of torture from other crimes.[72] Those

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[65] Abhilasha Shrawat, 'Extra-Judicial Killing and the Role of International Criminal Court' (2017) https://ssrn.com/abtstract+2938358 accessed on 7 October, 2021.

[66] United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) Article 1.

[67] Nigel S. Rodley, Matt Pollard, *The Treatment of Prisoners under International Law* (New York: Oxford University Press, 2011) 84. Also see Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT).

[68] United Nations General Assembly, 'Extra-custodial use of force and the prohibition of torture and cruel, inhuman or degrading treatment or punishment' (July 20, 2017) http://www.undocs.org/A/72/178 accessed August 20, 2021.

[69] ibid.

[70] ibid 10.

[71] Example in Algeria and Uganda a person who is a perpetrator of torture can be held responsible both in his official and private capacity for acts of torture.

[72] REDRESS (2016), *Legal Frameworks to end Torture in Africa; Best practices, Shortcomings and Options Going Forward*, A report which is part of a regional project entitled *Anti- Torture Legislative Frameworks: Pan- African strategies for adoption and implementation*, (March, 2016)

arguing for the widening of the definition to include both official and private capacities of perpetrators, contend that the extremely egregious crimes committed with increasing frequency by non-actors would meet the severity threshold of torture. For instance, this applies in the context of armed conflict, and the corresponding need for accountability of perpetrators and justice for victims.[73]

The definition in the UNCAT only criminalizes acts performed in an official capacity.[74] The Robben Island Guidelines provide that state parties should ensure that acts which fall within the definition of torture, based on Article 1 of the UNCAT are offences within their national legal systems.[75] The REDRESS Report further states that inserting a clear definition of torture into the relevant national law that incorporates the definition under Article 1(1) UNCAT minimizes the possibility that courts will fail to interpret the crime in line with international requirements.[76] The view that perpetrators of torture should only be held responsible when they perform the acts in their official capacities is rather absurd. This definition does not suit the circumstances of the African continent. On the African continent where, powerful individuals abuse their official positions with impunity, virtually all the powerful offenders would get off scot-free. This is why the strategic use of alternative remedies is increasingly becoming a useful tool in curbing police brutality.

With the aid of soft law instruments on policing, Melzer also sheds some light on the circumstances under which extra-custodial use of force may amount to torture and other forms of brutality.[77] He also notes that the use of force outside custodial settings has not been closely studied. Melzer also observes that this may occur in the course of arrest, stop and search, and crowd control environments.[78] He also states that law enforcement officials are empowered to use force, but must adhere to the principles on the use of force.[79] In the next section, the author reviews the theories on policing.

[73] ibid.
[74] United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, (UNCAT), Article 1.
[75] Robben Island Guidelines, Paragraph 22.
[76] REDRESS Report, Op. Cit., Page 11.
[77] ibid 4.
[78] ibid.
[79] ibid 6.

Theories on Policing

There are several theories of policing. These include; the democratic policing theory, the community policing theory, problem-oriented policing theory and broken windows policing theory. The democratic policing theory requires that law enforcement must carry out all its functions in accordance with the rules and regulations provided for by the law.[80] The founding ideology of community policing theory is that there must be increased involvement of members of the community in law enforcement because they often provide invaluable information, leads and suggested solutions to crime which police might not be privy to.[81] Community policing is often associated with the principles of policing by consent.[82] Problem-oriented policing was first proposed as a theory in 1979 by Goldstein.[83] John Eck and William Spelman expounded on Goldstein's theory in developing scanning, analysis, response, and Evaluation [SARA].[84] Scanning requires law enforcement to identify repetitive problems in the community; weigh the repercussions of the problem; list the problems according to priority; formulate aims and objectives; and ascertain the actual prevalence of the problem.[85] Analysis involves examining the factors that contribute to the problem; identifying issues which need more scrutiny; investigating existing information on the problem; examining current solutions to the problem together with their weaknesses; and exploring the various ways in which the problem might be solved.[86] The response stage involves devising innovative interventions; examining how other similar communities have handled those kinds of issues; outlining the aims and objectives of the plan of action; and finally executing the plan.[87] Finally, assessment is an evaluative process to determine whether the plan of action was executed according to the initial preparations; determining whether the set aims and objectives of the operation were adequately fulfilled; and carrying out a

[80] CE Stone & HH Ward, *Democratic Policing: a framework for action* (Policing and Society: An International Journal 12, 2000) 10(1)
[81] DP Rosenbaum, *the challenge of community policing: Testing the promises* (1994) 258.
[82] SA Lentz & RH Chaires, *The Invention of Peel's Principles: A study of Policing "textbook" history* (Journal of Criminal Justice 69, 2007) 35(1)
[83] H Goldstein (1990) *Problem Oriented Policing* USA: McGraw-Hill, Inc.
[84] See SARA at www.ncjp.org/index.php/index?q=strategic-planning.justice-applications/sara-problem-solving-model#sthsh.LOpjk14v.dpuf accessed 11 October, 2021.
[85] H Goldstein (1990) *Problem Oriented Policing* USA: McGraw-Hill, Inc.
[86] ibid.
[87] ibid.

continuous objective assessment on the effectiveness of the plans of action.[88] The broken windows policing theory encourages proactive policing where law enforcement uses all the available resources to curb all forms of societal disorder by arresting, cautioning and watching the streets.[89] The two major assertions of the theory is that minor misdemeanors are discouraged and more sophisticated crime is prevented.[90] This theory is often criticised for encouraging authoritarian policing.[91] In this article, the author adopts the democratic policing theory to examine the challenge of police brutality.

Internal and External Oversight Mechanisms

Related to the policing theories are internal and external accountability measures which enable effective policing. All over the world, police are accountable to a chain of command within the police forces.[92] Externally, they are also accountable to several government organs. Depending on the country, these may include; the public prosecutor, interior ministry, the judiciary, the legislature, national human rights institution, independent civilian oversight agencies, among others. Related to external oversight is international accountability.[93] This concerns "international scrutiny that police may be subjected to by international human rights treaty bodies such as the Human Rights Committee or regional treaty bodies…".[94] It is important to note that in a functional domestic legal system, internal and external oversight measures do not operate in conflict with each other, but are complementary to each other.[95] It has been noted that "internal and external oversight police accountability mechanisms both have strengths and weaknesses.[96] While external systems are likely to be more credible in the eyes of the public, they are less likely to succeed in unravelling systematic police misconduct without the support of police management".[97] It has been

[88] ibid.
[89] BE Harcourt, *Illusion of Order: The false promise of broken windows policing* (2009) 5.
[90] ibid.
[91] ibid.
[92] United Nations Industrial Development Organization (UNIDO), Handbook on Police Accountability, Oversight and Integrity, criminal justice handbook series, page 12.
[93] ibid.
[94] ibid.
[95] ibid 13.
[96] E. Alemika, *Police accountability institutions and mechanisms in Nigeria*, unpublished manuscript (UNIDO, Handbook police accountability, oversight and integrity, criminal justice handbook series, 2009) page 14.
[97] Handbook on Police Accountability, Op. Cit., page 14.

argued that "they often lack the necessary investigative skills, especially when they have to operate within the context of insular police culture".[98]

This article concentrates on the police forces because often times they are the very institution who are charged with investigating these grave crimes, but turn into the offenders. This conflict of interest provides the police forces with a fertile ground to perpetuate police brutality. This is often facilitated through police codes of silence.[99] There are many forms of redress available to prohibit and prevent police brutality, which may manifest in form of ill-treatment, torture and extrajudicial executions.[100] These include access to medical examination upon arrest and after detention, access to a lawyer upon arrest, independent monitoring and oversight mechanisms of the police forces, exclusion of evidence obtained under torture, criminal accountability for torture, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, among others.[101] All the aforementioned forms of reparation can function perfectly only with the assistance of the police management and the public prosecutor, among other key internal and external oversight measures. In case the individual police officials are the offenders, the likelihood of the aforementioned oversight and monitoring tools performing, as they are supposed to, is significantly reduced or obliterated.

This paper, therefore, is relevant because alternative remedies remain one of few tools to hold powerful individuals within the police forces accountable. This especially so with those who wantonly commit torture or issue superior orders to torture or to extra judicially execute individuals, well-knowing that they will not be held accountable. The aforementioned scenario usually plays out in countries with politically charged environments. In the following section, the author examines the parameters within which the police may lawfully use force.

Limitations on Police Use of Force

[98] ibid.

[99] The "Blue Code of Silence" within the police forces enables individual police officers not to report fellow officers in case crimes are committed.

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[101] 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, Principles of 19 -23

The lawful use of force by police in the execution of its mandate has limitations.[102] Bittner states that police work frequently involves coping with problems that require the use of force.[103] In the course of carrying out their duties, the police have a legal obligation to avoid the use of force.[104] The police shall therefore rely on force in circumstances where it is absolutely necessary.[105] Even where force is used it must be proportionate to the risk posed.[106] Police brutality therefore is a crime at the domestic level and the UNCAT compels each member state party to ensure that all acts of torture are offenses under their criminal law.[107] The Code of Conduct for Law Enforcement Officials (hereinafter titled "Code of Conduct") also provides that no police officer "may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment".[108] It also provides that no officer may cite superior orders as a justification for torture, even in circumstances where there is a threat to national security or internal political stability, among other situations.[109] Not only is police brutality a grave criminal offence but it is also a constitutional civil rights violation that occurs when a police officer acts with excessive force by using an amount of force with regards to a civilian that is deemed more than necessary.[110] Excessive force is not subject to a precise definition, but it is generally beyond the force a reasonable and prudent law enforcement officer would use under the circumstances.[111] This basically entails that the use and exercise of force by a law enforcement officer in carrying out an arrest must be proportional to the threat or danger posed in the circumstances. Any further deviation from such proportionality is deemed to be excessive force and will be in violation of not only another's right to human dignity but also to their right to freedom of security of person.[112] In

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[102] United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
[103] Bittner, Egon, 'Florence Nightingale in Pursuit of Willie Sutton', *(Aspects of Police Work. Bittner, Egon (ed), (pp. 233-268), Boston: Northeastern University Press. p. 256, (1974))*, http://lists.lib.keele.ac.uk/items/0873305F-2524-30C3-1406-555DFD3E0C4F.html accessed March 9, 2018.
[104] The Code of Conduct for Law Enforcement Officials Article 3 and 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 Principle 4.
[105] ibid.
[106] ibid, and 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 Principles 5 (a) & (b).
[107] United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) Article 4(1).
[108] Code of Conduct for Law Enforcement Officials Article 5.
[109] ibid.
[110] Snyman, 'Criminal Law (2008)' 130-138 http://www.saflii.org/za/journals/PER/2012/26.pdf. accessed April 7, 2018.
[111] ibid.
[112] *S V. Walters* (2002) 2 SACR 105 (CC) at 47 http://www.saflii.org/za/cases/ZACC/2002/6.pdf, accessed May 15, 2018.

S v. Williams & Others,[113] the Constitutional Court of South Africa stated that respect for human dignity is a value which, if you acknowledge it, includes acceptance by society that even the vilest criminal remains a human being possessed of common human dignity.[114] This right is at the heart of the right not to be tortured or to be treated or punished in a cruel, inhumane or degrading way, hence the reason why corporal punishment is expressly prohibited.[115] In *S v. Makwanyane* the Constitutional Court of South Africa noted that the right to human dignity and the right to life are entwined.[116] In view of the aforementioned authorities, police use of force must fit within the parameters set by the law. The discussion on police of force in Uganda follows in the section.

Police Use of Force in Uganda

The National Objectives and Directive Principles of State Policy of the 1995 Constitution, provides for Uganda's foreign policy objectives. Objective 28(XXVIII) (b) prescribes 'that the foreign policy of Uganda shall be based on principles of … (b) respect for international law and treaty obligations.[117]

The aforementioned constitutional provision is buttressed by Article 119 of the Constitution of the 1995 Constitution, which provides for reception, incorporation and application of international law. Article 119(4) of the 1995 Constitution grants the Attorney General the duty to draw and pursue agreements, treaties, conventions and documents whatever name called to which the government is a party or in respect of which the government has an interest. Article 119(5) of the 1995 Constitution further provides that the government cannot enter in any of the above commitments and cannot conclude them without the legal advice from the Attorney General except in such cases and subject to such condition as Parliament may by law prescribe.[118]

Article 123(1) of the 1995 Constitution, states that the execution of international treaties, conventions and agreements is a preserve of the President who may delegate his or her power to any person. Article 123(2) of the 1995 Constitution provides for Parliament to make laws to govern ratification of treaties. This brief examination of the constitutional provisions of the 1995

[113] [1995] (CCT20/94) 3 SA 632 http://www.saflii.org/za/cases/ZACC/1995/6.html accessed on 16 March, 2018
[114] ibid.
[115] ibid.
[116] [1995] (CCT3/94) ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995) http://www.saflii.org/za/cases/ZACC/1995/3.html accessed March 17, 2018.
[117] Constitution of the Republic of Uganda, 1995 (as amended).
[118] See *Nsimbe Holdings Ltd v The Attorney General & Another,* Constitutional Petition No 2 of 2006 [2007] UGCC 4 (6 November 2007)

Constitution therefore, justifies the duty of Uganda as a state party, to abide by international standards.

In view of the above discussion, Uganda is a signatory to several international and regional human rights instruments that spell-out parameters on police use of force. At international level, they include the ICCPR which Uganda signed and ratified on 21 June, 1995.[119] Other key human rights instruments signed and ratified by Uganda include the United Nations Convention against Torture and Statute of the International Criminal Court. On the African continent, Uganda has signed and ratified the African Charter on Human and Peoples Rights, and The Protocol of the African Charter on the African Court, among other instruments.

Legal framework in Uganda

The Bill of Rights under Chapter 4 of the 1995 Constitution guarantees a significant number of human rights.[120] The rights relevant to police brutality include the right to life,[121] the right to liberty,[122] and the right to human dignity, including freedom from torture and inhuman treatment.[123] A strict interpretation of Article 22 on the right to life, makes it unlawful for a police officer to shoot any person with the intention of killing them. Any "shoot to kill" order from a superior officer to junior police officers is also unlawful. Article 22 states as follows: -

> No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.

As compared to the right to life provisions of Constitutions of other countries, the aforementioned provision is drafted in very imprecise terms.[124] Under Article 44, the non derogable human rights are spelt out. They include freedom from torture and cruel, inhuman and degrading treatment or

[119] https://www.tinternetohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&lang=EN accessed on

[120] Articles 20 – 45 of the Constitution of the Republic of Uganda, 1995 (as amended).

[121] Article 22 of the Constitution of the Republic of Uganda, 1995 (as amended).

[122] Article 23 of the Constitution of the Republic of Uganda, 1995 (as amended).

[123] Article 24 of the Constitution of the Republic of Uganda, 1995 (as amended).

[124] For example, Section 11 of the Constitution of the Republic of South Africa, 1996; see also the Constitutions of Kenya and Ghana.

punishment,[125] freedom from slavery, servitude,[126] the right to a fair hearing[127] and the right to an order of habeas corpus.[128] Interestingly, the right to life is not included among the aforementioned none derogable rights. Article 29 enables the right to peacefully assemble and petition.[129] Any person who claims that "a fundamental or other right or freedom guaranteed under the 1995 Constitution has been threatened and/or violated is entitled to apply to a competent court for redress, which may include compensation".[130] The above discussion shows that Uganda has permissive provisions in regard to the human right to life and other associated rights. Consequently, it can be argued that the said regime does not meet international human rights standards.

Institutional framework in Uganda

The Uganda Police Force is one of the duly established law enforcement organisations in Uganda.[131] The other law enforcement organs that have power to use force include local chiefs,[132] Uganda Prisons Service and Uganda Peoples Defence Forces, among others.[133] There are other specialized laws regulating the use of force in Uganda, but the major law is the Criminal Procedure Code Act (PCA).[134] This is colonial law that was enacted in 1950, before the independence of the Uganda Protectorate in 1962.[135] This law lays down the procedure of arrest of a person in Uganda. Section 2(1) of the Criminal Procedure Code Act provides for the various forms of arrest. It is important to note that every Ugandan has a right to liberty.[136] Therefore, a person can only be deprived of their personal liberty as authorised by law.[137]

Use of Force in carrying out an Arrest

The use of force is authorised in effecting an arrest of a person, if the person resists an attempt by a police officer to be arrested peacefully. The police officer is authorised to use all the means

[125] See Article 24 of the Constitution of the Republic of Uganda, 1995 (as amended).
[126] Article 25 of the Constitution of the Republic of Uganda, 1995 (as amended).
[127] Article 28 of the Constitution of the Republic of Uganda, 1995 (as amended).
[128] Article 23 & 44 (d) of the Constitution of the Republic of Uganda, 1995 (as amended).
[129] Constitution of the Republic of Uganda, 1995 (as amended).
[130] See Article 50 of the Constitution of the Republic of Uganda, 1995 (as amended).
[131] See Article 211 of the Constitution of the Republic of Uganda; also see section 2 Police Act, 1994 (as amended).
[132] Section 69 (3) (h) of the Local Governments Act.
[133] Section 27 of the Parliament Privileges Act and Section 184 of the Uganda Peoples Defence Act, among others.
[134] Criminal Procedure Code Act Cap. 50, Prisons Act, 1950 and Police Act, 1994 (as amended).
[135] This is a colonial era law that was "received" by the Uganda Protectorate by virtue of the 1902 Order-In-Council.
[136] Article 23 of the Constitution of the Republic of Uganda, 1995 (as amended).
[137] Article 23 of the Constitution of the Republic of Uganda, 1995 (as amended).

necessary to arrest the person.[138] Only reasonable use of force proportionate to the circumstances is allowed. Excessive and unreasonable use of force is unlawful.[139] In *PC Ismail Kisegerwa v. Uganda*[140] the Court of Appeal held that when excessive force is used in arresting a person and a death occurs, the killing of person is murder, a capital offense. The use of a firearm in carrying out an arrest of a person who is resisting arrest using a firearm is lawful, as held in *Byarugaba v. Uganda.*[141] Relatedly, in *Omar Awadh and Others v. Attorney General*[142] the Constitutional Court of Uganda held that the acts of excessive use of force suffered by the petitioners during their arrest and interrogation in both Kenya and Tanzania were not attributable to Uganda law enforcement agencies or officials.

Once a person has been arrested, there is no need to use force that is more than necessary to restrain him or her from escaping from arrest.[143] It is also illegal to tie or assault a person who is already in police custody. It would amount to police brutality. Before use of force is employed to arrest a person, regard must be had to the seriousness of the offence committed. If it is a capital offence where violence is involved, a police officer maybe justified in using deadly force in order to arrest a person who is attempting to evade arrest.[144] Under section 28 of the Police Act a police officer is authorized to use a fire arm in the following circumstances: -

> (1) A police officer may use a firearm against—
> (a) a person charged with or convicted of a felony who escapes from lawful custody;
> (b) a person who, through force, rescues another person from lawful custody;
> (c) a person who, through force, prevents the lawful arrest of himself or herself or of any other person.

[138] Sections 2 (2) & (3) of the Criminal Procedure Code Act.
[139] Section 2 (3) of the Criminal Procedure Code Act.
[140] [1978] Crim. Appeal No.6 (Court of Appeal).
[141] [1973] 4 (ULR).
[142] [2014] (Consolidated Constitutional Petition No(s). 55 and 56 of 2011) UGCC 18 (22 October 2014).
[143] Section 5 of the Criminal Procedure Code Act.
[144] Section 36 of the Police Act, 1994 (as amended).

The justification for use of force in Uganda is at a variance with international human rights standards on police use of force. Under international law, police use of force is only authorized when there is an eminent threat to life.[145]

Similarly, under section 36 of the Police Act, a Police officer who uses excessive force in dispersing an unlawful assembly is not liable in criminal or civil proceedings. The section provides as follows: -

> If upon the expiration of a reasonable time after a senior police officer has ordered an assembly to disperse under section 35(4) the assembly has continued in being, any police officer, or any other person acting in aid of the police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming that resistance, and shall not be liable in any criminal or civil proceedings for having by the use of that force caused harm or death to any person.

The aforementioned provision of the Police Act does not comply with international law on the police use of force.[146]

Internal and External Oversight of Police in Uganda

The Uganda Police Force has several internal oversight mechanisms. They include a code of conduct, a complaints system and disciplinary courts charged with the mandate of resolving any police misconduct, including the investigation of police brutality.[147] Section 1(e) of the Police Act provides that "Code" means the disciplinary code of conduct provided for under section 44 of the Police Act. Section 44(1) provides that the aforementioned code of conduct shall be the basis for disciplining police misconduct. Section 44(2) states that the code of conduct is in the schedule annexed to the Police Act. Rules 12 and 24 of the Police code of conduct outlaws any misconduct, including the excessive use of force by any police officer.[148] The Police complaints system consists

[145] See United Nations Code of Conduct for Law Enforcement officials (1979); Also see United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), among other instruments.
[146] See United Nations Code of Conduct for Law Enforcement officials (1979); Also see United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), among other instruments.
[147] See part VI of the Police Act, 1994 (as amended).
[148] Rule 28 of the Code of Conduct lays down sanctions against police misconduct ranging from a reprimand to dismissal from the Uganda Police Force.

of complaints desks at police stations, a human rights and complaints desk and a professional standards unit at the Police Headquarters.[149] The Uganda Police Force also has established a hierarchy of police courts from the lowest to the highest unit.[150] The Police courts have handled numerous complaints against police officers. One of the prominent cases included several senior officers who were demoted after a private prosecution was instituted against them and the Inspector General of Police.[151] The author was involved in the private prosecution of the former Inspector General of Police, General Kale Kayihura and 7 other senior police officers in Uganda in July 2016 for perpetrating police torture by issuing orders to junior police officers and men to brutalize supporters of an opposition political party who were peacefully assembled in protest.

With regard to external oversight, the Uganda Police Force is supervised by the Uganda Human Rights Commission that monitors and investigates human rights violations including police brutality.[152] There is also parliamentary oversight on how the Police executes its mandate. The Police leadership must periodically appear before committees of Parliament to explain how they are executing their mandate.[153] Civil Society Organisations (CSOs) have also facilitated the exposure of police brutality within the Uganda Police Force.[154] In terms of international accountability, Uganda is required to file periodic reports to various human rights mechanisms in accordance with its international obligations.[155] Having reviewed the international and domestic standards governing the police use force in Uganda, recommendations are proposed hereunder.

Recommendations

Internal Police Oversight

[149] See part VI of the Police Act, 1994 (as amended).
[150] Police Act Sections 50, 52 and 53.
[151] *Uganda versus Kale Kayihura & 7 Others*, Revision Cause No. 34 of 2016.
[152] Article 51 and 52 of the Constitution of the Republic of Uganda, 1995 (as amended).
[153] See parliamentary Rules of Procedure of the 11 Parliament., also see Article 79 of the Constitution of the Republic of Uganda, 1995 (as amended).
[154] D. Woods "The Role of civil society in police reform in Uganda" IDASA Conference "Policing in post-conflict Africa. Available at https://www.humanrightsinitiative.org/programs/aj/police/papers/presentations/role_of_civil_society_in_police_reform_in_uganda.pdf accessed on (10 June 2022).
[155] These are to the Human Rights monitoring mechanisms at the United Nations and African Commission, among others.

Internal police oversight is partly enabled through an effective chain of command.[156] An effective chain of command involves a clear reporting mechanism and a transparent internal disciplinary structure.[157] The Uganda Police Force has been found to have had challenges with its internal disciplinary processes which have been criticised by the Uganda public. The internal oversight mechanisms within the Uganda Police do not meet the accountability standards a law and order institution should aspire to.

External Police Oversight

8.2.1 Independent Police Oversight

Uganda does not have an independent police oversight agency.[158] In view of the numerous cases of police misconduct, including police brutality, it is critical that such a civilian oversight agency is established in Uganda. Numerous African countries have established independent police oversight agencies in view of the complex challenges that police brutality presents to society. The countries include Kenya, which established the Independent Police Oversight Authority (IPOA) in 2011 to provide civilian oversight over the work of police in Kenya.[159] South Africa, whose Independent Police Investigative Directorate (IPID) is charged with investigating serious offences criminal offences suspected to have been committed by the police.[160] Recently, Sierra Leone has also established the Independent Police Complaints Board (IPCB) as a civilian oversight mechanism to receive and investigate any complaints against police misconduct.[161] The establishment of an independent civilian oversight agency will eventually redeem the battered public image of the Uganda Police and raise its legitimacy before the Ugandan public.

Uganda as a state party to the ICCPR is required to ensure that when human rights violations occur including police brutality, independent and permanent mechanisms are established to investigate

[156] United Nations Office on Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity*, (Criminal Justice Handbook Series (2011) New York: United Nations 12).
[157] ibid (Criminal Justice Handbook Series (2011) New York: United Nations 12).
[158] Sarah Mount, *Police and the Media in Uganda: Independent oversight of the Police is the next step*, (Commonwealth Human Rights Initiative, 2012).
[159] IPOA was established in November 2011 through an Act of Parliament.
[160] IPID, 'Independent Police Investigative Directorate: Overview', https://nationalgovernment.co.za/units/view/20/independent-police-invetsigative-directorate-ipid accessed on 15 February, 2021.
[161] IPCB Regulations, 2013 Section 3 (1) & (2); Also see IPCB, 'Institutionalizing Accountable Policing in Sierra Leone- A Progress Report on Operationalization of the IPCB' http://www.ipcb.govsl/wp-content/uploads/2019/Pub-Ist-IPCB-progress-report-to-parliament-march-2014.pdf accessed on 15 February, 2021.

those infringements. The establishment of an independent civilian oversight agency will enable Uganda to comply with its international obligations under the United Nations Human Rights state reporting system.[162]

There are key considerations in setting up the independent civilian oversight agency on the Uganda police. These will include; First, an independent appointment process of the staff divorced from the executive arm of government, and an enhanced security of tenure for the agency staff.[163] Secondly, an independent financial vote charged on the consolidated fund of government to facilitate the agency's affairs. Thirdly, the mandate of the oversight agency should enable it to receive complaints from the public, but also initiate investigations on its motion against police brutality including other serious crimes. These serious crimes include deaths, torture and serious injuries caused by police in police custody and out of police custody.[164] Fourthly, the oversight agency should make binding recommendations including internal police disciplinary procedures, criminal prosecution and periodic reform of police policy. Lastly, the agency should be adequately resourced in order to make quality periodic reports to parliament and also to the general public. In addition to the aforementioned practical recommendations, key stakeholders like the civil society, parliamentary oversight committees and the office of Directorate of Public Prosecutions and the general public, among others, as external oversight persons and agencies working in concert can enable a society freed from police brutality.

Conclusion

The paper has focused its discussion on the challenge of police brutality and the possibility of using alternative remedies, where internal and external oversight mechanisms are weak or have been co-opted into the undemocratic environment in which they situated. A discussion of the international standards on police use of force was done to tease-out the best practices in this area. The legal regime on police use of force in Uganda was reviewed and found inadequate. The

[162] Uganda is required and agreed to under Universal Periodic Review process to ensure that "[i]mpartial, independent investigations are undertaken into allegations of human rights violations by security forces, including torture and other cruel, inhumane or degrading treatment, and the findings of those investigations be made public." See Mount (2012) 3.

[163] Experiences from elsewhere on the continent indicates that the staff should be a mixture of retired law enforcement officers and civilians who are shown honesty and integrity in their work record.

[164] Out of Police custody situations may include crowd control environments including during peaceful assemblies.

establishment of an external oversight agency is one of the practical recommendations suggested to curb the challenge of police brutality in Uganda.