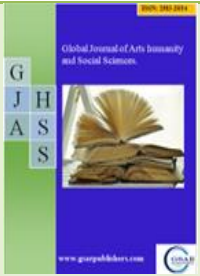


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## THE COMPLIANCE OF THE INTERNATIONAL ANTI TORTURE STANDARDS IN TANZANIA CRIMINAL JUSTICE SYSTEM

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### Abstract

This article analyses the compliance of the international anti torture standards in Tanzania criminal justice system. It investigates the reason behind establishment of international anti torture norms and how it is important to be implemented in Tanzania domestic criminal justice system. One of the functions of the state is to ensure protection of human right, compliance of the laws by the state officers including police and prison officers to ensure protection of individuals from any harm, which can be caused by Torture. State in exercising that functions should comply with laws, which prohibit torture during enforcement of the different criminal laws.

However, police offices and prison officers in exercising their function has sometimes alleged to use torture to get some information from the suspect of crimes or inmate. This allegation has given rise to this research, which looks at the application of the international anti torture norms in Tanzania criminal justice system by police officers and prisoners' officers in Tanzania. International laws require that states to criminalize torture in their jurisdiction in order to deter police or prisoners' officers to use torture as a way to get information's. There are claims from suspect that are tortured by police officers during arrest, of investigation and in some occasions when an unofficial arrest occurred to get some information's. Thus, this research intends to discuss in niceties the applicability of international ant torture norms in Tanzania criminal justice system in its framework.

**KeyTerms:** Anti Torture, International Compliance and Criminal Justice System.

## INTRODUCTION

### CONCEPT OF TORTURE

Torture is an illegal action. Torture is an act regarded as inhuman treatment.<sup>i</sup> This is the act which is committed by the state agencies or person acting in official capacity for the intention of collecting information from a person or third part. Torture basically cause pain to the victim whereby; this pain can be caused physically or psychosocially. Torture by its nature violate human rights. Furthermore, torture is prohibited by both International, Regional and Domestic legal framework. Torture has important features that differentiate it from other Criminal offences such as cause bodily harm.<sup>ii</sup>

## ELEMENT OF TORTURE

### 2.2.1.1 Sever Pain or Suffering

Sever pain is a highest level of pain whereby a person suffers either once of constantly. This pain can be caused through various ways. The pain can end within minutes or may last for a long period of time, taking even years. According to the Black's Law Dictionary, pain or suffering means a physical discomfort or emotional distress comparable as an element of damage.<sup>iii</sup> A person being tortured is affected by the pain either physically or mentally or both ways to mean physically and mentally. The concept of severe pain or suffering is an important element to determine the act of torture. The aspect of pain is highly related or associated with criminal offences.<sup>iv</sup> Not all pain caused by a person to another is a criminal matter or offence unless the Mens're a and actus reus is proved. Furthermore, sever pain to form element of torture shall be

associated with higher level of pain to the victim as well as purpose to cause the said pain.<sup>v</sup>

The aspect of torture accepts that torture cause both physical pain and psychological or mental pain. Physical pain is associated with frequent pain and wounds in muscle system of a victim. Physical pain or suffering is caused to the different modes or ways used by perpetrators towards the victim these are to include, burning, beating, cutting, canning, this is to mention a few. All of these methods leave a victim with scars and wounds hence resulting to, continuous pain towards the victim. For instance, neuropathic pain as a result of torture used different methods such as traction, suspension, and strangulation. These methods cause risk to the victim resulting to suffering from nerve tissue dislocation, or tissue fractures.<sup>vi</sup>

The aim of psychological torture is to destroy and control a person from making independent decisions. The aim of this kind of torture is to ensure that a person provides a required information. The impact of psychological torture towards the victim is to cause emotional pain which may last for a long time.<sup>vii</sup> Different methods are used to inflict psychological pain including prolonged solitary confinement, sleep deprivation, sensory deprivation, humiliation, threats. Many of these methods are not clearly stated or defined in legal framework.<sup>viii</sup>

#### 2.2.1.2. Intentionally

In any criminal offences there are two important elements among other elements which must be proved beyond reasonable doubt. Torture as a criminal offence under international law and many domestic legal frameworks from different Jurisdictions, the two elements which are Actus reus and Men's rea must exist. From the definition of torture as provided under Article 1,<sup>ix</sup> provides that an act to be recognized as torture, should conducted intentionally. According to the Black's Law Dictionary defines the term intention to mean a willingness to bring about something planned.<sup>x</sup> Intention is associated with the purpose of mind to commit or conduct something either good or bad.

The element of intention in torture treatment is to cause pain or suffering in order to fulfil the purpose which basically is to collect some information from the suspect or the third party. The relevancy of intention as an element of torture must be associated with a person or perpetrator who according to both international laws and some domestic laws must involve a person acting in the government official capacity.<sup>xi</sup> The determination of intention should be conducted by the Judiciary or an established and competent authority with power and ability to test the said element and through this it will enable a person to be punished fairly. Therefore, as far as this study is concerned, intention is a willingness of a perpetrator to cause a sever pain to another person for the aim of punishing or collecting information from him or her.

#### 2.2.1.3 Purpose

Torture is conducted with purpose. The cardinal and primary purpose of torture is to obtain information from the intended person. The mode or method used by the person shall cause pain or suffering in order to fulfil the intended objectives.<sup>xii</sup> Information

may be associated with criminal matters, Political matters, social matters, or economic matters. Purpose refers to a specific intention which drives a person to conduct something. The difference between torture and other criminal offences related to torture are determined by the Purpose Approach. Collection of information is an important element which should associate with other elements including intention and cause of sever pain to the victim of torture. Purpose should be seen in the fact of the case of torture where Judiciary or adjudicative body shall find it before making decision.

#### 2.2.1.4 Public Officials

According to the definition of torture as provided under Article 1 of the UNCAT, torture shall be conducted by the public officials acting in official capacity. Most of the state officials are claimed of conducting torture including police officers and prison officers. These are the people and authorities allowed to investigate crimes committed in Tanzania. Furthermore, any public official is capable of conducting torture.<sup>xiii</sup> Since that torture is an illegal action, police are prohibited from treating people under the police custody without respecting human dignity and human rights. International laws and Domestic laws recognize public officials and any other person who can act in official capacity as the first people who are supposed to ensure human right protection. Furthermore, public officials are at the high position to collect information from the people, especially those who commit offences or those who engage in political matter.

#### 2.2.2 Human Right

Human rights are the rights in which everyone has for the reason that they are human. It is all right in which a person is entitled and it cannot be taken away by another person or in any way. Human rights are universal, to mean that a person's rights are protected and enjoyable without limitation of geographical boundaries, race, beliefs, or ethnic groups. Furthermore, human right is inalienable, to the extent that all peoples, institutions, and government are strictly prohibited by the laws both domestic laws, international laws, customary norms, religious laws to be taken away except under legal justification.<sup>xiv</sup>

Human right has a great and important link with the act of torture because from the definition of torture, the act itself causes physical and psychological pain to the victim. The nature of the act widely affects different human rights including right to life. This is fundamental and inalienable. It should be protected and respected everywhere even in the state of emergency. Right to life is highly affected by the act of torture because of the high level of pain inflicted to a person, injury caused, and effect remains to the victim of torture. For a person to survive needs good health both physical and psychological.<sup>xv</sup>

Torture also affects the right of fair trial. This is a fundamental right as far as criminal justice system is concerned. A person shall not be treated guilty unless is proved beyond reasonable doubt. State agency collects investigative information unlawfully through torture which affects the right of fair trial because a person confesses or provides information to avoid further pain or suffering. In addition to that, a person is treated guilty without

following a legal procedure. This highly affects the criminal justice system.<sup>xvi</sup>

There are different international instruments which protect human rights and prohibit torture, including UDHR, ICCPR, CRC, UNCAT. All of these international instruments require states to ensure establishment of different measures to eradicate the practice of torture. States are required to take both judicial, administrative, and legislative measures to criminalize and eradicate torture as well as maximize human right protection. The mechanism established should be too strong because perpetrators claimed to conduct torture are government officials including police and prison officers. Victims should be able to report without fear and action should be taken accordingly.

Tanzania's main laws which prohibit and protect human rights is the Constitution of United Republic of Tanzania in which Article 13(6)(e) prohibits any person torture and every person should be treated fairly according to the human right standard. The Constitution does not criminalize torture in Tanzania. So as to strengthen the protection of human dignity and human rights. Therefore, the concept of human right and torture is seen as an important and cardinal approach which intends to ensure strong and effective protection of human right and human dignity from torture. Torture is a fundamental violation of human right which needs to be prohibited and eradicated both in international, regional, and domestic community by establishing strong mechanisms and system.

## LEGAL STATUS OF TORTURE IN TANZANIA

Tanzania being a sovereign state it has the power and ability to manage its own internal affairs including legislation without external interference. In exercising its sovereign power and authority Tanzania enacted different laws which prohibit torture as well as establish different institution which required to ensure implementation of the said laws. It includes general laws and specific laws, principal legislations and subsidiary legislation which are discussed in the following trend;

### 3.4.1 The Constitution of the United Republic of Tanzania, 1997

Constitution is mother law of the land where other laws both written and unwritten, and action of the state organ shall not continue the constitution. Any constitution is void and constitution shall prevail over that law or action committed. The parliament as an authority mandated to enact laws shall consider the supremacy of the constitution in order to avoid conflict between written laws and constitution. Constitution as a supreme law provide protection to the human right which are enshrined from article 12 and duties to the citizen and government from article 25 to 29.

As far as this study is concerned, prohibition of torture in Tanzania acquire constitution basis under article 13(6), [B] where provide that no person shall be subjected to torture in Tanzania. this provision is supplement by the same article which require a person

to be treated innocent until provide guilt by the court of law which allow practice of torture in Tanzania.

The prohibition of torture as provided in the constitution is associated with the right to life as provided under article 14. The constitution requires full and strong protection of some life. torture is among of the function which may affect right to life because of the nature of the action itself and the effect of the action. Torture cause both physical and the action. Torture cause both physical and psychological pain to the victim. Other mode way of conduct torture affects health of the victim which is the threats to someone life.<sup>xvii</sup>

Judiciary which are established under provision of article 107A where court is the state organ mandated to administer justice in Tanzania. To ensure effective prohibition torture as stipulated under article 13(6)(e) of constitution judicially shall take all necessary measure under his mandate to punish offenders of torture. This will be adherence of international-anti-torture norms. Since article 13 fall under human right provisions, the procedure to institute case on violation of the right are provided under article 30. The nature of the offence of torture falls under criminal offences which need to be handled under criminal justice system rather than human cases.<sup>xviii</sup>

### 3.4.2 The Penal Code CAP 16 R.E 2023

This is the main law as far as Criminal offences is concerned. Is the specific law enacted to provide for offences which are prohibited in Tanzania jurisdiction and punishment in case of the commission of an offence. Chapter XXII of the Penal Code is associated with the offences which endanger life of a person or a person's health. Among of the offences provided in this chapter including attending to cause grievous harm, excess use of force. all of these offences cause pain to the victim person are dangerous to the life of the victim. Furthermore, this act is not similar to the offence of torture. Tanzania Penal code is silent to the offence of torture something which increase possibility to the state officials to commit such an offence and cause the increase and possibility to endanger personal right to life.<sup>xix</sup>

### 3.4.3 The Criminal Procedure Act CAP 20 R.E 2023

This is the primary law which provide the procedures to be followed by the state authorities including police, state authority judiciary, investigators and other stake holder involved in the criminal justice system, as far as this study is concerned torture may be committed at the arrest stage and investigation stage police department is proper authority mandated to arrest any suspect person who alleged to commit an offence or any act prohibited by the law. Arrest of the suspect person shall conduct lawful.<sup>xx</sup>

Furthermore, police are required to follow the procedure and standard stipulated under CPA during the process of arrest of the suspect person. However, the law does not criminalize any action of the police officer who on the process of arrest, torture a victim or violate any provision governing arrest. Police also are mandated to investigate concerning offence committed contrary to any law. There different ways in which police of investigators may conduct

on investigation including common a person in the jurisdiction of the police station for investigation.

Furthermore, laws allow police allowed to arrest by using any necessary means to ensure that the intended person or accused person is arrested. The word necessary means allow the use of force by the police officer so as to ensure a person has been arrested by the police the law prohibit any further use of force against that person unless the said person intent to escape from detention.

Police officer on the cause of arrest has power to use necessary force to arrest a person. On the course of arrest of suspect police is strongly prohibited by the law to use unreasonable force, or subject person to indignity action. Furthermore, law prohibit any arrest which may affect right to life or cause death to a suspected person unless on the protection of another person in case death happen as a result of arrest a police officer will be held liable after inquire conducted by concerned on the source of death and involvement of the officer.<sup>xxi</sup>

Among of the step of investigation is interrogation of the suspect done by investigation against accused person in order to get some information or evidence concerning a crime committed. The law requires that police officer to conduct on interview with a suspect person within four hours since his or her arrest or any further time not exceed 8 hours. during the whole process of investing the offences or other authorized person shall treat an accused with humanity and respect of human dignity. Any action of police or investigator shall be out of cruel, inhuman, or degrading treatment. The law does not directly prohibit any torture to be conducted by the police offer on the cause of interrogating a suspect.

## CHALLENGES

### Lack of Strong Constitutional Basis

In Tanzania constitution is a supreme law which both state and individuals should respect it. There is no any other laws or action which is above the constitutions. This is the reason why international laws should accept to form part of domestic laws after undergo legal process as stipulated in the constitution especially under article 63 (3) (e). Also, as far as this study is concerned torture is criminal offence but also a act which violate human right. It importantly to be addressed strongly by the Constitution of state in order to draw a strong protection and prohibition.

Tanzania constitution under article 13 (6) (e) only prohibit the act of torture without going further to criminalize it or order a Parliament to enact further a law to handle the same matter. This creates a change for government officials especially police and prison officers to treat people under their custody without considering human dignity.

### 4.3.2 Weak Criminal Justice System

Since under international law torture is taken as criminal offence in which require state to include torture as criminal offence in their criminal laws. It is important for the state to have strong criminal justice system because it establishes strong legal framework which not only prohibit torture but also criminalize torture as a way to

meet international standard, it establishes strong and independence institution which govern implementation of the laws and polices prohibiting torture and also govern how personnels employed in that institution will be obtained and their qualification in order to ensure torture is prevented.

Weak criminal justice system which creates weak procedure for investigation of crime and collection of information from the suspect, emphasize brutality from the public officials especially police officers, create the chance for misuse of authority especially for political and economic interests, enhance correct and affect administration of justice. Weak criminal justice system also affects the access of the justice system to the victim of torture by not providing a clear and express means of handle the issue of torture. Tanzania constitution, Tanzania Criminal Procedure Act prohibit torture and any related treatment but does not criminalized by the penal laws in order to enable police or any other authorized institution to take action against any person who commit such an offence.

### 4.3.3 Institutional Challenges

Torture is both legal matter as well as practical matter. As a legal matter torture need to be legally prohibited as it prohibited under Constitution and other written laws. But also, as a matter of practice, torture need a strong institution which implement laws prohibiting it. In Tanzania there several established institutions which deal with protection of human right including Commission for Human Right and Good Governance, Judiciary, Police Department, Coroner Court to mention but few.

These institutions deal with protection of human right in general and not specifically on an act of torture. For instance, Commission for Human Right and Good Governance is the constitutional institution which mandated to ensure protection of human right. However, president under Article 129 (3), empower president to appoint commissioners and assistance commissioners. Furthermore, article 130 (3) give power to the president to issue directive and orders to the commission for different purposes include not to investigate a certain incident. These situations affect the effort to prevent torture and protection of human right in Tanzania.

Another institution which established to deal directly with human right violation include Coroner Court which are established by the Inquest Act with different power and functions. The challenges facing coroner court as far as torture is concerned is lack of jurisdiction to investigate and determine the incidents of torture to the person who survived. It has jurisdiction only in case of death of the person and the act submitted to the coroner for further inquiries. This affect also affect the effort to protect human right and prevent the act of torture which are constitutionally prohibited.

Police as an institution which mandated to investigate and handle all criminal matters include violation of human right lack institutional legitimacy to deal with claim of torture because, the one who accused to conduct torture in large extent are police themselves. There it is not possible for police to investigate their own wrong.





#### 4.3.4 Lack of Political Will

Political will as far as this study is concerned is an important factor to enhance effective implementation of the and compliance of international standard of laws of torture in Tanzania criminal justice system. Lack of political will affect and undermine to the large extent the effort of prevent torture in Tanzania because it hinders the ratification of The United Nation Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which will help to enhance and reboots criminal legislation toward torture prevention in Tanzania by criminalize torture and enact special legislation which handle the torture in the country.

Failure to ratify international instrument prohibiting torture prevent Tanzania to take strong effort to comply with international standard of laws of torture as well as hold wrongdoers of offence of torture criminal liable. Furthermore, failure to ratify The United Nation Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as result of lack of political will make Tanzania to suffer inadequate legal framework concerning prevention of torture and make torture as a criminal offence, inadequacy on institutional framework, as well as affect administrative action against perpetrators of torture in Tanzania. Lack of political will also affect the effort of the state and international community to support victim of torture to get some remedies stipulated under the laws including payment of compensations, medical services for the injury attained, psychological treatment as well as legal support.

### RECOMMENDATIONS

Government should ratify and domesticate The United Nation Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in order to be bound by the

standard and principle stipulated under the said law. this will boost the effort of Tanzania to protect human right in which will also enable individual and victim of torture to claim and institute case of any other way for redress and enhance accountability to the person who commit torture. Furthermore, this will make Tanzania as a safe place to live in terms of human right protection and join effort with international community to ensure human dignity are highly protected

Legislature should enact specific laws which will govern and control torture in Tanzania. The said laws should criminalize torture and establish specific institutions which deal prevention of torture, investigate claims of torture as well as supervise all mechanism to ensure victim of torture is get important redress and remedies. This will boost efforts of the government and judiciary to ensure implementation of Article 13 (6) (e) which prohibit all acts of torture in Tanzania

Judiciary is mandated under Article 107A as the last constitutional and legal organ to administer and dispense justice in Tanzania. Under this power judiciary should ensure that human right in Tanzania is highly protected by punishing all perpetrators of torture in Tanzania include police officers and prison officers. Since Tanzania legal framework which is adversarial or common law legal system which allow to use laws from other common laws jurisdiction to determine cases in case laws of Tanzania are silent on that matter, to use laws from Kenya or other Common law countries to ensure justice are administered. Through judiciary a best and good precedent can be made in order to create a road map for establishing and implement international standards of laws of torture within Tanzania jurisdiction.

### END NOTE

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