

**A HUMAN RIGHTS PERSPECTIVE ON THE USE OF FORCE BY POLICE OFFICERS
IN EXERCISING THEIR DUTIES**

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PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE
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UNIVERSITY**

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DECLARATION

I, BOGERE ALICE, do solemnly declare, that apart from reference to other peoples' work which has been duly acknowledged, this work is the product of my intellect and academic exercise and has not been presented to any university or other institution of higher learning and where in the world by anyone, either in part or as a whole for the purpose of a certificate, diploma, LLB-Bachelor of Laws degree. I also certify that I prepared by myself specifically for the partial fulfillment for the award of the degree in law at Kampala International University, Uganda.

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APPROVAL

This is to certify that, this research entitled “A HUMAN RIGHTS PERSPECTIVE ON THE USE OF FORCE BY POLICE OFFICERS IN EXERCISING THEIR DUTIES” has been carefully supervised and approved to meet regulations governing dissertation writing of School of Law, in partial fulfillment of the award requirements for the award of Bachelor of Laws (LLB) Degree from School of Law of Kampala International University, Uganda.



MUWONGE EMMANUEL

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DATE:

4/06/2018



DEDICATION

This book is dedicated to my family, my lovely parents Mr. Ojambo Stephen and Mrs. Gune Beatrice, my amazing brothers and sisters, relatives, friends and all my fellow students I have shared my knowledge with.

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ABSTRACT

"Human Rights are very fundamental to the development of the society. At all times, they must be promoted and protected by all persons. Both domestic and international law protect the various existing rights which are inherent and which every individual is entitled to. The provisions of the law are quite specific on the rights protected, rights of which may be derogable or non-derogable. The protection of these rights are the utmost responsibility of the state. The state through its apparatus has to ensure that in performing the duties imposed, Human Rights are not violated. Therefore it is the responsibility of the police to protect and preserve Human Rights whilst performing its duties and exercising its rights. The study will discuss how and whether this has been done.

CHAPTER ONE

INTRODUCTION

1.0 Introduction

The constitution guarantees different freedoms and human rights entitlement to Uganda. Specifically, chapter four of the 1995 constitution embodies such fundamental human rights entitlement. Uganda is a party to various human rights conventions and treaties in which she has vowed to protect the rights and freedoms of its citizens and those under her jurisdiction. In the protection and promotion of these rights, the Constitution does not fail to provide for the Uganda police force¹ who is charged with the protection of lives and property of the people and more importantly the promotion and protection of the rights of the people either as an individual or corporation, association, etc.

The provisions of the Uganda Police Act² entitle the police to use force in circumstances and situations requiring so, such force being reasonable in the circumstances. Such force may be used in effecting an arrest of a suspect, in conducting searches, in apprehending a suspect who escapes or attempts to escape from custody amongst others. The keyword here as already mentioned is “reasonable”. This means that in effecting that mentioned above, the police must only use force which is reasonable and justified in the circumstances. The reasonability and justification being talked about here is one that boils down to the protection of the human rights of the suspect. The police must therefore not use force which will amount to an infringement of the suspect’s human rights and freedoms guaranteed under the Constitution.

Of course there are rights under the Constitution which are not absolute such as the right to freedom, movement, privacy amongst others., the infringement or restriction of such right however must be in accordance with the Constitution and standards set out. Other rights which are absolute like freedom from torture, cruel, inhuman degrading treatment and punishment must be protected at all times by the police when performing its duties.

There are other ways the police use force, for example, in quelling riots and other related situations. In applying such force, the police must not put an individual in harm’s way. The need to perform its functions, duties and obligations must be balanced with the need to protect and

¹ Article 211, Constitution of the Republic of Uganda, 1995.

² Section 28, Police Act, 1994.

promote the rights and freedoms of the people. This study will give a comprehensive analysis as to whether the police has done this.

1.1 Background of the study

Policing in Uganda can be traced back to the colonial periods when the British established the Uganda Armed Constabulary in 1899 with the main objective of maintaining law and order and preserving the peace of the protectorate. Accordingly the procedures for recruitment of the police, the organization as well as training of police officers were based on the Royal Irish Constabulary mode of armed policing.³ Members of the force were therefore recruited on basis of fitness, aggressiveness, strength, physique amongst others, to make sure that law and order were kept successfully. Later in 1906, the British government renamed the police as the Protectorate Police Force. Accordingly, it was created to crime and administrative requirements of the colonial government to curtail any resistance and rebellion to the colonial government. The Protectorate Police Force was in existence even in periods of riots and rebellions against the way the colonialists governed the natives. The Police Force was in existence till independence when it was later called the Uganda Police Force. During the period of 1960 to 1966, the Police was noted for committing assaults on political and human rights. This was the period of the UPC-KY alliance and the 1966 Kabaka crisis. Bribery and corruption was the order of the day in the Police and the people lost faith in the police. There were reported cases of detention without trial, torture, illegal arrests, amongst others. The administration of Iddi Amin saw worse infringement of human rights by the police. People were being killed even by the police, the army constantly interfered into the police and perpetrated more human rights infringement. The administration of Milton Obote did not see much success either. By the time NRM came into power, the police force was a mess. A commission of inquiry into the police was conducted, however, more than 3 decades of the NRM administration has also not seen much success in the protection, preservation and enforcement of human rights either even after the enactment of the 1995 Constitution of the Republic of Uganda, although the situation seems to have improved under the leadership of General Kale Kayihura, the current Inspector General of the Uganda police. He changed the name from Uganda Police Force to Uganda National Police.

³www.observer.ug/tracing-the-origins-of-uganda-police/

The protection, preservation and enforcement of human rights is very fundamental and vital to the development of our contemporary society. The police need to understand the need to protect such rights and must be committed to doing so.

1.2 Statement of the problem

Uganda has well drafted laws on the human rights and its protection by the Police which is the major responsibility of the police. The police Act also provides for the rights, duties and responsibilities of the police, all boiling down to human rights protection and enforcement. Uganda is also a party to different human rights covenants, conventions and treaties on the protection of human rights like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of all forms of Discrimination against Women, the Convention against Torture, Cruel and Inhuman Degrading Treatment and Punishment amongst others. Its judiciary is well grounded in the protection of human rights by the police as there are various cases on the subject. Yet the Uganda police force does not seem to understand its role in the protection of human rights. The problem therefore stems from the following questions in relation to the performance and execution of police duties;

1. What are the roles of the police in protecting and enforcing human rights?
2. Why have the police been involved in human rights violations in what is known as police brutality?
3. What laws control the powers given to the police?
4. What category of rights are being infringed upon by the police?
5. What can be done to reduce human rights infringements by police use of force?

1.3 Aims/objectives of the study

1.3.1 General Aims/Objectives

The general objective of this study is to give a comprehensive study on Police use of force whilst performing and executing the duties imposed by law vis a vis the protection of human rights guaranteed under the Constitution. It aims at showing whether in using force the Police has either protected human rights or infringed upon it instead.

1.3.2 Specific Aims/Objectives

Specifically, the conduct of this study shall be to achieve the following aims and objectives:

- Understanding the rate at which fundamental human rights are infringed upon through police use of force in performing their duties.
- Knowing what fundamental human rights are most vulnerable to infringement by the police when executing their lawful duties.
- Providing recommendations as to the rate at which the police infringes upon human rights when employing use of force.
- Addressing the aforementioned problems as relates to human rights and police use of force.
- Understanding the role of the judiciary when it comes to human rights protection and police use of force.

1.4 Scope of the study

The scope of this study shall cover the use of force by the Uganda Police Force vis a vis human rights protection. Therefore, this study shall be concentrating on instances of police use of force performing and executing the duties imposed on them by law like in effecting an arrest, in preventing a suspect from escaping, in quelling riots and demonstrations, while engaged in crime fighting, amongst others. The 1995 Constitution of the Republic of Uganda and the Police Act of Uganda are laws which shall be used in the conduct of this study. Provisions concerning the establishment of the Police Force, their duties/functions as well as human right provisions shall be within the purview of this study. Some international human right conventions and treaties shall also be referenced in this study. The study shall however, not be extended to use of force by the Uganda Peoples Defense Forces (UPDF), Uganda Prisons Service and other law enforcement agencies.

1.5 Methodology

This study shall be conducted making use of the doctrinal approach of research methodology. This emphasizes use of written sources such as text book materials, articles, journals, papers, reports (including human rights and newspaper reports), amongst others, which shall be gotten from the Iddi Basajjabalaba Memorial Library, Makerere University Library and others. Relevant information will also be gotten from internet sources including materials gotten from trusted online websites. If need be, the empirical method may also be resorted to as a means of data collection. Legislations relative to the study shall contribute to the conduct of this study as well as decided case law on the subject.

1.6 Literature review

There are various literatures written which center on the police and protection of human rights in Uganda including the Police Act of Uganda amongst others. A review of some of the literatures will be done to give the basis of this study.

The Police Act⁴ is the only independent Act enacted by the Parliament of Uganda which regulates the conduct of policing. the Act was enacted to provide for the structure, organization and functions of the police, amongst others.⁵ The Act is divided into 9 parts and a schedule making provisions for police administration. Part1 basically deals with interpretation of certain technical terminologies used in the Act. Part 2 makes provisions for the establishment, composition and functions of the police force. Amongst other functions stipulated, the Act provides that it is the function of the police force to protect the life, property and other rights of the individual.⁶ The question here arises as to whether the police has indeed protected these rights. Other functions include prevention and detection of crime in the society and to ensure public order and safety. Part 3 makes provisions for the force command which include the inspector general and deputy inspector, powers of the inspector general, police authority, council and their functions including that of the district police committees. Part 4 deals with appointments, promotions, recruitment, service and termination of appointments. The next part, Part 5, is one of the most important parts of the Act which provides, in particular, the general powers and duties of a police officer. Basically the police has the power to regulate traffic, arrest without warrant,⁷ conduct preventive arrest,⁸ power to detain and search a suspect,⁹ power of seizure of property,¹⁰ power to regulate assemblies and processions,¹¹ power to use arms in only special cases as provided under the Act.¹² The understanding of these provisions are to the effect that although the Uganda police has the powers to do that stated in the Act, the Act implies that such powers, functions and duties must be carried out in accordance with the law. The effect of

⁴ Police Act, 1994 Laws of Uganda

⁵ Long Title to the Police Act, 1994

⁶ Section 4 (1) (a), Police Act, 1994

⁷ Section 23, Police Act, 1994

⁸ *Ibid.* Section 24

⁹ *Ibid.* Section 26

¹⁰ *Ibid.* Section 29

¹¹ *Ibid.* Section 32

¹² *Ibid.* Section 28

this is that the police must at no time use its powers to infringe on the rights of individuals, suspects or even criminals. Now, the Act provides for resort to arms only in special cases. This implies that use of force by the police is only restricted to those cases and even in those cases, the force used must be reasonable and not excessive. Part 5 of the Police Act relates to discipline in the police force. The establishment of the police disciplinary code of conduct, disciplinary conduct of police officers is part of the provisions therein. All members of the force including police officers, constables, etc., are subject to the code of conduct. Under this part, the Act makes provision for police council courts established to adjudicate on allegations of breach of the code, amongst others. Part 6 provides for the police welfare which includes the police welfare fund, disposal of deceased's estate, the police pension scheme and the police tender board which is "responsible for the procurement and award of tenders to supply materials, equipment and any other thing required for the welfare and operation of the force."¹³ Next is Part 7 which basically deals with provisions concerning the appointment of special constables, establishment of a police reserve and local administration police. The last part, Part 8, deals with general provisions including complaints against the police, giving false information to the police, amongst others. the provisions of the Police Act are very relevant to the administration of the police force in Uganda however, the Act does not really put the duties/functions of the police in relation to human rights protection into perspective. The Act of course makes provision for resort to arms in special cases but there must be stipulations that the force use is not excessive as to infringe particular right of the individual or suspect.

Dispatches: Uganda's Brazen Police Beatings is an article which was written in 2016 by Maria Burnett, Director Human Rights Watch, East Africa and the Horn. It centers on police use of force during the 2016 presidential elections. In this article, the way the police were involved in the infringement of human rights in this period was explained. This period was the period when Besigye had been charged with treason after he had sworn himself in as the President. He was granted bail after spending some time in prison. The article describes the events after the grant of bail revolving around how the police was caning and whipping the people. This was a clear infringement of human rights. This article is particularly helpful because the infringement disclosed is one of an infringement of the right to freedom from torture. However, this article is

³*Ibid.* Section 63 (3)

somewhat only limited to that event and does not cover other important rights the police has infringed upon in employing the use of force which is what this study aims at doing.

There aren't so many articles, textbooks, etc., on the subject however, the conduct of the study shall be made with reference to some of the relevant articles, reports, etc.

1.7 Chapterisation

This study will have five chapters in the order of chapter 1, chapter 2, chapter 3, chapter 4 and chapter 5. Each chapter will look at different aspects of the study. The composition of these chapters is therefore as follows;

1.7.1 Chapter One

This chapter will basically deal with the introduction, background of the study, statement of the problem, scope of the study, methodology used to conduct the study, the aims and objectives of the study as well as the literature review and the last which is the chapterization.

1.7.2 Chapter Two

INTERNATIONAL PERSPECTIVE ON SELECTED HUMAN RIGHTS AND POLICE USE OF FORCE

In this chapter, the international perspective on selected human rights and fundamental freedoms such as the right to liberty and security of person, the right to freedom of assembly and association and the right to freedom from torture and other cruel and inhuman degrading treatment and punishment. Therefore, this chapter will examine and analyze how international law protects, promotes and enforces these rights as well as how international Courts enforces the protection of these rights. Different international instruments such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights as well as other international conventions.

1.7.3 Chapter Three

THE POLICE AND THE RIGHT TO FREEDOM OF ASSOCIATION AND ASSEMBLY AND THE RIGHT TO PERSONAL LIBERTY

The Right to Freedom of Association and Assembly is a very important and fundamental right in the development of a democratic society. In Uganda, there is the Public Order Management legislation which aims, in principle, at reducing and curbing unlawful assemblies, associations as well as protests and public demonstrations. Since the police is the principal agency involved

having the duty to preserve law and order, it is under the responsibility to curb unlawful assemblies and riots. The down side of this however, is that judging from the recent reports in that regard, the police seems to be applying excessive use of force which has resulted in the infringement of this right and in event the infringement of other important human rights and privileges.

The chapter will clearly demonstrate this in a descriptive and analytical manner. Regarding the Right to Personal Liberty, it shall be looked at in relation to use of force by the police while performing their duties. This means that under this chapter a comprehensive analysis of the Right to Personal Liberty will be made. Freedoms such as the Freedom from Illegal Detention, amongst others will be looked at. In the end, this chapter shall reveal the manner in which the Uganda police protects this right when resorting to use of force in performing its duties.

1.7.4 Chapter Four

THE POLICE AND THE RIGHT TO FREEDOM FROM TORTURE CRUEL AND INHUMAN DEGRADING TREATMENT AND PUNISHMENT

This chapter will examine right to Freedom from Torture, Cruel Inhuman Degrading Treatment and Punishment in relation to use of force by the police when executing duties imposed by law. Human rights activists have reported police brutality whereby the police have been involved in torturing the people especially those suspected to have committed particular offences. This has had an effect on the overall protection, promotion and preservation of human rights. Therefore, this chapter will conduct a comprehensive analysis of how the police has either protected or infringed upon this right.

1.7.5 Chapter Five

SUMMARY, FINDINGS, CONCLUSION AND RECOMMENDATIONS

This chapter will address the summary; conclusions made based on findings from the study and will thereafter give recommendations to the effect of improving the human rights situation as relates to police use of force whilst performing and exercising the duties imposed by the Police Act and other related legislations. The recommendations will consist of that which should be done to ensure that the situation is improved in like manner.

CHAPTER TWO

INTERNATIONAL PERSPECTIVE ON SELECTED HUMAN RIGHTS AND POLICE USE OF FORCE

2.0 Right to Liberty and Security of Person

The Right to Personal Liberty in Uganda is, if I may say, borrowed from international law as are other rights. Various conventions, treaties, charters, declarations, principles, cases of international jurisprudence have emphasized the Right to Liberty and Security of Persons.¹⁴ International Commissions and Courts have held that the right to personal liberty can only be restricted in accordance with the provisions of the law and that the state has the duty to ensure that restrictions imposed are in conformity with internationally established human rights principles and do not defeat the enjoyment of other rights.¹⁵ Most particularly, the Courts have recognized the powers and duties of state security agencies vis a vis the right to Personal Liberty.¹⁶

At the universal level, the Human Rights Committee of the United Nations has held that pre-trial detention following arrest must not only be in accordance with the law but must also be reasonable.¹⁷ Instruments of human rights, though similar in provision apply to different jurisdictions of which this study will focus on. These include, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Right, the European Convention on Human Rights and the Inter-American Convention on Human Rights.

The African Charter on Human and Peoples' Rights¹⁸ provides for the right to liberty and security of person and is to the effect that "every individual shall have the right to liberty and security of his person, that no one may be deprived of his freedom except for reasons or

¹⁴International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by UNGA Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976, Article 9, Universal Declaration on Human Rights, adopted by the United Nations General Assembly in Paris on 10 December 1948, Article 3.

¹⁵*Epple v Germany*, 2005 ECHR AppNr 77909/01; *Brogan v The United Kingdom*, ECHR AppNr 1120984.

¹⁶*Assenov and Others v Bulgaria* ECHR AppNr. 24760/94 (1998)

¹⁷*Danyal Shaftiq v Australia*. Communication No. 1324/2004, U.N. Doc. CCPR/C/88/D/1324/2004(2006).

¹⁸African Charter on Human and Peoples' Right, adopted in Nairobi, June 27, 1981, entered into force, October 21, 1986.

conditions previously laid down by the law and in particular, no one may be arbitrarily arrested or detained.”¹⁹ The African Commission on Human and Peoples’ Rights is responsible for deciding human rights cases within countries in the African Union. It has decided quite a number of cases on the Right to Liberty and Security of Person upholding the right to personal liberty. The Commission has found out that detention or imprisonment for an unreasonable period of time is an infringement of the right to personal liberty.²⁰ Not only is unreasonable period of time an infringement of this right but also detention for that period of time without trial before a court of competent jurisdiction is in violation of the Charter’s provisions on the Right to Liberty and Security of Person.²¹

Therefore, it is noteworthy to state that the Charter condemns arbitrary arrest and detention carried out by the government of state parties to the Charter. The cases handled by the African Commission on violation of this right discloses that the government whose duty is to preserve these rights end up violating them in a manner that cannot be justified by the restrictions provided by law. It therefore seems to be that most arbitrary arrests and detentions are carried out by security agents (such as the Police) of these States when exercising duties imposed upon them by law. The Special Rapporteur has reported that there is minimal improvement in regards to violations of this right as a result of political instability being faced by some member states notwithstanding the fact that there is a commitment to improve the situation and in particular the condition of detention centers²² to be in conformity with the provisions of the Charter.

The **European Convention on Human Rights**²³ establishes certain procedural guarantees and minimum standards for protection against arbitrary arrest and detention, specially and exhaustively providing for cases in which a person may be deprived of his/her liberty, unlike other conventions.²⁴ These provisions are similar in some respect to the provisions of the Constitution and therefore it is imperative to state that member states of the European Union

¹⁹*Ibid.* Article 6.

²⁰*Amnesty International on Behalf of Orton and Vera Chirwa v Malawi*, Communications 78/92.

²¹*Commission Nationale des Droits de l’Homme et des Libertés v Chad*, Communications 74/92; *Union Interafricaine des Droits de l’Homme v Rwanda*, Communications 99/93.

²²Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, by Hon. Commissioner Med S.K Kaggwa, at the 52nd Ordinary Session of the African Commission on Human and Peoples’ Rights, at Yamoussoukro, Cote d’Ivoire, 9-22 October 2012, Pg. 18-20.

²³European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, at Rome, Italy, effective 3 September 1953.

²⁴*The Right to Personal Liberty*, Icelandic Human Rights Centre.

observe more practical protection of the Right to Liberty and Security of Person than other regional bodies. The policing system in states in the European Union is more organized than in Uganda thereby suggesting that the Right to Personal Liberty vis a vis Police Use of Force in those countries is upheld and protected.

The **Inter-American Convention on Human Rights**²⁵ is a treaty adopted by the Organization of American States, convention of which regulates the human rights aspect of the region. The member states to the Convention include Argentina, Brazil, Colombia, Costa Rica, Jamaica, Mexico, Nicaragua, Honduras, Venezuela, amongst others. The Convention similarly provides for the Right to Liberty and Security of Person.²⁶ The Inter-American Commission has ruled in relation that the right to liberty and security of person extends also to freedom from threats of arbitrary arrest and detention.²⁷ The Inter American Commission has explained that any arrest must be made by the agency properly authorized by the national constitution and in accordance with the procedures required by international law. If these conditions are not met, 'arrests cease to be arrest per se and become kidnappings.'²⁸

Now, although Uganda is not a party to this Convention, the provisions of this Convention reflect international principles regarding this right which security agencies in Uganda must abide by and put into practice. The provisions of the Constitution therefore reflect that for an arrest or detention to be justified within the ambit of the law, the arresting officer must follow due processes and procedures provided for such as informing the individual arrested as to the reason of arrest and detaining in a place authorized or in other words gazetted by law.

2.1 The Right to Freedom from Torture and Other Cruel, Inhuman, Degrading Treatment and Punishment

The right to freedom from torture and other cruel, inhuman, degrading treatment and punishment is a fundamental freedom guaranteed not just domestically but regionally and internationally. This right is protected under various laws such as international humanitarian law, international

²⁵ American Convention on Human Rights (Pact of San Jose), signed on 22 November 1969, at San Jose, Costa Rica, effective on 18 July 1978.

²⁶ *Ibid.* Article 7.

²⁷ *Garcia v Peru* (Case 11.006) Inter-Am.C.H.R., Report No. 39/90, OEA/Ser.L/V/II.79.

²⁸ *Velasquez Rodriguez and Godinez Cruz v Honduras* (1989) Inter-Am.C.H.R. Series C-No. 5.

human rights law, international criminal law, international refugee law, amongst others. This right entails that every individual shall not, in any circumstances be subjected to any form of punishment which is to the effect of causing severe, pain either physically, emotionally, psychologically, etc. Also, this right protects individuals from any form of treatment which is meant to have a degrading effect on such person such as to deprive the individual of his/her human dignity. Under the law, this right is absolute and must not in any circumstances be restricted or infringed upon. In international law, this right has attained the status of what is known in law as *jus cogens*.²⁹ The phrase as explained below connotes that it is a compelling law, a binding law that cannot be derogated from. Therefore, it is to the effect that the freedom from torture is guaranteed to the extent that there is nothing like lawful justification for its infringement or derogation. International conventions, covenants, treaties, declarations, charters, amongst others guarantee this right. Such include the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the European Convention on Human Rights, amongst others.

The provision of the **Universal Declaration on Human Rights** with regards to this freedom is quite specific. It provides basically that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment and punishment."³⁰ The **International Covenant on Civil and Political Right** provides similarly but in addition, it stipulates that "no one shall be subjected to medical or scientific experimentation without his/her consent."³¹ Another provision of the same covenant states that "every person deprived of liberty shall be treated with humanity and with respect for his/her human dignity."³² This therefore broadens the scope of the freedom to connect with the right to personal liberty. In order to understand this freedom therefore, the definition of Torture has to be first understood. The definition of Torture is quite broad when understood in the context of international humanitarian law and international human rights law. In relation therefore, it is imperative to look at another important convention; the UN Convention Against

²⁹ *Jus cogens* literally means compelling law. It is the highest form of international law that even supersedes customary international law and as such no derogation from it is permitted.

³⁰ *Ibid.* Article 5.

³¹ *Ibid.* Article 7.

³² *Ibid.* Article 10

Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment.³³ This Convention is particularly important and interesting because it focuses on this freedom specifically. The Convention does not give a particular definition of torture but does provide which action or rather what constitutes torture. It therefore provides that³⁴ “severe pain or suffering has to be inflicted, for a specific purpose such as to obtain information, as punishment or to intimidate, or for any reason based on discrimination, by or at the instigation of or with the consent or acquiescence of state authorities.” A classic explanation of what amounts to torture was seen in the case of *Aksoy v Turkey*³⁵ wherein the applicant was subjected to “Palestinian hanging” of which he was stripped naked, with his arms tied behind his back and suspended by his arms. The Court found that such act was “deliberately inflicted on the victim” and that “the punishment caused severe pain, it was of a serious and cruel nature.” Therefore, any act which causes severe pain or suffering or is directed at causing humiliation to an individual is prohibited. All these are with relevance to international human rights law. When we look at international criminal law and international humanitarian law, we consider the four Geneva Conventions and their Additional Protocols as well as the Rome Statute of the International Criminal Court because these laws prohibit as an element of war crimes and crimes against humanity, the torture of a civilian or persons *hors de combat*.³⁶ Therefore, international law not only prohibits torture and other cruel and inhuman or degrading treatment and punishment, but punishes perpetrators of such under international criminal law and international humanitarian law.

2.2 The Right to Freedom of Association and Assembly

The Right to Freedom of Association and Assembly are two freedoms that are correlated and intertwined in one another. The freedom of Association entails that an individual has the right to join or leave groups voluntarily and additionally, a group has the right to take collective action to

³³Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, adopted by the UNGA resolution 39/46 of 10 December 1984, entered into force 26 June 1987.

³⁴Article 1.

³⁵*Aksoy v Turkey* (Application No. 21987/93, Judgment of 18 December 1996).

³⁶Literally meaning “outside the fight” from French, relates to combatants who, as a result of injury or sickness, no longer have the capacity to engage in armed conflicts either of international nature or non-international nature. See Article 41(1), Additional Protocol 1 to the Geneva Conventions of 1949. See also Article 8(2)(b)(vi), Rome Statute of the International Criminal Court.

pursue the interests of its members.³⁷ Therefore, this right explains that any individual may choose to become part of a particular association or organization and may choose to leave. In relation, it entails that in order to enjoy the right to freedom of association, the association themselves must be free from excessive and unreasonable interference from the government.³⁸

This freedom includes the right to form and join trade unions, the right of those unions to administer and enact their own rules and regulations and to conduct their affairs without unlawful, unwarranted interference from any person or the government.

Relatively, the freedom of peaceful assembly and of association are important and fundamental to the democratic process, both before, during, between and after elections as such these freedoms are very vital for individuals and groups to participate in public affairs.³⁹ The Special Rapporteur defines an assembly as an intentional and temporary gathering in a private or public place for a specific purpose.⁴⁰ Therefore, States have the obligation to respect and fully protect the rights of all individuals to assembly peacefully and associate freely in the context of elections.⁴¹ This right can be said to apply to all works of life. Everyone of different professions, religions, etc., have the right to associate with each other and to end, they have the right to choose the association, organization, union or group is suitable for them, according to such profession or religion or any other secular association.

The Right to Freedom of Association and Assembly is protected by international law most notably by charters, declaration, treaties, conventions, etc., the United Nations, international NGOs, regional organizations such as the African Union (AU), the European Union (EU), the Organization of American States (OAS), and sub-regional organizations such as the Economic Community for West African States (ECOWAS), East African Commission (EAC), amongst others.

³⁷https://en.wikipedia.org/wiki/freedom_of_association/

³⁸www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-participate-in-society/

³⁹United Nations General Assembly, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, A/68/299, Pg. 4/21. In addition, the Human Rights Council stated that these rights are an essentiality as they empower men and women to express their political opinions, engage in cultural, economic and social activities, amongst others.

⁴⁰Maina Kai, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, Agenda item 3, Human Rights Council, Twentieth Session, UNGA A/HRC/20/27.

⁴¹*Ibid.*

With relevance to international instruments, the **International Covenant on Civil and Political Rights**⁴² provides for the recognition of the right of peaceful assembly⁴³ and the right to freedom of association with others⁴⁴ of which the only restrictions placed “must be in conformity with the law and must be necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of rights and freedoms of others.”⁴⁵ In light of this provision, the Human Rights Committee has found in one particular case, that restriction to the freedom by banning a fascist political party for the justification of public order and national security was compatible with the ICCPR.⁴⁶

Similarly, the **Universal Declaration on Human Rights**⁴⁷ provides that “everyone has the right to freedom of peaceful assembly and association” and that “no one may be compelled to belong to an association.”⁴⁸ The **International Covenant on Economic, Social and Cultural Rights** makes provisions and stipulates the right to form trade unions, the rights of trade unions to federations, the rights of trade unions to function freely though subject to certain limitations and the right to strike.⁴⁹ The **Convention on the Rights of the Child** similarly provides that children have the right to freedom of association with legitimate limitations.⁵⁰

Regionally, the **African Charter on Human and Peoples’ Rights** provides for this freedom where in it stipulates that “every individual shall have the right to free association provided that he/she abides by the law”.⁵¹ Additionally, it provides that “subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association” and that “every individual shall have the right to assemble freely with others.”⁵² The recognition of this right therefore, is to the effect that no person shall be deprived of the right and freedom to associate

⁴²*Ibid.* Note 1.

⁴³Article 21.

⁴⁴Article 22 (1).

⁴⁵Article 21 and 22 (2).

⁴⁶*M.A. v Italy*, Communication No. 117/1981 (21 September 1981), U.N. Doc. Supp. No. 40 (A/39/40) at 190 (1984).

⁴⁷*Ibid.* Note 1.

⁴⁸Article 20.

⁴⁹International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966 and in force from 3 January 1976, Article 8.

⁵⁰Convention on the Rights of the Child, signed at New York on 20 November 1989, effective on 2 September 1990, Article 15.

⁵¹Article 10.

⁵²Article 11.

and be in an assembly with other individuals and as such the right to form and manage associations or unions alike is guaranteed. The African Commission has in relation decided various cases on the protection of this right. Particularly, the Commission has decided that there is a violation of the Right to Freedom of Association when the state unjustly tries and convicts members of a community organization.⁵³

Additionally in the case of *Civil Liberties Organization in Respect of the Nigerian Bar Association v Nigeria*⁵⁴ the Commission held that a governmental decree establishing a governing body for a bar association appointing the majority nominees itself violated the freedom of association. To this end, the right to freedom of association in Africa is somewhat protected by the judiciary. It is however, a bit disappointing that the executive arm is not particularly committed to the full protection of this freedom in the sense that it comes up with rules that tend to restrict this right without any significant, legally justified reason. Human rights activists have to this end, protested and called upon the government, basically in Africa to uphold this freedom.⁵⁵

Other regional bodies such as the European Union and the Organization of American States have similar provisions on the protection of the right to freedom of assembly and association. Particularly, the European Convention on Human Rights provides that “everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”⁵⁶ It then provides for similar restrictions as do other international instruments.⁵⁷ The European Court of Human Rights has held cases centering on the protection of this freedom. In the case of *Sidiropoulos et al. v Greece*,⁵⁸ the Court found that compulsory membership of a professional organization, contrary to a person’s conviction was an infringement of the right to freedom of association. Additionally, in the case of *Baczowski and Others v Poland*, the Court held that unlawful refusal to grant

⁵³*International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organization v Nigeria* Communications 137/94, 139/94, 154/96 and 161/97

⁵⁴*Civil Liberties Organization in Respect of the Nigerian Bar Association v Nigeria* Communication 101/93.

⁵⁵[https://www.amnesty.org/en/countries/africa/report-africa/The State of the World’s Human Rights](https://www.amnesty.org/en/countries/africa/report-africa/The%20State%20of%20the%20World's%20Human%20Rights), Amnesty International Report 2017/18, Pg. 18-19.

⁵⁶*Supra* Note 12. Article 11 (1).

⁵⁷Article 11 (2).

⁵⁸*Sidiropoulos et al. v Greece* ECHR (57/1997/841/1047) 10 July 1998.

permission for a march and meetings to protest against homophobia a violation of the right to assembly.⁵⁹ When we look at the American Convention on Human Rights, similar provisions protecting and guaranteeing the right to freedom of association and assembly.⁶⁰

The Inter-American Court of Human Rights has similarly held in several cases the importance of the protection of this freedom. In the *Advisory Opinion on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*,⁶¹ the Court held that preventing specific individuals from joining an association violated the freedom of assembly, association as well as the right to freedom of expression in that it denied them the use of media as a means of expression and to impart information. In another case, the Court had found that the firing of nearly 300 union leaders from state-owned companies because of their union activities was a violation of the freedom of association and of assembly.⁶²

2.3 Conclusion

In conclusion, these rights and freedoms were chosen because police use of force basically centers on them. These rights are not only provided for in our domestic human rights law system but they are in fact adopted from international laws, conventions, declarations, charters, treaties and the likes. They are interconnected and interdependent, in other words, they go hand in hand such that the restriction of one right may lead to the infringement of another. For example, the restriction of the right to personal liberty may lead to a denial of the right to freedom of association and assembly and when an individual is detained illegally, it may inflict some form of torture on to him/her. Therefore, it is important to state that in the performance and exercise of the lawful duties of the police, it is more likely possible for these rights and fundamental freedoms to be infringed upon. This is not to say that there aren't other rights that the police use of force infringes upon on restricts. Therefore, the police must be vigilant to ensure that in the performance and exercise of their lawful duties, they take into consideration that the individuals have rights and those rights should not be infringed upon.

⁵⁹ *Baczowski and Others v Poland* ECHR (Application No. 1543/06).

⁶⁰ *Supra* Note 14, Article 23.

⁶¹ Advisory Opinion OC-5/85.

⁶² *Baena Ricardo et al. (270 workers) v Panama* Inter-Am.C.H.R. Series C No. 104, IHRL 1487 (IACHR 2003) Judgment of November 28, 2003.

CHAPTER THREE

THE POLICE AND THE RIGHT TO PERSONAL LIBERTY AND THE RIGHT TO FREEDOM OF ASSOCIATION AND ASSEMBLY

3.0 Introduction

It has been shown from the previous chapter, how international law protects and promotes the right to personal liberty and the right to freedom of association and assembly. These rights are very important of course, to the protection and realization of a free and fair, democratic society. The right to personal liberty as is explained, deals with the fact that every person has the entitlement to freedom without arbitrary imprisonment or detention. The right to freedom of association and assembly on the other hand, explains that every person has the freedom to express his or her opinions and ideas freely, without unlawful and unwarranted restriction from any person or body. These two rights, if one may say, complements the other. In other words, both rights are interconnected and interrelated. The restriction of one could mean the violation of the other.

For instance, in a situation where an individual's personal liberty is restricted, he or she, most times, will not have the freedom to express his or her thoughts, feelings, beliefs, ideas and opinions. On the other hand, where a person has been deprived the freedom to assemble and associate with others, his or her liberty and security of person would have also been infringed upon or violated. Therefore, the government has the duty to ensure and make sure that even where there is a lawful justification for the limitation, restriction or violation of a particular right, such does not result in the infringement of the other rights that are related.

In Uganda, as already stated, it is the duty of the Police to protect the life and property of individuals and in addition, it must protect the right to liberty and security of person as well as the right to freedom of association and assembly of individuals and groups. These rights usually conflict with the duty of the Police to ensure that there is peace and security in the society. This is because in some circumstances, the Police will have to infringe a particular right to apprehend a suspect who has committed a crime, which of course is justified. But the question is, does the Police go too far in the limitation of these rights? Or is it possible that some of the reasons given by the Police having infringed on these rights, justifiable in accordance with the provisions and stipulations of the law? This chapter will discuss in detail in regards to answering these questions.

3.1 An Analysis of Statutory Provisions on the Exercise of the Duties and Functions of the Police

In the protection of human rights, the Court has declared some laws made by Parliament unconstitutional because they violate constitutional provisions on human rights such as the right to freedom of association and assembly.⁶³ The Police Act is one of the major legislations in Uganda that stipulate the duties and functions of the Police and how such is required to be exercised in accordance with the Constitution so as to forestall any violation of a fundamental human right and freedom. In addition to the Police Act, there are other legislations that elucidate on the exercise of police duties and functions and what kind of force ought to be used when executing such lawful duties. These legislations include the Criminal Procedure Code Act⁶⁴ and the Public Order Management Act.⁶⁵

The Police Act basically provides that it is the duty of the Police to protect life and property of Ugandans, maintain law and order and security, to prevent the commission of offences,⁶⁶ amongst others. In performing such duties, the Police is entitled to arrest a person suspected to have committed a crime or is about to commit a crime and also has the power to detain a person who is suspected to be in possession of a stolen property. These powers basically are in relation to the right to liberty and security of person. This is because, arrest and detain typically subjects a person to the deprivation of his/her liberty. However, in accordance with the Constitution, for purposes of the maintenance of law and order, such arrest and or detention is lawful and as such, the restriction of that right is justified.

With regards to the right to freedom of assembly and association, the police, in performance of the duties highlighted above, has the powers to regulate assemblies and processions, also has the power to disperse unlawful assemblies and processions.⁶⁷ The provisions of the Act in this regard are to the effect that the dispersal of unlawful assemblies may be a restriction of the right to freedom of assembly and association, however, the question is, what connotes an unlawful assembly? The Act explains that an unlawful assembly is one that has been convened in

⁶³*Paul K. Semwogerere and Zachary Olum v Attorney General* Constitutional Petition No 3 of 1999, No 1 and 7 of 200; *Kizza Besigye and Others v Attorney General* Constitutional Petition No. 12 of 2006; *Uganda Law Society v Attorney General* Constitutional Petition No. 18 of 2005.

⁶⁴Public Order Management Act, Laws of Uganda, 2013.

⁶⁵Criminal Procedure Code Act, Laws of Uganda, Cap 116.

⁶⁶Police Act, Section 4.

⁶⁷*Ibid.* Section 32.

contravention of the prohibitions stipulated under the Act.⁶⁸ This is where the Public Order Management Act comes in.

The **Public Order Management Act** was enacted to regulate public meetings and provide for the duties and responsibilities of police officers, organizers and participants as is related to public meetings.⁶⁹ As the Act provides, the exercise of the right to freedom of association and assembly has to be regulated to make sure that only those that are peaceful and unarmed are conducted.⁷⁰ Accordingly, the provisions of the Act are to the effect that a notification must be given by the organizer to the authorized officer of an intention to hold a public meeting.⁷¹ The definition of a public meeting within the Act has been given to exclude meetings of members of a public organization, trade unions, social, religious, cultural, educational, and other meetings held by public orders for a lawful purpose.⁷²

The Act also excludes meetings of political parties but on the condition that the purpose of the meeting relates only exclusively to the affairs of the party.⁷³ This Act has been challenged not in public opinion for being in contravention of the provisions of the Constitution which guarantees and protects the right to freedom of association and assembly.⁷⁴ This is quite through because from an understanding of the provisions of the Act, it is quite clear that the government seeks to restrict meetings which seemingly have the intention to discuss about the shortcomings of the government. In a broad sense, restricting the conduct of a particular meeting is more less showcases some form of discrimination because of the fact that meetings of other bodies are excluded.

The Police has asserted that respect for the Public Order Management Act will increase security and safety in Uganda,⁷⁵ however, members of the public have rejected this explaining that in effect this Act favors the government. The truth of these depends on the circumstances of the

⁶⁸Section 32-34.

⁶⁹Public Order Management Act, Long Title.

⁷⁰*Ibid.* Section 2.

⁷¹Section 5.

⁷²Section 4.

⁷³Section 4 (e).

⁷⁴Human Rights Watch, *Uganda: End Police Obstruction of Gatherings; Teargas, Brutality Threatens Free Assembly as Elections Loom*, October 18, 2015.

<https://www.hrw.org/news/2015/10/18/uganda-end-police-obstruction-gatherings>

⁷⁵www.monitor.co.ug/news/national/respect-public-order-management-act--and-you-will-be-safe/

situation. Therefore, it is safe to say that although in particular circumstances the Police have performed their duties to preserve law and order, through the regulation of assemblies, in some scenarios, the Police have gone too far, in which case, a violation of the right to freedom of association and assembly has occurred. It is therefore understood that the Police Act provides for the duties and the functions of the Police in line with the protection of both the right to liberty and security of person as well as the right to freedom of assembly and association.

Another important provision of the Police Act is with relevance to the kind of force the Police ought to apply when exercising the duties imposed by law including the preservation of law and order as well as security in the society. The Police Act provides in this regard that fire arms may only be used by the Police in special cases such as against a person who is charged or convicted with a felony and tries to escape from lawful custody, a person who uses force to rescue another person from lawful custody or uses force to prevent him/herself from being brought into lawful custody of the Police.⁷⁶ Therefore, the Police are allowed to use force, or in other words, employ the use of firearm to ensure that order is kept. The Act, however, places a restriction on the use of firearm by the Police and as such, the Police may only use firearm when he or she is in danger of grievous bodily harm or where warning has been issued and the person has refused to take heed.⁷⁷

The law does not exactly provide for other ways the Police may apply force. However, in practice, the Police apply whips and canes in performing the duties imposed upon them by law. In some cases, the way the Police has applied or exerted force whether through the use of firearms, whips, canes, etc., have been unreasonable and have even violated related rights such as the right to freedom from torture and ill treatment.⁷⁸ In other cases, similarly, the Police has applied the use of severely dragging a suspect either of a crime or people arrested for “unlawfully” convening a public meeting. This shows that the problem is not with the provisions of the law on the exercise of the duties and functions of the Police but with the way the Police

⁷⁶Police Act, Section 28 (1).

⁷⁷*Ibid.* Section 28 (3).

⁷⁸Med S.K Kaggwa, *UHRC Press Release on Police Brutality against Civilians*, Uganda Human Rights Commission, 15 July 2016, <https://www.uhrc.ug/uhrc-press-release-police-brutality-against-civilians/>. Sarah Nagle, *Police Brutality and Torture in Uganda*, TASSC International, 7 August 2017, <https://www.tassc.org/voices-against-torture/2017/8/7/police-brutality-and-torture-n-uganda/>

use their powers. In short, the Police misuse the powers and functions provided for them under the law. There is no denial that the force applied by them has been excessive.⁷⁹

Another legislation relevant to this study on the powers, duties and functions of the Police in line with the protection and preservation of fundamental human rights and freedoms of Ugandans is the **Criminal Procedure Code Act**. The Criminal Procedure Code Act generally deals with the procedure relating to be followed in the criminal cases.⁸⁰ One of the seemingly most important provisions of this Act is in relation to the protection of the right to personal liberty. The Act provides in relation provides that the person arrested shall not be subjected to more restraint than is necessary to prevent his/her escape.⁸¹ This provision is in line with the provisions of the Constitution which stipulates similarly that a person shall be brought to Court not been detained for more than forty-eight hours.⁸² This means that where a person has been caught for the commission of a crime or is suspected to have committed a crime, the Police has a duty to make sure and ensure that the person is not deprived of his liberty too long that it will amount to an unreasonable restraint.

The Act further allows the Police to use all necessary means to effect an arrest of a person who attempts to evade such arrest. Now the construction of what amounts to the use of all necessary means depends on the circumstances. The means used must therefore be not only necessary but reasonable as well and as such, the Act provides that there shall be no justification for the use of greater force than that which is necessary in those same circumstances in effecting the arrest of the suspect.⁸³ In practice, however, in some circumstances the Police have detained suspects more than the mandated, lawful and reasonable period,⁸⁴ which has amounted to a violation of the right to liberty and security of person. The next segment will conduct a specific analysis of these rights and the police.

⁷⁹<https://www.ugandaradionetwork.com/story/uhrc-condemns-police-over-excessive-use-of-force/>

⁸⁰Criminal Procedure Code Act, Long Title.

⁸¹*Ibid.* Section 5. *Omar Awadh and 10 Others v Attorney General*(Infra)

⁸²Constitution of the Republic of Uganda, Article 23.

⁸³Criminal Procedure Code Act, Section 2 (3).

⁸⁴Universal Periodic Review (UPR) for Uganda, Joint Submission Report on Human Rights in Uganda; <https://www.lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/JS3-JointSubmission3-eng/>; <https://www.freedomhouse.org/report/freedom-world/2015/uganda/> ; *The Police, The People, The Politics: Police Accountability in Uganda*, Commonwealth Human Rights Initiative, 2006, Page 7.

3.2 The Right to Personal Liberty and the Police

Protecting, preserving and promoting the right to liberty and security of person has been quite controversial in the Ugandan human rights legal system. This study analyzes the right to personal liberty and how the Police has protected it. Most often than not, the truth is, the Uganda police has not fully respected, protected and upheld these rights. Various reports and cases have disclosed that the actions of the Police do not reflect the provisions and the position of the law regarding these rights. Although the right to liberty and security of person is not an absolute right, the state of violations of the right by the Police begs the question as to if such right should not become a non-derogable right. The Acts discussed above give the Police the powers of arrest and detention, the power to use force which is lawful and reasonable to effect such arrest or detention.

In this regard, the Police is obligated to ensure that they treat every suspect, no matter the weight of crime or offence allegedly committed, equally with regards to the respect of their rights to liberty and security of person.⁸⁵ The justification afforded to the Police should not be misused and therefore, care and reasonableness must be exercised by the Police in performing the duties imposed on them by the provisions of not only the Police Act, Public Order Management Act and Criminal Procedure Code Act, but also other relevant laws and international instruments; conventions, declarations and treaties that guarantee the protection and preservation of the right. Therefore, in effecting the arrest of a suspect or in the prevention of escape of the suspect or criminal, the Police should actually act in accordance with the provisions of the law.

3.3 The Right to Freedom of Association and Assembly and the Police

The right to freedom of association and assembly is an important right the Police must respect and uphold notwithstanding that the right is not absolute. As stated earlier, the right freedom of association and assembly is closely related to the right to freedom of expression.⁸⁶ Without the freedom of association and assembly, the people cannot have the right and freedom to express their ideas and opinions about the government in place and about what is happening in the society.

⁸⁵ *Omar Awadh and 10 Others v Attorney General* Consolidated Const. Pet. No. 55 and 56 of 2011

⁸⁶ Dr. Bonaventure Rutinwa, *Article 19: Freedom of Association and Assembly; Unions, NGOs and Political Freedom in Sub-Saharan Africa*, Global Campaign for Free Expression March 2001, Pg. 2.

The Public Order Management Act can be said to be the Act specifically focuses on the right to freedom of association and assembly. In fact, it's like the framers or drafters of the Act, just targeted the right to intentionally restrict its enjoyment and application. The Act is quite specific on the duties and responsibilities of the police, organizers and participants. The powers of the authorizing officer are also provided for and accordingly, the authorized officer has the power to issue orders for the dispersal of a public meeting in particular circumstances.⁸⁷ Additionally, the authorizing officer has the power to prevent or stop the conduct of such meeting.⁸⁸

The duties of the Police regarding the conduct of such public meeting includes the duty to preserve law and order before, during and after a public meeting,⁸⁹ has the duty to provide security for the participants and the public as related to the conduct of the public meeting.⁹⁰ Furthermore, the police have the responsibility to ensure fairness and equal treatment of all parties,⁹¹ has the duty to control and direct traffic related to the public meeting,⁹² to disperse "defiant or unruly crowds" so as to preserve and restore order and security.⁹³

The duties and responsibilities of the organizers and participants include that the organizer is responsible for adherence to requirements for holding such public meeting, informing the participants as to that which is required by the provisions of the Act, coordinate and cooperate with the Police to ensure that law, order and peace is maintained,⁹⁴ amongst others. In certain respects, the Act does lawfully regulate the conduct of public meetings. However, it is the Police that act in a manner which is not consistent with the law. Therefore, any individual whose rights have been subjected to any violation or infringement that is not in line with the law will be entitled compensation at the expense of the state.⁹⁵

3.4 Conclusion

Both the right to liberty and security of person and the right to freedom of association, and assembly are very important rights within the Ugandan human rights legal system. The Police

⁸⁷Public Order Management Act, Section 8 (2).

⁸⁸*Ibid.* Section 8 (1).

⁸⁹Section 9 (1).

⁹⁰Section 9 (2) (a).

⁹¹Section 9 (2) (b).

⁹²Section 9 (2) (d) and (e).

⁹³Section 9 (2) (f).

⁹⁴Section 10 (1) (c).

⁹⁵*Ismail Serugo v KCC and Attorney General* Supreme Court Constitutional Appeal No. 2 of 1997

should therefore, be serious with the protection and preservation of these rights. It is not contended that the Police has duties and functions imposed upon it by the law, which is expected to be carried out. In the performance and exercise of these powers, duties and functions, the Police should take into account the rights of the citizens of the society. There should be a balance between the performance of lawful duties and the protection of human rights otherwise instead of protecting the people, the Police will be the ones harming the people.

This chapter has explained the Acts of Parliament that directly affect the enjoyment of the right to liberty and security of person as well as the right to freedom of association and assembly and it has been disclosed that the Police does not really obey the provisions of the law. As seen above, the Police arrests and detain suspects more than the required period without lawful justification. The Police is now notorious for being brutal in the maintenance of law and order. This should not be the Police. The standards and practices of the Police must therefore be improved greatly to eliminate all violations and infringement of the right to liberty and security of person as well as the right to freedom of association and assembly.

The Public Order Management Act can be a blessing or a curse. It all depends on the way the Police choose to enforce and implement its stipulations and provisions. And additionally, the government or lawmakers should make laws whilst taking into consideration what whilst trying to preserve, uphold, protect and guarantee the rights of the citizens or individuals, the public and other groups, other rights should not be infringed in the process. These rights should not only be protected only in principle as laid down in our laws but should be implemented and enforced in practice as well. The public also has a role to play. They should respect lawful orders issued by the Police. They should not misuse the fundamental human rights and freedoms made available to them and they should also cooperate with the Police and the government to preserve both the rights and law and order. The Courts should also be independent and see to it that the executive upholds and protects the rights that have been made available to the public.⁹⁶

⁹⁶*Republic v Amos Karuga Karatu* Kenya High Court Case No. 12 of 2006; *R v Horseferry P. and Magistrates Ex Parte Bennet* (1994) 1 A.C. 42, according to Lord Griffiths

CHAPTER FOUR

THE POLICE AND THE RIGHT TO FREEDOM FROM TORTURE AND OTHER CRUEL INHUMAN DEGRADING TREATMENT AND PUNISHMENT

4.0 Introduction

The right to freedom from torture and other cruel and inhuman degrading treatment and punishment is a non-derogable right within both domestic and international human rights framework. This right explains that it is prohibited for any person, to commit such acts causing severe pain or suffering towards an individual or group in order to get information or even for any other reason.⁹⁷ This definition is quite restricted, however, another definition explains that torture is “the systematic and deliberate infliction of pain on another to accomplish the purpose of the former against the will of the latter.”⁹⁸ It is prohibited. There is no justification which can be accepted under the law for the infringement or even the restriction of this right. This right is recognized internationally by different conventions and treaties.

The United Nations Convention Against Torture⁹⁹ is the foremost international instrument that elaborates on the right to freedom from torture and other cruel and inhuman degrading treatment and punishment. The Convention has been ratified in Uganda¹⁰⁰ and therefore Uganda has a duty to respect and protect this right.

The domestic human right framework does also provide for the right to freedom from torture and other cruel and inhuman degrading treatment and punishment. The Constitution initially provides also for this right.¹⁰¹ In fact, there is an Act of parliament called the Prevention and Prohibition of Torture Act¹⁰² drafted specifically to provide for that right and “give effect to the respect of human dignity and protection from inhuman treatment by prohibiting any form of torture or

⁹⁷ In *Catholic Commission for Justice and Peace in Zimbabwe v Attorney General and Others* S. A of 1993 it was held that no person shall be subjected to any torture, cruel inhuman degrading treatment or punishment.

⁹⁸ Amnesty International, (1973) *Torture in the Eighties*. USA Edition. Amnesty International Publication. Archived 26 December 2013 at the Wayback Magazine.

⁹⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, drafted on 10 December 1984, signed on 4 February 1985, at New York and effective 26 June 1987.

¹⁰⁰ The Convention was ratified by Uganda on 3 November 1986.

¹⁰¹ Constitution of the Republic of Uganda, 1995, Article 24 and 44.

¹⁰² Prevention and Prohibition of Torture Act, Laws of Uganda, 2012.

cruel, inhuman or degrading treatment or punishment”,¹⁰³ etc. Torture in Uganda dates back to the colonial times, the post-colonial governments and even to the current regime. It seems torture is now common in Uganda to the extent that it has been carried out even by security agents.

The commission of torture has a broad history in Uganda. The security and law enforcement units have used torture on their victims. This has resulted in the loss of trust in the police as a result of the fact that it is even the police that carry out these tortuous acts on suspected criminals, therefore causing an infringement of the right. Of course the justification usually given by the police is the usual security reasons. In performance and exercise of the duties imposed upon them by law, the police must ensure that the right to freedom from torture of citizens have not been infringed upon.

But the question, however, is whether the police has really protected individual's right to freedom from torture. This chapter relatively discusses the performance of the duties of the police, including special police units, in relation to the protection and preservation of the right to freedom from torture and other cruel, inhuman or degrading treatment and punishment.

This chapter additionally, first gives the historical analysis of torture in Uganda, analyses the Prevention and Prohibition of Torture Act, discusses the role of the Uganda Human Rights Committee regarding the right, discusses the non-derogable nature of such right and analyses the right in relation to other rights. All these will draw to the conclusion as to whether the police have, in exercising its duties and powers in accordance with the provisions of the law, protected and preserved the right to freedom from torture and other cruel, inhuman or degrading treatment and punishment.

4.1 Historical Analysis of Torture in Uganda

Before the introduction of the United Nations Convention Against Torture, there were existing framework that afforded the masses the right to freedom from torture together with other rights. The problem, of course, was not always with the provisions of the law but came from the executives themselves and of course through the security and law enforcement agencies in Uganda at that time. In most cases, even up-to-date, torture has been used in Uganda as a tool of interrogation by the Uganda security forces, which of course has seriously affected the Ugandan

⁰³ *Ibid.* Long Title.

citizens. The colonial period did not envisage so much reports of torture, however, because of the strives between the whites and the natives, torture occurred to the natives.

There have been reports of gross human rights violations that rocked the past regimes.¹⁰⁴ The Obote and Amin regimes both committed serious violations of human rights. The right to life, freedom from torture and all were the usual rights violated during these periods. Although these rights were not particularly developed at this time, the rate at which it was infringed upon was on another level. The persons who suffered most were those who had been opposing the government in power. Amin eliminated every person who had supported the opposition government. At such a time like this, one would say that the security agencies were under the government of the day which is correct. But at the time they assumed responsibility, they ought to have put into consideration the fundamental human rights and freedoms of the citizens which is not what they did, probably in fear of their own lives.

This history reveals how the state who was supposed to protect the citizens, had committed various atrocities against them instead. This showed that there was need to reform the human rights system of the country because the protection of these rights would have seriously improved the development of the society as well. One would think that the current government had brought reforms with regards to the protection of fundamental human rights and freedoms, especially the right of freedom from torture and other cruel inhuman and degrading treatment or punishment, which it did to some extent. However, the security agents of Uganda¹⁰⁵ began to commit various violations of the human rights. Torture as stated, were used by the same security agents. This infringement was not only limited to torture but other fundamental rights such as the right to freedom from illegal detention and others which these security agencies were noted for despite the laws and existing mechanisms protecting the fundamental human rights and freedoms.

4.2 Analysis of the Prevention and Prohibition of Torture Act

The Prevention and Prohibition of Torture Act was enacted in 2012 to amongst others, provide for the crime of torture and to give effect to the obligations of Uganda as a State Party to the

¹⁰⁴Centre for Policy Analysis, *Torture in Uganda: State Failure and a Case of Old Habits Die Hard*, Policy Paper Series 2017, Pg. 4.

¹⁰⁵Including the Uganda Police Force, the Uganda Peoples' Defense Forces, the Joint Anti-Terrorism Task Force, the Rapid Response Unit, among others.

United Nations Convention Against Torture.¹⁰⁶ The Act is not hesitant to stipulate provisions which explain the definition of torture.¹⁰⁷ It seems that the definition given by the Act is a replica of the definition given by the Convention. But notwithstanding that, the Act does prohibit the use of torture even in circumstances of war or threat of war, internal political instability, public emergency and superior orders.¹⁰⁸

This emphasizes the non-derogable nature of the right because the said justifications are valid justifications when applied to the restriction or violation of other rights. It goes ahead to provide for the criminalization of any act of torture as provided for under the previous section¹⁰⁹ and where a person refuses to carry out an order given by superior to commit such acts of torture, the Act is to the effect that such person shall not be punished for disobeying such orders.¹¹⁰

The next section provides for the circumstances aggravating torture and according to the Act, such circumstances, whilst committing such torture include using a deadly weapon, using sex as a means of torture, torture on a victim with disability, torture on pregnant victim or one that becomes pregnant, death is caused by offender as a result, victim has been given HIV/AIDS, victim is under the age of 18 years, amongst other circumstances,¹¹¹ and for the person who perpetrates these acts, a sentence of life imprisonment is available upon conviction.¹¹² The Act then provides for the compensation, rehabilitation or restitution of the victim by the Court.¹¹³ It is true that the Act does not just only focus on torture. It does also make stipulations for what amounts to cruel, inhuman or degrading treatment or punishment which in line with the Act also has the same definition as is given to torture.¹¹⁴

¹⁰⁶ Prevention and Prohibition of Torture Act, Long Title.

¹⁰⁷ *Ibid.* Section 2.

¹⁰⁸ Section 3.

¹⁰⁹ Section 4 (1).

¹¹⁰ Section 4 (2).

¹¹¹ Section 5 (1) (a)-(k).

¹¹² Section 5 (2).

¹¹³ Section 6.

¹¹⁴ Section 7. In *Vuolanne v Finland* (Human Rights Committee, Communication No. 265/1987), the Human Rights Committee observed that the assessment of what constitutes inhuman or degrading treatment depends on all the circumstances of the case, such as the duration and manner of treatment, its physical and mental effects, amongst others. In addition, the Committee explained that "for punishment to be degrading, the humiliation or debasement involved must exceed a particular level and must in any event, entail other elements beyond the mere fact of deprivation of liberty..."

The next Part of the Act starts by providing for other parties to the offence of torture and such party includes the person who procures, aids or abets, finances, solicits, incites, recommends, encourages, harbors, etc., in order to commit such acts of torture.¹¹⁵ An accessory after the fact to the offence of torture is then provided for explaining that a person who assists another to escape punishment becomes an accessory after the fact.¹¹⁶ The next provision of the Act is quite impressive as it provides for the superior responsibility over the subordinate. The principle of superior responsibility is a well-known principle in international law, particularly in international criminal law.¹¹⁷ In accordance with the provisions of the Act, the superior is liable for acts of torture committed by the subordinate where he knew or consciously disregarded information indicating that the act of torture was about to or was committed by the subordinate, amongst other instances provided.¹¹⁸

Any person has the right to make a complaint upon which an investigation is made to that effect and the suspect may be found and arrested by the Police, after which a criminal proceeding in accordance with the provisions of the Act may be instituted against the person.¹¹⁹ Evidence obtained, therefore, by torture will be inadmissible and it will be prohibited to use information which has been obtained by torture.¹²⁰ Additionally, the Act, in Part V provides that a detainee shall not be transferred to a place where there is reasonable belief that he may be subjected to torture.¹²¹ The Chief Magistrate has the jurisdiction to handle offences of torture, offence of which is bailable by it.¹²²

Then lastly, the Act stipulates general provisions relative to torture. This Act is actually a comprehensive legislation dealing with the prevention and prohibition of torture in Uganda. It is in fact a welcome development in the field of criminal law as it not just provides for torture as a

¹¹⁵Section 8.

¹¹⁶Section 9.

¹¹⁷Rome Statute of the International Court of Justice, Article 25 and 33; *The Hostages Trial (United States of America v Wilhelm List)* Case No. 7 Judgment of 1948; *Prosecutor v Jean Paul Akayesu* ICTR-96-4-T. These cases, having been decided by the Nuremberg Tribunal and the International Criminal Tribunal for Rwanda, as well as the Rome Statute establish both the principles of command responsibility and superior orders and in addition, the individual responsibility is also important.

¹¹⁸Section 10.

¹¹⁹Section 11-12.

¹²⁰Section 14-15.

¹²¹Section 16.

¹²²Section 17-18.

crime but also comprehensively discusses its prohibition in Uganda. The only issue there exists with the Act is that it is really limited as to “other cruel inhuman and degrading treatment or punishment,” tending to make it appear like it is the same with torture yet in reality it is somewhat different.¹²³

4.3 The Role of the Uganda Human Rights Commission regarding the Right

The Uganda Human Rights Commission is created under the Constitution¹²⁴ composed of the chairperson and other three members appointed by the President with the approval of the Parliament. The Constitution mandates that the “chairperson and the members shall be persons of high moral character and proven integrity.”¹²⁵ As provided for under the Constitution,¹²⁶ the Uganda Human Rights Commission (UHRC) has the power to investigate human rights complaints, publish and submit periodic and annual report to the Parliament of Uganda. It is also empowered to monitor the government’s compliance with international treaties and conventions obligations on human rights.¹²⁷ The Constitution provides for other functions, powers and duties to be performed by the Uganda Human Rights Commission.

In line with the performance and exercise of the powers and duties of the police, the Uganda Human Rights Commission inspects the police, which is part of the executive arm of the government, to find out whether the police are protecting the lives of individuals. Human Rights Reports are therefore made showing also in that line what the police are doing to ensure that there is a reduction in the number of violations of the right to freedom from torture and other cruel inhuman and degrading treatment and punishment and other rights as well because the fact is that torture by security forces remain serious¹²⁸ and unaddressed in Uganda.¹²⁹ One of the recommendations that have been made is that the government of Uganda should take immediate measures to investigate the excessive use of force and incidents of torture by security forces and

¹²³<https://www.ncbi.nlm.nih.gov/m/pudmed>; Accessed May 11, 2018.

¹²⁴Constitution of the Republic of Uganda, Article 51.

¹²⁵*Ibid.* Article 51 (4).

¹²⁶Article 52.

¹²⁷Article 52 (1) (h).

¹²⁸<https://ugandaradionetwork.com/story/uhrc-2011-report-pins-police-on-torture>

¹²⁹HRW Submission to UPR (2011). <https://www.hrw.org/news/2011/03/29/universal-periodic-review-uganda>

to prosecute those members of the security forces who perform such acts of torture.¹³⁰ The UHRC's role in relation to this right, therefore, is to make sure that in one way or the other, the violations committed are reduced drastically.

4.4 Application of International Instruments on Torture in Uganda and the Non-Derogable Nature of the Right

As explained earlier, international law provides for this right and guarantees its protection. There are various international treaties and conventions that give provisions for the protection of the right to freedom from torture and other cruel inhuman and degrading treatment or punishment. The status of protection that has been afforded to this right in international law is the status of *jus cogens*,¹³¹ which is already understood to mean compelling law, being a higher level of customary international law.¹³² In this sense, the prohibition of torture and other cruel and inhuman degrading treatment or punishment is high such that in international law, there is no justification.¹³³

Diverse areas and branches of international law emphasize on the prohibition of torture however there are areas more important such as international human rights law, international humanitarian law and international criminal law. The provisions of international human rights law give general prohibitions of torture but of course, this international human rights law is only applicable in peace time. Conventions of international human rights law include, the International Covenant on Civil and Political Rights, the Universal Declaration on Human Rights, the African Charter,

¹³⁰ *Ibid.*

¹³¹ *Al-Adsani v. UK*, [2001] ECHR 35763/97, at para. 61; Inter-American Court of Human Rights, *Caesar v. Trinidad and Tobago* (11 March 2005), paragraph 70

¹³² Henckaerts, J-M. and Doswald-Beck, L., *Customary International Humanitarian Law, Volume I: Rules*, International Committee of the Red Cross and Cambridge University Press, Cambridge, 2005, at pp. 315-317; 1975 *UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly Resolution 3452, by consensus, article 3; UN Human Rights Committee, General Comment 24; ICTY *Prosecutor v. Anto Furundzija* (10 December 1998), para. 137; ICTY, *Prosecutor v. Delalić and others* (16 November 1998), paras. 454, 517.

¹³³ Human Rights Committee, General Comment 20, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), paragraph 3. Convention against Torture, articles 2(2) and (3). General Assembly Declaration, articles 2, 3 and 7.

the European Convention, the Inter-American Convention and a few others.¹³⁴ International humanitarian law whilst seemingly intertwined with international criminal law prohibits torture in specific cases known as war or armed conflict as a result of the fact that international humanitarian law only applies in that regard.

The interrelationship between international humanitarian law and international human rights law gives result to comprehensive instruments such as the Rome Statute of the International Criminal Court, the Geneva Conventions and their Additional Protocols. The Rome Statute being the creator of the ICC is a statute which provides for international crimes including war crimes, crimes against humanity, genocide, crime of aggression. The substantive provisions of these crimes prohibit the torture and in fact criminalizes it.¹³⁵

The provisions of the Geneva Conventions and their Additional Protocols do the same providing amongst the minimum guarantees that women and children shall not be subjected to torture.¹³⁶

The United Nations Convention Against Torture whilst being primarily an international human rights instrument is clearly also applicable in international criminal law and international humanitarian law when also identifying the acts that constitute torture.

Another important international convention here, is the Inter-American Convention on Prevention and Prohibition of Torture and the European Convention on the same, but is only applicable in the continent of South America and Europe. They do however, protect the freedom from torture and other cruel and inhuman degrading treatment and punishment. It is quite obvious the extent to which international law protects the freedom from torture and as such, it is the duty of the Police to also do the same, protecting and preserving the freedom from torture and not being the perpetrators of such violations themselves. But the next segment shall look at some special police units in Uganda and how they have perpetrated acts of torture in the name of security, against the individual population in Uganda.

¹³⁴ 1953 European Convention for the Protection of Human Rights and Fundamental Freedoms, article 3; 1978 American Convention on Human Rights article 5(2); 1981 African Charter on Human and Peoples' Rights, article 5.

¹³⁵ Rome Statute of the International Criminal Court, articles 7(1)(f) and (k), and 8(2)(a)(ii), b)(xxi) and (c); *Prosecutor v Jean Paul Akayesu*, ICTR.

¹³⁶ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, articles 3(1)(a) and (c), 27, 29, 31, 32, 147. Additional Protocol to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts, Article 75; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Article 4.

4.5 Torture and Special Police Units in Uganda

The Uganda Police have been given the responsibility to protect the lives and property of the civilian population¹³⁷ and in so doing, they are given special powers to enable them effectively and efficiently perform those duties.¹³⁸ In practice, the Police have come up with special task force units which are presumably more efficient in tackling and fighting specific crimes. These include Joint Anti-Terrorism Task Force (JATT), Rapid Response Unit (RRU), among others.¹³⁹ These specialized units have been accused of torturing alleged suspects and keeping them in “safe houses”¹⁴⁰ therefore showing that they have not been committed to protecting and preserving the right to freedom from torture and other cruel inhuman and degrading treatment and punishment.

The overwhelming violations that have been perpetrated by these so-called special police and task-force units have made people unsatisfied with the actions of the police and have even called for the disbandment of these special police units since they have failed to protect and uphold the right to freedom from torture and other cruel inhuman and degrading treatment or punishment in addition to other fundamental human rights and guarantees provided by the Constitution and relevant international law.

4.6 The Right to Freedom from Torture and Other Cruel Inhuman Degrading Treatment and Punishment in Relation to other Rights in Uganda

The right to freedom from torture and other cruel and inhuman degrading treatment and punishment is a right that is closely related and interconnected with other rights. It is obvious that the infringement of one right can also result in the violation of other rights.¹⁴¹ There is no

¹³⁷Police Act, Section 4.

¹³⁸*Ibid.* Section 23.

¹³⁹APCOF Policy Paper in conjunction with the UHRC, Pre-Trial Detention in Uganda by Roselyn Karugonjo-Segawa, Page 3. The Rapid Response Unit is notorious for various human rights violations including the violation of the freedom from torture and other cruel inhuman and degrading treatment or punishment.

⁴⁰Joint NGO Submission by African Centre for Treatment and Rehabilitation of Torture Victims, and others, Universal Periodic Review for Uganda, Page 3-4; Uganda 2016 Human Rights Report, Page 3-4. 2009, Human Rights Watch, Open Secret: *Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*; Human Rights Watch, *State of Pain: Torture in Uganda*, 2004.

⁴¹Constitution of the Republic of Uganda, Article 43 (1).

doubt what rights the right to freedom from torture is interrelated with. These right includes the right to life, the right to liberty and security of person as well as the right to health. The right to freedom from torture is related with the right to life because consistent infliction of acts of torture on any particular person may lead to his/her death, thereby depriving such person of the right to life. The relationship between this freedom and that of liberty and security of person is that torture usually disables the person or victim of his/her liberty. The reports disclose that¹⁴² the special police units are known for keeping suspects in "safe houses" of course, ungazetted areas, torturing them in order to have access to information.

More often than not, the torture and deprivation of liberty and security of person go hand-in-hand. This is also applicable to the right to health. This right is also closely related to the right to life because when the health of person deteriorates, the result can be death. Since torture inflicts severe pain and injuries to the victim, these pains and injuries can lead to sickness. If the wounds are not treated well, viruses and bacteria can enter and cause illnesses and diseases. This is clearly an infringement of the right to health. The researcher decided to focus on the three rights; right to life, personal liberty and because these rights relate closely with each other. Prolonged deprivation of liberty can also cause deprivation of health where such detention centre is poorly ventilated. These rights will be discussed in relation to have a better understanding of how the actions of the police have affected the said rights.

4.6.1 The Right to Life

The right to life is one of the most important fundamental human rights guaranteed to any individual. It is prohibited by both domestic and international law¹⁴³ to take away the life of a person in a manner that is inconsistent with the exceptions provided by the law. The right to life is given so much protection because of the fact that without the existence and enjoyment of the

⁴²Human Rights Watch, *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda*; Human Rights Watch, *State of Pain: Torture in Uganda*, 2004. This report has given a detailed account of how the security agency, JATT has been committing torture and illegal detention, including other systematic human rights violations.

⁴³Universal Declaration on Human Rights, adopted by the United Nations General Assembly in Paris on 10 December 1948, Article 3; International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 200A (XXI) of 16 December 1966, entry into force 23 March 1976, Article 6.

right, other rights cannot be enjoyed and or realized. The State therefore has the underlying duty to protect the lives of its citizens.

Within the Ugandan jurisdiction the only exceptions allowed where the right to life of an individual may be taken away is where there has been a conviction and sentence passed by a competent Court and confirmed by the highest appellate Court for an offence attracting such penalty.¹⁴⁴ The second exception provided for is where there is the termination of the life of an unborn child to save the life of the mother.¹⁴⁵ The does not permit any other derogation from the right to life.

It has been explained already that it is the utmost duty of the Police to protect the property and lives of citizens and additionally, it is their duty to preserve, protect and uphold the fundamental human rights and freedoms of individuals.¹⁴⁶ Therefore, in the performance of their duties, generally, the Police must take into consideration the life of the person who it seeks to arrest for the commission of a crime and even where the Police has to use force to apprehend a suspect or prevent his/her escape, it must take into account the protection of the life of that person. In relation to the prohibition of torture, there have been reported cases where the Police and even the UPDF has used excess force, thereby aggravating the act and circumstances of torture, resulting in the death of the individual.¹⁴⁷

4.6.2 The Right to Liberty and Security of Person

The right to liberty and security of person has been exhaustively discussed in previous chapters of this study. This right, as explained, emphasizes that an individual has the freedom and the liberty to do as they wish. This right is also important in a democratic society and is additionally closely related to the right to freedom of association and assembly. The protection of this right is guaranteed both in domestic and international law. It is not an absolute right and can be

¹⁴⁴Constitution of the Republic of Uganda, Article 22 (1).

¹⁴⁵Constitution of the Republic of Uganda, Article 22 (2).

¹⁴⁶Police Act, Section 4. *Muwanga Kivumbi v Attorney General* Constitutional Petition No. 9 of 2005. It was stated in this case that it is the paramount duty to keep law and order and to protect the lives of citizens and as such the Police should provide security and not to harm individuals and to ensure that their rights are protected; See also, *Byarungaba v Uganda* (1973) 1 EA 234.

¹⁴⁷*Uganda v PTE Turyamureeba Amon and Lwanga Issa* HCT-05-CR-CSC-0297, 2006; Uganda 2016 Human Rights Report.

derogated or restricted or limited but must be in accordance with the provisions of the Constitution.¹⁴⁸

It is the duty of the Police to protect the liberty and security of persons even when exercising the duties, functions and powers given to them by and in accordance with the law. The right to liberty and security of person usually precedes the right to freedom from torture and other cruel inhuman and degrading treatment and punishment when it comes to do with the performance of the duties of the Police. This is because usually, when the Police apprehends a suspect for the commission of a particular crime, his/her liberty is restricted by placing such suspect in a detention facility. Where a person is detained in an illegal detention facility, torture is what comes as a result. The study has explained that the so-called special police units have been involved in torture and detention of persons in "safe houses".¹⁴⁹ More often than not, these safe houses are not gazetted in accordance with the provisions of the law. Additionally, the infliction of torture can result in the inability of the victim to exercise the right to liberty and security of person.

4.6.3 The Right to Health

The right to health is a right provided for under the Constitution¹⁵⁰ that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, in addition to other rights provided. The right to health is closely related to the right to life which the Police has the duty to protect in performance and exercise of their duties provided under the law. Torture generally has a physical effect on the victim. It exposes the victim to serious internal and external injuries, detrimental to the health of that victim, which if not particularly treated will result in the death of the victim. The conditions of prisons and detention centers are bad and also deteriorate the health of the detainee or prisoner, therefore even inflicting torture on them.¹⁵¹

⁴⁸Constitution of the Republic of Uganda, Article 46.

⁴⁹Uganda 2016 Human Rights Report.

⁵⁰Constitution of the Republic of Uganda, Objectives and Directive Principles of State Policy, Objective XIV (b)

⁵¹Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. p.37; Human Rights Watch. 2011. *'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons*. New York: Human Rights Watch. p.15 and p. 19

4.7 Conclusion

This chapter has discussed the right to freedom from torture and other cruel inhuman and degrading treatment or punishment in detail. The historical analysis of the right has also been looked at. The right to freedom from torture and other cruel inhuman and degrading treatment or punishment is a very delicate right to be protected by the Police as a result of the fact that the right is a non-derogable right. The provisions of domestic and international law effectively do provide for the protection of this right, that there shall be no violation of it. The Ugandan human rights system has not been adequately protected by the state. The study has in effect explained that it is the duty of the state to respect these delicate rights and fundamental freedoms. The state apparatus in this regard consists of the police and other law enforcement agencies. If the police fail to protect the fundamental human rights and freedoms, violating them instead, it will be against the whole purpose of protecting the right.

Therefore, in conclusion it is imperative and pertinent that the Police is reformed to ensure that it takes serious the fundamental human rights of the citizens. The Prevention and Prohibition of Torture Act is a very comprehensive Act but has not been enforced or implemented. The question is, how can these fundamental human rights and freedoms be protected when the law enforcers are the ones who violate the rights themselves. The conduct of this chapter therefore shows the importance of this right and how the Police are going about it.

CHAPTER FIVE

SUMMARY, FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.0 Summary of the study

This study has dealt with specific human rights issues in Uganda. In this study, the researcher looked at, discussed and analyzed three basic rights in relation to Police use of force in performing their duties and exercising their powers. These rights include the right to liberty and security of person, the right to freedom of association and assembly and the right to freedom from torture and other cruel inhuman and degrading treatment or punishment. These rights were selected because they are the rights directly affected by the Uganda Police. Amongst them, it is only the right to freedom from torture that is non-derogable. The chapters of this study therefore analyzed the level at which the Uganda Police has protected, and enforced the preservation of this right.

In summary the second chapter of this study gave a discussion and analysis as well as a review of the international provisions of the various rights considered in the study. The chapter included excerpts from conventions, treaties and declarations such as the international covenant on civil and political rights, the universal declaration on human rights, the international covenant on economic, social and political rights, the United Nations Convention Against Torture, the African Charter, the European Convention amongst other human rights conventions. The international perspective was given to show not only what instruments and provisions govern the protection of human rights internationally, but in addition put forth some international case law that emphasized the protection and realization of the rights discussed in the study. The chapter concluded by stating that the international protection of select human rights and fundamental freedoms are more developed and protected when compared to the Ugandan human rights system.

The third chapter of this study focused on the right to freedom of association and assembly together with the right to liberty and security of person and how the Police has protected it. The discussion on these rights are to the effect that the Police has not put in much effort in making sure that the use and exercise of their powers and duties do not cause an unjustifiable infringement of these rights. The rights were discussed together because they are interrelated and interconnected in more ways than one. The arrest of persons expressing their freedom of

assembly may also lead to the detention of such persons in a manner that is inconsistent with the provisions of the law. The chapter looked at the provisions of the Police Act and the Public Order Management Act in relation to the duties of the Police to disperse public meetings in accordance with the law.

The discussion of on the exercise of these powers have taken two perspectives. The first one is that the powers of the Police to disperse public gatherings is *prima facie* unconstitutional and a violation of human rights in the context the Acts stipulates. The second perspective is these powers may not necessarily be unconstitutional but the constitutionally comes with the way the Police exercise the power to disperse public meetings. Practically, the understanding of the second perspective is that the Police has arbitrarily exercised the powers given to them in accordance with the provisions of the Constitution and the Act. On personal liberty, the chapter looked at the how the Police and its special units have committed utter violations of the freedom from detention. Apparently people are being detained in illegal and ungazetted places, for a period more than is required and more than is constitutional. The various instances of this were given by this chapter.

The next chapter, chapter four, dealt with the right to freedom from torture and other cruel inhuman and degrading treatment or punishment. The definition of torture was given. The Prevention and Prohibition of Torture Act was analyzed explaining the various aspects the Act provided on the right. The understanding given by this chapter is that violations of these rights have been committed by the Police but more by the special police units including the JATT, RRU and others. international protection, in order to give light on this right, was explained. The UN Convention on Torture was of particular importance. The chapter looked at the role that has been played by the Uganda Human Rights Commission in relation to the protection of this. Additionally, the relationship between this right and other rights including the right to health, the right to life, etc., were explained.

The conduct of this chapter and the study reveals (the findings will be highlighted in detail in the next segment) that the Police has instead of preserving and protecting the fundamental human rights and freedoms of individuals, have perpetrated their infringement in a manner totally unconstitutional. The recommendations which shall be given must be taken into perspective and acted upon by the Police in order to realize a better and responsible Police force who shall protect the rights of individuals discussed in this chapter in addition to other rights provided in

accordance with the Constitution and other laws as well as human rights provisions of international instruments.

5.1 Findings of the study

The conduct of this study has revealed some interesting results which are understood to consist the findings of the study. The careful analysis of the aspects of the study has contributed greatly to the findings that have been revealed. There are positive findings which have been made by the conduct of the study and there are also negative findings. The positive findings should be improved upon whilst the recommendations given should change the negative findings and also improve upon it. The findings of this study include the following;

- Well drafted human rights laws

The conduct of the study has revealed that human right legislations in Uganda are well provided for. An example is the Constitution and the Prevention and Prohibition of Torture Act giving specific provisions of the rights, the exceptions and how the rights should be protected and preserved by the State and its law enforcement agencies including the Police.

- Broad international protection of the rights

It has been revealed by this study either directly or indirectly that there is a vast and broad international protection of the rights discussed in this study. These include not only conventions, treaties, declarations, but principles, customs, norms, general comments, reports of special rapporteurs on these rights, varieties of decided cases on these rights, among others showing that the international bodies place a fundamental importance on the protection of these rights.

- The State has caused more human rights violations than individuals have

The State enacted the laws that provide for the protection and preservation of the various rights and additionally provides that it is the solemn duty and responsibility of the State, its apparatus and organs to ensure that the rights provided in the various enactments are preserved and protected fully, in exception of justified restrictions. But the conduct of this study has revealed that the State has caused more human rights violations instead of protecting them, through the misuse of the powers given by the Police whilst applying force in “relevant” circumstances.

- Poor implementation and enforcement of the selected rights

The study has revealed that there is poor implementation and enforcement of the rights discussed in this study stemming from the misuse of force by the Police and the failure to eliminate such actions.

- Excessive Police use of force and abuse of powers and Extensive reports on human rights violations by the Police

The human rights violations perpetrated by the Police and its special units have been occurring for a long period of time and as such there have been extensive reports on the abuses of human rights that have been conducted by the Police and its special units.

5.2 General conclusions

The conclusion of this study is quite simple. The Police has not lived up to its mandate and expectations and as such a serious reformation which will be given in the recommendations is needed. The three rights discussed in this study have revealed that the Police has not done that which they ought to do. The Constitution provides for these rights and guarantee their protection but the Police has not been vigilant enough to do the same. The justification of security reasons are just mere excuses given to violate these rights and apparently the infringement of these rights can cause the people to even go into violence more.

Lastly, the fact that the study only discusses three rights does not mean that the Police has not caused violations of other rights. The way international law protects these rights and other existing rights should also be the way the Police protects these rights. The force used should be reduced in accordance with the provisions of the law and its code of conduct.

5.3 Specific recommendations

The conduct of this study shows that something needs to be done to stop the violations perpetrated by the Police Force of Uganda which is the major problem that has been discussed in this study and as such recommendations have been given below to change the situation that is present in order to improve the human rights protection standard by the Police in Uganda. These recommendations include the following;

- All special police units should be eliminated if they cannot be regulated.
- The Police disciplinary actions should be tightened and fully implemented.

- There should be more awareness of the functions and duties of the Police as well as the limitations on the powers of the Police.
- There should be better implementation and enforcement of human rights by the Police.
- There should be a constant and periodic review of Police actions to make sure that such violations are reduced to the barest minimum.
- The legislations imposing functions, duties and powers on the Police should be reviewed and where possible be amended to reduce that powers given to them.